Commerce Committee

Monday, April 24, 2023
12:00 PM - 5:00 PM
Webster Hall (212 Knott)

Meeting Packet

Paul Renner
Speaker

Bob Rommel
Chair

The Florida House of Representatives

Commerce Committee

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Meeting Agenda

Monday, April 24, 2023
12:00 PM – 5:00 PM
Webster Hall (212 Knott)

I. Call to Order

II. Roll Call

III. Opening Remarks

IV. Consideration of the following bill(s):

- HB 451 Valuation of Timeshare Units by Fine
- CS/HB 1241 Safety Standards for Amusement Rides by Regulatory Reform & Economic Development Subcommittee, Bracy Davis
- HB 1333 Interstate-Mobility and Universal-Recognition Occupational Licensing Act by Koster
- CS/HB 1383 Specialty Contractors by State Administration & Technology Appropriations Subcommittee, Trabulsy, Mooney
- CS/HB 1547 Technology Transparency by Regulatory Reform & Economic Development Subcommittee, McFarland
- CS/HB 1549 Pub. Rec./Investigations by the Department of Legal Affairs by Regulatory Reform & Economic Development Subcommittee, McFarland

Consideration of the following proposed committee bill(s):

- PCB COM 23-05 -- Changes in Ownership of or Interest in Pari-mutuel Permits

Consideration of the following proposed committee substitute(s):

- PCS for CS/HB 669 -- Improvements to Real Property
- PCS for HB 917 -- Wage and Employment Benefits
- PCS for CS/HB 1013 -- Protection from Discrimination Based on Health Care Choices
- PCS for CS/HB 1015 -- Pub. Rec./Protection from Discrimination Based on Health Care Choices
- PCS for HB 1617 – Immigration

V. Closing Remarks

VI. Adjournment

HB 451

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 451 Valuation of Timeshare Units
SPONSOR(S): Fine
TIED BILLS: **IDEN./SIM. BILLS:** SB 1450

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Ways & Means Committee	14 Y, 4 N	Berg	Aldridge
2) Commerce Committee		Fletcher	Hamon

SUMMARY ANALYSIS

Under Florida law, a property appraiser must first look to the resale market to value timeshare property. If the property appraiser determines that there is an inadequate number of resales to provide a basis for determining value, the property appraiser must use the original purchase price of the timeshare and then deduct "usual and reasonable fees and costs of the sale" to determine value.

The bill provides that upon an appeal of a property appraiser's valuation of timeshare property, the number of resales is deemed to be adequate if the taxpayer asserts that there is a reasonable number of resales and such assertion is supported by the Uniform Standards of Professional Appraisal Practice.

The bill does not have an effect on state government revenues or expenditures. However, the Revenue Estimating Conference estimates that the bill would have a recurring negative impact on local government property tax revenues of $208.2 million ($77.5 million school taxes; $130.7 million non-school taxes), beginning in FY 2023-24. The bill will have an indeterminate positive fiscal impact on the private sector.

The bill is effective July 1, 2023.

This bill may be a county or municipality mandate requiring a two-thirds vote of the membership of the House. See Section III.A.1 of the analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Timeshares

A timeshare interest is a form of ownership of real and personal property.[1] In a timeshare, multiple parties hold the right to use a condominium unit or a cooperative unit. Each owner of a timeshare interest is allotted a period of time during which the owner has the exclusive right to use the property.

The Florida Vacation Plan and Timesharing Act, ch. 721, F.S., establishes requirements for the creation, sale, exchange, promotion, and operation of timeshare plans, including requirements for full and fair disclosure to purchasers and prospective purchasers.[2] Chapter 721, F.S., applies to all timeshare plans consisting of more than seven timeshare periods over a period of at least three years in which the accommodations and facilities are located within this state or offered within this state.[3] Part I of ch. 721, F.S., relates to vacation plans and timesharing, and Part II of chapter 721, F.S., relates to multisite vacation and timeshare plans that are also known as vacation clubs.

A timeshare unit is an accommodation of a timeshare plan which is divided into timeshare periods or a condominium unit in which timeshare estates have been created.[4]

A "timeshare estate" is a right to occupy a timeshare unit, coupled with a freehold estate or an estate for years with a future interest in a timeshare property or a specified portion thereof.[5] The term also includes an interest in a condominium unit, a cooperative unit, or a trust. Whether the term includes both direct and indirect interests in trusts is not specified. An example of an indirect interest in a trust is the interest of a trust beneficiary's spouse or other dependent.

The "managing entity" for a timeshare property is the person who operates or maintains the timeshare plan pursuant to s. 721.13(1), F.S., which defines the managing entity as either the developer, a separate manager or management firm, or an owners' association.[6]

Tax Assessments

Section 192.037, F.S., governs the ad valorem taxation of fee timeshare real property.[7] The managing entity responsible for operating and maintaining fee timeshare real property is considered the taxpayer as an agent of the timeshare period titleholder.[8]

The managing entity responsible for operating and maintaining the timesharing plan and each person having a fee interest in a timeshare unit or timeshare period may contest or appeal an ad valorem tax assessment in the same manner as other property owners under ch. 194, F.S., which relates to the administrative and judicial review of property taxes assessed by the property appraiser.[9]

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[1] See s. 721.05(36), F.S.
[2] S. 721.02(2) and (3), F.S.
[3] S. 721.03, F.S.
[4] See ss. 721.05(41) and 718.103(26), F.S.
[5] S. 721.05(34), F.S.
[6] See s. 721.02(22), F.S., defining the term "managing entity."
[7] S. 192.001(14), F.S., defines the term "fee timeshare real property" to mean "the land and buildings and other improvements to land that are subject to timeshare interests which are sold as a fee interest in real property."
[8] S. 192.001(15), F.S., defines the term "timeshare period titleholder" to mean "the purchaser of a timeshare period sold as a fee interest in real property, whether organized under ch. 718, F.S., relating to condominium associations, or ch. 721, F.S, relating to timeshares and vacation plans.
[9] S. 192.037(4), F.S.

The managing entity is required to collect and remit the taxes and special assessments due on fee timeshare real property. In allocating taxes, special assessments, and common expenses to individual timeshare period titleholders, the managing entity must clearly label the portion of any amounts due which are attributable to ad valorem taxes and special assessments.[10]

A property appraiser must first look to the resale market for determining the value of timeshare property.[11] In order for resales to meet the definition of "fair market" value, those resales must constitute arms-length transactions.[12] If the property appraiser finds an inadequate number of resales exists for such a determination, the property appraiser must determine the value by deducting the "usual and reasonable fees and costs of the sale" from the original purchase price.[13]

The term "usual and reasonable fees and costs of the sale" for timeshare real property includes all marketing costs, atypical financing costs, and those costs attributable to the right of a timeshare unit owner or user to participate in an exchange network of resorts.[14] For timeshare real property, the "usual and reasonable fees and costs of the sale" is presumed to be 50 percent of the original purchase price, but that presumption is rebuttable.[15]

Litigation

The valuation of timeshare properties has been the subject of recent litigation. In Star Island Vacation Ownership Ass'n v. Scarborough, 313 So. 3d 1168 (Fla. Dist. Ct. App. 2021), the Fifth District Court of Appeals per curium affirmed the ruling of the circuit court that the resale market of timeshares does not provide a sufficient basis for obtaining reliable resale data.[16]

In Star Island, the Property Appraiser presented evidence that during the year at issue (2014), out of approximately 25,000 total sales of timeshares, only 3,790 were classified as resales.[17] Of those resales, approximately 90% were transacted for nominal amounts which removed them from consideration for valuation purposes.[18] The Property Appraiser also presented evidence that the exceedingly large number of resales at nominal amounts reflected significant financial distress in the overall market.[19] The remaining number of resales constituted less than 1.7% of the total timeshare sales market each year.[20] When evaluating the sales from the viewpoint of total sales consideration, the resale market constituted less than 1% of the total sales of timeshares.[21]

While there were hundreds of developer sales each year that clearly qualified as arms-length transactions reflective of just value, the resales showed no consistent trend in pricing, and, accordingly, the court agreed with the Property Appraiser that there were not a sufficient number (only 4 resales potentially qualified as arms-length transactions) to support an accurate, credible, and reliable value conclusion.[22] In sum, the court concluded that the resale market does not provide a sufficient basis for obtaining reliable sales data.[23]

Effect of Proposed Changes

The bill amends s. 192.037, F.S., to provide that in any tax appeal regarding a timeshare unit, if the taxpayer asserts that there are an adequate number of resales to provide a basis for arriving at value

[10] S. 192.037(5), F.S.
[11] S. 192.037(10), F.S.
[12] Star Island v. Scarborough, case no. 2016-CA-1006-OC, 9th Cir. Ct. Fla. 2019.
[13] S. 192.037(11), F.S.
[14] S. 192.037(11), F.S.
[15] S. 192.037(11), F.S.
[16] Star Island v. Scarborough, case no. 2016-CA-1006-OC, 9th Cir. Ct. Fla. 2019.
[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *Id.*
[23] *Id.*

conclusions, the number of resales must be considered adequate if the taxpayer provides a reasonable number of resales and such number is supported by the most recent standards adopted by the Uniform Standards of Professional Appraisal Practice.[24]

The bill further provides that this method meets the requirement of just valuation of all property, as provided in s. 4, Art. VII of the State Constitution.

The bill is effective July 1, 2023.

B. SECTION DIRECTORY:

Section 1: Amends s. 192.037, F.S., relating to fee timeshare real property; taxes and assessments; escrow.

Section 2: 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:

The Revenue Estimating Conference estimates that the bill would have a recurring negative impact on local government property tax revenues of $208.2 million ($77.5 million school taxes; $130.7 million non-school taxes), beginning in FY 2023-24.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Individuals having an interest in a timeshare unit or timeshare period may benefit from a reduction in assessed ad valorem taxes.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

[24] Adopted by Congress in 1989, the Uniform Standards of Professional Appraisal Practice are the generally recognized ethical and performance standards for the appraisal profession in the United States. *See* The Appraisal Foundation, *What is UPAP?*, available at: https://www.appraisalfoundation.org/imis/TAF/Standards/Appraisal_Standards/Uniform_Standards_of_Professional_Appraisal%20Practice/TAF/USPAP.aspx (last visited April 23, 2023).

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 may reduce the authority of cities and counties to raise total aggregate revenues. This bill does not appear to qualify under any exemption or exception. If the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

2. Other:

   The bill provides that the valuation methodology provided for in the bill meets the requirement of just valuation of all property, as provided in s. 4, Art. VII of the State Constitution. The authority to make this determination vests with the judicial branch of state government.[25]

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

[25] *See* Art. V, s. 1., and Art. III, s. 3., Fla. Const.

A bill to be entitled

An act relating to valuation of timeshare units; amending s. 192.037, F.S.; specifying the methodology by which certain timeshare units must be valued in certain tax appeals; providing that the methodology meets the constitutional mandate for just valuation; providing an effective date.

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

Section 1. Subsection (12) of section 192.037, Florida Statutes, is renumbered as subsection (13), and a new subsection (12) is added to that section to read:

192.037 Fee timeshare real property; taxes and assessments; escrow.—

(12) In all tax appeals regarding timeshare units in which the taxpayer asserts that there are an adequate number of resales to provide a basis for arriving at value conclusions, the number of resales shall be considered adequate when a reasonable number of resales are provided by the taxpayer and supported by the most recent standards adopted by the Uniform Standards of Professional Appraisal Practice. This methodology meets the requirement of just valuation of all real estate located in this state, including timeshare units, as recognized by and provided in s. 4, Art. VII of the State Constitution.

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

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

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1241 Safety Standards for Amusement Rides
SPONSOR(S): Regulatory Reform & Economic Development Subcommittee, Bracy Davis and others
TIED BILLS: HB 1243 **IDEN./SIM. BILLS:** CS/SB 902

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	15 Y, 0 N, As CS	Larkin	Anstead
2) Agriculture & Natural Resources Appropriations Subcommittee	14 Y, 0 N	Byrd	Pigott
3) Commerce Committee		Larkin	Hamon

SUMMARY ANALYSIS

The Department of Agriculture and Consumer Services (DACS) is required to inspect all amusement rides in Florida, except those at large parks with more than 1,000 employees and inspectors on staff. All temporary amusement rides are inspected each time they are moved or set up at a new location, and permanent rides are inspected semiannually. All amusement rides are required to be permitted annually, required to undergo nondestructive testing for structural integrity, and must have an annual inspection by a professional engineer or qualified inspector. DACS can investigate accidents, impose sanctions for violations, and close and impound amusement rides that are a danger to the public.

The bill:

- Renames the act related to safety standards for amusement rides, “The Tyre Sampson Act”.
- Requires permanent amusement rides operated for the first time in this state after a specified date to have a ride commissioning and certification report on file with the DACS within a specified timeframe.
- Revises nondestructive testing and affidavit requirements.
- Provides authority for DACS to inspect certain rides that are exempt from inspection, at the request of DACS.
- Revises requirements for posting signs relating to rider qualifications.
- Revises the circumstances under which the owner or manager of an amusement ride is required to report an accident and under which DACS may impound an amusement ride involved in an accident.
- Authorizes DACS to impound rides with similar operating characteristic to other rides involved in an accident investigation.
- Requires DACS to produce a written report of all accident investigations.
- Revises circumstances under which an amusement ride may be considered an immediate serious danger to the public.
- Requires that amusement ride owners record maintenance and training data at the time the maintenance or training was performed.
- Directs DACS to create rules for operator training/retraining standards

The bill will have an indeterminate negative fiscal impact on DACS.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Tyre Sampson

In March 2022, 14-year-old Tyre Sampson, who was visiting Orlando, Florida with his football team, fell to his death from an amusement ride, the 400-foot (122-meter) drop tower ride, operated by Orlando Slingshot[1]. The teenager was described as great athlete, hard worker, a very good and generous person, and "a big teddy bear, a gentle giant."[2]

After an investigation, outside engineers reported that sensors on the ride had been adjusted manually to double the size of the opening for restraints on two seats, resulting in the teen not being properly secured.[3] The attendant who strapped Sampson into the ride was newly hired. The ride has since been shut down and the company has been fined by the DACS.

Amusement Ride Inspections

DACS is required to inspect all amusement rides in Florida, except those at large parks with more than 1,000 employees and an inspector on staff. The Bureau of Fair Rides Inspection within the department is required to inspect, investigate, and enforce the regulations related to amusement rides.[4]

Amusement rides regulated in the state of Florida fall into two major groups:

- Temporary amusement rides (those that are regularly relocated with or without assembly);
- Permanent facility amusement rides (those that are not regularly relocated and operate as a lasting part of the premises).[5]

All temporary amusement rides are inspected each time they are moved or set up at a new location, and permanent rides are inspected semiannually. All amusement rides are required to be permitted annually, are required to undergo nondestructive testing for structural integrity, and must have an annual inspection by a professional engineer or qualified inspector.[6]

DACS also inspects go-kart tracks, water-related amusement rides, and zip-line courses operating in the state.[7]

In addition, DACS investigates accidents involving amusement rides and has the authority to impose sanctions on amusement ride owners for violation of the law. DACS can close and impound amusement rides that pose an immediate serious danger to public health, safety, and welfare.[8]

Adoption of Standards

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[1] Curt Anderson, *Florida Amusement Park Where Tyre Sampson Fell to His Death Fined $250,000*, ABC Channel 7, Nov. 22, 2022, https://www.mysuncoast.com/2022/11/22/florida-amusement-park-where-tyre-sampson-fell-his-death-fined-250000/ (last visited March *22, 2023).*

[2] *CNN, Alisha Ebrahimji, Teen who died at Florida amusement park was a football standout and a 'gentle giant' with a kind heart, loved ones say, Mar. 28, 2022, https://www.cnn.com/2022/03/28/us/tyre-sampson-icon-park-teen-death/index.html*

[3] *Id.*

[4] S. 616.242, F.S.

[5] Florida Department of Agriculture and Consumer Services, Fair Rides Inspection, https://fdacs.gov/Business-Services/Fairs/Fair-Rides-Inspection (last visited March 22, 2023).

[6] *Id.*

[7] *Id.*

[8] *Id.*

The DACS is required to adopt by rule standards for amusement rides which are the same as or similar to the following national standards:

- American Society for Testing and Materials (ASTM) Committee F-24 Standards on Amusement Rides and Devices;
- National Electric Code Handbook, Article 525;
- National Fire Protection Code 101 (chapters 8-4.6 and 9-4.6);
- ASTM Standards: E543 Practice for Determining the Qualification of Nondestructive Testing Agencies; and
- American Society for Nondestructive Testing (ASNT) Document Recommended Practice for Nondestructive Testing Personnel Qualification and Certification (SNT-TC-1A).[9]

DACS is authorized to adopt rules necessary to effectuate its statutory duties in the interest of public health, safety, and welfare and to promote patron safety in the design, construction, assembly, disassembly, maintenance, and operation of amusement rides in this state.[10]

There are no mandatory national safety standards for U.S. amusement rides, but the amusement ride industry has developed safety standards through the ASTM F-24 committee. The ASTM F-24 committee is responsible for standards related to amusement rides and devices. This includes waterslides, inflatables, go-karts, zip lines and challenge courses, trampoline courts, and a growing list of commercially-operated amusement experiences.[11]

Annual Permits

Amusement rides may not operate without an annual permit. To apply, an owner must submit to the DACS a written application on a form prescribed by department rule, and include:

- The legal name, address, and primary place of business of the owner;
- A description, manufacturer's name, serial number, model number, and, if previously assigned, the United States Amusement Identification Number of the amusement ride;
- A valid certificate of insurance for each amusement ride;
- An affidavit of compliance (AOC) that the amusement ride was inspected and in general conformance with the law and applicable rules;
- The AOC must be executed by a professional engineer or a qualified inspector no earlier than 60 days before, but not later than, the date of filing of the application with DACS;
- The owner is required to request inspection and permitting of the amusement ride within 60 days of the date of filing the application with DACS;
- DACS is required to inspect and permit the amusement ride within 60 days after the filing of the application with DACS;
- If required, an affidavit of nondestructive testing dated and executed no earlier than 60 days before, but not later than, the date of the filing of the application with DACS;
- The owner is required to request inspection and permitting of the amusement ride within 60 days of the date of filing the application with DACS;
- DACS is required to inspect and permit the amusement ride within 60 days after the filing of the application with DACS; and
- A request for inspection.[12]

Upon request, the owner must, at no cost to DACS, provide DACS with a copy of the manufacturer's current recommended operating instructions in the possession of the owner, the owner's operating fact

[9] S. 616.242(4), F.S.
[10] *Id.*
[11] ASTM International, *Committee F24 on Amusement Rides and Devices*, https://www.astm.org/get-involved/technical-committees/committee-f24 (last visited March 22, 2023).
[12] S. 616.242(5), F.S.

sheet, and any written bulletins in the possession of the owner concerning the safety, operation, or maintenance of the amusement ride.[13]

An annual permit must be issued to the owner when a completed application has been received, the amusement ride has passed DACS inspection, and all applicable fees, as set by department rule,[14] have been paid.[15]

The annual permit:

- Is valid for one year from the date of issuance;
- Is not transferable; and
- Must be displayed on the amusement ride in a place that is visible to patrons.[16]

Nondestructive Testing

Background

Nondestructive testing is a means by which a person can evaluate the strength and integrity of a device without altering or destroying it.[17] The purpose of nondestructive testing to make sure that the device is safe. The two types of nondestructive testing are visual and nonvisual testing.

Visual testing is used to look at the device to determine whether there are any signs of corrosion, cracks, welding defects, deformation, and so forth.[18]

Nonvisual nondestructive testing consists of multiple kinds of methods that evaluate whether a latent defect or issue exists.[19]

Nondestructive Testing Affidavit

In order to operate an amusement ride the owner must at all times have a current affidavit of nondestructive testing from a professional engineer or qualified inspector. The affidavit provides that the amusement ride has undergone nondestructive testing for metal fatigue at least annually.[20] Nondestructive testing must be performed by a technician who meets the national standards for amusement rides provided in department rule.[21]

Nondestructive testing for metal fatigue must include visual and nonvisual testing and can be conducted more often than annually if required by any rule adopted under this section, the manufacturer of the amusement ride, or the professional engineer or qualified inspector executing the affidavit of nondestructive testing.[22]

An affidavit of nondestructive testing must provide:

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[13] *Id.*
[14] R. 5J-18.012, F.A.C.
[15] S. 616.242(5), F.S.
[16] *Id.*
[17] *Nondestructive Testing Overview: A Comprehensive Guide to NDT*, Zetec, May 5, 2020, https://www.zetec.com/resources/nondestructive-testing-overview/ (last visited March 22, 2023); *see also*, Siim Sild, *Non-Destructive Testing (NDT): Process, Types & Applications*, Fractory, Nov. 9, 2022, https://fractory.com/non-destructive-testing/ (last visited March 22, 2023).
[18] Siim Sild, *Non-Destructive Testing (NDT): Process, Types & Applications*, Fractory, Nov. 9, 2022, https://fractory.com/non-destructive-testing/ (last visited March 22, 2023); *see also*, Thomas R. Hay, "Non-Destructive Testing (NDT) of Amusement Park Rides." TechKnowServ, Feb. 27, 2020, https://www.techknowserv.com/post/non-destructive-testing-ndt-of-amusement-park-rides (last visited March 22, 2023).
[19] Nonvisual nondestructive test methods include ultrasonic testing, eddy-current testing, or magnetic flux leakage testing. Thomas R. Hay, *Non-Destructive Testing (NDT) of Amusement Park Rides*, TechKnowServ, Feb. 27, 2020, https://www.techknowserv.com/post/non-destructive-testing-ndt-of-amusement-park-rides (last visited March 22, 2023).
[20] S. 616.242(6), F.S.
[21] *Id.*
[22] *Id.*

- That the amusement ride was inspected in person by the affiant;
- That all nondestructive testing requirements are current;
- That the nondestructive testing was performed by a qualified nondestructive testing technician.
- The components of the amusement ride for which the manufacturer has recommended or required nondestructive testing;
- The type of nondestructive testing required or recommended by the manufacturer;
- The frequency of the nondestructive testing required or recommended by the manufacturer;
- The components of the amusement ride for which the affiant has recommended or required nondestructive testing;
- The type of nondestructive testing required or recommended by the affiant;
- The frequency of the nondestructive testing as required or recommended by the affiant; and
- That visual nondestructive testing is adequate for the amusement ride to be in general conformance with the requirements of this section, and all applicable rules, if only visual nondestructive testing is required or recommended by either the manufacturer or the affiant.[23]

Nondestructive testing is not required for:
- Fun houses;
- Houses of mirrors;
- Haunted houses;
- Mazes;
- Wave pools;
- Wave-making devices;
- Kiddie pools;
- Slides that are fully supported by an earthen mound;
- Non-motorized playground equipment that requires a manager; or
- Lazy-river type non-motorized floating carriers propelled by water.[24]

Inspections

In order to obtain an annual permit, amusement rides must be inspected by DACS and receive an inspection certificate. In addition, the following requirements must be met:
- Permanent amusement rides must be inspected semiannually and receive an inspection certificate; and
- Temporary amusement rides must be inspected and receive an inspection certificate each time the ride is set up or moved to a new location in this state unless the ride is:
    - Used at a private event;
    - A simulator, the capacity of which does not exceed 16 persons; or
    - A kiddie ride used at a public event, provided that there are no more than three amusement rides at the event, none of the kiddie rides at the event exceeds a capacity of 12 persons, and the ride has an inspection certificate that was issued within the preceding 6 months.[25]

To obtain a DACS inspection, the owner must submit a written request on a department prescribed form providing the following information:
- The legal name, address, and primary place of business of the owner;
- A description, manufacturer's name, serial number, model number, and the United States Amusement Identification Number, if previously assigned, of the amusement ride; and
- For a temporary amusement ride, for each time the amusement ride is set up or moved to a new location, the date of first intended use at the new location and the address or a description of the new location.[26]

[23] *Id.*
[24] *Id.*
[25] S. 616.242(5), F.S.
[26] *Id.*

For permanent amusement rides, a request for inspection must be received by DACS at least 15 days before the:

- Owner's planned opening date; or
- Expiration of the prior inspection certificate. [27]

For temporary amusement rides, the request for inspection must be received by DACS each time the amusement ride is set up or moved to a new location at least 14 days before the date of first intended use at the new location.[28]

In both cases, if the request for inspection is received late, DACS is authorized to inspect the amusement ride and charge a late fee. In addition, if the owner fails to timely cancel a Request for Inspection, requests holiday or weekend inspections, or is required to have a replacement United States Amusement ID Program (USAID) plate issued by DACS, then the owner may be charged an appropriate fee.[29]

Inspections are assigned on a first come, first served basis, and overflow requests will be scheduled on the closest date to the date for which the inspection was requested. Upon failure of an amusement ride to pass an inspection, the owner may request in writing a re-inspection. DACS is required to re-inspect the ride as soon as practical following receipt of the written request and applicable re-inspection fees. [30]

Upon passage of inspection and payment of the applicable fee, DACS must issue an inspection certificate containing the following information:

- Date of inspection;
- Site of the inspection; and
- Name of the inspector.[31]

Inspection certificates are valid only for the site stated on the certificate, for a period of not more than 6 months from the date of issuance. They are not transferable and must be displayed on the amusement ride at a place readily visible to patrons.[32]

Fees

DACS is required by rule to establish fees to cover the costs and expenditures associated with the fair rides inspection program, including all direct and indirect costs. If there is not sufficient general revenue appropriated by the Legislature, the industry is required to pay for the remaining cost of the program.[33]

Fees must be deposited in the General Inspection Trust Fund. Any owner of an amusement ride who has not paid all the fees required under this section or who has any unpaid fine outstanding under this section, are prohibited from operating any amusement ride in this state until the fees and fines have been paid to DACS.[34]

DACS has adopted the following fees:[35]

Type of Fee	Permanent Ride	Temporary Ride
Annual permit fee for each kiddie amusement ride	$300	$150
Annual permit fee for each non-kiddie amusement ride	$400	$200

[27] *Id.*
[28] S. 616.242(6), F.S.
[29] S. 616.242(8)(d), F.S.
[30] S. 616.242(8)(b)-(c), F.S.
[31] *Id.*
[32] *Id.*
[33] S. 616.242(9), F.S.
[34] *Id.*
[35] R. 5J-18.012, F.A.C.

Annual permit fee for each super amusement ride	$600	$300
Inspection fee per go kart, in addition to the track inspection fee	$10	$10
Reinspection fee (return to site)	$500	$500
Reinspection fee (return on-site)	$100	$100
Fee to replace a lost U.S. Amusement Identification (USAID) plate	$100	$100
Fee per amusement ride for late inspection request	$100	$100
Fee per amusement ride for failure to cancel inspection request	$100	$100
Additional fee per amusement ride for inspection on weekend or state holiday	$75	$75
Inspection fee per harness, in addition to the ropes course/zipline permit fee	$5	$5

In order to obtain a permit to operate an amusement ride in Florida, the ride owner must obtain injury liability insurance in the following amounts:

- One million dollars minimum per occurrence; and
- One million dollars in the aggregate.[36]

The policies must be procured from an insurer that is:

- Licensed to transact business in this state; or
- Approved as a surplus lines insurer.[37]

The insurance requirements do not apply to a governmental entity that is covered by the provisions of s. 768.28(16), F.S., which authorizes the state and its agencies and subdivisions to:

- Be self-insured;
- Enter into risk management programs;
- Purchase liability insurance for whatever coverage they may choose; or
- Have any combination thereof.[38]

Exemptions

The regulations[39] related to amusement rides do not apply to the following:

- Permanent facilities that employ at least 1,000 full-time employees and that maintain full-time, in-house safety inspectors;
- Any playground operated by a school, local government, or business licensed under chapter 509, F.S., if the playground is an incidental amenity and the operating entity is not primarily engaged in providing amusement, pleasure, thrills, or excitement;
- Museums or other institutions principally devoted to the exhibition of products of agriculture, industry, education, science, religion, or the arts;
- Conventions or trade shows for the sale or exhibit of amusement rides if there are a minimum of 15 amusement rides on display or exhibition, and if any operation of such amusement rides is limited to the registered attendees of the convention or trade show;
- Skating rinks, arcades, laser or paint ball war games, bowling alleys, miniature golf courses, mechanical bulls, inflatable rides, trampolines, ball crawls, exercise equipment, jet skis, paddle boats, airboats, helicopters, airplanes, parasails, hot air or helium balloons whether tethered or untethered, theatres, batting cages, stationary spring-mounted fixtures, rider-propelled merry-go-rounds, games, side shows, live animal rides, or live animal shows;
- Go-karts operated in competitive sporting events if participation is not open to the public;
- Non-motorized playground equipment that is not required to have a manager;

[36] S. 616.242(10), F.S.
[37] *Id.*
[38] *Id.*
[39] S. 616.242, F.S. does not apply to these exemptions.

- Coin-actuated amusement rides designed to be operated by depositing coins, tokens, credit cards, debit cards, bills, or other cash money and which are not required to have a manager, and which have a capacity of six persons or less;
- Motorsports facilities described in s. 549.09(1)(a), F.S., when such facilities are operating cars, trucks, or motorcycles only;
- Battery-powered cars or other vehicles that are designed to be operated by children seven years of age or under and that cannot exceed a speed of four miles per hour;
- Mechanically driven vehicles that pull train cars, carts, wagons, or other similar vehicles, that are not confined to a metal track or confined to an area but are steered by an operator and do not exceed a speed of 4 miles per hour;
- Water-related amusement rides operated by a business licensed under chapter 509, F.S., if the water-related amusement ride is an incidental amenity and the operating business is not primarily engaged in providing amusement, pleasure, thrills, or excitement and does not offer day rates;
- Amusement rides at a private, membership-only facility if the amusement ride is an incidental amenity and the facility is not open to the general public; is not primarily engaged in providing amusement, pleasure, thrills, or excitement; and does not offer day rates; and
- Nonprofit permanent facilities registered under ch. 496, F.S., which are not open to the general public.[40]

DACS is authorized to establish by rule exemptions from the regulations on amusement rides for "non-motorized or human-powered amusement rides or coin-actuated amusement rides."[41]

Inspection Standards

Amusement rides are required to adhere to the following inspection standards:

- All mechanical, structural, and electrical components that affect patron safety must be in good working order.
- All control devices, speed-limiting devices, brakes, and safety equipment designated by the manufacturer must be in good working order.
- Parts must be properly aligned and not be bent, distorted, cut, or otherwise injured to force a fit. Parts requiring lubrication must be lubricated in the course of assembly. Fastening and locking devices must be installed where required for safe operation.
- Before being used by the public, an amusement ride must be placed or secured with blocking, cribbing, outriggers, guys, or other means so as to be stable under all operating conditions.
- Areas in which patrons may be endangered by the operation of an amusement ride must be fenced, barricaded, or otherwise effectively guarded against inadvertent contact.
- Machinery used in or with an amusement ride must be enclosed, barricaded, or otherwise effectively guarded against inadvertent contact.
- An amusement ride powered so as to be capable of exceeding its maximum safe operating speed must be provided with a maximum-speed-limiting device.
- The interior and exterior parts of all patron-carrying amusement rides with which a patron may come in contact must be smooth and rounded and free from sharp, rough, or splintered edges and corners, with no projecting studs, bolts, screws, or other projections which might cause injury.
- Signs that advise or warn patrons of age restrictions, size restrictions, health restrictions, weight limitations, or any other special consideration or use restrictions required or recommended for the amusement ride by the manufacturer must be prominently displayed at the patron entrance of each amusement ride.
- All amusement rides must comply with the section of law governing amusement rides and related rules.[42]

[40] S. 616.242(11), F.S.
[41] *Id.*
[42] S. 616.242(12), F.S.

Major Modifications

After an amusement ride has undergone a major modification, and prior to the time it is placed in operation, a Florida Licensed professional engineer must certify that the amusement ride is in compliance with the entire section of law governing amusement ride safety, and all related rules.[43]

Entry for Inspections

Authorized DACS employees may enter unannounced and inspect amusement rides at any time in a reasonable manner and DACS is authorized to impose fees for unannounced inspections and recover the cost of related tests.[44] DACS employees are authorized to:

- Question any owner or manager;
- Inspect, investigate, photograph, and sample all pertinent places, areas, and devices; and
- Conduct all appropriate tests including nondestructive testing.[45]

Reporting and Investigating Accidents and Defects

Accidents that the owner or manager have knowledge or, through the exercise of reasonable diligence should have knowledge, and for which a patron is transported to a hospital as defined in ch. 395, F.S., must be reported by the owner or manager to DACS. Such reporting must be conducted by telephone within four hours after the accident and followed up with a written report to DACS within 24 hours after the accident.

Any mechanical, structural, or electrical defects affecting patron safety for which an amusement ride is closed to patron use for more than four hours must be reported by the owner or manager to DACS by telephone or facsimile within eight hours after the closing of the ride. A written report of the closing must be filed by the owner or manager with DACS within 24 hours after the ride closes.

Impounding Amusement Rides

DACS is authorized to impound amusement rides that have:

- Been involved in an accident for which a patron is transported to a hospital as defined in ch. 395, F.S.;
- A mechanical, structural, or electrical defect affecting patron safety.

In cases of impoundment, DACS is authorized to impound any other amusement ride of a similar make and model and perform all necessary tests to determine the cause of the accident, defect, or safety of the ride and any other ride of a similar make and model. The ride owners are responsible for the cost of impoundment and relating testing.[46]

Owner/Manager Inspections

Prior to opening each day of operation, and before any inspection by DACS, the owner or manager of an amusement ride is required to inspect and test the ride to ensure compliance with all requirements of the law governing amusement rides. Each inspection must be recorded on a form prescribed by department rule and signed by the person who conducted the inspection.[47]

In lieu of using the department form, an owner or manager may request approval of an alternative form, which must include at least the information required on the department form. Inspection records of the last 14 daily inspections must be:

- Kept on site by the owner or manager; and

[43] S. 616.242(13), F.S.
[44] *Id.*
[45] S. 616.242(14), F.S.
[46] S. 616.242(15), F.S.
[47] S. 616.242(16), F.S.

- Made immediately available to DACS upon request.[48]

Employee Training

Owners or managers of amusement rides are required to:
- Maintain a record of employee training for each employee who is authorized to operate, assemble, disassemble, transport, or conduct maintenance on an amusement ride; and
- Certify that each employee is trained on the amusement ride for which the employee is responsible.[49]

The training record must be kept on site by the owner or manager and made immediately available to DACS upon request. In lieu of using the department form, the owner or manager may request approval of an alternative form.[50]

Training is prohibited when an amusement ride is open to the public, unless the training is conducted under the supervision of an employee who is trained in the operation of that ride.[51]

Enforcement and Penalties

DACS has the authority to deny, suspend for up to one year, or revoke any permit or inspection certificate. In addition, DACS may impose an administrative fine pursuant to s. 570.971, F.S., not to exceed $10,000 per violation, for each day the violation exists, against the owner of the amusement ride if DACS finds that an amusement ride has operated or is operating:
- With a mechanical, structural, or electrical defect that affects patron safety, of which the owner or manger has knowledge, or, through the exercise of reasonable diligence, should have knowledge;
- In a manner or circumstance that presents a risk of serious injury to patrons;
- At a speed in excess of its maximum safe operating speed;
- In violation of department rules or state law; or
- In violation of an order of DACS or any court.
- A manager in the course of his or her duties is under the influence of drugs or alcohol.[52]

DACS is required, in its order suspending a permit or inspection certificate, to specify the period during which the suspension is effective, which may not exceed one year. The permit or inspection certificate must remain suspended during the period, subject to any rescission or modification of the order by the department or modification or reversal by the court, prior to expiration of the suspension period.[53]

The owner of an amusement ride whose permit or inspection certificate has been revoked by DACS may not apply for another permit or inspection certificate for the amusement ride within 2 years after the date of the revocation. If judicial review is sought and a stay of the revocation is obtained, the owner may not apply for another permit or inspection certificate within 2 years after the final order of the court sustaining the revocation.[54]

During the period of suspension or revocation, the owner may not engage in or attempt to engage in any operation of the amusement ride for which a permit or inspection certificate is required.[55]

When a DACS -imposed suspension period has expired, the owner may reapply for a new permit or inspection certificate by submitting a complete application to DACS.[56]

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[48] *Id.*
[49] S. 616.242(17), F.S.
[50] *Id.*
[51] *Id.*
[52] S. 616.242(21), F.S.
[53] *Id.*
[54] *Id.*
[55] *Id.*

In addition, and notwithstanding the existence of any adequate remedy at law, DACS is authorized to bring an action to enjoin the violation of any provision, or rules adopted, under this section, in the circuit court of the county in which the violation occurs or is about to occur. Upon competent and substantial evidence presented by DACS, the court is required to immediately issue the temporary or permanent injunction sought by DACS without bond.[57]

In addition to the penalties, DACS is authorized to issue a letter of warning to the owner of the ride specifying the violation and requiring immediate corrective action.[58]

Any person who knowingly violates any of the provisions of the regulations governing amusement rides commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, F.S.[59]

Consumer Product Safety Commission

The Consumer Product Safety Commission (Commission) is charged with protecting the public from unreasonable risks of injury or death associated with the use of the thousands of types of consumer products under the Commission's jurisdiction. The Consumer Product Safety Act (Act)[60] authorizes the Commission to investigate serious accidents involving portable carnival rides, inflatables, and go-karts. Amusement rides operated at permanent parks ("permanently fixed to a site") are exempt from compliance with the Act.[61]

Ride manufacturers or owner/operators are required to notify the Commission if they obtain information which reasonably supports the conclusion that a portable amusement ride, inflatable device, go-kart or other non-exempt amusement device:

- Fails to comply with a consumer product safety standard or banning regulation established by the omission or a voluntary consumer product safety standard upon which the Commission has relied under section 9 of the Act;[62]
- Contains a defect which could create a substantial product hazard described in section 15(a)(2) of the Act;[63] or
- Creates an unreasonable risk of serious injury or death.[64]

The Commission does not provide for an inspection program.

Other States

According to a consumer safety organization, Safeparks.org, the research of amusement ride laws in 50 states found the following:[65]

Degree of Oversight	Number of States

[56] *Id.*
[57] *Id.*
[58] *Id.*
[59] *Id.*
[60] 15 U.S.C. ch. 47 § 2051 et seq.
[61] "Consumer Product Safety Commission." *RidesDatabase*, https://ridesdatabase.org/regulations/united-states/ (last visited March 23, 2023); see also, 15 U.S.C.A. § 2065 (2008).
[62] *See*, 15 U.S.C. § 2058 (2008).
[63] *See,* 15 U.S.C. § 2064.
[64] 15 U.S.C. § 2064(b)(4).
[65] Safeparks, *U.S. Federal and State Amusement Ride Regulation*, https://ridesdatabase.org/saferparks/u-s-regulatory-agencies/ (last visited March 22, 2023)

Comprehensive Government Oversight	20 States (Including Florida)
Partial Government Oversight	12 States
Private Sector Oversight	9 States
No State Agency with Jurisdiction	8 States
Electrical Inspections Only	1 State

Effect of Bill

The bill, titled the Tyre Sampson Act, amends ch. 616, F.S. relating to the regulation of amusement rides. The bill amends the definition of "major modification" and provides a definition for "ride commissioning and certification report."

The bill provides new requirements for permanent and temporary amusement rides and requires, for each permanent or temporary amusement rides operated, for the first time after July 1, 2023, to have a ride commissioning and certification report on file with DACS before the ride's first inspection and a permit is issued.

The bill provides exemptions for temporary amusement rides from required permit to include previously permitted rides at private events and kiddie rides at public events not to exceed three amusement rides. The bill permits DACS to inspect certain rides that are exempt from inspection **upon request**.

The bill requires nonvisual nondestructive testing to be used when it cannot be adequately evaluated by other means and the type of nondestructive testing or recommended by affiant to include the manufacturer's requirements and recommendations. If there are no additional nondestructive testing it is required to be affirmed that the manufacturer's requirements are sufficient for safe operation.

The bill creates new reporting requirements for an affidavit of nondestructive testing. The affidavit of nondestructive testing must include the following statement:

- The ride is in conformance with the requirements of statute and applicable department rules, and
- Whether the amusement ride went under a major modification, the name of the person who authorized modification and the date modification took place.

The bill permits DACS to immediately remove amusement ride from service if unsafe conditions are found.

The bill requires that the proper positioning, measurements, and demonstration of proper patron loading procedures related to patron safety restraint systems of an amusement ride must be provided to the department upon request.

The bill provides that if rider restrictions are not provided from manufacturer, the owner or manager must provide DACS with documentation from manufacturer stating that such restrictions are not necessary for safe operation.

The bill permits DACS to prepare a written report of each investigation it conducts. The bill also changes the accident reporting requirements for owners and managers following an accident and changes the parameters in which DACS is permitted to impound an amusement ride involved in an accident. DACS must establish by rule minimum training and retraining standards and the frequency of employee training for all amusement rides. The bill also creates the requirement that the owner or manager of an amusement ride shall immediately document all training following each training session.

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

B. SECTION DIRECTORY:

Section 1: Names the title of the Act.

Section 2: Amends s. 616.242 relating to certification reports, permit applications, temporary ride exemptions, nondestructive testing, inspections and reports; reporting for accidents involving medical treatment; impoundment of ride, DACS rules, and employee training.

Section 3: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill has a negative fiscal impact due to a number of regulatory changes and requirements for amusement rides to operate in the State of Florida. DACS estimates it will require 18 additional full-time equivalent positions, $1,409,949 in recurring funds and $791,204 in nonrecurring funds to implement the bill.[66] The House proposed General Appropriations Act (GAA) provides four (4) full-time equivalent positions, $320,176 in recurring funds and $185,064 in nonrecurring funds for this regulatory program. Additional resources will be addressed in the Fiscal Year 2023-2024 GAA.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Additional costs may be incurred by new ride operators to produce a ride commissioning report. This cost could vary greatly depending on the complexity of the ride. Also, the additional nondestructive testing requirements may result in increased costs associated with the inspection by a professional engineer executing the affidavit.[67]

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

[66] Department of Agriculture and Consumer Services, Agency Analysis of 2023 House Bill CS 1241, p. 3 (April 6, 2023).
[67] *Id*.

to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties and municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill instructs DACS to create rules for operator training/retraining standards.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 29, 2023, the Regulatory Reform & Economic Development Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Removes and modifies provisions to lessen the fiscal impact on DACS.
- Removes duplicative provisions.

This analysis is drafted to the committee substitute as passed by the Regulatory Reform & Economic Development Subcommittee.

A bill to be entitled

An act relating to safety standards for amusement rides; providing a short title; amending s. 616.242, F.S.; defining and redefining terms; requiring permanent amusement rides operated for the first time in this state after a specified date to have a ride commissioning and certification report on file with the Department of Agriculture and Consumer Services within a specified timeframe; revising the application requirements for permanent and temporary amusement ride permits; exempting from permit requirements temporary amusement rides that meet certain conditions; revising the annual nondestructive testing requirements for amusement rides; requiring nonvisual nondestructive testing to be used in certain circumstances; revising the affidavit requirements for nondestructive testing; requiring the department to remove an amusement ride from service and take appropriate administrative actions under certain circumstances; removing an inspection exemption for temporary amusement rides; authorizing the department to conduct certain inspections upon request; revising amusement ride inspection standards; revising the reasons for which the department is authorized to enter and inspect amusement rides; requiring the

department to prepare a written report of each investigation it conducts; revising the circumstances under which the owner or manager of an amusement ride is required to report an accident and under which the department may impound an amusement ride involved in an accident; requiring daily owner or manager amusement ride inspections to be recorded at the time of inspection; requiring the department to establish by rule minimum amusement ride training and retraining standards; revising training requirements; revising circumstances under which an amusement ride may be considered an immediate serious danger to the public; providing an effective date.

WHEREAS, on March 24, 2022, Tyre Sampson, a 14-year-old boy visiting this state from Missouri, fell to his death from the Eagle Drop Tower in Orlando, and

WHEREAS, after the accident, Department of Agriculture and Consumer Services inspectors performed multiple onsite inspections of the tower and its components and contracted with a third party to conduct a failure analysis assessment of the tower, and

WHEREAS, the investigators concluded that changes made to the ride by the ride operators after initial installation contributed to Tyre Sampson's death, and

WHEREAS, the proposed changes made by this act are necessary to address the safety problems discovered during the department's investigation, NOW, THEREFORE,

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

Section 1. This act may be cited as the "Tyre Sampson Act."

Section 2. Paragraphs (r) through (u) of subsection (3) of section 616.242, Florida Statutes, are redesignated as paragraphs (s) through (v), respectively, paragraph (h) of subsection (3), paragraph (b) of subsection (5), paragraph (b) and present paragraph (f) of subsection (6), subsection (7), paragraph (a) of subsection (8), paragraph (b) of subsection (11), subsections (12) and (14), paragraphs (a) and (c) of subsection (15), and subsections (16), (17), and (19) of that section are amended, and a new paragraph (r) is added to subsection (3) and a new paragraph (f) is added to subsection (6) of that section, to read:

616.242 Safety standards for amusement rides.—

(3) DEFINITIONS.—As used in this section, the term:

(h) "Major modification" means any change in the structural characteristics, ~~or~~ operational characteristics, or safety systems of an amusement ride which will alter its performance or settings from those ~~that~~ specified in the

manufacturer's design criteria or operator's manual.

(r) "Ride commissioning and certification report" means a commissioning and certification report by the ride manufacturer which certifies that the ride has been designed and manufactured in conformance with the manufacturer's design criteria, standards referenced in this section, and rules adopted by the department.

(5) PERMANENT AMUSEMENT RIDE ANNUAL PERMIT.—

(b) To apply for an annual permit, an owner or manager must submit to the department a written application on a form prescribed by department rule, which must include all of the following:

1. The legal name, address, e-mail address, and primary place of business of the owner or manager~~, as applicable~~.

2. A description, manufacturer's name, serial number, model number, and, if previously assigned, the United States Amusement Identification Number of the amusement ride.

3. A valid certificate of insurance for each amusement ride.

4. ~~If required under subsection (7),~~ An annual affidavit of compliance and nondestructive testing certifying that the amusement ride was inspected in person by the affiant and that the amusement ride is in ~~general~~ conformance with the requirements of this section and all applicable department rules. The affidavit must have been executed by a professional

engineer or a qualified inspector within the last calendar year.

5. ~~The owner or manager shall,~~ At no cost to the department, ~~provide the department~~ an electronic copy of the manufacturer's current recommended operating instructions, the owner's operating fact sheet, and any written bulletins concerning the safety, operation, or maintenance of the amusement ride.

6. Beginning July 1, 2023, a ride commissioning and certification report for each permanent amusement ride operated for the first time in this state after July 1, 2023.

(6) TEMPORARY AMUSEMENT RIDE PERMIT.—

(b) To apply for a permit, an owner or manager must submit to the department a written application on a form prescribed by department rule. The written application~~, which~~ must include all of the following:

1. The legal name, address, e-mail address, and primary place of business of the owner or manager~~, as applicable~~.

2. A description, manufacturer's name, serial number, model number, and, if previously assigned, the United States Amusement Identification Number of the amusement ride.

3. A valid certificate of insurance for each amusement ride.

4. ~~If required under subsection (7),~~ An affidavit of compliance and nondestructive testing certifying that the amusement ride was inspected in person by the affiant and that

the amusement ride is in ~~general~~ conformance with the requirements of this section and all applicable department rules. The affidavit must be executed by a professional engineer or a qualified inspector.

5. ~~The owner or manager shall,~~ At no cost to the department, ~~provide the department~~ an electronic copy of the manufacturer's current recommended operating instructions, the operating fact sheet, and any written bulletins concerning the safety, operation, or maintenance of the amusement ride.

(f) A temporary amusement ride is exempt from the required permit if it is:

1. Used at a private event and was issued a permit within the preceding 6 months; or

2. A kiddie ride used at a public event, provided that not more than three amusement rides are at the event, the kiddie rides at the event do not exceed a capacity of 12 persons, and the kiddie ride passed a department inspection and was issued a permit within the preceding 6 months. Unless the capacity of the ride has been determined and specified by the manufacturer, the department shall determine the capacity of the kiddie ride by rule. An owner or a manager of a kiddie ride operating under this exemption is responsible for ensuring that not more than three amusement rides are operated at the event.

(g) ~~(f)~~ The permit must be displayed in an accessible location on the amusement ride.

(7) NONDESTRUCTIVE TESTING; ANNUAL AFFIDAVIT; EXEMPTIONS.—

(a) ~~Except as provided in paragraph (d),~~ An owner or manager may not operate an amusement ride unless the owner or manager at all times has a current affidavit of nondestructive testing from a professional engineer or qualified inspector that the amusement ride has undergone nondestructive testing to verify the integrity of all components ~~for metal fatigue~~ at least annually. The nondestructive testing ~~for metal fatigue~~ must be conducted more often than annually if required by any rule adopted under this section, by the manufacturer of the amusement ride, or by the professional engineer or qualified inspector executing the affidavit of nondestructive testing. The nondestructive testing ~~for metal fatigue~~ must consist at least of visual nondestructive testing, as well as nonvisual nondestructive testing ~~for metal fatigue~~, which must be conducted on the components of the amusement ride as required by any rule adopted under this section, by the manufacturer of the amusement ride, or by the professional engineer or qualified inspector executing the affidavit of nondestructive testing.

(b) Nonvisual nondestructive testing must be used to verify the integrity of components that, due to their design, location, installation, or a combination thereof, cannot be adequately evaluated by other means.

(c) ~~(b)~~ Nondestructive testing ~~testings~~ must be performed by a technician who meets the requirements prescribed by

department rule.

(d) ~~(c)~~ An affidavit of nondestructive testing, on a form prescribed by department rule, must state, at a minimum, all of the following:

1. That the amusement ride was inspected in person by the affiant.

2. That all of the manufacturer's nondestructive testing requirements and recommendations are current.

3. That the nondestructive testing was performed by a qualified nondestructive testing technician.

4. The components of the amusement ride for which the manufacturer has recommended or required nondestructive testing.

5. The type of nondestructive testing required or recommended by the manufacturer.

6. The frequency of the nondestructive testing required or recommended by the manufacturer.

7. The components of the amusement ride for which the affiant, in addition to the manufacturer's requirements and recommendations, has recommended or required nondestructive testing.

8. The type of nondestructive testing required or recommended by the affiant in addition to the manufacturer's requirements and recommendations. If the affiant does not require or recommend additional nondestructive testing, the affiant must affirm that the manufacturer's requirements are

sufficient for the safe operation of the amusement ride.

9. The frequency of the nondestructive testing as required or recommended by the affiant.

10. That visual nondestructive testing is adequate for the amusement ride to be in ~~general~~ conformance with the requirements of this section and all applicable rules, ~~only~~ if only visual nondestructive testing is required ~~or recommended~~ by the manufacturer or the affiant.

11. That the amusement ride is in conformance with the requirements of this section and all applicable department rules.

12. Whether the amusement ride has undergone a major modification and, if so, the name of the manager, owner, or operator who authorized the modification and the date the modification took place.

13. That the amusement ride and its components are in conformance with the service life specified by the manufacturer.

(e) ~~(d)~~ Nonvisual nondestructive testing is not required for fun houses, houses of mirrors, haunted houses, mazes, wave pools, wave-making devices, kiddie pools, slides that are fully supported by an earthen mound, nonmotorized playground equipment that requires a manager, or lazy-river-type nonmotorized floating carriers propelled by water.

(8) DEPARTMENT INSPECTIONS.—

(a) In order to obtain an annual or a temporary amusement

ride permit, an amusement ride must be inspected by the department.

~~1. A temporary amusement ride is exempt from the required inspection if it is:~~

~~a. Used at a private event;~~

~~b. A simulator, the capacity of which does not exceed 16 persons; or~~

~~c. A kiddie ride used at a public event, provided that not more than three amusement rides are at the event, the kiddie rides at the event do not exceed a capacity of 12 persons, and the kiddie ride passed a department inspection and was issued a permit within the preceding 6 months. The capacity of a kiddie ride shall be determined by department rule, unless the capacity of the ride has been determined and specified by the manufacturer. Any owner or manager of a kiddie ride operating under this exemption is responsible for ensuring that not more than three amusement rides are operated at the event~~.

~~2.~~ The department shall inspect permanent amusement rides 6 months after the issuance of the annual permit. The required inspection may be waived for a permanent amusement ride if it was inspected and certified by an accredited trade organization as defined by department rule.

(11) EXEMPTIONS.—

(b) All of the following are exempt from subsections (5), (6), (8), and (9), but may be inspected by the department upon

request, following a complaint or pursuant to an accident that is required to be reported under subsection (15), and such exemption may be removed if the exempted amusement ride is found to have been operating in a manner or circumstance that presents a risk or resulted in a serious injury to patrons:

1. Museums or other institutions principally devoted to the exhibition of products of agriculture, industry, education, science, religion, or the arts.

2. Conventions or trade shows for the sale or exhibit of amusement rides if there are a minimum of 15 amusement rides on display or exhibition and if any operation of such amusement rides is limited to the registered attendees of the convention or trade show.

3. Nonmotorized playground equipment that is not required to have a manager.

4. Coin-actuated amusement rides designed to be operated by depositing coins, tokens, credit cards, debit cards, bills, or other cash money and which are not required to have a manager, and which have a capacity of six persons or less.

5. Facilities described in s. 549.09(1)(a) when such facilities are operating cars, trucks, or motorcycles only.

6. Battery-powered cars or other vehicles that are designed to be operated by children 7 years of age or under and that cannot exceed a speed of 4 miles per hour.

7. Mechanically driven vehicles that pull train cars,

carts, wagons, or other similar vehicles, that are not confined to a metal track or confined to an area but are steered by an operator and do not exceed a speed of 4 miles per hour.

8. A water-related amusement ride operated by a business licensed under chapter 509 if the water-related amusement ride is an incidental amenity and the operating business is not primarily engaged in providing amusement, pleasure, thrills, or excitement and does not offer day rates.

9. An amusement ride at a private, membership-only facility if the amusement ride is an incidental amenity and the facility is not open to the general public; is not primarily engaged in providing amusement, pleasure, thrills, or excitement; and does not offer day rates.

10. A nonprofit permanent facility registered under chapter 496 which is not open to the general public.

(12) INSPECTION STANDARDS.—An amusement ride must conform to all of the following standards:

(a) All mechanical, structural, and electrical components that affect patron safety must be in good working order.

(b) All control devices, speed-limiting devices, brakes, and safety equipment must be in good working order.

(c) Parts must be properly aligned and may not be bent, distorted, cut, or otherwise injured to force a fit. Parts requiring lubrication must be lubricated in the course of assembly. Fastening and locking devices must be installed when

required for safe operation.

(d) The proper positioning, measurements, and demonstration of proper patron loading procedures related to patron safety restraint systems must be provided to the department upon request.

(e) ~~(d)~~ An amusement ride must be placed or secured with blocking, cribbing, outriggers, guys, or other means ~~so as~~ to be stable under all operating conditions.

(f) ~~(e)~~ Areas in which patrons may be endangered by the operation of an amusement ride must be fenced, barricaded, or otherwise effectively guarded against inadvertent contact.

(g) ~~(f)~~ Machinery used in or with an amusement ride must be enclosed, barricaded, or otherwise effectively guarded against inadvertent contact.

(h) ~~(g)~~ An amusement ride powered ~~so as~~ to be capable of exceeding its maximum safe operating speed must be provided with a maximum-speed-limiting device.

(i) ~~(h)~~ The interior and exterior parts of all patron-carrying amusement rides with which a patron may come in contact must be smooth and rounded and free from sharp, rough, or splintered edges and corners, and from projecting studs, bolts, and screws or other projections that might cause injury.

(j) ~~(i)~~ Signs that advise or warn patrons of age restrictions, size restrictions, health restrictions, weight limitations, or any other special consideration or use

restrictions, or lack thereof, ~~required or recommended for the amusement ride by the manufacturer~~ must be prominently displayed at the patron entrance of each amusement ride. If such rider restrictions are not provided by the manufacturer, the owner or manager must provide the department with documentation from the manufacturer or a licensed professional engineer stating that such rider restrictions are not necessary for the safe operation of the amusement ride.

(k) ~~(j)~~ All amusement rides presented for inspection as ready for operation or in operation must comply with this section and department rule.

(l) ~~(k)~~ A sign containing the toll-free number of the department and informing patrons that they may contact the department with complaints or concerns regarding the safe operation of amusement rides must be posted in a manner conspicuous to the public at each entrance of an ~~a temporary~~ amusement ride ~~facility~~. The department shall prescribe by rule specifications for such signs.

(14) ENTRY FOR INSPECTION OR INVESTIGATION.—

(a) Upon presentation of identification, an authorized employee of the department may enter unannounced and inspect amusement rides at any time and in a reasonable manner and has the right to question any owner, operator, or manager; to inspect, investigate, photograph, and sample all pertinent places, areas, and devices and review required documentation;

and to conduct or have conducted all appropriate tests, including nondestructive testing. The department may impose fees for unannounced inspections and recover the cost of tests authorized by this subsection.

(b) The department shall prepare a written report of each investigation it conducts.

(15) REPORTING AND INVESTIGATION OF ACCIDENTS AND DEFECTS; IMPOUNDMENTS.—

(a) Any accident of which the owner or manager has knowledge or, through the exercise of reasonable diligence should have knowledge, and for which a patron seeks treatment at ~~is transported to~~ a hospital or an urgent care center, as those terms are defined in chapter 395, must be reported by the owner or manager to the department by telephone within 4 hours after the occurrence of the accident or after notification by the patron and must be followed up by a written report to the department within 24 hours after the occurrence of the accident or after notification by the patron.

(c) The department may impound an amusement ride involved in an accident for which a patron seeks treatment at ~~is transported to~~ a hospital or an urgent care center as those terms are defined in chapter 395 or which has a mechanical, structural, or electrical defect affecting patron safety; may impound any other amusement ride of a similar make and model or with similar operating characteristics; and may perform all

necessary tests to determine the cause of the accident or the mechanical, structural, or electrical defect or to determine the safety of the amusement ride and any other amusement ride of a similar make and model or with similar operating characteristics. The cost of impounding the amusement ride and performing the necessary tests must be borne by the owner of the amusement ride.

(16) INSPECTION BY OWNER OR MANAGER.—Before opening on each day of operation and before any inspection by the department, the owner or manager of an amusement ride must inspect and test each amusement ride to ensure compliance with this section. Each inspection must be recorded at the time of inspection on a form prescribed by department rule and signed by the person who conducted the inspection. In lieu of the form prescribed by department rule, the owner or manager may request approval of an alternative form that includes, at a minimum, the information required on the form prescribed by department rule. Inspection records of the last 14 daily inspections must be kept on site by the owner or manager and made immediately available to the department upon request.

(17) TRAINING OF EMPLOYEES.—

(a) The department shall establish by rule minimum training and retraining standards and the frequency of employee training for all amusement rides.

(b) The owner or manager of an amusement ride shall

maintain a record of employee training for each employee authorized to operate, assemble, disassemble, transport, or conduct maintenance on an amusement ride on a form prescribed by department rule. In lieu of the form prescribed by department rule, the owner or manager may request approval of an alternative form that includes, at a minimum, the information required on the form prescribed by department rule. The training record must be kept on site by the owner or manager and made immediately available to the department upon request. Training may not be conducted when an amusement ride is open to the public unless the training is conducted under the supervision of an employee who is trained in the operation of that ride. The owner or manager shall immediately document all training following each training session and certify that each employee is trained, as required by this section and any rules adopted thereunder, on the amusement ride for which the employee is responsible.

(19) IMMEDIATE FINAL ORDERS.—

(a) An amusement ride that fails to meet the requirements of this section or pass the inspections required by this section; that is involved in an accident for which a patron seeks treatment at ~~is transported to~~ a hospital or an urgent care center as those terms are defined in chapter 395; or that has a mechanical, structural, or electrical defect that affects patron safety may be considered an immediate serious danger to

the public health, safety, and welfare and, upon issuance of an immediate final order prohibiting patron use of the ride, may not be operated for patron use until it has passed a subsequent inspection by or at the direction of the department.

(b) An amusement ride of a similar make and model or with similar operating characteristics to an amusement ride described in paragraph (a) may be considered an immediate serious danger to the public health, safety, and welfare and, upon issuance of an immediate final order prohibiting patron use of the ride, may not be operated for patron use until it has passed a subsequent inspection by or at the direction of the department.

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

COMMERCE COMMITTEE

CS/HB 1241 by Rep. Bracy Davis
Safety Standards for Amusement Rides

AMENDMENT SUMMARY
April 24, 2023

Amendment 1 by Rep. Botana (lines 157-217):

- Clarifies that nondestructive testing needs to be done as *recommended or specified by the manufacturer*.
- Clarifies that the service life of the ride and its components must be checked to determine whether the ride and its parts are in conformance, if the service life is provided by the manufacturer.

Amendment 2 by Rep. Botana (lines 305-333):

- Clarifies that certain procedures related to patron safety restraint systems must be provided to the department upon request *if such procedures are provided by the manufacturer*.
- Removes a bill provision that would have required an owner or manager to take certain steps even if an amusement ride manufacturer did not provide rider restrictions for the safe operation of the ride.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment

Remove lines 157-217 and insert:

verify the integrity of all components that are recommended or specified by the manufacturer ~~or metal fatigue~~ at least annually. The nondestructive testing ~~for metal fatigue~~ must be conducted more often than annually if required by any rule adopted under this section, by the manufacturer of the amusement ride, or by the professional engineer or qualified inspector executing the affidavit of nondestructive testing. The nondestructive testing ~~for metal fatigue~~ must consist at least of visual nondestructive testing, as well as nonvisual nondestructive testing ~~for metal fatigue~~, which must be conducted on the components of the amusement ride as required by any rule adopted under this

section, by the manufacturer of the amusement ride, or by the professional engineer or qualified inspector executing the affidavit of nondestructive testing.

(b) When specified by the manufacturer, nonvisual nondestructive testing must be used to verify the integrity of components that, due to their design, location, installation, or a combination thereof, cannot be adequately evaluated by other means.

(c) ~~(b)~~ Nondestructive testing ~~testings~~ must be performed by a technician who meets the requirements prescribed by department rule.

(d) ~~(c)~~ An affidavit of nondestructive testing, on a form prescribed by department rule, must state, at a minimum, all of the following:

1. That the amusement ride was inspected in person by the affiant.

2. That all of the manufacturer's nondestructive testing requirements and recommendations are current.

3. That the nondestructive testing was performed by a qualified nondestructive testing technician.

4. The components of the amusement ride for which the manufacturer has recommended or required nondestructive testing.

5. The type of nondestructive testing required or recommended by the manufacturer.

6. The frequency of the nondestructive testing required or recommended by the manufacturer.

7. The components of the amusement ride for which the affiant, in addition to the manufacturer's requirements and recommendations, has recommended or required nondestructive testing.

8. The type of nondestructive testing required or recommended by the affiant in addition to the manufacturer's requirements and recommendations. If the affiant does not require or recommend additional nondestructive testing, the affiant must affirm that the manufacturer's requirements are sufficient for the safe operation of the amusement ride.

9. The frequency of the nondestructive testing as required or recommended by the affiant.

10. That visual nondestructive testing is adequate for the amusement ride to be in ~~general~~ conformance with the requirements of this section and all applicable rules, ~~only~~ if only visual nondestructive testing is required ~~or recommended~~ by the manufacturer or the affiant.

11. That the amusement ride is in conformance with the requirements of this section and all applicable department rules.

12. Whether the amusement ride has undergone a major modification and, if so, the name of the manager, owner, or

operator who authorized the modification and the date the modification took place.

13. That the amusement ride and its components are in conformance with the service life, if the manufacturer has provided a service life for such ride and its components.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment

Remove lines 305-333 and insert:

department upon request if provided by the manufacturer.

(e) ~~(d)~~ An amusement ride must be placed or secured with blocking, cribbing, outriggers, guys, or other means ~~so as~~ to be stable under all operating conditions.

(f) ~~(e)~~ Areas in which patrons may be endangered by the operation of an amusement ride must be fenced, barricaded, or otherwise effectively guarded against inadvertent contact.

(g) ~~(f)~~ Machinery used in or with an amusement ride must be enclosed, barricaded, or otherwise effectively guarded against inadvertent contact.

(h)~~(g)~~ An amusement ride powered ~~so as~~ to be capable of exceeding its maximum safe operating speed must be provided with a maximum-speed-limiting device.

(i)~~(h)~~ The interior and exterior parts of all patron-carrying amusement rides with which a patron may come in contact must be smooth and rounded and free from sharp, rough, or splintered edges and corners, and from projecting studs, bolts, and screws or other projections that might cause injury.

(j)~~(i)~~ Signs that advise or warn patrons of age restrictions, size restrictions, health restrictions, weight limitations, or any other special consideration or use restrictions, or lack thereof, ~~required or recommended for the amusement ride by the manufacturer~~ must be prominently displayed at the patron entrance of each amusement ride.

HB 1333

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1333 Interstate-Mobility and Universal-Recognition Occupational Licensing Act
SPONSOR(S): Koster, Maney, Salzman
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1364

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	11 Y, 0 N	Wright	Anstead
2) State Administration & Technology Appropriations Subcommittee	15 Y, 0 N	Helpling	Topp
3) Commerce Committee		Wright	Hamon

SUMMARY ANALYSIS

An occupational or professional license is a form of government regulation that requires individuals to obtain authorization in order to perform certain types of work, such as nurses, contractors, and cosmetologists. Florida's Sunrise Act prohibits state regulation of occupations and professions that unnecessarily restrict entry into the profession or occupation and the Act requires that any regulation only be adopted if it is necessary to protect the health, safety, and welfare of the public.

The bill requires Florida licensing boards that issue occupational licenses or government certifications to individuals under ch. 455, F.S., relating to the regulations of professions by the Department of Business and Professional Regulation (DBPR), or ch. 456, F.S., relating to the regulation of professions by the Department of Health (DOH), to issue an occupational license or government certification (universal license) to eligible applicants, under certain circumstances (universal licensing requirement).

Applicants may seek a universal license through one of three pathways described in the bill. An applicant from another state is automatically approved under the universal licensing scheme if:

- The applicant is licensed by another licensing entity or state;
- The applicant has certain work experience in another state or in the military; or
- The applicant has a private certification with work experience in a non-licensing state or the military.

The bill provides that an applicant with a valid occupational license or certification in good standing, or who otherwise meets the requirements for an occupational license for a lawful occupation, is presumed to be qualified for the license and must be issued an occupational license or government certification by the appropriate Florida licensing board.

The bill provides that during a declared state of emergency, the Governor may order the recognition of occupational licenses from outside Florida or from a foreign country as if the licenses were issued in Florida, may expand any occupation license scope of practice, and authorize licensees to provide services in Florida in person, telephonically, or by other means for the duration of the emergency.

The bill will have an indeterminate fiscal impact on state and local governments. *See* Fiscal Analysis & Economic Impact Statement.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Occupational Licensing

An occupational or professional license is a form of government regulation that requires individuals who want to perform certain types of work, such as nurses, contractors, and cosmetologists, to obtain governmental authorization to work in a specific field.[1]

An estimated 23.5 percent of the civilian labor force nationwide has an occupational license.[2] Various governmental entities and agencies in Florida license and regulate such individuals practicing in a wide range of professions, including:[3]

- Department of Business and Professional Regulation (DBPR),
- Department of Health (DOH),
- Department of Financial Services (DFS),
- Department of Agriculture and Consumer Services (DACS),
- Florida Supreme Court (FSC),
- Department of Environmental Protection (DEP),
- Agency for Healthcare Administration (AHCA),
- Department of Children and Families (DCF),
- Department of Elder Affairs (DEA),
- Department of Highway Safety and Motor Vehicles (DHSMV), and
- Office of Financial Regulation (OFR).

In the 1950s, less than five percent of U.S. workers were required to have a license to do their jobs. Since then, the number of U.S. workers required to have a license has risen five-fold to more than one-quarter, with most of these workers being licensed by states. Almost two-thirds of this change stems from an increase in the number of professions that require a license. The number of licensed workers is even higher in Florida, with an estimated 28.7 percent of the workforce being licensed by the state.[4]

In 2015, the White House published a report on the current state of occupational licensing in the nation. The report found that when designed and implemented carefully, requiring occupational licenses offers important health and safety protections to consumers as well as benefits to workers. However, the report also found that too often licensing requirements are inconsistent, inefficient, arbitrary, and there is evidence that the current license regime in the U.S. raises the price of goods and services, restricts employment opportunities, and makes it more difficult for workers to take their skills across state lines.[5]

The report stated that because occupations are diverse in their tasks, designing and implementing successful occupational license regulations often requires a tailored approach. However, there are a number of common factors that policymakers should consider when contemplating enacting, revising, or repealing an occupational regulation. Policymakers should:[6]

- Ensure that restrictions are closely targeted to protecting public health and safety, and are not overly burdensome;
- Facilitate a careful consideration of licensure's costs and benefits; and

[1] The White House, *Occupational Licensing: A Framework for Policymakers*, 6 (July 2015) https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf (last visited on Mar 20, 2023).
[2] Bureau of Labor Statistics, *Labor Force Statistics from the Current Population Survey, 2021*, Certification and licensing status of the civilian noninstitutional population 16 years and over by employment status (bls.gov), (last visited on Mar. 20, 2023).
[3] Chs. 20, 25, F.S.
[4] White House *supra* note 1 at 3 & 24.
[5] *Id*.
[6] *Id*. at 41-43

- Work to reduce licensing's barriers to mobility.

Policymakers can facilitate a careful consideration of licensure costs and benefits through both sunrise and sunset reviews. However, evidence suggests that sunrise reviews are more successful at limiting the growth of licensing since removing a license is much more difficult than enacting one. Additionally, state regulators suggested that sunrise reviews may be more effective than sunset reviews.[7]

Sunrise Review

Generally, a sunrise review is a formal process where a legislature scrutinizes legislation proposing to regulate an unregulated profession or occupation by requiring a cost-benefit analysis before the legislation is enacted. Most sunrise reviews require the proponents of the regulation to outline the potential impacts, costs, and benefits of the proposed regulation. Some states require the proponents of the regulation to provide certain information to a legislative committee or a state agency for analysis and evaluation, which is then provided to the legislature. Policymakers can review the information provided before moving forward with the legislation.[8]

Currently 14 states, including Florida, have sunrise reviews.[9] However, states vary widely in how independently and thoroughly they administer sunrise reviews. Colorado requires proponents of regulation to submit the proposed regulation along with the potential impacts, costs, and benefits to the Colorado Department of Regulatory Agencies for analysis and evaluation.[10] Minnesota requires proponents of regulation to file a report outlining the regulation's potential impacts, costs, and benefits with the legislature within 15 days of the bill being introduced.[11] Maine requires sunrise reviews for legislation regulating an unregulated profession or occupation and legislation that substantially expands regulation of an already regulated profession or occupation.[12] Florida currently requires proponents of regulation to file information about the regulation's potential impacts, costs, and benefits upon request.[13]

Florida's Sunrise Act

Section 11.62, F.S., is Florida's sunrise review, which is called the Sunrise Act. The Sunrise Act states that regulation should not be adopted unless it is:

- Necessary to protect the public health, safety, or welfare from significant and discernible harm or damage;
- Exercised only to the extent necessary to prevent the harm; and
- Limited so as not to unnecessarily restrict entry into the practice of the profession or adversely affect public access to the professional services.

In determining whether to regulate a profession or occupation, the Sunrise Act requires the Legislature to consider the following:

- Whether the unregulated practice of the profession or occupation will substantially harm or endanger the public health, safety, or welfare, and whether the potential for harm is recognizable and not remote;
- Whether the practice of the profession or occupation requires specialized skill or training and whether that skill or training is readily measurable or quantifiable so that examination or training requirements would reasonably assure initial and continuing professional or occupational ability;

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[7] *Id.* at 42, 48-49.
[8] *Id.* at 48; Iris Hentze, *Improving Occupational Licensing with Sunrise and Sunset Reviews*, National Conference of State Legislatures, (July 2018), https://www.ncsl.org/labor-and-employment/sunset-and-sunrise (last visited Mar. 20, 2023); Council on Licensure & Regulation, *Sunrise, Sunset and State Agency Audits*, https://clear.wildapricot.org/page-486181 (last visited Mar. 20, 2023).
[9] Council on Licensure & Regulation *supra* note 5.
[10] Colo. Rev. Stat. § 24-34-104.1.
[11] Minn. Stat. § 214.002.
[12] ME. Rev. Stat. Ann. Tit. 32-1A, § 60-J.
[13] S. 11.62(4), F.S.

- Whether the regulation will have an unreasonable effect on job creation or job retention in the state or will place unreasonable restrictions on the ability of individuals who seek to practice or who are practicing a given profession or occupation to find employment;
- Whether the public is or can be effectively protected by other means; and
- Whether the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable.

The Sunrise Act requires proponents of legislation that propose new regulation on professions or occupations to provide the following information, **upon request,** by the agency proposed to have jurisdiction or the legislative committee to which the legislation is referred, to document the need for regulation:

- The number of individuals or businesses that would be subject to the regulation;
- The name of each association that represents members of the profession or occupation, together with a copy of its codes of ethics or conduct;
- Documentation of the nature and extent of the harm to the public caused by the unregulated practice of the profession or occupation, including a description of any complaints that have been lodged against persons who have practiced the profession or occupation in this state during the preceding three years;
- A list of states that regulate the profession or occupation, and the dates of enactment of each law providing for such regulation and a copy of each law;
- A list and description of state and federal laws that have been enacted to protect the public with respect to the profession or occupation and a statement of the reasons why these laws have not proven adequate to protect the public;
- A description of the voluntary efforts made by members of the profession or occupation to protect the public and a statement of the reasons why these efforts are not adequate to protect the public;
- A copy of any federal legislation mandating regulation;
- An explanation of the reasons why other types of less restrictive regulation would not effectively protect the public;
- The cost, availability, and appropriateness of training and examination requirements;
- The cost of regulation, including the indirect cost to consumers, and the method proposed to finance the regulation;
- The cost imposed on applicants or practitioners or on employers of applicants or practitioners as a result of the regulation;
- The details of any previous efforts in this state to implement regulation of the profession or occupation; and
- Any other information the agency or the committee considers relevant to the analysis of the proposed legislation.

The Sunrise Act requires the agency proposed to have jurisdiction over the regulation to provide the Legislature with the following information:

- The resources required to implement and enforce the regulation;
- The technical sufficiency of the proposal, including its consistency with the regulation of other professions; and
- Any alternatives that may result in less restrictive or more cost-effective regulation.

In determining whether to recommend regulation, the legislative committee reviewing the proposal must assess whether the proposed regulation is:

- Justified based on the statutory criteria and the information provided by both the proponents of regulation and the agency responsible for its implementation;
- The least restrictive and most cost-effective regulatory scheme necessary to protect the public; and
- Technically sufficient and consistent with the regulation of other professions under existing law.

Department of Business and Professional Regulation

The Florida Department of Business and Professional Regulation (DBPR), through 11 divisions, regulates and licenses businesses and professionals in Florida. The divisions established under DBPR include:

- 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 Professions;
- The Division of Real Estate;
- The Division of Regulation;
- The Division of Technology; and
- The Division of Service Operations.[14]

The Division of Professions (Professions) licenses and regulates more than 434,000 professionals through the following professional boards and programs:

- Board of Architecture and Interior Design,
- Asbestos Licensing Unit,
- Athlete Agents,
- Board of Auctioneers,
- Barbers' Board,
- Building Code Administrators and Inspectors Board,
- Regulatory Council of Community Association Managers,
- Construction Industry Licensing Board,
- Board of Cosmetology,
- Electrical Contractors' Licensing Board,
- Board of Employee Leasing Companies,
- Home Inspectors,
- Board of Landscape Architecture,
- Mold-Related Services,
- Board of Pilot Commissioners,
- Board of Professional Geologists,
- Talent Agencies,
- Board of Veterinary Medicine, and
- Florida Board of Professional Engineers.[15]

The Division of Regulation is the enforcement authority for the Florida Athletic Commission, Farm Labor Program, Child Labor Program, and any professional boards and programs housed within Professions.[16] To ensure compliance with applicable laws and rules by those professions and related businesses, the division investigates complaints, utilizes compliance mechanisms, and performs inspections.[17]

The Division of Certified Public Accounting is responsible for the regulation of certified public accountants and accounting firms in the state.[18]

The Division of Real Estate is responsible for the regulation of real estate sales associates, brokers, and appraisers, in conjunction with the Florida Real Estate Commission and the Florida Real Estate Appraisal Board.[19]

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[14] s. 20.165, F.S.

[15] Florida Department of Business and Professional Regulation, *Division of Professions*, http://www.myfloridalicense.com/dbpr/pro/index.html (last visited Feb. 20, 2017).

[16] Except the Board of Architecture and Interior Design, and the Florida Board of Professional Engineers.

[17] Florida Department of Business and Professional Regulation, *Division of Regulation*, http://www.myfloridalicense.com/DBPR/division-of-regulation/ (last visited Mar. 12, 2023).

[18] S. 473.3035, F.S.; Florida Department of Business and Professional Regulation, *Certified Public Accounting*, Certified Public Accounting – MyFloridaLicense.com (last visited Mar. 12, 2023).

Each profession is governed by an individual practice act and by ch. 455, F.S., which provides the general powers of DBPR and sets forth the procedural and administrative framework for all of the professional boards housed under DBPR.[20] Chapter 455, F.S., applies to the regulation of professions constituting "any activity, occupation, profession, or vocation regulated by DBPR in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation."[21]

In Fiscal Year 2021-2022, DBPR's Division of Professions had 937,960 active licensees (of which 38,541 were licensed accountants; 66,936 were licensed engineers, and 345,026 were real estate-related licensees).[22] Such licenses have statutory procedures in places to allow out-of-state licensees to obtain a Florida license.

In 2020, HB 1193,[23] an omnibus license deregulation bill, was enacted, which instituted greater license portability measures for the following DBPR licenses:

- Veterinarians,
- Construction contractors,
- Electrical contractors,
- Landscape architects,
- Geologists,
- Professional engineers,
- Certified public accountants,
- Home inspectors,
- Building code professionals,
- Cosmetologists, and
- Barbers.

Locally Licensed Contractors

Chapter 489, F.S., relates to "contracting," with part I addressing the licensure and regulation of construction contracting, and part II addressing the licensure and regulation of electrical and alarm system contracting. DBPR, through the Construction Industry Licensing Board and the Electrical Contractors' Licensing Board and under the Division of Professions, provide statewide licenses for various construction and electrical contractors. Chapter 489, F.S., also allows local jurisdictions across the state to locally license registered contractors to practice in their jurisdiction.[24]

Department of Health

The Department of Health (DOH) is created under the authority of s. 20.43, F.S., which outlines the composition of the agency structure to include the Division of Medical Quality Assurance (MQA). MQA is statutorily responsible for the following boards and professions established within the division:

- The Board of Acupuncture, created under ch. 457, F.S.;
- The Board of Medicine, created under ch. 458, F.S.;
- The Board of Osteopathic Medicine, created under ch. 459, F.S.;
- The Board of Chiropractic Medicine, created under ch. 460, F.S.;
- The Board of Podiatric Medicine, created under ch. 461, F.S.;
- Naturopathy, as provided under ch. 462, F.S.;
- The Board of Optometry, created under ch. 463, F.S.;
- The Board of Nursing, created under part I of ch. 464, F.S.;

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[19] S. 475.021, F.S.
[20] S. 455.203, F.S.
[21] S. 455.01(6), F.S.
[22] *See* Department of Business and Professional Regulation, *Annual Report, Fiscal Year 2021-2022*, at 10, at http://www.myfloridalicense.com/DBPR/os/documents/Division%20Annual%20Report%20FY%2021-22.pdf (last visited Mar. 20, 2023).
[23] Ch. 2020-125, L.O.F.
[24] Ss. 489.117 and 489.131, F.S.

- Nursing assistants, as provided under part II of ch. 464, F.S.;
- The Board of Pharmacy, created under ch. 465, F.S.;
- The Board of Dentistry, created under ch. 466, F.S.;
- Midwifery, as provided under ch. 467, F.S.;
- The Board of Speech-Language Pathology and Audiology, created under part I of ch. 468, F.S.;
- The Board of Nursing Home Administrators, created under part II of ch. 468, F.S.;
- The Board of Occupational Therapy, created under part III of ch. 468, F.S.;
- Respiratory therapy, as provided under part V of ch. 468, F.S.;
- Dietetics and nutrition practice, as provided under part X of ch. 468, F.S.;
- The Board of Athletic Training, created under part XIII of ch. 468, F.S.;
- The Board of Orthotists and Prosthetists, created under part XIV of ch. 468, F.S.;
- Electrolysis, as provided under ch. 478, F.S.;
- The Board of Massage Therapy, created under ch. 480, F.S.;
- The Board of Clinical Laboratory Personnel, created under part III of ch. 483, F.S.;
- Medical physicists, as provided under part IV of ch. 483, F.S.;
- The Board of Opticianry, created under part I of ch. 484, F.S.;
- The Board of Hearing Aid Specialists, created under part II of ch. 484, F.S.;
- The Board of Physical Therapy Practice, created under ch. 486, F.S.;
- The Board of Psychology, created under ch. 490, F.S.;
- School psychologists, as provided under ch. 490, F.S.;
- The Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling, created under ch. 491, F.S.; and
- Emergency medical technicians and paramedics, as provided under part III of ch. 401, F.S.;

The DOH and the practitioner boards have different roles in the regulatory system. Boards establish practice standards by rule, pursuant to statutory authority and directives.[25] The DOH receives and investigates complaints about practitioners and prosecutes cases for disciplinary action against practitioners.

The DOH, on behalf of the professional boards, investigates complaints against practitioners.[26] Once an investigation is complete, the DOH presents the investigatory findings to the boards. The DOH recommends a course of action to the appropriate board's probable cause panel which may include:[27]

Issuing an emergency order;
Having the file reviewed by an expert;
Issuing a closing order; or
Filing an administrative complaint.

The boards determine the course of action and any disciplinary action to take against a practitioner under the respective practice act.[28] For professions for which there is no board, the DOH determines the action and discipline to take against a practitioner and issues the final orders.[29] The DOH is responsible for ensuring that licensees comply with the terms and penalties imposed by the boards.[30] If a case is appealed, DOH attorneys defend the final actions of the boards before the appropriate appellate court.[31]

[25] The DOH also establishes these for some professions. Professions which do not have a board include naturopathy, nursing assistants, midwifery, respiratory therapy, dietetics and nutrition, electrolysis, medical physicists, genetic counselors, and school psychologists.
[26] Department of Health, *Investigative Services,* http://www.floridahealth.gov/licensing-and-regulation/enforcement/admin-complaint-process/isu.html (last visited Mar. 20, 2023).
[27] Department of Health, *Prosecution Services,* http://www.floridahealth.gov/licensing-and-regulation/enforcement/admin-complaint-process/psu.html (last visited Mar. 20, 2023).
[28] S. 456.072(2), F.S.
[29] *Supra* note 25.
[30] *Supra* note 27.
[31] *Id.*

The DOH and board rules apply to all statutory grounds for discipline against a practitioner. Under current law, the DOH has disciplinary authority for violations of a practice act only for practitioners that are not regulated by a board. The DOH does not have final disciplinary authority over practitioners for which there is a board.

Florida Health Care Licensure

The DOH does not license health care practitioners by specialty or subspecialty. A health care practitioner's specialty area of practice is acquired through the practitioner acquiring additional education, training, or experience in a particular area of health care practice. Practitioners who have acquired additional education, training, or experience in a particular area may also elect to become board-certified in that specialty by private, national specialty boards, such as the American Board of Medical Specialties (ABMS), the Accreditation Board for Specialty Nursing Certification, and the American Board of Dental Specialties.[32] Board certification is not required to practice a medical or osteopathic specialty.

Health Care Practitioner Licensure – Federal Government and Military

The federal government does not license health care practitioners, nor does it regulate practitioner behavior in terms of scope of practice, standards of practice, or practitioner discipline. Instead, the federal government relies on state governments to fulfill those functions.

In addition to state licensure requirements, Medicare, Medicaid, and other government reimbursement programs[33] rely on the power of the purse to manage practitioners and facilities providing health care services to persons enrolled in such programs. These programs impose "conditions of participation" and "conditions of payment," which essentially mandate compliance with specified standards. Certification under a federal health care program is an authorization to participate in government payment systems; it is distinct from state licensure or accreditation by a nationally-recognized board.[34]

For example, under federal labor law, the definition of "health care provider" includes, in part, a doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the state in which the doctor practices, and others capable of providing health care services, including podiatrists, dentists, clinical psychologists, optometrists, chiropractors, nurse practitioners, nurse midwives, clinical social workers, and physician assistants who are authorized to practice in the state and performing within the scope of their practice as defined under state law.[35]

Federal laws do not license or regulate such practitioners in the manner state regulatory laws and practice acts do, and do not define practitioner credentials or scopes of practice outside the applicable state law.

United States Armed Forces Career Fields

The U.S. Armed Forces consists of six military branches: Air Force, Army, Coast Guard, Marine Corps, Navy, and Space Force. The secretary of the U.S. Department of Defense controls each branch, except the Coast Guard, which is under the Department of Homeland Security (DHS). With more than two million civilian and military employees, the U.S. Department of Defense is the world's largest employer.[36]

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[32] Examples of specialties include dermatology, emergency medicine, ophthalmology, pediatric medicine, certified registered nurse anesthetist, clinical nurse specialist, cardiac nurse, nurse practitioner, endodontics, orthodontics, and pediatric dentistry.

[33] Programs such as the federal workers' compensation program for longshoremen and harbor workers found under 20 CFR Subchapter A, available at: https://www.law.cornell.edu/cfr/text/20/chapter-VI/subchapter-A (last visited Mar. 17, 2023).

[34] The Healthcare Law Review: USA, *Spotlight: The Regulation of Healthcare Providers and Professionals in the USA*, Sept. 7, 2020, available at: https://www.lexology.com/library/detail.aspx?g=c3c193d0-753e-4244-914a-fd943e70ec8e (last visited Mar. 17, 2023).

[35] *See* 29 CFR s. 825.125, defining the term "health care provider" in the context of the Family and Medical Leave Act of 1993, as amended.

[36] Military.com, *What Are the Branches of the US Military?* at https://www.military.com/join-armed-forces/us-military-branches-overview.html (last visited Mar. 20, 2023).

Joining the U.S. Armed Forces as an enlisted member or an officer has a significant impact on the type of experience and training a new recruit receives. All jobs for enlisted members require a high school diploma, although, with certain exceptions, a passing General Education Development (GED) test score is acceptable. While jobs for enlisted members include infantry roles, most jobs involve hands-on training for mechanical, transportation, human service, or office fields that transfer to the civilian world.

Almost all officer positions require a four-year college degree or equivalent. Officers are the managers of the military, acting in leadership roles that require planning, directing operations, and making critical decisions. Officer positions also include careers that require advanced degrees, such as law and medicine.[37]

The careers available to members of the U.S. Armed Forces are extensive, and depending on the service branch, have been referred to as career management fields (CMF), occupational management fields (OMF), and military occupational specialties (MOS).[38]

Servicemember Professional License Portability

The federal Veterans Auto and Education Improvement Act of 2022,[39] (the federal portability act) which became law on January 5, 2023, addresses the portability of professional licenses held by members of the U.S. Armed Forces (service members) and their spouses, when they move outside the jurisdiction that issued the license due to military orders for military service, under specified circumstances.

Portability is available only for a professional license or certificate in good standing with the issuing licensing authority which has been actively used by the servicemember or spouse during the two years immediately preceding the relocation (covered licenses), and licenses to practice law are expressly not covered.

Under the act, a covered license must be considered valid at a similar scope of practice and in the discipline applied for in the jurisdiction of such new residency for the duration of such military orders if such servicemember or spouse:

- Provides a copy of military orders to the licensing authority in the new jurisdiction;
- Remains in good standing with:
  - The licensing authority that issued the covered license; and
  - Every other licensing authority that has issued to the servicemember or spouse a license with a similar scope of practice and in the discipline applied in the new jurisdiction; and
- Submits to the authority of the licensing authority in the new jurisdiction for the purposes of standards of practice, discipline, and fulfillment of any continuing education requirements.

If the license of a servicemember or spouse is covered by an interstate licensure compact, use of the license is governed by the interstate compact or applicable state law, and the above portability provisions do not apply.

Occupational Licensing Trends

According to the National Conference of State Legislatures (NCSL), "occupational licensing remains a growing area of interest for states, stemming largely from tight labor markets and the race to recruit workers for the large number of job openings nationwide. In 2022, the focus has largely been on

[37] Today's Military, *Enlisted and Officer Paths*, at https://www.todaysmilitary.com/ways-to-serve/enlisted-officer-paths (last visited Mar. 20, 2023).
[38] *See e.g.*, listed careers for the Air Force, Army, Marines, and Navy, respectively, at https://www.airforce.com/careers; https://en.wikipedia.org/wiki/List_of_United_States_Army_careers; https://www.marines.com/about-the-marine-corps/roles/military-occupational-specialty.html; and https://www.navy.com/node/3512 (all last visited Mar. 20, 2023).
[39] *See* s. 19, Pub. Law No. 117-333, H.R. 7939, 117th Cong. (Jan. 5, 2023) at https://www.congress.gov/bill/117th-congress/house-bill/7939/text (last visited Mar. 17, 2023), which amended the Servicemembers Civil Relief Act (SCRA), 42 U.S.C. 4021 *et seq.* by adding Section 705A. The amendment also expands the right to terminate certain types of service contracts and clarifies options for tax residence for a servicemember and his or her spouse.

improving the accessibility of licensing in order to bolster the workforce and integrate new employees."[40] The NCSL identified four trends: worker mobility; universal licensure recognition; reducing barriers for veterans and military spouses; and simplifying or eliminating licensing.[41]

Emergency Powers

During a declared state of emergency, in addition to any other powers conferred upon the Governor by law, the Governor may suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders or rules of any state agency, if strict compliance with the provisions of any such statute, order, or rule would in any way prevent, hinder, or delay necessary action in coping with the emergency.[42]

Effect of Bill

The bill, titled the Interstate-Mobility and Universal-Recognition Act, relates to licenses and certifications issued by DBPR and DOH. The bill requires DBPR and DOH to recognize other state licenses and certifications, certain work experience, and private certifications and work experience for certain individuals, under certain circumstances.

The bill requires Florida licensing boards that issue occupational licenses or government certifications to individuals under ch. 455, F.S., relating to the regulations of professions by the Department of Business and Professional Regulation (DBPR), or ch. 456, F.S., relating to the regulation of professions by the Department of Health (DOH), to issue an occupational license or government certification (universal license) to eligible applicants, under certain circumstances (universal licensing requirement).

Applicants may seek a universal license through one of three pathways described in the bill. An applicant from another state is automatically approved under the universal licensing scheme if:

- The applicant is licensed by another licensing entity or state;
- The applicant has certain work experience in another state or in the military; or
- The applicant has a private certification with work experience in a non-licensing state or the military.

The bill provides that an applicant with a valid occupational license or certification in good standing, or who otherwise meets the requirements for an occupational license for a lawful occupation, is presumed to be qualified for the license and must be issued an occupational license or government certification by the appropriate Florida licensing board.

The bill provides the following definitions:

- "Board" means an agency, board, department, or other governmental entity that regulates a lawful occupation under DBPR or DOH and issues an occupational license or government certification to an individual.
- "Government certification" means a voluntary, government-granted, and nontransferable recognition granted to an individual who meets personal qualifications related to a lawful occupation. The term includes a military certification for a lawful occupation. The term does not include credentials,[43] such as those used for medical board certification or held by a certified public accountant, that are prerequisites to working lawfully in an occupation.

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[40] *See NCSL 2022 Occupational Licensing Trends Summary*, https://www.ncsl.org/labor-and-employment/2022-occupational-licensing-trends (last visited Mar. 20, 2023).
[41] *Id*.
[42] S. 252.36(6), F.S.
[43] The term "credentials" is not defined in the bill, however, *see* the University of Florida Professional and Workforce Development Medical Credentialing Program information at https://pwd.aa.ufl.edu/medical-credentialing-program/ (last visited Mar. 20, 2023). The Florida Certification Board (FCB), a nonprofit organization, indicates it has, over the last 30 years, designed, developed and managed certification programs in Florida for over 30 health and human services professions. *See* https://flcertificationboard.org/credentials/ and https://flcertificationboard.org/about/ (last visited Mar. 20, 2023).

- "Lawful occupation" means a course of conduct, pursuit, or profession that includes the lawful sale of goods or services to sell regardless of whether the individual selling them is subject to an occupational license.
- "Military" means the Armed Forces of the United States, including the Air Force, Army, Coast Guard, Marine Corps, Navy, Space Force, National Guard, and all reserve components and auxiliaries. The term also includes the military reserves and militia of any United States territory or state.
- "Occupational license" means a nontransferable authorization in law for an individual to exclusively perform a lawful occupation based on meeting personal qualifications. The term includes a military occupational specialty.
- "Other licensing entity" or "another licensing entity" means any United States territory or state in the United States other than this state which issues occupational licenses or government certifications. The term includes the military.
- "Private certification" means a voluntary program in which a private organization grants nontransferable recognition to an individual who meets personal qualifications and standards relevant to performing the occupation, as determined by the private organization.
- "Scope of practice" means the procedures, actions, processes, and work that a person may perform under an occupational license or government certification issued in this state.

The bill provides that notwithstanding any other law, a board must issue an occupational license or government certification to a person applying to a board for such license or certification if all of the following apply:

- The person holds a current and valid occupational license or government certification by another licensing entity in a lawful occupation with a similar scope of practice, as determined by a board in this state.
- The person has held the occupational license or government certification by another licensing entity for at least 1 year.
- A board for the other licensing entity required the person to pass an examination or meet education, training, or experience standards.
- A board for the other licensing entity holds the person in good standing.
- The person does not have a disqualifying criminal record as determined by a board in this state.
- A board for another licensing entity has not revoked the person's occupational license or government certification because of negligence or intentional misconduct related to the person's work in the occupation.
- The person did not surrender an occupational license or government certification, or have such license or certification revoked, because of negligence or intentional misconduct related to the person's work in the occupation in another state or in the military.
- The person does not have a complaint, allegation, or investigation pending before a board for another licensing entity which relates to unprofessional conduct or an alleged crime. If the person has a complaint, allegation, or investigation pending, a board may not issue or deny an occupational license or government certification to the person until the complaint, allegation, or investigation is resolved or the person otherwise meets the criteria for an occupational license or government certification in this state to the satisfaction of a board in this state.
- The person pays all applicable fees in this state.

If another licensing entity issued the person a government certification but this state requires an occupational license to work, a board must issue an occupational license to the person if the person otherwise satisfies all of the above qualifications.

Work Experience

In addition, the bill requires boards under DBPR and DOH to issue an occupational license or government certification to a person applying to a board for such license or certification based on work experience in another state or the military if all of the following requirements are met:

- The person worked in a state that does not use an occupational license or government certification to regulate a lawful occupation or was a member of the military, but this state uses

an occupational license or government certification to regulate a lawful occupation with a similar scope of practice, as determined by the board.
- The person worked for at least 3 years in the lawful occupation.
- The person satisfies all of the above qualifications under occupational license or government certification.

Private Certification

Notwithstanding any other law, a board must issue an occupational license or government certification to a person applying for such license or certification based on the person holding a private certification and the person's work experience in another state or the military if all of the following apply:
- The person holds a private certification and worked in a state that does not use an occupational license or government certification to regulate a lawful occupation or was a member of the military, but this state uses an occupational license or government certification to regulate a lawful occupation with a similar scope of practice, as determined by the board.
- The person worked for at least 2 years in the lawful occupation.
- The person holds a current and valid private certification in the lawful occupation.
- The private certification organization holds the person in good standing.
- The person does not have a disqualifying criminal record as determined by a board in this state.
- A board for another licensing entity has not revoked the person's occupational license or government certification because of negligence or intentional misconduct related to the person's work in the occupation.
- The person did not surrender an occupational license or government certification, or have such license or certification revoked, because of negligence or intentional misconduct related to the person's work in the occupation in another state or in the military.
- The person does not have a complaint, allegation, or investigation pending before a board for another licensing entity which relates to unprofessional conduct or an alleged crime. If the person has a complaint, allegation, or investigation pending, a board may not issue or deny an occupational license or government certification to the person until the complaint, allegation, or investigation is resolved or the person otherwise meets the criteria for an occupational license or government certification in this state to the satisfaction of a board in this state.
- The person pays all applicable fees in this state.

Presumption of Approval

The bill provides that unless a board can demonstrate a substantial difference between licensure or certification requirements of another licensing entity and this state, there is a presumption that an applicant who holds a valid occupational license, government certification, or private certification, or otherwise meets the requirements to credentialed for a lawful occupation, and is in good standing in another state is qualified for an occupational license or government certification in this state and **must** be approved by the board.

A board shall provide an applicant with a written decision regarding the application within 90 days after receiving a complete application.

Appeal Process

The person may appeal the board's decision to the Division of Administrative Hearings, such as:
- The board's denial;
- Determination of the occupation;
- Determination of the similarity of the scope of practice of the occupational license or government certification issued; or
- Other applicable determinations.

Applicability

The bill provides that:

- Nothing in this bill shall prevent a person from obtaining an occupational license or government certification from another law or rule.
- An occupational license or government certification issued under this bill is valid only in this state unless otherwise provided by law.
- It does not prevent Florida from entering into a licensing compact or reciprocity agreement with another state, foreign province, foreign country, international organization, or other entity.
- May not be construed to prevent this state from recognizing occupational credentials issued by a private certification organization, foreign province, foreign country, international organization, or other entity.
- May not be construed to require a private organization to grant or deny private certification to any individual.

The bill provides that the Governor may order the recognition of occupational licenses from other licensing entities or from a foreign country as if the licenses were issued in this state under a state of emergency declared by the Governor.

The bill requires each board under DBPR and DOH to submit an annual report to the President of the Senate and the Speaker of the House of Representatives by December 31 of each year, detailing the number of licenses or certifications issued, the number of applications submitted which were denied, and the reason for each denial.

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

B. SECTION DIRECTORY:

Section 1: Creates s. 455.2135, F.S.; the "Interstate-Mobility and Universal Recognition Occupational Licensing Act."
Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill may increase revenues from application fees at DBPR and DOH due to an increase in out-of-state license applicants.

2. Expenditures:

   DBPR and DOH may have an indeterminate negative fiscal impact related to creating new licensing processes and forms. *See* Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill may increase revenues from application fees for local contracting licenses due to an increase in out-of-state license applicants.

2. Expenditures:

   The bill may cause an increase in local contractor licenses being issued, but local governments may charge fees to cover the cost of regulation.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Individuals in the state may make the decision to forgo education and testing requirements in Florida in favor of moving to another state that has an easier path to licensure, or move to a state that doesn't

have a licensing scheme to obtain a private certification, and later return to be licensed in the state through one of the bill's alternative pathways.

Out-of-state professionals seeking to work in the state may be eligible under the additional alternative pathways created by the bill to obtain a license to work in specified occupations and professions in Florida. Thus, the state may see an increase in the number of available professionals to hire.

D. FISCAL COMMENTS:

DBPR has provided the following response on the fiscal impact:[44]

The potential fiscal impact to DBPR is indeterminate at this time. Depending upon the number of individuals who take advantage of this new licensing method the DBPR would collect a corresponding amount of revenues from the licensees. Additionally, if enough new license applications are received there could be staffing needs in order to process any increased applications or complaints.

DOH estimates they will need $2.5 M in additional resources including 13.00 positions. The estimate includes $1.1 M in salary and benefits, $432 K in expenses, $18 K in OPS, and $641 K in contracted services. However, in Fiscal Year 2021-2022, DOH reverted $125.0 M in salaries and benefits, $43.0 M in expenses, $27.4 M in OPS, and $35.4 M in contracted services. Additionally, as of April 4, 2023, DOH had 2,473.85 vacant positions for a department vacancy rate of 19.3 percent.

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:

Article VII, s. 19 of the Florida Constitution requires the imposition, authorization, or raising of a state tax or fee be contained in a separate bill that contains no other subject and be approved by two-thirds of the membership of each house of the Legislature. As such, Art, VII, s. 19 of the Florida Constitution may apply if the fee provisions in the bill are interpreted to be a new fee.

Mandating acceptance of unspecified private certifications and other state licenses may potentially implicate the "nondelegation doctrine." Article III, Section 1 of the Florida Constitution states that "[t]he legislative power of the state shall be vested in a legislature of the State of Florida." The Florida Supreme Court has held that this constitutional provision requires that "primary policy decisions must be made by members of the legislature who are elected to perform those tasks, and administration of legislative programs must be pursuant to some minimal standards and guidelines…."[45]

The Legislature may constitutionally transfer subordinate functions to "permit administration of legislative policy by an agency with the expertise and flexibility to deal with complex and fluid conditions."[46] However, the Legislature "may not delegate the power to enact a law or the right to exercise unrestricted discretion in applying the law."[47] Further, the nondelegation doctrine precludes

[44] Department of Business and Professional Regulation, Agency Analysis of 2023 Senate Bill 1364, p. 10 (Mar. 20, 2023).
[45] *Askew v. Cross Key Waterways,* 372 So.2d 913, 925 (Fla. 1978).
[46] *Microtel v. Fla. Pub. Serv. Comm'n,* 464 So.2d 1189, 1191 (Fla.1985) (citing *State, Dep't of Citrus v. Griffin,* 239 So.2d 577 (Fla.1970)).
[47] *Sims v. State,* 754 So.2d 657, 668 (Fla. 2000).

the Legislature from delegating its powers "absent ascertainable minimal standards and guidelines."[48] When the Legislature delegates power to another body, it "must clearly announce adequate standards to guide in the execution of the powers delegated."[49]

The bill allows people to obtain a license in this state that move here from another state more easily than Florida residents. There are constitutional provisions and analysis that may be implicated.[50]

B. RULE-MAKING AUTHORITY:

The bill requires boards at DBPR and DOH to create new licensing processes and forms. The bill does not provide rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

It is unclear if the bill is intended to cover all licensed professions in the state or only those licensed professions covered in chs. 455 and 456, F.S., as it specifically excepts occupations regulated by the Florida Supreme Court, such professionals are not regulated by DBPR or DOH.

The sponsor has indicated that an amendment is planned to address concerns once the sponsor has heard from all interested parties and received input from DBPR and DOH. The planned amendment will also address technical drafting issues, make conforming changes, clarify definitions and other language for consistency, address profession and industry specific concerns by identifying more specifically those individuals who are not covered by the universal licensing requirements created by the bill, and will allow rulemaking by DBPR and DOH to implement the provisions in the bill.

The bill may also need clarification related to which fees an applicant must pay. DBPR and DOH have a specific fee structure authorized for each type of license and avenue for obtaining licensure, including a license by endorsement. The bill does not currently specify which fee or fees are applicable.

The bill may need clarification related to the requirements for a universal license based on work experience, which appear to be internally inconsistent. To qualify under this provision, the bill requires the applicant to have worked in another state that does not require a license for the occupation; however, to qualify under this provision, the bill also requires the applicant to meet the requirements s. 455.2135(3)(a), F.S., which requires the person to have been licensed by another licensing entity.

Some of the bill's provisions conflict with current law. For example: The bill creates s. 455.2135, F.S., to provide occupational license portability for professions or occupations regulated by the DBPR and DOH. However, ch. 455, F.S., relates to professions regulated by the DBPR. The sponsor may wish to include in an amendment additional provisions in ch. 456, F.S., noting the applicability of the act to professions regulated by the DOH, and providing notice to eligible individuals and the affected boards of the universal licensing requirements. A similar amendment may be needed to clarify conflicts between the bill's provisions related to the Emergency Powers of the Governor that conflict with current law.

DBPR has conveyed the following concerns:[51]

The bill states that a board may not issue or deny an occupational license or government certification to any person with a pending complaint, allegation, or investigation until such matter is resolved. This conflicts with s. 455.213(4), F.S., which authorizes denial of an initial license to any applicant who is under investigation or prosecution in any jurisdiction for an action that would constitute a violation of ch. 455, F.S., or the respective professional practice acts, until such time as the investigation is complete. It is unclear if the provisions of s. 120.60(1), F.S., that deem an application approved for failure to issue a

[48] *Dep't of Bus. Reg., Div. of Alcoholic Beverages and Tobacco v. Jones*, 474 So.2d 359, 361 (Fla. 1st DCA 1985).
[49] *Martin, 916 So.2d at 770*.
[50] U.S. Const. art IV, § 2, cl. 1; U.S. Const. art I, § 8, cl. 3; U.S. Const. amend. XIV, §§ 1,2;
[51] *Id*. at 8-9.

decision within 90 days of a complete application would still apply when an agency is prohibited from denying or issuing a license while the applicant has pending complaints, allegations, or investigations.

The bill's effective date of July 1, 2023 will not allow sufficient time for rulemaking to implement the provisions of the bill, including developing new fees and applications.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the Interstate-Mobility and Universal-Recognition Occupational Licensing Act; creating s. 455.2135, F.S.; providing a short title; defining terms; requiring certain agencies, boards, departments, and other governmental entities to issue an occupational license or government certification to persons under certain circumstances; authorizing such entities to require a person to pass a specified examination under certain circumstances; providing a presumption that the applications of certain individuals will be approved; requiring such entities to provide a written decision to an applicant within a specified timeframe; authorizing a person to appeal a decision made under the act; specifying that a person licensed or certified under the act is still subject to specified laws and entities; providing construction; authorizing the Governor to take certain actions relating to occupational licenses during declared states of emergency; requiring such entities to submit an annual report to the Legislature by a specified date; providing an effective date.

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

Section 1. Section 455.2135, Florida Statutes, is created to read:

455.2135 Interstate-Mobility and Universal-Recognition Occupational Licensing Act.—

(1) SHORT TITLE.—This section may be cited as the "Interstate-Mobility and Universal-Recognition Occupational Licensing Act."

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

(a) "Board" means an agency, board, department, or other governmental entity that regulates a lawful occupation under this chapter or chapter 456 and issues an occupational license or government certification to an individual.

(b) "Government certification" means a voluntary, government-granted, and nontransferable recognition granted to an individual who meets personal qualifications related to a lawful occupation. The term includes a military certification for a lawful occupation. The term does not include credentials, such as those used for medical board certification or held by a certified public accountant, that are prerequisites to working lawfully in an occupation.

(c) "Lawful occupation" means a course of conduct, pursuit, or profession that includes lawful the sale of goods or services to sell regardless of whether the individual selling them is subject to an occupational license.

(d) "Military" means the Armed Forces of the United

States, including the Air Force, Army, Coast Guard, Marine Corps, Navy, Space Force, National Guard, and all reserve components and auxiliaries. The term also includes the military reserves and militia of any United States territory or state.

(e) "Occupational license" means a nontransferable authorization in law for an individual to exclusively perform a lawful occupation based on meeting personal qualifications. The term includes a military occupational specialty.

(f) "Other licensing entity" or "another licensing entity" means any United States territory or state in the United States other than this state which issues occupational licenses or government certifications. The term includes the military.

(g) "Private certification" means a voluntary program in which a private organization grants nontransferable recognition to an individual who meets personal qualifications and standards relevant to performing the occupation, as determined by the private organization.

(h) "Scope of practice" means the procedures, actions, processes, and work that a person may perform under an occupational license or government certification issued in this state.

(3) OCCUPATIONAL LICENSE OR GOVERNMENT CERTIFICATION.—

(a) Notwithstanding any other law, a board must issue an occupational license or government certification to a person applying to a board for such license or certification if all of

the following apply:

1. The person holds a current and valid occupational license or government certification by another licensing entity in a lawful occupation with a similar scope of practice, as determined by a board in this state.

2. The person has held the occupational license or government certification by another licensing entity for at least 1 year.

3. A board for the other licensing entity required the person to pass an examination or meet education, training, or experience standards.

4. A board for the other licensing entity holds the person in good standing.

5. The person does not have a disqualifying criminal record as determined by a board in this state.

6. A board for another licensing entity has not revoked the person's occupational license or government certification because of negligence or intentional misconduct related to the person's work in the occupation.

7. The person did not surrender an occupational license or government certification, or have such license or certification revoked, because of negligence or intentional misconduct related to the person's work in the occupation in another state or in the military.

8. The person does not have a complaint, allegation, or

investigation pending before a board for another licensing entity which relates to unprofessional conduct or an alleged crime. If the person has a complaint, allegation, or investigation pending, a board may not issue or deny an occupational license or government certification to the person until the complaint, allegation, or investigation is resolved or the person otherwise meets the criteria for an occupational license or government certification in this state to the satisfaction of a board in this state.

9. The person pays all applicable fees in this state.

(b) If another licensing entity issued the person a government certification but this state requires an occupational license to work, a board must issue an occupational license to the person if the person otherwise satisfies paragraph (a).

(4) WORK EXPERIENCE.—Notwithstanding any other law, a board must issue an occupational license or government certification to a person applying to the board for such license or certification based on work experience in another state or the military if all of the following apply:

(a) The person worked in a state that does not use an occupational license or government certification to regulate a lawful occupation or was a member of the military, but this state uses an occupational license or government certification to regulate a lawful occupation with a similar scope of practice, as determined by the board.

(b) The person worked for at least 3 years in the lawful occupation.

(c) The person satisfies paragraph (3)(a).

(5) PRIVATE CERTIFICATION.—Notwithstanding any other law, a board must issue an occupational license or government certification to a person applying for such license or certification based on the person holding a private certification and the person's work experience in another state or the military if all of the following apply:

(a) The person holds a private certification and worked in a state that does not use an occupational license or government certification to regulate a lawful occupation or was a member of the military, but this state uses an occupational license or government certification to regulate a lawful occupation with a similar scope of practice, as determined by the board.

(b) The person worked for at least 2 years in the lawful occupation.

(c) The person holds a current and valid private certification in the lawful occupation.

(d) The private certification organization holds the person in good standing.

(e) The person satisfies subparagraphs (3)(a)5.-9.

(6) STATE EXAMINATION.—A board may require a person to pass a jurisprudential examination specific to relevant state laws that regulate the occupation if an occupational license or

government certification under this chapter or chapter 456 requires such examination.

(7) PRESUMPTION OF APPROVAL; DECISION.—Unless a board can demonstrate a substantial difference between licensure or certification requirements of another licensing entity and this state, there is a presumption that an applicant who holds a valid occupational license, government certification, or private certification, or otherwise meets the requirements to be credentialed for a lawful occupation, and is in good standing in another state is qualified for an occupational license or government certification in this state and must be approved by the board. A board shall provide an applicant with a written decision regarding his or her application within 90 days after receiving a complete application.

(8) APPEAL.—

(a) The person may appeal the board's decision to the Division of Administrative Hearings.

(b) The person may appeal the board's:

1. Denial of an occupational license or government certification;

2. Determination of the occupation;

3. Determination of the similarity of the scope of practice of the occupational license or government certification issued; or

4. Other determinations made under this section.

(9) STATE LAWS AND JURISDICTION.—A person who obtains an occupational license or a government certification pursuant to this section is subject to:

(a) The laws regulating the occupation in this state; and

(b) The jurisdiction of the board in this state.

(10) EXCEPTION.—This section does not apply to an occupation regulated by the Florida Supreme Court.

(11) CONSTRUCTION.—

(a) This section may not be construed to prohibit a person from applying for an occupational license or a government certification under another law or rule.

(b) An occupational license or a government certification issued pursuant to this section is valid only in this state. Such license or certification does not make the person eligible to work in another state under an interstate compact or a reciprocity agreement unless otherwise provided in law.

(c) This section may not be construed to prevent this state from entering into a licensing compact or reciprocity agreement with another state, foreign province, foreign country, international organization, or other entity.

(d) This section may not be construed to prevent this state from recognizing occupational credentials issued by a private certification organization, foreign province, foreign country, international organization, or other entity.

(e) This section may not be construed to require a private

certification organization to grant or deny private certification to any individual.

(12) EMERGENCY POWERS.—

(a) During a state of emergency declared by the Governor, the Governor may order the recognition of occupational licenses from other licensing entities or from a foreign country as if the licenses were issued in this state.

(b) The Governor may expand any occupational license's scope of practice and may authorize licensees to provide services in this state in person, telephonically, or by other means for the duration of the emergency.

(13) ANNUAL REPORT.—Each board shall submit an annual report to the President of the Senate and the Speaker of the House of Representatives by December 31 of each year, detailing the number of licenses or certifications issued pursuant to this section, the number of applications submitted pursuant to this section which were denied, and the reason for each denial.

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

COMMERCE COMMITTEE

HB 1333 by Rep. Koster
Interstate-Mobility and Universal-Recognition Occupational Licensing Act

AMENDMENT SUMMARY
April 24, 2023

Amendment 1 by Rep. Koster (line 181):

- Provides that the bill does not apply to acupuncturists, physicians, osteopathic physicians, chiropractic physicians, podiatric physicians, certified optometrists, dentists and dental hygienists, professional engineers, certified public accountants, physical therapists and physical therapy assistants general contractors, building contractors, residential contractors, roofing contractors, specialty structure contractors, glass and glazing contractors, electrical contractors, alarm system contractors, clinical social workers, marriage and family therapists, mental health counselors, and funeral directors.

Amendment 2 by Rep. Koster (line 217):

- Provides that, contingent upon the appropriation of funds, the Department of Veterans' Affairs must establish a portal system that allows former and present members of the military and their dependents to enter and verify their military credentials, government certifications, occupational licenses, or recognized private certifications.
- Requires the Department of Business and Professional Regulation and the Department of Health to use this system to verify credentials for license applicants.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Commerce Committee

Representative Koster offered the following:

Amendment

Remove lines 181-182 and insert:

(10) EXCEPTION.—This section does not apply to an occupation regulated by the Florida Supreme Court; acupuncturists regulated under chapter 457; physicians regulated under chapter 458; osteopathic physicians regulated under chapter 459; chiropractic physicians regulated under chapter 460; podiatric physicians regulated under chapter 461; certified optometrists regulated under chapter 463; dentists and dental hygienists regulated under chapter 466; professional engineers regulated under chapter 471; certified public accountants regulated under chapter 473; physical therapists and physical therapy assistants regulated under chapter 486; general

contractors, building contractors, residential contractors, roofing contractors, specialty structure contractors, glass and glazing contractors, electrical contractors, and alarm system contractors regulated under chapter 489; clinical social workers, marriage and family therapists, and mental health counselors regulated under chapter 491; and funeral directors regulated under chapter 497.

Amendment No.2

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Commerce Committee

Representative Koster offered the following:

Amendment

Between lines 217 and 218, insert:

(14) VETERANS ONLINE PORTAL.—Contingent upon the appropriation of funds for that purpose by the Legislature, the Department of Veterans' Affairs shall establish a one-stop online portal system that allows former and present members of the military and their dependents to enter and verify their military credentials, government certifications, occupational licenses, or recognized private certifications. The Department of Business and Professional Regulation and the Department of Health shall, for the boards under their respective jurisdiction, use this system to verify credentials for applicants under this section.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1383 Specialty Contractors
SPONSOR(S): State Administration & Technology Appropriations Subcommittee, Trabulsy
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 1570

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	9 Y, 2 N	Wright	Anstead
2) State Administration & Technology Appropriations Subcommittee	12 Y, 0 N, As CS	Helpling	Topp
3) Commerce Committee		Wright	Hamon

SUMMARY ANALYSIS

In 2021, HB 735 was enacted, which expressly preempted occupational licensing to the state and provided that any local licensing of an occupation not specifically authorized by general law may not be enforced. This preemption supersedes any local government licensing requirement of occupations unless:

- The licensing of occupations by local governments is authorized by general law; or
- The local licensing scheme was imposed before July 1, 2021. However, any such local licensing scheme expires on July 1, 2023.

HB 735 specifically preempted local construction licensing that is **outside the scope** of state construction contractor licensing provisions regulated by the Construction Industry Licensing Board (CILB) under the Department of Business and Professional Regulation, including, but not limited to, painting, cabinetry, and ornamental iron installation.

The bill extends the expiration date for local licensing without general law authority to January 1, 2024,

The bill requires the CILB, by January 1, 2024, to, by rule, establish certified specialty contractor categories for voluntary licensure for all of the following:

- Structural aluminum or screen enclosures.
- Marine seawall work.
- Marine bulkhead work.
- Marine dock work.
- Marine pile driving.
- Structural masonry.
- Structural prestressed, precast concrete work.
- Rooftop solar heating installation.
- Structural steel.
- Window and door installation, including garage door installation and hurricane or windstorm protection.
- Plaster and lath.

The bill provides that a local government may not require a license issued by the local government or CILB to perform a job scope which does not substantially correspond to one of the state contractor or specialty contractor categories.

The bill prohibits local governments from requiring a license to obtain a permit for a job scope outside of the practice of contracting.

The bill allows a county in an area designated as an area of critical state concern to continue to offer a license for any job scope which requires a statewide contractor license, or a local government to continue to offer a license for fence installation and erection, if such a licensing requirement existed before January 1, 2021.

The bill provides that a local government may not require a license as a prerequisite to submit a bid for public works projects if the work to be performed does not require a license under general law.

The bill will have an indeterminate, likely insignificant, negative fiscal impact on state government and does not appear to have a fiscal impact on local governments. *See* Fiscal Analysis & Economic Impact Statement.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Preemption

State preemption precludes a local government from exercising authority in a particular area, and requires consistency with the state constitution or state statute.[1] A local government enactment may be found inconsistent with state law if (1) the Legislature has preempted a particular subject area to the state or (2) the local regulation conflicts with a state statute.[2]

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.[3] Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.[4] When local ordinances have been enacted in the face of state preemption, the effect has been to find such ordinances null and void.[5]

Implied preemption is a legal doctrine that addresses situations in which the legislature has not expressly preempted an area but, for all intents and purposes, the area is dominated by the state. Findings of implied preemption are for a very narrow class of areas in which the state has legislated pervasively.[6]

Local Government Authority

General law authorizes counties "the power to carry on county government" and to "perform any other acts not inconsistent with law, which acts are in the common interest of the people of the county, and exercise all powers and privileges not specifically prohibited by law."[7] More specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.[8] Those counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by vote of the electors.[9]

Likewise, municipalities[10] have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform functions, provide services, and exercise any power for municipal purposes, except as otherwise provided by law.[11]

A "special district" is a unit of local government created for a particular purpose, with jurisdiction to operate within a limited geographic boundary. Special districts are created by general law,[12] special

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[1] James R. Wolf and Sarah Harley Bolinder, *The Effectiveness of Home Rule: A Preemption and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009), available at https://www.floridabar.org/the-florida-bar-journal/the-effectiveness-of-home-rule-a-preemption-and-conflict-analysis/.

[2] *Id.*

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

[4] *Mulligan*, 934 So. 2d at 1243.

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

[6] Wolf and Bolinder, *supra* note 1.

[7] *Id.*

[8] Art. VIII, s. 1(f), Fla. Const.

[9] Art. VIII, s. 1(g), Fla. Const.

[10] A municipality is a local government entity created to perform functions and provide services for the particular benefit of the population within the municipality, in addition to those provided by the county. The term "municipality" may be used interchangeably with the terms "town," "city," and "village."

[11] Art. VIII, s. 2(b), Fla. Const. *See also* s. 166.021(1), F.S.

act,[13] local ordinance,[14] or by rule of the Governor and Cabinet.[15] A special district has only those powers expressly provided by, or reasonably implied from, the authority provided in the district's charter. Special districts provide specific municipal services in addition to, or in place of, those provided by a municipality or county.[16]

A "dependent special district" is a special district where the membership of the governing body is identical to the governing body of a single county or municipality, all members of the 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 the approval of the governing body of a single county or municipality.[17] An "independent special district" is any district that is not a dependent special district.[18]

Revenue Sources Authorized in the Florida Constitution[19]

The Florida Constitution limits the ability of local governments to raise revenue for their operations. The Florida Constitution provides:

> No tax shall be levied except in pursuance of law. No state ad valorem taxes[20] shall be levied upon real estate or tangible personal property. All other forms of taxation shall be preempted to the state except as provided by general law.[21]
>
> Counties, school districts, and municipalities shall, and special districts may, be authorized by law to levy ad valorem taxes and may be authorized by general law to levy other taxes, for their respective purposes, except ad valorem taxes on intangible personal property and taxes prohibited by this constitution.[22]

However, not all local government revenue sources are taxes requiring general law authorization. When a county or municipal revenue source is imposed by ordinance, the question is whether the charge is a valid assessment or fee. As long as the charge is not deemed a tax, the imposition of the assessment or fee by ordinance is within the constitutional and statutory home rule powers of county and municipal governments. If the charge is not a valid assessment or fee, it is deemed a revenue source requiring general law authorization.

Revenue Sources Based on Home Rule Authority

Pursuant to home rule authority, local governments may impose proprietary fees, regulatory fees, and special assessments to pay the cost of providing a facility or service or regulating an activity. A regulatory fee should not exceed the regulated activity's cost and is generally required to be applied solely to the regulated activity's cost for which the fee is imposed.[23]

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[12] S. 189.031(3), F.S.
[13] *Id*.
[14] S. 189.02(1), F.S.
[15] S. 190.005(1), F.S. *See*, generally, s. 189.012(6), F.S.
[16] *2018 – 2020 Local Gov't Formation Manual*, p. 62, https://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3025&Session=2019&DocumentType=General%20Publications&FileName=2018-2020%20Local%20Government%20Formation%20Manual%20Final.pdf (last visited Dec 19, 2019).
[17] S. 189.012(2), F.S.
[18] S. 189.012(3), F.S.
[19] The Florida Legislature, Office of Economic and Demographic Research, 2019 Local Government Financial Information Handbook, p. 1, http://edr.state.fl.us/Content/local-government/reports/lgfih19.pdf.
[20] "Ad valorem tax" means a tax based upon the assessed value of property." Section 192.001(1), F.S.
[21] Art. VII, s. 1(a), Fla. Const.
[22] Art. VII, s. 9(a), Fla. Const.
[23] EDR, *supra* note 19, at 9.

HB 735 (2021 Regular Session)

General law directs a number of state agencies and licensing boards to regulate certain professions and occupations. For example, the Department of Business and Professional Regulation (DBPR) currently regulates approximately 25 professions and occupations.[24]

In 2021, HB 735[25] was enacted, relating to preempting occupational licensing to the state. The law defines the following terms:

- "Local government" means a county, municipality, special district, or political subdivision of the state.
- "Occupation" means a paid job, profession, work, line of work, trade, employment, position, post, career, field, vocation, or craft.
- "Licensing" means any training, education, test, certification, registration, or license that is required for a person to perform an occupation along with any associated fee.

The law expressly preempts occupational licensing to the state. This preemption supersedes any local government licensing requirement of occupations unless:

- The licensing of occupations by local governments is authorized by general law; or
- The local licensing scheme for an occupation was imposed before July 1, 2021. However, any such local licensing scheme expires on July 1, 2023.

The law provides that any local licensing of an occupation not authorized under the provisions of the bill or otherwise authorized by general law does not apply and may not be enforced. For example, Florida law specifically authorizes local regulations relating to:

- Zoning and land use;
- The levy of "reasonable business, professional, and occupational regulatory fees, commensurate with the cost of the regulatory activity, including consumer protection, on such classes of businesses, professions, and occupations, the regulation of which has not been preempted by the state or a county pursuant to a county charter";[26]
- The levy of local business taxes;[27]
- Building code inspection fees;[28]
- Tattoo establishments;[29]
- Massage practices;[30]
- Child care facilities;[31]
- Taxis and other vehicles for hire;[32] and
- Waste and sewage collection.[33]

Additionally, Florida law specifically preempts local regulation with regard to the following:

- Zoning of family day care homes;[34]
- Zoning of community residential homes;[35]
- Pest control;[36]

[24] S. 20.165, F.S.
[25] Ch. 2021-214, L.O.F.
[26] S. 166.221, F.S.
[27] Ch. 205, F.S.
[28] S. 166.222, F.S.
[29] S. 381.00791, F.S.
[30] S. 480.052, F.S.
[31] S. 402.306, F.S
[32] S. 125.01(1)(n), F.S.
[33] S. 125.01(1)(k), F.S.
[34] S. 125.0109, F.S.
[35] S. 419.001, F.S.
[36] S. 482.242(1), F.S.

- Assessing local fees in certain circumstances for contractors;[37]
- Assessing local fees for low-voltage alarm system projects;[38]
- Public lodging establishments and public food service establishments;[39]
- Food trucks;[40]
- Mobile home parks, lodging parks, recreational vehicle parks, and recreational camps;[41]
- Beekeeping;[42]
- Nonresidential farm buildings, farm fences and farm signs;[43]
- Insurers and agents;[44]
- Sellers of travel;[45]
- Movers of household goods and moving brokers;[46]
- Tobacco and nicotine products;[47]
- Firearms, weapons, and ammunition;[48]
- Employment benefits;[49]
- Polystyrene products;[50] and
- Disposable plastic bags.[51]

Construction Professional Licenses

Chapter 489, F.S., relates to "contracting," with part I addressing the licensure and regulation of construction contracting, and part II addressing the licensure and regulation of electrical and alarm system contracting.

Construction contractors are either certified or registered by the Construction Industry Licensing Board (CILB) housed within DBPR. The CILB consists of 18 members who are appointed by the Governor and confirmed by the Senate. The CILB meets to approve or deny applications for licensure, review disciplinary cases, and conduct informal hearings relating to discipline.[52]

"Certified contractors" are individuals who pass the state competency examination and obtain a certificate of competency issued by DBPR. Certified contractors are able to obtain a certificate of competency for a specific license category and are permitted to practice in that category in any jurisdiction in the state.[53]

"Certified specialty contractors" are contractors whose scope of work is limited to a particular phase of construction, such as drywall or demolition. Certified specialty contractor licenses are created by the CILB through rulemaking. Certified specialty contractors are permitted to practice in any jurisdiction in the state.

[37] S. 553.80(7)(d), F.S.
[38] S. 489.503(14), F.S.
[39] S. 509.032, F.S.
[40] S. 509.102, F.S.
[41] S. 513.051, F.S.
[42] Ss. 586.10(1) & 586.055, F.S.
[43] S. 604.50, F.S.
[44] S. 624.401(3), F.S.
[45] S. 559.939
[46] S. 507.13, F.S.
[47] Ch. 569, F.S., and s. 386.209, F.S.
[48] S. 790.33(1), F.S.
[49] S. 218.077, F.S.
[50] S. 500.90, F.S.
[51] S. 403.7033, F.S.
[52] S. 489.107, F.S.
[53] S. 489.105, F.S.

"Registered contractors" are individuals that have taken and passed a local competency examination and can practice the specific category of contracting for which he or she is approved, only in the local jurisdiction for which the license is issued.[54]

The CILB licenses the following types of contractors:[55]

Statutory Licenses	Specialty Licenses
• Air Conditioning- Classes A, B, and C • Building • General • Internal Pollutant Storage Tank Lining Applicator • Mechanical • Plumbing • Pollutant Storage Systems • Pool/Spa- Classes A, B, and C • Precision Tank Tester • Residential • Roofing • Sheet Metal • Solar • Underground Excavation	• Drywall • Demolition • Gas Line • Glass and Glazing • Industrial Facilities • Irrigation • Marine • Residential Pool/Spa Servicing • Solar Water Heating • Structure • Swimming Pool Decking • Swimming Pool Excavation • Swimming Pool Finishes • Swimming Pool Layout • Swimming Pool Piping • Swimming Pool Structural • Swimming Pool Trim • Tower

Current law provides that local jurisdictions may approve or deny applications for licensure as a registered contractor, review disciplinary cases, and conduct informal hearings relating to discipline of registered contractors licensed in their jurisdiction.[56] Local governments may only collect licensing fees that cover the cost of regulation.[57]

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. However, persons holding a local construction license whose job scope does not substantially correspond to the job scope of a certified contractor or a certified specialty contractor are not required to register with DBPR.[58]

Electrical contractors, alarm system contractors, and electrical specialty contractors are certified or registered under the Electrical Contractors' Licensing Board (ECLB). Certified contractors can practice statewide and are licensed and regulated by ECLB. Registered contractors are licensed and regulated by a local jurisdiction and may only practice within that locality.[59]

Electrical certified specialty contractors are contractors whose scope of work is limited to a particular phase of electrical contracting, such as electrical signs. The ECLB creates electrical certified specialty contractor licenses through rulemaking. Certified electrical specialty contractors can practice statewide. The ECLB has created the following certified specialty contractor licenses:

- Lighting maintenance specialty contractor;

[54] S. 489.103, F.S.
[55] S. 489.105(a)-(q), F.S.; R. 61G4-15.015-.040, F.A.C.
[56] Ss. 489.117 and 489.131, F.S.
[57] EDR, *supra* note 19, at 9.
[58] Ss. 489.105 and 489.117(4), F.S.
[59] *See generally* s. 489.505, F.S.

- Sign specialty electrical contractor;
- Residential electrical contractor;
- Limited energy systems specialty contractor; and
- Utility line electrical contractor.[60]

HB 735 specifically preempted local licensing that is outside the scope of state contractor licensing provisions. Specifically, it provided that a county or municipality may not require a license for a person whose job scope does not substantially correspond to a contractor category licensed by the CILB after July 1, 2023. The bill precluded counties and municipalities from requiring a license for certain job scopes, including, but not limited to, painting, flooring, cabinetry, interior remodeling, handyman services, driveway or tennis court installation, decorative stone, tile, marble, granite, or terrazzo installation, plastering, stuccoing, caulking, canvas awning installation, and ornamental iron installation.

The law also expressly authorized counties and municipalities to issue journeyman licenses in the plumbing, pipe fitting, mechanical and HVAC trades, as well as, the electrical and alarm system trades, which is the current practice by counties and municipalities. The licensing of those specific local journeyman licenses is exempt from preemption.

Since the law was enacted, certain local jurisdictions and local contractors have noted issues with the law and its enforcement. For example, some local jurisdictions will no longer continue to license certain types of contractors, even though those contractors perform work that corresponds to a state license and ch. 489, F.S., provides authority to do so.[61]

Some have stated that local enforcement agencies are not allowing unlicensed professionals to pull permits for work that is outside of the scope of contracting, but previously required a local license.[62] However, current law does not require a professional license to pull a permit for such work.

Florida Building Code

In response to the destruction of Hurricane Andrew, in 1998, the Legislature approved a single state building code and enhanced the oversight role of the state over local code enforcement. In 2000, the Legislature authorized the implementation of the Building Code (Code), and that first edition replaced all local codes on March 1, 2002, making it the first statewide building code in the United States.[63]

The "Florida Building Codes Act" was created to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state Code. The Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.[64]

The Florida Building Commission (Building Commission) was statutorily created to implement the Code. The Building Commission, which is housed within DBPR, is a 19-member technical body made up of design professionals, contractors, and government experts in various disciplines covered by the Code. The Building Commission reviews several International Codes published by the International Code Council, the National Electric Code, and other nationally adopted model codes (model codes) to determine if the Code needs to be updated and adopts an updated Code every three years.[65]

[60] S. 489.505(19), & 489.511(4), F.S; Rule 61G6-7.001, F.A.C.
[61] Lee County, Contractor Licensing, https://www.leegov.com/dcd/ContLic (last visited Mar. 19, 2023).
[62] Patrick Fraser and Gabby Hernandez, WSVN-TVSunbeam Television Corp, 7 News Miami, July 11, 2022, *Confusing state law: Licenses*, https://wsvn.com/news/help-me-howard/confusing-state-law-licenses/ (last visited Mar. 19, 2023).
[63] *Id.*
[64] *See* s. 553.72(1), F.S.
[65] Ss. 553.73 and 553.74, F.S.

Local Enforcement of the Florida Building Code

It is the intent of the Legislature that local governments have the power to inspect all buildings, structures, and facilities within their jurisdiction in protection of the public's health, safety, and welfare.[66] Every local government must enforce the Building Code and issue building permits.[67] It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a permit from the local government enforcing agency 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.[68]

Areas of Critical State Concern

The Areas of Critical State Concern Program is intended to protect resources and public facilities of major statewide significance, within designated geographic areas, from uncontrolled development that would cause substantial deterioration of such resources. The Department of Economic Opportunity reviews all local development projects within the designated areas and is responsible for reviewing and approving amendments to comprehensive plans and land development regulations proposed and adopted by local governments within the designated areas.[69]

Designated areas of critical state concern are:[70]

- Big Cypress Area (portions of Collier, Miami-Dade, and Monroe Counties).
- Green Swamp Area (portions of Polk and Lake Counties).
- City of Key West and the Florida Keys Areas (Monroe County).
- Apalachicola Bay Area (Franklin County).

Effect of the Bill

The bill extends the expiration date for local licensing without general law authority to January 1, 2024, from July , 2023.

The bill requires the CILB, by January 1, 2024, to, by rule, establish certified specialty contractor categories for voluntary licensure for all of the following:

- Structural aluminum or screen enclosures.
- Marine seawall work.
- Marine bulkhead work.
- Marine dock work.
- Marine pile driving.
- Structural masonry.
- Structural prestressed, precast concrete work.
- Rooftop solar heating installation.
- Structural steel.
- Window and door installation, including garage door installation and hurricane or windstorm protection.
- Plaster and lath.

[66] S. 553.72, F.S.
[67] Ss. 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.
[68] Ss. 125.56(4)(a) and 553.79(1), F.S.
[69] S. 380.05, F.S.; Department of Economic Opportunity, *Areas of Critical State Concern Program*, https://floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/areas-of-critical-state-concern (last visited Apr. 18, 2023).
[70] *Id*.

The bill provides that a local government may not require a license issued by the local government or DBPR for a job scope which does not substantially correspond to the job scope of one of the contractor or specialty contractor categories.

The bill also prohibits local governments from requiring a license to obtain a permit for a job scope outside of the practice of contracting, including, but not limited to, painting, flooring, cabinetry, interior remodeling when the scope of the project does not include a task for which a state license is required, handyman services, driveway or tennis court installation, decorative stone, tile, marble, granite, or terrazzo installation, plastering, stuccoing, caulking, canvas awning installation, and ornamental iron installation.

The bill allows a county that includes an area designated as an area of critical state concern to continue to offer a license for any job scope which requires a statewide contractor license, if the county imposed such a licensing requirement before January 1, 2021.

The bill allows a local government to continue to offer a license for fence installation and erection, if the local government imposed such a licensing requirement before January 1, 2021.

The bill provides that a local government may not require a license as a prerequisite to submit a bid for public works projects if the work to be performed does not require a license under general law.

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

B. SECTION DIRECTORY:

Section 1: Amends s. 163.211, extending an expiration date.
Section 2: Amends s. 489.113, F.S.; relating to specialty contractors.
Section 3: Amends s. 489.117, F.S.; relating to local licensing requirements.
Section 4: 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 an increase of specialty contractors licensed by DBPR.

2. Expenditures:

   The bill may have an increase in regulatory expenditures related to creating new specialty licenses including updates to the department's licensing document management and online portal and an increase in workload. These expenditures can be absorbed within existing resources.[71]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

[71] Florida Department of Business and Professional Regulation, Agency Analysis of 2023 House Bill 1383, pp. 5 and 7 (Mar. 8, 2023).

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminant. Private sector impacts will fluctuate based on how many citizens apply for the new licenses and how many local governments require a local license to perform the work outlined in 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:

The bill requires significant rulemaking to create specified specialty licenses. The CILB has authority to do so.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On April 18, 2023, the State Administration & Technology Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Extended the expiration date for local licensing to January 1, 2024.
- Added “plaster and lath” to the list of new specialty licenses.
- Allowed counties in an area of critical state concern to continue certain local licensing.
- Allowed local licensing for fence installation and erection, under certain circumstances.
- Clarified what qualifies as “interior remodeling.”

This analysis is drafted to the committee substitute as passed by the State Administration & Technology Appropriations Subcommittee.

A bill to be entitled

An act relating to specialty contractors; amending s. 163.211, F.S.; revising the date on which the local government licensing of certain occupations expires; amending s. 489.113, F.S.; requiring the Construction Industry Licensing Board to establish certified specialty contractor categories for voluntary licensure by a specified date; amending s. 489.117, F.S.; prohibiting local governments from imposing new licensing requirements for certain specialty contractors; authorizing a county that includes an area designated as an area of critical state concern to offer a licensure for certain job scopes; authorizing certain local governments to continue to offer a license for fence installation and erection; prohibiting a local government from requiring a license as a prerequisite to submit a bid for public works projects under certain conditions; providing an effective date.

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

Section 1. Paragraph (a) of subsection (2) of section 163.211, Florida Statutes, is amended to read:

163.211 Licensing of occupations preempted to state.—

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

(2) PREEMPTION OF OCCUPATIONAL LICENSING TO THE STATE.—The licensing of occupations is expressly preempted to the state, and this section supersedes any local government licensing requirement of occupations with the exception of the following:

(a) Any local government that imposed licenses on occupations before January 1, 2021. However, any such local government licensing of occupations expires on January 1, 2024 ~~July 1, 2023~~.

Section 2. Subsection (6) of section 489.113, Florida Statutes, is amended to read:

489.113 Qualifications for practice; restrictions.—

(6)(a) The board shall, by rule, designate those types of specialty contractors which may be certified under this part. The limit of the scope of work and responsibility of a specialty contractor shall be established by the board by rule. However, a certified specialty contractor category established by board rule exists as a voluntary statewide licensing category and does not create a mandatory licensing requirement. Any mandatory statewide construction contracting licensure requirement may only be established through specific statutory provision.

(b) By January 1, 2024, the board shall, by rule, establish certified specialty contractor categories for voluntary licensure for all of the following:

1. Structural aluminum or screen enclosures.

2. Marine seawall work.

3. Marine bulkhead work.

4. Marine dock work.

5. Marine pile driving.

6. Structural masonry.

7. Structural prestressed, precast concrete work.

8. Rooftop solar heating installation.

9. Structural steel.

10. Window and door installation, including garage door installation and hurricane or windstorm protection.

11. Plaster and lath.

Section 3. Paragraph (a) of subsection (4) of section 489.117, Florida Statutes, is amended to read:

489.117 Registration; specialty contractors.—

(4)(a)1. A person whose job scope does not substantially correspond to either the job scope of one of the contractor categories defined in s. 489.105(3)(a)-(o), or the job scope of one of the certified specialty contractor categories established by board rule, is not required to register with the board. A local government, as defined in s. 163.211, may not require a person to obtain a license, issued by the local government or the state, for a job scope which does not substantially correspond to the job scope of one of the contractor categories defined in s. 489.105(3)(a)-(o) and (q) or authorized in s. 489.1455(1), or the job scope of one of the certified specialty contractor categories established pursuant to s. 489.113(6). A

local government may not require a state or local license to obtain a permit for such job scopes. For purposes of this section, job scopes for which a local government may not require a license include, but are not limited to, painting; flooring; cabinetry; interior remodeling when the scope of the project does not include a task for which a state license is required; driveway or tennis court installation; handyman services; decorative stone, tile, marble, granite, or terrazzo installation; plastering; stuccoing; caulking; and canvas awning and ornamental iron installation.

2. A county that includes an area designated as an area of critical state concern under s. 380.05, may offer a license for any job scope which requires a contractor license under this part, if the county imposed such a licensing requirement before January 1, 2021.

3. A local government may continue to offer a license for fence installation and erection if the local government imposed such a licensing requirement before January 1, 2021.

4. A local government may not require a license as a prerequisite to submit a bid for public works projects if the work to be performed does not require a license under general law.

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

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

COMMERCE COMMITTEE

CS/HB 1383 by Rep. Trabulsy
Specialty Contractors

AMENDMENT SUMMARY
April 24, 2023

Amendment 1 by Rep. Trabulsy (line 32):

- Extends the expiration date for local licensing and the date by which DBPR must create new specialty licenses to July 1, 2024.
- Adds “structural carpentry” to the list of new specialty licenses.
- Adds “pressure washing” to the list of job scopes that do not require a contracting license.
- Allows local licensing for veneer work and rooftop painting, coating, and cleaning above three stories to continue, under certain circumstances.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment

Remove lines 32-91 and insert:

government licensing of occupations expires on July 1, 2024 ~~July 1, 2023~~.

Section 2. Subsection (6) of section 489.113, Florida Statutes, is amended to read:

489.113 Qualifications for practice; restrictions.—

(6)(a) The board shall, by rule, designate those types of specialty contractors which may be certified under this part. The limit of the scope of work and responsibility of a specialty contractor shall be established by the board by rule. However, a certified specialty contractor category established by board rule exists as a voluntary statewide licensing category and does

not create a mandatory licensing requirement. Any mandatory statewide construction contracting licensure requirement may only be established through specific statutory provision.

(b) By July 1, 2024, the board shall, by rule, establish certified specialty contractor categories for voluntary licensure for all of the following:

1. Structural aluminum or screen enclosures.

2. Marine seawall work.

3. Marine bulkhead work.

4. Marine dock work.

5. Marine pile driving.

6. Structural masonry.

7. Structural prestressed, precast concrete work.

8. Rooftop solar heating installation.

9. Structural steel.

10. Window and door installation, including garage door installation and hurricane or windstorm protection.

11. Plaster and lath.

12. Structural carpentry.

Section 3. Paragraph (a) of subsection (4) of section 489.117, Florida Statutes, is amended to read:

489.117 Registration; specialty contractors.—

(4)(a)1. A person whose job scope does not substantially correspond to either the job scope of one of the contractor categories defined in s. 489.105(3)(a)-(o), or the job scope of

one of the certified specialty contractor categories established by board rule, is not required to register with the board. A local government, as defined in s. 163.211, may not require a person to obtain a license, issued by the local government or the state, for a job scope which does not substantially correspond to the job scope of one of the contractor categories defined in s. 489.105(3)(a)-(o) and (q) or authorized in s. 489.1455(1), or the job scope of one of the certified specialty contractor categories established pursuant to s. 489.113(6). A local government may not require a state or local license to obtain a permit for such job scopes. For purposes of this section, job scopes for which a local government may not require a license include, but are not limited to, painting; flooring; cabinetry; interior remodeling when the scope of the project does not include a task for which a state license is required; driveway or tennis court installation; handyman services; decorative stone, tile, marble, granite, or terrazzo installation; plastering; pressure washing; stuccoing; caulking; and canvas awning and ornamental iron installation.

2. A county that includes an area designated as an area of critical state concern under s. 380.05, may offer a license for any job scope which requires a contractor license under this part, if the county imposed such a licensing requirement before January 1, 2021.

3. A local government may continue to offer a license for

veneer, including aluminum or vinyl gutters, siding, soffit, or fascia; rooftop painting, coating, and cleaning above three stories; or

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1547 Technology Transparency
SPONSOR(S): Regulatory Reform & Economic Development Subcommittee, McFarland
TIED BILLS: HB 1549 **IDEN./SIM. BILLS:** CS/SB 262

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	15 Y, 0 N, As CS	Wright	Anstead
2) Commerce Committee		Wright	Hamon

SUMMARY ANALYSIS

Due to the growth in businesses that collect personal information for the purpose of selling targeted advertising on the Internet, many countries and states have adopted or updated laws relating to the collection and use of personal information. Specifically, the European Union, and states like California, Virginia, and Illinois, have enacted data privacy laws to protect consumers' personal information.

The bill requires certain businesses to publish a privacy policy for personal information, and defines "personal information" as information that is linked or reasonably linkable to an identified or identifiable consumer or household, including biometric information and unique identifiers to the consumer. The term does not include certain public information, certain employee information, or deidentified or aggregate information.

The bill gives consumers rights related to personal information collected by certain businesses with over $1 billion in gross annual revenues, including:

- The right to access personal information collected;
- The right to delete or correct personal information; and
- The right to opt-out of the sale or sharing of personal information.

The bill provides that online platforms predominantly accessed by children may not, except under certain situations:

- Process personal information of or profile a child.
- Collect, sell, share, or retain personal information or geolocation of a child.
- Use a child's personal information for any unstated reason.
- Use dark patterns to obtain more information of a child than necessary.
- Use collected information to estimate age for any other reason.

The bill allows the Department of Legal Affairs (DLA) to enforce such rights by bringing an action against, and collecting civil penalties from, online platforms or businesses that violate a consumer's rights as provided in the bill. A consumer whose personal information has been sold or shared after opting-out, or has been retained after a request to delete or correct such information may also bring a cause of action on his or her own behalf.

The bill also adds "biometric information or genetic information" and "geolocation" to the definition of "personal information" under the Florida Information Protection Act. As such, entities in possession of such information must take reasonable measures to protect biometric and genetic information and report data breaches.

The bill provides that certain government employees may not request that a social media platform remove content or accounts and prohibits a governmental entity from working with a social media platform for the purpose of content moderation, with certain exceptions.

The bill has no fiscal impact on local governments, and an indeterminate fiscal impact on state government.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Consumer Data Privacy – Current Situation

Florida Deceptive and Unfair Trade Practices Act (FDUTPA)

FDUTPA is a consumer and business protection measure that prohibits unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in trade or commerce.[1] FDUTPA was modeled after the Federal Trade Commission (FTC) Act.[2]

The DLA or the Office of the State Attorney (SAO) may bring actions on behalf of consumers or governmental entities when it is a matter of public interest.[3] The SAO may enforce violations of FDUTPA if the violations take place within its jurisdiction. The DLA has enforcement authority when the violation is multi-jurisdictional, the state attorney defers to the DLA in writing, or the state attorney fails to act within 90 days after a written complaint is filed.[4] In certain circumstances, consumers may also file suit through private actions.[5]

The DLA and the SAO have powers to investigate FDUTPA claims, which include:[6]

- Administering oaths and affirmations;
- Subpoenaing witnesses or matter; and
- Collecting evidence.

The DLA and the State Attorney, as enforcing authorities, may seek the following remedies:

- Declaratory judgments;
- Injunctive relief;
- Actual damages on behalf of consumers and businesses;
- Cease and desist orders; and
- Civil penalties of up to $10,000 per willful violation.[7]

FDUTPA may not be applied to certain entities in certain circumstances, including:[8]

- Any person or activity regulated under laws administered by the Office of Insurance Regulation or the Department of Financial Services; or
- Banks, credit unions, and savings and loan associations regulated by the Office of Financial Regulation or federal agencies.

Consumer Data

[1] Ch. 73-124, L.O.F.; s. 501.202, F.S.
[2] D. Matthew Allen, et. al., *The Federal Character of Florida's Deceptive and Unfair Trade Practices Act*, 65 U. MIAMI L. REV. 1083 (Summer 2011).
[3] S. 501.207(1)(c) and (2), F.S.; *see* s. 501.203(2), F.S. (defining "enforcing authority" and referring to the office of the state attorney if a violation occurs in or affects the judicial circuit under the office's jurisdiction; or the Department of Legal Affairs if the violation occurs in more than one circuit; or if the office of the state attorney defers to the department in writing; or fails to act within a specified period); *see also* David J. Federbush, *FDUTPA for Civil Antitrust: Additional Conduct, Party, and Geographic Coverage; State Actions for Consumer Restitution*, 76 FLORIDA BAR JOURNAL 52, Dec. 2002 (analyzing the merits of FDUPTA and the potential for deterrence of anticompetitive conduct in Florida), *available at* http://www.floridabar.org/divcom/jn/jnjournal01.nsf/c0d731e03de9828d852574580042ae7a/99aa165b7d8ac8a485256c8300791ec1!OpenDocument&Highlight=0,business,Division* (last visited on Mar. 25, 2023).
[4] S. 501.203(2), F.S.
[5] S. 501.211, F.S.
[6] S. 501.206(1), F.S.
[7] Ss. 501.207(1), 501.208, and 501.2075, F.S. Civil Penalties are deposited into general revenue. Enforcing authorities may also request attorney fees and costs of investigation or litigation. S. 501.2105, F.S.
[8] S. 501.212(4), F.S.

As technologies that capture and analyze data proliferate so do businesses' abilities to contextualize consumer data. Businesses use such data for a range of purposes, including better understanding day-to-day operations to increase revenue, making informed business decisions, learning about their customer base, and tailoring marketing strategies.[9]

From consumer behavior to predictive analytics, companies regularly capture, store, and analyze large amounts of quantitative and qualitative data on their consumer base. Some companies have built an entire business model around consumer data, which may include the company are selling personal information to a third party or creating targeted ads for specific consumers.[10]

Generally, the types of consumer data that businesses collect are:[11]

- Personal data, which includes personally identifiable information, such as Social Security numbers and gender, as well as identifiable information, including IP address, web browser cookies, and device IDs;
- Engagement data, which details how consumers interact with a business's website, mobile apps, social media pages, emails, paid ads, and customer service routes;
- Behavioral data, which includes transactional details such as purchase histories, product usage information, and qualitative data; and
- Attitudinal data, which encompasses metrics on consumer satisfaction, purchase criteria, product desirability, and more.

General Data Protection Regulation (European Union)

In 2016, The European Union passed a broad data privacy law that addressed several areas of consumer rights and data protection called the General Data Protection Regulation (GDPR).[12] The law became effective in 2018 and unified the regulatory approach to data privacy across the European Union. The GDPR has since become a model for other data privacy laws in other countries, including Chile, Japan, Brazil, South Korea, Argentina, and Kenya.[13]

Under the GDPR, personal data includes anything that allows a person to be identified. Individuals, organizations, and companies that are either "controllers" or "processors" of personal data are covered by the law. Controllers exercise overall control of the purposes and means of processing personal data; whereas processors act on behalf of, and only on the instructions of, the relevant controller.[14]

Before processing or collecting any personal data, a business must explicitly request permission from the subject or person to do so. The request must use clear language and is commonly referred to as a data "opt-in."

The GDPR specifically bans the use of lengthy documents filled with legalese to confuse or frustrate the consumer. Hiding permissions to collect and use data within a contract's Terms and Conditions or Privacy Policy sections is not permissible under the GDPR. Consent must be given for a specific purpose and must be requested separately from other documents and policy statements. [15]

The GDPR requires companies to provide, at the data subject's request, confirmation as to whether personal data pertaining to them is being processed, where it is being processed, and for what

[9] Max Freedman, *How Businesses Are Collecting Data (And What They're Doing With It)*, Business News Daily (Jun. 17, 2020) https://www.businessnewsdaily.com/10625-businesses-collecting-data.html (last visited Mar. 25, 2023).
[10] *Id*.
[11] *Id*.
[12] European Data Protection Supervisor, *The History of the General Data Protection Regulation*, https://edps.europa.eu/data-protection/data-protection/legislation/history-general-data-protection-regulation_en (last visited Mar. 25, 2023).
[13] *Id*.
[14] Wired, *What is the GDPR? The Summary Guide to GDPR Compliance in the UK*, https://www.wired.co.uk/article/what-is-gdpr-uk-eu-legislation-compliance-summary-fines-2018 (last visited Mar. 25, 2023).
[15] TechRepublic, *GDPR: A Cheat Sheet*, https://www.techrepublic.com/article/the-eu-general-data-protection-regulation-gdpr-the-smart-persons-guide/ (last visited Mar. 25, 2023).

purpose. A company must also provide, free of charge**,** a copy of the personal data being processed in an electronic format to the consumer.[16]

Under the GDPR, a company must erase all personal data when asked to do so by the subject consumer. At that point, the company must cease further dissemination of the data and halt all processing of that consumer's data. Valid conditions for erasure include situations where the data is no longer relevant, the original purpose has been satisfied, or a subject consumer withdraws consent.[17]

The GDPR requires a company to provide mechanisms for a subject to receive any previously provided personal data in a commonly used and machine-readable format.[18]

The GDPR allows private rights of action for violations of privacy rights; however, the consumer must prove any damages in order to receive compensation.[19]

California Consumer Privacy Act (CCPA) and California Privacy Rights Act (CPRA)

The California Consumer Privacy Act of 2018 (CCPA) was passed to give consumers more control over the personal information that businesses collect. This landmark law granted new privacy rights for California consumers, including:[20]

- The right to know about the personal information a business collects, specifically about the consumer, and how it is used and shared;
- The right to delete personal information collected with some exceptions;
- The right to opt-out of the sale of personal information; and
- The right to non-discrimination for exercising the CCPA rights.

The CCPA applies to for-profit businesses that do business in California that also meet any of the following:[21]

- Have a gross annual revenue of over $25 million;
- Buy, receive, or sell the personal information of 50,000 or more California residents, households, or devices; or
- Derive 50 percent or more of their annual revenue from selling California residents' personal information.

Businesses must give consumers certain notices explaining their privacy practices and provide certain mechanisms to allow consumers to exercise their rights.[22]

The law is largely enforced by the Attorney General, and businesses are subject to fines for violating the law. A consumer may only bring a cause of action against a business if certain categories of personal information tied to his or her name have been stolen in a nonencrypted and nonredacted form.[23] As of July 2020, approximately 50 suits had been filed pursuant to this provision.[24]

The California Privacy Rights Act (CPRA) passed in 2020 as a statewide proposition, though it is not effective until January 1, 2023. The CPRA amends and expands the CCPA. Specifically dealing with certain areas of concern with the CCPA, the CPRA created a new agency to handle complaints and enforcement. The CPRA changes the CCPA by:[25]

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[16] *Id*.
[17] *Id*.
[18] *Id*.
[19] Art. 82 of the GDPR.
[20] State of California Department of Justice, Office of the Attorney General, California Consumer Privacy Act (CCPA), https://oag.ca.gov/privacy/ccpa (last visited Mar. 25, 2023).
[21] Cal. Civ. Code s. 1798.140.
[22] Cal. Civ. Code ss. 1798.130, 1798.135.
[23] Cal. Civ. Code ss. 1798.150, 1798.155.
[24] Holland & Knight LLP, *Litigating the CCPA in Court*, Litigating the CCPA in Court | Insights | Holland & Knight (hklaw.com) (last visited Mar. 25, 2023).
[25] Ballotpedia, *California Proposition 24, Consumer Personal Information Law and Agency Initiative (2020)*, https://ballotpedia.org/California_Proposition_24,_Consumer_Personal_Information_Law_and_Agency_Initiative_(2020) (last visited Mar. 25, 2023).

- Allowing a consumer to:
  - Prevent businesses from sharing his or her personal information;
  - Correct inaccurate personal information; and
  - Limit businesses' use of "sensitive personal information"—including precise geolocation; race; ethnicity; religion; genetic data; private communications; sexual orientation; and specified health information;
- Establishing California Privacy Protection Agency to additionally enforce and implement consumer privacy laws and impose fines;
- Changing criteria for which businesses must comply with laws by:
  - Doubling the CCPA's threshold number of consumers or households from 50,000 to 100,000, resulting in reduced applicability of the law to small and midsize businesses;
  - Expanding applicability to businesses that generate most of their revenue from sharing personal information, not merely selling it; and
  - Extending the definition to joint ventures or partnerships composed of businesses that each have at least a 40 percent interest.
- Prohibiting businesses' retention of personal information for longer than reasonably necessary;
- Tripling maximum penalties for violations concerning consumers under age 16; and
- Authorizing civil penalties for theft of consumer login information.

California Age-Appropriate Design Code Act

In 2022, California adopted the California Age-Appropriate Design Code Act (CAADCA), an amendment to the CPRA,[26] legislation modelled on the United Kingdom's Age Appropriate Design Code,[27] which requires online platforms to adhere to strict default privacy and safety settings that protect the best interest of children.[28] CAADCA covers children under 18 years of age and will be effective July 1, 2024.[29]

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:[30]

- 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.[31]

Virginia Consumer Data Protection Act

On March 2, 2021, the Virginia Consumer Data Protection Act (VCDPA) was signed into law.[32] The VCDPA, which becomes effective January 1, 2023, borrows from CCPA and GDPR.[33] Some argue that

[26] Cal. Civil Code § 1798.99.28-.35
[27] 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).
[28] 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).
[29] Cal. Civil Code § 1798.99.28-.35
[30] 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).
[31] *Id*.
[32] JDSupra, *Virginia's Consumer Data Protection Act Has assed: What's in It?*, https://www.jdsupra.com/legalnews/virginia-s-consumer-data-protection-act-1577777/ (last visited Mar. 25, 2023).
[33] Sidley Austin LLP, East Coast Meet West Coast: Enter the Virginia Consumer Data Privacy Protection Act, https://www.sidley.com/en/insights/newsupdates/2021/03/east-coast-meets-west-coast-enter-the-virginia-consumer-data-protection-act (last visited Mar. 25, 2023).

because Virginia was able to benefit from the experience of businesses that have spent the better part of the last five years implementing GDPR or CCPA, the Virginia law may be a lighter implementation task for companies.[34]

Generally, with regard to personal data, the VCDPA grants consumers the right to access, correct, delete, obtain a copy of, and opt-out of the processing of personal data for the purposes of targeted advertising.

VCDPA contains exceptions for certain types of data and information governed by federal law. It provides that the Attorney General has exclusive authority to enforce violations of the law, and does not provide a private cause of action to a consumer. VCDPA applies to persons conducting business in the state that either:

- Control or process personal data of at least 100,000 consumers; or
- Derive over 50 percent of gross revenue from the sale of personal data and control or process personal data of at least 25,000 consumers.[35]

Colorado Privacy Act

The Colorado Privacy Act (CPA)[36] was signed in to law on July 8, 2021, and is effective July 1, 2023. The law also borrows from the GDPR, CCPA, and VDCPA.[37]

Generally, with regard to personal data, the CPA grants a consumer the right to:[38]

- Access data;
- Correct data;
- Delete data; and
- Move data across different services.

Like the CCPA and VCDPA, CPA contains exceptions for certain types of data and information governed by federal law. It provides that the Attorney General has exclusive authority to enforce violations of the law, and does not provide a private cause of action to a consumer. CPA applies to persons conducting business in the state that either:[39]

- Control or process personal data of 100,000 or more consumers during a calendar year; or
- Derive revenue or receive discounts from the sale of personal data and control or process data of at least 25,000 consumers.

Illinois Biometric Information Privacy Act

In 2008, Illinois adopted the Biometric Information Privacy Act (BIPA), which puts in place safeguards and procedures relating to the retention, collection, disclosure, and destruction of biometric information and specifically protects the biometric information of those in the state. It was the first state law in the U.S. to specifically regulate biometrics.

Under BIPA, a private entity:[40]

- In possession of biometric data (defined as retina or iris scan, fingerprint, voiceprint, or scan of hand or face geometry) must have a written policy establishing a retention schedule and guidelines for permanently destroying such data;

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[34] *Id*.
[35] Virginia's Legislative Information System, Bill Summary for SB 1392, https://lis.virginia.gov/cgi-bin/legp604.exe?211+sum+SB1392S (last visited Mar. 25, 2023).
[36] C.R.S. 1-6-1301-1313
[37] The National Law Review, *And Now There are Three…The Colorado Privacy Act*, July 16, 2021, https://www.natlawreview.com/article/and-now-there-are-three-colorado-privacy-act#:~:text=Colorado%20has%20now%20joined%20California,effect%20on%20July%201%2C%202023. (last visited Mar. 25, 2023).
[38] *Id*.
[39] *Id*.
[40] 740 Ill. Comp. Stat. 14/10, 14/15 (2008).

- May not collect, capture, purchase, receive through trade, or otherwise obtain biometric data unless it informs the subject that the data is being stored and the manner of storage, and receives a written release from the subject;
- May not profit from a person's biometric data;
- May not disseminate a person's biometric data unless the subject consents, is authorized by the subject, or is required by law or a valid warrant or subpoena; and
- Must store, transmit, and protect biometric data with a reasonable standard of care and in a manner as or more protective as other confidential and sensitive information.

BIPA provides a private cause of action, with relief including:[41]

- Liquidated damages of $1,000 or actual damages, whichever is greater, against a private entity that negligently violates BIPA;
- Liquidated damages of $5,000 or actual damages, whichever is greater, against a private entity that intentionally or recklessly violates BIPA;
- Reasonable attorneys' fees and costs; and
- Other relief, including an injunction, as the court deems appropriate.

Because Illinois granted a private cause of action for violations of BIPA, there have been several lawsuits claiming damages for privacy and use violations, and Illinois courts have upheld the law. On January 25, 2019, the Illinois Supreme Court found that an individual does not need to allege an actual injury or adverse effect, beyond violation of their rights under BIPA, to qualify as an aggrieved party. Therefore, anyone whose biometric data is affected by a violation of BIPA may seek liquidated damages or injunctive relief under the Act.[42] Court documents also tend to support the notion that an individual in Illinois has a valid cause of action if his or her biometric data is taken without consent by a private entity, including out-of-state entities, but it is subject to a finding of fact.[43]

Additional States

Connecticut and Utah recently signed similar bills to Virginia and Colorado into law. There are also 18 other states that are actively considering data privacy bills.[44]

Federal Laws Addressing Data Privacy

While there is no broad federal law addressing data privacy, generally, there are several industry-specific laws that address the need to keep certain data private or protected.

Health Insurance Portability and Accountability Act

The Health Insurance Portability and Accountability Act of 1996 (HIPAA)[45] is a federal law that required the creation of national standards to protect sensitive patient health information from being disclosed without the patient's consent or knowledge. The U.S. Department of Health and Human Services (HHS) issued the HIPAA Privacy Rule[46] to implement the requirements of HIPAA. The HIPAA Security Rule protects a subset of information covered by the Privacy Rule.[47]

HIPAA's Privacy Rule protects all "individually identifiable health information" held or transmitted by a covered entity or its business associate, in any form or media, whether electronic, paper, or oral. The

[41] 740 Ill. Comp. Stat. 14/20 (2008).
[42] *Rosenbach v. Six Flags Entertainment Corporation*, 2019 IL 123186.
[43] *Rivera v. Google, Inc.*, 238 F.Supp.3d 1088 (N.D. Ill. 2017).; *In re Facebook Biometric Information Privacy Litigation*, 185 F.Supp.3d 1155 (N.D. Cal. (2016).; *Norberg v. Shutterfly, Inc.*, 152 F.Supp.3d 1103 (N.D. Ill. 2015).
[44] IAPP, *US State Privacy Legislation Tracker*, Mar. 17, 2023, https://iapp.org/resources/article/us-state-privacy-legislation-tracker/ (last visited Mar. 25, 2023).
[45] 42 U.S.C. s. 1320.
[46] 45 C.F.R. ss. 160 and 164.
[47] Centers for Disease Control and Prevention, Health Insurance Portability and Accountability Act of 1996 (HIPAA), https://www.cdc.gov/phlp/publications/topic/hipaa.html (last visited Mar. 25, 2023).

Privacy Rule calls this information "protected health information (PHI)" from being disclosed without the patient's consent or knowledge.[48]

"Individually identifiable health information" is information, including demographic data, that relates to:[49]

- The individual's past, present or future physical or mental health or condition,
- The provision of health care to the individual, or
- The past, present, or future payment for the provision of health care to the individual.

The Privacy Rule excludes from protected health information employment records that a covered entity maintains in its capacity as an employer and education and certain other records subject to, or defined in, the Family Educational Rights and Privacy Act.[50]

The Security Rule applies to the subset of identifiable health information a covered entity creates, receives, maintains, or transmits in electronic form, and is called "electronic protected health information" (e-PHI). The Security Rule does not apply to PHI transmitted orally or in writing. To comply with the Security Rule, all covered entities must do the following:[51]

- Ensure the confidentiality, integrity, and availability of all electronic protected health information;
- Detect and safeguard against anticipated threats to the security of the information;
- Protect against anticipated impermissible uses or disclosures; and
- Certify compliance by their workforce.

"Covered entities" who must abide by the Privacy Rule and the Security Rule are:[52]

- Health plans;
- Healthcare providers;
- Healthcare clearinghouses; and
- Business associates.

Federal Policy for the Protection of Human Subjects

The Federal Policy for the Protection of Human Subjects, or the "Common Rule," is a rule promulgated by the U.S. Food and Drug Administration (FDA).[53] The Common Rule governs the ethical conduct of research involving human subjects. Fifteen federal agencies and departments are party to this rule, which first came into effect in 1981. The Common Rule has not been substantively updated since 1991.[54] Among other requirements, the Common Rule mandates that researchers protect the privacy of subjects and maintain confidentiality of human subject data.[55]

The FDA is a member of the International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use, which brings together the regulatory authorities and pharmaceutical industry to develop guidelines for pharmaceutical trials.[56]

The Fair Credit Reporting Act

The Fair Credit Reporting Act[57] (FCRA) protects information collected by consumer reporting agencies such as credit bureaus, medical information companies and tenant screening services. Information in a consumer report cannot be provided to anyone who does not have a purpose specified in the FCRA. Companies that provide information to consumer reporting agencies also have specific legal

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[48] *Id*.
[49] 45 C.F.R. s. 160.103.
[50] 20 U.S.C. s. 1232(g).
[51] CDC, supra note 47.
[52] 45 C.F.R. ss. 160.102, 160.103.
[53] 21 C.F.R. §§ 50, 60.
[54] U.S. Department of Health and Human Services, Federal Policy for the Protection of Human Subjects ('Common Rule'), Federal Policy for the Protection of Human Subjects ('Common Rule') | HHS.gov (last visited Mar. 25, 2023).
[55] The University of Chicago, *University Data Usage Guide, Sensitive Identifiable Human Subject Research Data*, https://dataguide.uchicago.edu/sensitive-identifiable-human-subject-research-data (last visited Mar. 25, 2023).
[56] International Council for Harmonisation, https://www.ich.org/ (last visited Mar. 25, 2023).
[57] 15 U.S.C. s. 1681.

obligations, including the duty to investigate disputed information. In addition, users of the information for credit, insurance, or employment purposes must notify the consumer when an adverse action is taken on the basis of such reports.[58]

The Gramm-Leach-Bliley Act

The Gramm-Leach-Bliley Act[59] requires financial institutions, such as companies that offer consumers financial products or services like loans, financial or investment advice, mortgages, or insurance, to explain their information-sharing practices to their customers and to safeguard sensitive data.[60]

The law requires that financial institutions protect information collected about individuals; it does not apply to information collected in business or commercial activities.

In certain situations, consumers of a financial institution have opt-out rights from having their nonpublic personal information shared with third parties.[61]

Driver's Privacy Protection Act

The Driver's Privacy Protection Act of 1994 (DPPA)[62] protects the privacy of personal information assembled by state departments of motor vehicles (DMVs).

The DPPA prohibits the release or use by any state DMV (or any officer, employee, or contractor thereof) of personal information about an individual obtained by the DMV in connection with a motor vehicle record, subject to certain exceptions, such as for legitimate government needs. It sets penalties for violations and makes violators liable on a civil action to the individual to whom the released information pertains.[63]

DPPA also requires states to obtain permission from individuals before their personal motor vehicle record may be sold or released to third-party marketers.[64]

Family Educational Rights and Privacy Act

The Family Educational Rights and Privacy Act (FERPA)[65] protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education. FERPA gives parents certain rights with respect to their children's education records. These rights transfer to the student when they reach the age of 18 or attend a school beyond the high school level.

Schools may disclose, without consent, "directory" information such as a student's name, address, telephone number, date and place of birth, honors and awards, and dates of attendance. However, schools must tell parents and eligible students about directory information and allow parents and eligible students a reasonable amount of time to request that the school not disclose directory information about them. Schools must notify parents and eligible students annually of their rights under FERPA.[66]

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[58] The Federal Trade Commission, Fair Credit Reporting Act, https://www.ftc.gov/enforcement/statutes/fair-credit-reporting-act (last visited Mar. 25, 2023).
[59] 15 U.S.C. s. 6801.
[60] The Federal Trade Commission, Gramm-Leach-Bliley Act, https://www.ftc.gov/tips-advice/business-center/privacy-and-security/gramm-leach-bliley-act (last visited Mar. 25, 2023).
[61] International Association of Privacy Processionals, *In Brief: The Financial Privacy Requirements of the Gramm-Leach-Bliley Act*, https://iapp.org/media/pdf/knowledge_center/brief_requirements_GLBA.pdf (last Mar. 25, 2023).
[62] 18 U.S.C. s. 2721.
[63] Electronic Privacy Information Center, The Drivers Privacy Protection Act (DPPA) and the Privacy of Your State Motor Vehicle Record, https://epic.org/privacy/drivers/ (last visited Mar. 25, 2023).
[64] *Id*.
[65] 20 U.S.C. s. 1232(g); 34 C.F.R. s. 99.
[66] United States Department of Education, Family Educational Rights and Privacy Act (FERPA), https://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html (last visited Mar. 25, 2023).

Children's Online Privacy Protection Act (COPPA)

The Children's Online Privacy Protection Act (COPPA)[67] and its related rules regulate 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 information (covered entities), must comply with requirements regarding data collection and use, privacy policy notifications, and data security.

A covered entity may not collect a child's (individual under the age of 13) personal information without the prior, verifiable consent of his or her parent.[68]

COPPA requires covered entities to:[69]

- 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.[70]

Effects of Social Media on Children

Generally, social media use by children can have both positive and negative effects on their health.[71] Some potential safety risks of social media use include:[72]

- 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.[73]

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[67] 16 C.F.R. pt. 312.
[68] 15 U.S.C. ss. 6502(a)-(b).
[69] *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. 25, 2023).
[70] Federal Trade Commission, *General Questions About the COPPA Rule: COPPA Enforcement*, https://www.ftc.gov/tips-advice/business-center/guidance/complying-coppa-frequently-asked-questions-0 (last visited Mar. 25, 2023).
[71] 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. 29, 2023).
[72] Loyola Medicine, *Social Media Safety for Kids and Teens*, https://www.loyolamedicine.org/about-us/blog/social-media-safety-kids-teens, (last visited Mar. 29, 2023)
[73] 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. 29, 2023).

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.[74]

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.[75]

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.[76]

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."[77]

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.[78]

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.[79]

Consumer Data Privacy – Effect of the Bill

Overview

The bill creates s. 501.173, F.S., to establish consumer rights related to personal information, including:

- The right to access personal information collected specific to the individual consumer;
- The right to delete or correct personal information; and
- The right to opt out of the sale of sharing of personal information to third parties.

The bill defines "personal information" as information that identifies, relates to, or describes a particular consumer or household, or is reasonably capable of being directly or indirectly associated or linked

[74] Maria T. Maza, *supra* note 73.
[75] *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 Study*; Journal of Adolescent Health, Dec. 12, 2022; https://www.jahonline.org/article/S1054-139X(22)00722-4/fulltext (last visited Mar. 29, 2023).
[76] 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. 29, 2023).
[77] 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. 29, 2023).
[78] Mayo Clinic, *supra* note 71.
[79] 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. 29, 2023).

with, a particular consumer or household. The term does not include public information from government records; or deidentified or aggregate consumer information.

A controller that receives a verifiable consumer request to access, delete, correct, or opt-out must comply with such consumer request, with certain exceptions. Exceptions include those for:

- Certain small businesses;
- Businesses which only use personal information to market its own products or services; and
- Businesses which only sell or share personal information under certain federal privacy laws.

Controllers may share personal information with a processor, even if a consumer has "opted out," if the processor processes information for a controller pursuant to a written contract which limits how the processor uses such information.

The DLA may bring a FDUTPA action against a controller, processor, third-party, or online platform who violates the provisions of the bill. As such, a controller, processor, third party or online platform may be subject to certain civil penalties and legal action.

Exceptions

The bill does not apply to the collection of personal information:

- Necessary for the sole purpose of sharing such personal information with a financial service provider solely to facilitate short term, transactional payment processing for the purchase of products or services.
- That is deidentified or aggregate consumer information.
- In compliance with federal, state, or local laws.
- In compliance with a civil, criminal, or regulatory inquiry, investigation, subpoena, or summons by federal, state, or local authorities.
- In cooperation with law enforcement agencies concerning conduct or activity that the controller, processor, or third party reasonably and in good faith believes may violate federal, state, or local law.
- Used for the purpose of exercising or defending legal rights, claims, or privileges.
- Collected through the controller's direct interactions with the consumer, if collected in accordance with the provisions of this section, that is used by such controller, or the processor that the controller directly contracts with for advertising or marketing services, to advertise or market products or services that are produced or offered directly by the controller. Such information may not be sold, shared, or disclosed unless otherwise authorized under the bill.
- Used by a controller or processor to advertise or market products or services that are produced or offered directly by the controller or processor as long as personal information is not sold, shared, or disclosed to another party outside the consumer's direct interaction with the controller or processor.
- Collected by a controller of a natural person acting in the role of a job applicant, employee, owner, director, officer, contractor, volunteer, or intern of the controller, to the extent the personal information is collected and used solely within the context of the person's role or former role with the controller. Personal information includes employee benefit information.
- That is the protected health information for purposes of HIPAA and related regulations, and patient identifying information for purposes of 42 C.F.R. Part 2, established pursuant to 42 U.S.C. s. 290dd-2.
- Collected by an entity or business associate governed by the privacy, security, and breach notification rules issued by the U.S. Department of Health and Human Services in 45 C.F.R. parts 160 and 164, or a program or a qualified service program defined in 42 C.F.R. part 2, to the extent the entity, business associate, or program maintains personal information in the same manner as medical information or protected health information and as long as the entity, business associate, or program does not use personal information for targeted advertising in conjunction with third parties and does not sell or share personal information to a third party unless such sale or sharing is covered by an exception.

- Collected for purposes of research as defined in 45 C.F.R. s. 164.501, conducted in accordance with the Federal Policy for the Protection of Human Subjects for purposes of 45 C.F.R. part 46, the good clinical practice guidelines issued by the International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use, the Federal Policy for the Protection for Human Subjects for purposes of 21 C.F.R. Parts 50 and 56; or personal information used or shared in research conducted in accordance with one or more of these standards.
- Created for purposes of the federal Health Care Quality Improvement Act of 1986 and related regulations, or patient safety work product for purposes of 42 C.F.R. part 3, established pursuant to 42 U.S.C. s. 299b-21 through 299b-26.
- Is deidentified in accordance with 45 C.F.R. part 164 and that is derived from individually identifiable health information, as described in HIPAA, or identifiable personal information, consistent with the Federal Policy for the Protection of Human Subjects or the human subject protection requirements of the FDA.
- Used only for public health activities and purposes as described in 45 C.F.R. s. 164.512.
- Collected, processed, sold, or disclosed pursuant to the federal Fair Credit Reporting Act, 15 U.S.C. s. 1681 and implementing regulations.
- Is nonpublic personal information collected, processed, sold, or disclosed pursuant to the Gramm-Leach-Bliley Act, 15 U.S.C. s. 6801 et seq. and implementing regulations.
- Of a financial institution as defined in the Gramm-Leach-Bliley Act, 15 U.S.C. ss. 6801 et seq. to the extent the financial institution maintains personal information in the same manner as nonpublic personal information, and as long as such financial institution does not use personal information for targeted advertising in conjunction with third parties and does not sell or share personal information to a third party unless such sale or sharing is covered by an exception.
- Collected, processed, sold, or disclosed pursuant to the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. ss. 2721 et. seq.
- Consisting of education information covered by the Family Educational Rights and Privacy Act, 20 U.S.C. s. 1232(g) and 34 C.F.R. part 99.
- That is collected as part of public or peer-reviewed scientific or statistical research in the public interest.
- Necessary to fulfill the terms of a written warranty when such warranty was purchased by the consumer or the product that is warranted was purchased by the consumer. Such information may not be sold or shared unless otherwise authorized under the bill.
- Necessary for a product recall for a product purchased or owned by the consumer conducted in accordance with federal law. Such information may not be sold or shared unless otherwise authorized under the bill.
- Processed solely for the purpose of independently measuring or reporting advertising or content performance, reach, or frequency pursuant to a contract with a controller that collected personal information in accordance with this section. Such information may not be sold or shared unless otherwise authorized under the bill.
- Shared between a manufacturer of a tangible product and authorized third-party distributors or vendors of the product, as long as such personal information is used solely for advertising, marketing, or servicing the product that is acquired directly through such manufacturer and such authorized third-party distributors or vendors. Such personal information may not be sold or shared unless otherwise authorized under the bill.

Definitions

The bill defines the following terms:

- "Aggregate consumer information" means information that relates to a group or category of consumers, from which the identity of an individual consumer has been removed and is not reasonably capable of being directly or indirectly associated or linked with, any consumer, household, or device. The term does not include information about a group or category of consumers used to facilitate targeted advertising or the display of ads online. The term does not include personal information that has been deidentified.

- "Biometric information" means an individual's physiological, biological, or behavioral characteristics, including an individual's deoxyribonucleic acid (DNA), that can be used, singly or in combination with each other or with other identifying data, to establish individual identity. The term includes, but is not limited to, imagery of the iris, retina, fingerprint, face, hand, palm, vein patterns, and voice recordings, from which an identifier template, such as a faceprint, a minutiae template, or a voiceprint, can be extracted, and keystroke patterns or rhythms, gait patterns or rhythms, and sleep, health, or exercise data that contain identifying information.
- "Collect" means to buy, rent, gather, obtain, receive, or access any personal information pertaining to a consumer by any means. The term includes, but is not limited to, actively or passively receiving information from the consumer or by observing the consumer's behavior or actions.
- "Consumer" means a natural person who resides in or is domiciled in this state, however identified, including by any unique identifier, who is acting in a personal capacity or household context. The term does not include a natural person acting on behalf of a legal entity in a commercial or employment context.
- "Controller" means:
    - A sole proprietorship, partnership, limited liability company, corporation, association, or legal entity that meets the following requirements:
        - Is organized or operated for the profit or financial benefit of its shareholders or owners;
        - Does business in this state;
        - Collects personal information about consumers, or is the entity on behalf of which such information is collected;
        - Determines the purposes and means of processing personal information about consumers alone or jointly with others; and
        - Has global annual gross revenues in excess of $1 billion, as adjusted in January of every odd-numbered year to reflect any increase in the Consumer Price Index.
        - Satisfies one of the following:
            - Derives 50 percent or more of its global annual revenues from providing targeted advertising or the sale of ads online; or
            - Operates a consumer smart speaker and voice command component service with an integrated virtual assistant connected to a cloud computing service that uses hands-free verbal activation. A consumer smart speaker and voice command component service does not include a motor vehicle or speaker or device associated with or connected to a vehicle.
    - Any entity that controls or is controlled by controller. As used in this definition, the term "control" means:
        - Ownership of, or the power to vote, more than 50 percent of the outstanding shares of any class of voting security of a controller;
        - Control in any manner over the election of a majority of the directors, or of individuals exercising similar functions; or
        - The power to exercise a controlling influence over the management of a company.
- "Deidentified" means information that cannot reasonably be used to infer information about or otherwise be linked to a particular consumer, provided that the controller that possesses the information:
    - Takes reasonable measures to ensure that the information cannot be associated with a specific consumer;
    - Maintains and uses the information in deidentified form and not to attempt to reidentify the information, except that the controller may attempt to reidentify the information solely for the purpose of determining whether its deidentification processes satisfy the requirements of this paragraph; and
    - Contractually obligates any recipients of the information to comply with all the provisions of this paragraph to avoid reidentifying such information.
    - Implements business processes to prevent the inadvertent release of deidentified information.

- "Department" means the Department of Legal Affairs.
- "Device" means a physical object associated with a consumer or household capable of directly or indirectly connecting to the Internet.
- "Homepage" means the introductory page of an Internet website and any Internet webpage where personal information is collected. In the case of a mobile application, the homepage is the application's platform page or download page, a link within the application, such as the "About" or "Information" application configurations, or the settings page, and any other location that allows consumers to review the required notice.
- "Household" means a natural person or a group of people in this state who reside at the same address, share a common device or the same service provided by a controller, and are identified by a controller as sharing the same group account or unique identifier.
- "Personal information" means information that is linked or reasonably linkable to an identified or identifiable consumer or household, including geolocation, biometric information, and unique identifiers to the consumer. The term does not include consumer information that is:
    - Consumer employment contract information;
    - Deidentified or aggregate consumer information; or
    - Publicly and lawfully available information reasonably believed to be made available to the public in a lawful manner without legal restrictions:
        - From federal, state, or local government records.
        - By a widely distributed media source.
        - By the consumer or by someone to whom the consumer disclosed the information unless the consumer has purposely and effectively restricted the information to a certain audience on a private account.
- "Precise geolocation data" means information from technology, such as global positioning system level latitude and longitude coordinates or other mechanisms, which directly identifies the specific location of a natural person with precision and accuracy within a radius of 1,750 feet. The term does not include information generated by the transmission of communications or any information generated by or connected to advance utility metering infrastructure systems or equipment for use by a utility.
- "Processing" means any operation or set of operations that are performed on personal information or on sets of personal information, regardless of whether by automated means.
- "Processor" means a sole proprietorship, partnership, limited liability company, corporation, association, or other legal entity that is organized or operated for the profit or financial benefit of its shareholders or other owners, that processes information on behalf of a controller and to which the controller discloses a consumer's personal information pursuant to a written contract, provided that the contract prohibits the entity receiving the information from retaining, using, or disclosing the personal information for any purpose other than for the specific purpose of performing the services specified in the contract for the controller, or as authorized.
- "Sell" means to sell, rent, release, disclose, disseminate, make available, transfer, or otherwise communicate orally, in writing, or by electronic or other means, a consumer's personal information or information that relates to a group or category of consumers by a controller to another controller or a third party for monetary or other valuable consideration.
- "Share" means to share, rent, release, disclose, disseminate, make available, transfer, or access a consumer's personal information for advertising. The term includes:
    - Allowing a third party to advertise to a consumer based on a consumer's personal information without disclosure of the personal information to the third party.
    - Monetary transactions, nonmonetary transactions, and transactions for other valuable consideration between a controller and a third party for advertising.
- "Targeted advertising" means marketing to a consumer or displaying an advertisement to a consumer when the advertisement is selected based on personal information used to predict such consumer's preferences or interests.
- "Third party" means a person who is not the controller or the processor.
- "Unique identifier" means a persistent identifier that can be used to recognize a consumer, a family, or a device that is linked to a consumer or a family, over time and across different services, including, but not limited to, a device identifier; an Internet Protocol address; cookies, beacons, pixel tags, mobile ad identifiers, or similar technology; a customer number, unique

pseudonym, or user alias; telephone numbers, or other forms of persistent or probabilistic identifiers that can be used to identify a particular consumer, family, or device that is linked to a consumer or family. The term "family" means a custodial parent or guardian and any minor children of whom the parent or guardian has custody, or a household.

- "Verifiable consumer request" means a request made by a consumer, by a parent or guardian on behalf of a consumer who is a minor child, or by a person authorized by the consumer to act on the consumer's behalf, that the controller can reasonably verify to be the consumer, pursuant to rules adopted by the department. A verifiable consumer request is presumed to have been made when requested through an established account using the controller's established security features to access the account through communication features offered to consumers, but a controller may not require the consumer to create or have an account with the controller in order to make a verifiable consumer request.
- "Voice recognition feature" means the function of a device which enables the collection, recording, storage, analysis, transmission, interpretation, or other use of spoken words or other sounds.

Controller Requirements and Consumer Data Collection Requirements and Responsibilities

The bill provides that a controller may not collect, without the consumer's authorization, a consumer's precise geolocation data or personal information through the operation of a voice recognition feature.

The bill requires a controller that operates a search engine to provide a consumer with information of how the controller's search engine algorithm prioritizes or deprioritizes political partisanship or political ideology in its search results.

The bill requires a controller who collects personal information about a consumer to maintain an online privacy policy and make such policy available on its homepage. The online privacy policy must include the following information:

- Any Florida-specific consumer privacy rights;
- A list of the categories of personal information the controller collects or has collected about consumers;
- The right to request deletion or correction of certain personal information; and
- The right to opt-out of the sale or sharing to third parties.

The bill requires a controller that collects personal information from the consumer to, at or before the point of collection, inform the consumer of the categories of personal information to be collected and the purposes for which the categories of personal information will be used.

The bill provides that a controller may not collect additional categories of personal information or use personal information collected for additional purposes without providing the consumer with notice consistent with the requirements of the bill.

The bill provides that a controller that collects a consumer's personal information must implement and maintain reasonable security procedures and practices appropriate to the nature of the personal information to protect the personal information from unauthorized or illegal access, destruction, use, modification, or disclosure. A controller shall require any processors to implement and maintain the same or similar security procedures and practices for personal information.

The bill requires a controller to adopt and implement a retention schedule that prohibits the use or retention of personal information by the controller or processor:

- After the satisfaction of the initial purpose for which such information was collected or obtained;
- After the expiration or termination of the contract pursuant to which the information was collected or obtained; or
- 3 years after the consumer's last interaction with the controller.

The required retention schedule does not apply to personal information reasonably used or retained to do any of the following:

- Fulfill the terms of a written warranty or product recall conducted in accordance with federal law.
- Provide a good or service requested by the consumer, or reasonably anticipate the request of such good or service within the context of a controller's ongoing business relationship with the consumer.
- Detect security threats or incidents; protect against malicious, deceptive, fraudulent, unauthorized, or illegal activity or access; or prosecute of those responsible for such activity or access.
- Debug to identify and repair errors that impair existing intended functionality.
- Engage in public or peer-reviewed scientific, historical, or statistical research in the public interest that adheres to all other applicable ethics and privacy laws when the controller's deletion of the information is likely to render impossible or seriously impair the achievement of such research, if the consumer has provided informed consent.
- Enable solely internal uses that are reasonably aligned with the expectations of the consumer based on the consumer's relationship with the controller or that are compatible with the context in which the consumer provided the information.
- Comply with a legal obligation, including any federal retention laws.
- Protect the controller's interests against existing disputes, legal action, or governmental investigations.
- Assure the physical security of persons or property.

Consumer's Right to Request a Copy of Personal Information Collected, Sold, or Shared

The bill provides that a consumer has the right to request that a controller that collects personal information about the consumer disclose the personal information that has been collected, sold, or shared by or on behalf of the controller. The bill provides that a consumer has the right to request that a controller that collects, sells, or shares personal information about the consumer to disclose the following to the consumer:

- The specific pieces of personal information which have been collected about the consumer.
- The categories of sources from which the consumer's personal information was collected.
- The specific pieces of personal information about the consumer which were sold or shared.
- The third parties to which the personal information about the consumer was sold or shared.
- The categories of personal information about the consumer which were disclosed to a processor.

The bill requires a controller that collects, sells, or shares personal information about consumers to disclose the requested information to the consumer upon receipt of a request.

The bill does not require a controller to retain, reidentify, or otherwise link any data that, in the ordinary course of business is not maintained in a manner that would be considered personal information.

The bill requires a controller to deliver the information required or act on a verifiable consumer request to a consumer free of charge within 45 calendar days after receiving a verifiable consumer request. The response period may be extended once by 45 additional calendar days when reasonably necessary, provided the controller informs the consumer of any such extension within the initial 45-day response period and the reason for the extension. The information must be delivered in a portable and, to the extent technically feasible, readily usable format that allows the consumer to transmit the data to another entity without hindrance. A controller may provide the data to the consumer in a manner that does not disclose the controller's trade secrets.

A controller is not obligated to provide information to the consumer if the consumer or a person authorized to act on the consumer's behalf does not provide verification of identity or verification of authorization to act with the permission of the consumer.

A controller may provide personal information to a consumer at any time, but may not be required to provide personal information to a consumer more than twice in a 12-month period.

Such requirements to disclose information do not apply to personal information relating solely to households.

Consumer Right to Correct or Delete Personal Information

The bill provides that a consumer has the right to request that a controller delete any personal information about the consumer or about the consumer's child younger than 18 years of age which the controller has collected from the consumer.

The bill requires a controller that receives a verifiable consumer request to delete the consumer's personal information to delete the consumer's personal information from its records and direct any processors to delete such information within 90 calendar days after receipt of the verifiable consumer request.

A controller or a processor acting pursuant to its contract with the controller may not be required to comply with a consumer's request to delete the consumer's personal information if it is reasonably necessary for the controller or processor to maintain the consumer's personal information to do any of the following:

- Complete the transaction for which the personal information was collected.
- Fulfill the terms of a written warranty or product recall conducted in accordance with federal law.
- Provide a good or service requested by the consumer, or reasonably anticipate the request of such good or service within the context of a controller's ongoing business relationship with the consumer, or otherwise perform a contract between the controller and the consumer.
- Detect security threats or incidents; protect against malicious, deceptive, fraudulent, unauthorized, or illegal activity or access; or prosecute those responsible for such activity or access.
- Debug to identify and repair errors that impair existing intended functionality.
- Engage in public or peer-reviewed scientific, historical, or statistical research in the public interest that adheres to all other applicable ethics and privacy laws when the controller's deletion of the information is likely to render impossible or seriously impair the achievement of such research, if the consumer has provided informed consent.
- Enable solely internal uses that are reasonably aligned with the expectations of the consumer based on the consumer's relationship with the controller or that are compatible with the context in which the consumer provided the information.
- Comply with a legal obligation, including any state or federal retention laws.
- Protect the controller's interests against existing disputes, legal action, or governmental investigations.
- Assure the physical security of persons or property.

The bill allows a consumer to make a request that a controller correct inaccurate personal information maintained by the controller about the consumer or about the consumer's child younger than 18 years of age. A controller that receives a verifiable consumer request to correct inaccurate personal information must use commercially reasonable efforts to correct such inaccurate information as directed by the consumer and direct any processors to correct such information within 90 calendar days after receipt of the verifiable consumer request. If a controller maintains a self-service mechanism to allow a consumer to correct certain personal information, the controller may require the consumer to correct his or her own personal information through such mechanism. A controller or a processor acting pursuant to its contract with the controller is not required to comply with a consumer's request to correct the consumer's personal information if it is reasonably necessary for the controller or processor to maintain such information to do any of the following:

- Complete the transaction for which the personal information was collected.
- Fulfill the terms of a written warranty or product recall conducted in accordance with federal law.
- Detect security threats or incidents, protect against malicious, deceptive, fraudulent, unauthorized, or illegal activity or access; or prosecute those responsible for such activity or access.
- Debug to identify and repair errors that impair existing intended functionality.

- Enable solely internal uses that are reasonably aligned with the expectations of the consumer based on the consumer's relationship with the controller or that are compatible with the context in which the consumer provided the information.
- Comply with a legal obligation, including any state or federal retention laws.
- Protect the controller's interests against existing disputes, legal action, or governmental investigations.
- Assure the physical security of persons or property.

Consumer Right to Opt Out of the Sale or Sharing of Personal Information

The bill provides the consumer with the right to opt out at any time and to direct a controller that sells or shares personal information about the consumer to third parties to not sell or share the consumer's personal information. This right may be referred to as the right to opt out.

The bill requires that a controller that sells or shares personal information to third parties to provide notice to consumers that this information may be sold or shared and that consumers have the right to opt out of the sale or sharing of their personal information.

The bill provides that a controller may not sell or share the personal information of a minor consumer if the controller has actual knowledge that the consumer is not 18 years of age or older. However, if a consumer is between 13 and 18, or if the parent or guardian of a consumer who is 12 years of age or younger, affirmatively authorizes the sale or sharing of such consumer's personal information, then a controller may sell or share such information. A controller that willfully disregards the consumer's age is deemed to have actual knowledge of the consumer's age. A controller that complies with the verifiable parental consent requirements of COPPA is deemed compliant with any obligation to obtain parental consent.

The bill provides that a controller that has received direction from a consumer opting out of the sale or sharing of the consumer's personal information is prohibited from selling or sharing the consumer's personal information beginning 4 calendar days after receipt of such direction, unless the consumer subsequently provides express authorization for the sale or sharing of the consumer's personal information.

Form to Opt Out of the Sale or Sharing of Personal Information

The bill requires a controller, in a reasonably accessible format, to provide a clear and conspicuous link on the controller's Internet homepage, entitled "Do Not Sell or Share My Personal Information," to an Internet webpage that enables a consumer, a parent or guardian of a minor who is a consumer, or a person authorized by the consumer, to opt out of the sale or sharing of the consumer's personal information. A controller may not require a consumer to create an account in order to direct the controller not to sell or share the consumer's personal information.

A controller may accept a request to opt out received through a user-enabled global privacy control, such as a browser plug-in or privacy setting, device setting, or other mechanism, which communicates or signals the consumer's choice to opt out.

A controller must respect the consumer's decision to opt out for at least 12 months before requesting that the consumer authorize the sale or sharing of the consumer's personal information.

A controller may not use any personal information collected from the consumer in connection with the submission of the consumer's opt-out request solely for the purposes of complying with the opt-out request.

The bill allows a consumer to authorize another person to opt out of the sale or sharing of the consumer's personal information on the consumer's behalf, and a controller must comply with an opt-out request received from a person authorized by the consumer to act on the consumer's behalf, pursuant to rules adopted by the DLA.

Actions Related to Consumers Who Exercise Their Rights

The bill provides that a controller may not deny goods or services to a consumer because the consumer exercised any of the consumer's rights under the bill.

The bill allows a controller to charge a consumer who exercised any of the consumer's rights a different price or rate, or provide a different level or quality of goods or services to the consumer, but only if that difference is:

- Reasonably related to the value provided to the controller by the consumer's data, or
- Related to a consumer's voluntary participation in a financial incentive program, including a bona fide loyalty, rewards, premium features, discounts, or club card program offered by the controller.

A controller may offer financial incentives, including payments to a consumer as compensation, for the collection, sharing, sale, or deletion of personal information if the consumer gives the controller prior consent that clearly describes the material terms of the financial incentive program. The consent may be revoked by the consumer at any time. The bill prohibits a controller from using financial incentive practices that are unjust, unreasonable, coercive, or usurious in nature.

Contracts and Roles

The bill requires that any contract between a controller and a processor must:

- Prohibit the processor from selling, sharing, retaining, using, or disclosing the personal information for any purpose that violates this section;
- Prohibit the processor from retaining, using, or disclosing the personal information other than for the purposes specified in the contract or agreement;
- Prohibit the processor from combining the personal information that the processor receives from or on behalf of the controller with personal information that the processor receives from or on behalf of another person or that the processor collects from its own interaction with the consumer, provided that the processor may combine personal information to perform any purpose specified in the contract or agreement and such combination is reported to the controller.
- Govern the processor's personal information processing procedures with respect to processing performed on behalf of the controller, including processing instructions, the nature and purpose of processing, the type of information subject to processing, the duration of processing, and the rights and obligations of both the controller and processor;
- Require the processor to return or delete all personal information under the contract to the controller as requested by the controller at the end of the provision of services, unless retention of the information is required by law; and
- Upon request of the controller, require the processor to make available to the controller all personal information in its possession under the contract or agreement.

The bill provides that determining whether a person is acting as a controller or processor with respect to a specific processing of data is fact-based and depends upon the context in which personal information is to be processed. The contract between a controller and processor must reflect their respective roles and relationships related to handling personal information. A processor that continues to adhere to a controller's instructions with respect to a specific processing of personal information remains a processor.

The bill provides that a third party that has collected personal information from a controller in accordance with this section:

- May not sell or share personal information about a consumer unless the consumer is provided an opportunity by such third party to opt out under this section. Once a third party sells or shares personal information after providing the opportunity to opt out, the third party becomes a controller under this section if the entity meets the definition of controller.

- May use such personal information from a controller to advertise or market products or services that are produced or offered directly by such third party.

The bill requires a processor or third party to require any subcontractor to meet the same obligations of such processor or third party with respect to personal information.

The bill provides that a processor or third party or any subcontractor thereof who violates any of the restrictions imposed upon it under the bill is liable or responsible for any failure to comply. A controller that discloses personal information to a third party or processor in compliance with the bill is not liable or responsible if the person receiving the personal information uses it without complying with the restrictions if, provided that at the time of disclosing the personal information, the controller does not have actual knowledge or reason to believe that the person does not intend to comply.

The bill provides that any provision of a contract or agreement of any kind that waives or limits in any way a consumer's rights under the bill, including, but not limited to, any right to a remedy or means of enforcement, is deemed contrary to public policy and is void and unenforceable. This section does not prevent a consumer from declining to exercise the consumer's rights under the bill.

Enforcement and Implementation

The bill provides that if DLA has reason to believe that any controller, processor, or third party is in violation of the requirements of the bill, DLA may bring an action against such controller, processor, or third party for an unfair or deceptive act or practice under FDUTPA. A consumer may not bring an action under FDUTPA under the bill. DLA is permitted to bring an action against:

- Any person or activity regulated under laws administered by the Office of Insurance Regulation or the Department of Financial Services; and
- Banks, credit unions, and savings and loan associations regulated by the Office of Financial Regulation or federal agencies.

In addition to other remedies under FDUTPA, the department may collect a civil penalty of up to $50,000 per violation of the bill.

Civil penalties may be tripled if the violation involves:

- A consumer who the controller, processor or third party has actual knowledge is 18 or younger.
- Failure to delete or correct the consumer's personal information after receiving a verifiable consumer request or directions from a controller to delete or correct such personal information unless the controller, processor, or third party qualifies for an exception to the requirements to delete or correct such personal information.
- Continuing to sell or share the consumer's personal information after the consumer chooses to opt out.

After DLA has notified a controller, processor, or third party in writing of an alleged violation, DLA may grant the controller, processor, or third party a 45-day period to cure the alleged violation. DLA may consider the number of violations, the substantial likelihood of injury to the public, or the safety of persons or property when determining whether to grant 45 days to cure. If the controller, processor, or third party cures the alleged violation to the satisfaction of DLA and provides proof, DLA may not bring an action for the alleged violation but in its discretion may issue a letter of guidance that indicates that the controller, processor, or person will not be offered a 45-day cure period for any future violations. If the controller, processor, or third party fails to cure the violation to the satisfaction of DLA within 45 calendar days, DLA may bring an action against the controller, processor, or third party for the alleged violation. The bill clarifies that any action brought by DLA may only be brought on behalf of a Florida consumer.

DLA may adopt rules to implement the bill, including standards for verifiable consumer requests, enforcement, data security, and authorized persons who may act on a consumer's behalf.

The bill requires DLA to submit a report by February 1 each year to the President of the Senate and the Speaker of the House of Representatives describing any actions taken by DLA to enforce the bill. The report must be viewable on the DLA website and include statistics and relevant information detailing:

- The number of complaints received and the categories or types of violations alleged by the complainant;
- The number and type of enforcement actions taken and the outcomes of such actions, including the amount of penalties issued and collected;
- The number of complaints resolved without the need for litigation; and
- The status of the development and implementation of rules to implement the bill.

DLA may collaborate and cooperate with other enforcement authorities of the federal government or other state governments concerning consumer data privacy issues and consumer data privacy investigations if such enforcement authorities have restrictions governing confidentiality at least as stringent as the restrictions provided in this section.
The bill provides that liability for a tort, contract claim, or consumer protection claim that is unrelated to an action brought under the bill does not arise solely from the failure of a controller, processor, or third party to comply with this section.

The bill provides that the bill does not establish a private cause of action.

The bill allows DLA to employ or use the legal services of outside counsel and the investigative services of outside personnel to fulfill the obligations of the bill.

Jurisdiction

For purposes of bringing an action under the bill, any controller which collects, shares, or sells the personal information of a Florida consumer is considered to be both engaged in substantial activities within Florida, and is operating, conducting, engaging in, or carrying on a business, and doing business in Florida; and is therefore subject to the jurisdiction of Florida courts.

Preemption

The bill provides that consumer data privacy is a matter of statewide concern and the bill supersedes all rules, regulations, codes, ordinances, and other laws adopted by a city, county, city and county, municipality, or local agency regarding the collection, processing, sharing, or sale of consumer personal information by a controller or processor. The regulation of the collection, processing, sharing, or sale of consumer personal information by a controller or processor is preempted to the state.

Legal Affairs Revolving Trust Fund

The bill provides that all moneys recovered by the Attorney General for attorney fees, costs, and penalties in an action for a violation of the bill must be deposited in the fund in the State Treasury the Legal Affairs Revolving Trust Fund, from which the Legislature may appropriate funds for the purpose of funding investigation, prosecution, and enforcement by the Attorney General.

Protection of Children in Online Spaces

The bill provides the following definitions for the Protection of Children in Online Spaces Act (PCOSA):

- "Child" means a consumer or consumers who are under 18 years of age.
- "Dark pattern" means a user interface designed or manipulated with the substantial effect of subverting or impairing user autonomy, decision-making or choice and includes, but is not limited to, any practice the FTC refers to as a "dark pattern."
- "Online platform" includes social media platforms and online gaming platforms.
- "Profiling" means any form of automated processing performed on personal information to evaluate, analyze or predict personal aspects related to a child's economic situation, health, personal preferences, interests, reliability, behavior, location or movements.

- "Substantial harm or privacy risk to children" means the processing of personal information in a manner that may result in any reasonably foreseeable substantial physical injury, economic injury, or offensive intrusion into the privacy expectations of a reasonable child under the circumstances, including:
    - Mental health disorders or associated behaviors, including the promotion or exacerbation of self-harm, suicide, eating disorders, and substance use disorders;
    - Patterns of use that indicate or encourage addiction-like behaviors;
    - Physical violence, online bullying, and harassment;
    - Sexual exploitation, including enticement, sex trafficking, and sexual abuse and trafficking of online sexual abuse material;
    - Promotion and marketing of narcotic drugs, tobacco products, gambling, or alcohol; and
    - Predatory, unfair, or deceptive marketing practices, or other financial harms.

The bill prohibits online platforms that provide an online service, product, game, or feature likely to be predominantly accessed by children from:

- **Processing the personal information of any child** if the online platform has actual knowledge or willfully disregards that the processing may result in substantial harm or privacy risk to children.
- **Profiling a child** unless both of the following criteria are met:
    - The online platform can demonstrate it has appropriate safeguards in place.
    - Either of the following is true:
        - Profiling is necessary to provide the online service, product, or feature requested and only with respect to the aspects with which the child is actively and knowingly engaged.
        - The online platform can demonstrate a compelling reason that profiling does not pose a substantial harm or privacy risk to children.
- **Collecting, selling, sharing, or retaining any personal information** that is not necessary to provide an online service, product, or feature with which a child is actively and knowingly engaged, unless the online platform can demonstrate a compelling reason that it does not pose a substantial harm or privacy risk to children.
- **Use personal information of a child for any reason** other than a reason for which that personal information was collected, unless the online platform can demonstrate a compelling reason that use of the personal information does not pose a substantial harm or privacy risk to children.
- **Collect, sell, or share any precise geolocation data** of children unless the collection of that precise geolocation data is strictly necessary for the online platform to provide the service, product, or feature requested and then only for the limited time that the collection of precise geolocation data is necessary.
- Collect any precise geolocation data of a child without providing an obvious sign to the child for the duration of that collection that precise geolocation data is being collected.
- **Use dark patterns** to lead or encourage children to provide personal information beyond what is reasonably expected to provide that online service, product, game, or feature, to forego privacy protections, or to take any action that the online platform has actual knowledge or willfully disregards may result in substantial harm or privacy risk to children.
- Use any personal information collected to estimate age or age range for any other purpose or retain that personal information longer than necessary to estimate age. Such age estimate shall be proportionate to the risks and data practice of an online service, product, or feature.

The bill provides that if an online platform processes a child's personal information in a way covered by PCOSA, the online platform bears the burden of demonstrating that such processing is not in violation.

The bill provides that an online platform that violates PCOSA is subject to the same enforcement actions used for violations of consumer data privacy provisions. Such enforcement actions are the exclusive remedy and PCOSA does not establish a private cause of action.

Comparison of Consumer Data Privacy Laws[80]					
Provision	**Colorado**	**Virginia**	**California**	**European Union**	**2023 HB 1547**
Opt-In or Opt-Out of Sale of PI	Opt-Out	Opt-Out	Opt-Out	Opt-In	Opt-Out
Opt-In or Opt-Out of Sensitive Info. Processing	Opt-In	Opt-In	Opt-Out	Opt-In	X
Cure Period	✓ 60 Days (Repeals 2025)	✓ 30 Days	✓ 30 Days	X	✓ 45 Days (AG Discretion)
Right to Appeal Denials or Requests	✓	✓	X	X	X
Express Obligations for Deidentified Data	✓	✓	X	X	✓
Requirement of Data Assessments	✓	✓	✓	✓	X
Private Right of Action	X	X	✓ Fine or actual damages	✓ Actual damages	X
Government Enforcement Agency	Attorney General	Attorney General	Attorney General, CPPA	Information Commissioner	Attorney General
Government Enforcement Penalties	Up to $20,000 per violation	Up to $7,500 per violation	Up to $2,500 per unintentional violation, and up to $7,500 per intentional violation	Up to €20 million, or 4% of worldwide annual revenue per violation	Up to $50,000 per violation, which can be tripled in certain circumstances
Operative Date	07/01/23	01/01/23	01/01/23	05/25/18	07/01/23
Applicability Thresholds For Business/Controller	Either, per year: •Controls/Processes data of at least 100,000 consumers; or •Derives revenue from sale of data from at least 25,000 consumers	Either, per year: •Controls/Processes data of at least 100,000 consumers; or •Derives over 50% of rev. from sale of data from at least 25,000 consumers	Meets any of the following: •Gross ann. rev. over $25 mill; •Processes 100,000 or more consumers; or •Derives at least 50% or more rev. from data	•Any E.U. business which processes consumer data; or •Any worldwide business that offers goods/services to or monitors behavior of E.U. individuals	•Global gross annual revenue over $1 bil; and either •Operates a certain smart speaker; or •Derives 50% or more global annual revenue from data sales

Florida Information Protection Act – Current Situation

In 2014, Florida passed the Florida Information Protection Act (FIPA).[81] FIPA requires commercial covered entities[82] and government entities which hold personal information to take reasonable measures to protect such information and report data breaches to affected consumers.[83]

FIPA defines "personal information" as:

- Online account information, such as security questions and answers, email addresses and passwords;
- An individual's first name or first initial and last name in combination with any one or more of the following:
  - A social security number;
  - A driver license or similar identity verification number issued on a government document;
  - A financial account number or credit or debit card number, in combination with any required security code, access code, or password that is necessary to permit access to an individual's financial account;
  - Any medical history information; or

[80] *See* JDSupra, *Virginia Is For Lovers…Of Data Privacy*, https://www.jdsupra.com/legalnews/virginia-is-for-lovers-of-data-privacy-3879845/ (last visited Mar. 25, 2023).
[81] S. 501.171, F.S.; Fla. SB 1524 (2014) (FIPA expanded and updated Florida's data breach disclosure laws contained in s. 817.5681, F.S. (2013), which was adopted in 2005 and repealed in 2014.)
[82] "Covered entity" means a sole proprietorship, partnership, corporation, trust, estate, cooperative, association, or other commercial entity that acquires, maintains, stores, or uses personal information. S. 501.171(1)(b), F.S.
[83] Florida Office of the Attorney General, *How to Protect Yourself: Data Security*, http://myfloridalegal.com/pages.nsf/Main/53D4216591361BCD85257F77004BE16C (last visited Mar. 25, 2023).

- An individual's health insurance identification numbers.[84]

Personal information does not include information:
- About an individual that has been made publicly available by a federal, state, or local governmental entity; or
- That is encrypted, secured, or modified to remove elements that personally identify an individual or that otherwise renders the information unusable.[85]

If a breach of personal information occurs, notice must be given to each individual in Florida whose personal information was accessed as a result of the breach. If the breach affected 500 or more individuals in this state, the covered entity must also provide notice to the Department of Legal Affairs (DLA). If the breach affected more than 1,000 individuals at a single time, credit reporting agencies must be notified of such breach, with certain exceptions.[86]

FIPA expressly does not provide a private cause of action, but does authorize enforcement actions by DLA under Florida's Unfair and Deceptive Trade Practices Act (FDUTPA) against covered entities for any statutory violations.[87]

In addition to the remedies provided for under FDUTPA an entity that fails to provide the required notification of a data breach is liable for certain civil penalties assessed on a daily basis. The civil penalties for failure to notify apply per breach and not per individual affected by the breach.

Florida Information Protection Act – Effect of the Bill

The bill amends s. 501.171, F.S., to define "biometric information" as an individual's physiological, biological, or behavioral characteristics that can be used, singly or in combination with each other or with other identifying data, to establish individual identity. The term includes, but is not limited to, imagery of the iris, retina, fingerprint, face, hand, palm, vein patterns, and voice recordings, from which an identifier template, such as a faceprint, a minutiae template, or a voiceprint, can be extracted, and keystroke patterns or rhythms, gait patterns or rhythms, and sleep, health, or exercise data that contain identifying information.

The bill defines **"**genetic information**"** as an individual's deoxyribonucleic acid (DNA).

The bill includes biometric information, genetic information, and geolocation in FIPA's definition of "personal information" so that covered entities are required to notify the affected individual, DLA, and credit reporting agencies of a breach of such information paired with an individual's first name or first initial and last name.

The bill allows DLA to bring a FDUTPA action against a covered entity which fails to notify DLA of or an individual affected by a breach of biometric information, genetic information, or geolocation.

Government Moderation of Social Media Platforms – Current Situation

Many cities and government entities in Florida have official accounts on various social media platforms. Social media can be an effective platform for reaching citizens in to keep them informed about news and events in their communities.[88]

Government entities may not censor a constituent's post or comment based on views in public conversation or restrict access to their profile based solely on viewpoints based on certain

[84] *Id.*; s. 501.171(1)(g)1., F.S.
[85] S. 501.171(1)(g)2., F.S.
[86] S. 501.171(3)-(6), F.S.
[87] S. 501.171(9), (10), F.S.; OAG *supra* note 75.
[88] Jessica Marabella, CivicPlus, *7 Ways to Use Social Media with Your Municipal Website in 2019*, https://www.civicplus.com/blog/ce/using-social-media-with-municipal-website (last visited Mar. 25, 2023).

Constitutional protections. However, certain speech is not protected under the First Amendment, and generally may be blocked, like threats.[89]

Government Moderation of Social Media Platforms – Effect of the Bill

The bill defines the following terms:

- "Social media platform" means a form of electronic communication through which users create online communities to share information, ideas, personal messages, and other content.
- "Governmental entity" means any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law, including, but not limited to, the Commission on Ethics, the Public Service Commission, the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

The bill provides that an officer or a salaried employee of a governmental entity may not use his or her position or any state resources to communicate with a social media platform to request that it remove content or accounts from the social media platform.

The bill prohibits a governmental entity, or an officer or a salaried employee acting on behalf of a governmental entity, from initiating or maintaining any agreements or working relationships with a social media platform for the purpose of content moderation.

However, these restrictions do not apply if the governmental entity or an officer or a salaried employee acting on behalf of a governmental entity is acting as part of any of the following:

- Routine account management of the governmental entity's account.
- An attempt to remove content or an account that pertains to the commission of a crime or violation of public records law.
- An investigation or inquiry related to public safety.

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

B. SECTION DIRECTORY:

Section 1: Creates s. 112.23, F.S., relating to governmental social media content moderation.
Section 2: Creates s. 501.173, F.S., relating to consumer data privacy rights and requirements.
Section 3: Amends s. 501.171, F.S.; relating to FIPA and triggering requirements.
Section 4: Amends s. 16.53, F.S.; relating to the Legal Affairs Revolving Trust Fund.
Section 5: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   There may be an increase in civil penalties collected by DLA.

2. Expenditures:

   There may be an increase of regulatory costs to DLA from implementing and enforcing the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

[89] ACLU Florida, *Government Social Media Censorship*, https://www.aclufl.org/en/know-your-rights/government-social-media-censorship (last visited Mar 25, 2023).

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will require certain businesses in possession of personal information to implement mechanisms to effectuate the requirements of the bill, and such implementation will have a fiscal impact on such businesses. However, many of the businesses subject to the bill's requirements may have already implemented similar privacy practices based on protections required in other states and countries.

The bill may increase protections provided for personal information that may save consumers the expense of dealing with stolen personal information used to commit financial crimes. About 15 million consumers are victims of identity theft or fraud each year. Identity theft and fraud costs consumers more than $15 billion a year.

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:

Certain provisions may implicate Constitutional analysis based on the U.S. and Florida Constitutions' Equal Protection Clause,[90] and the U.S. and Florida Constitutions' protections of the right to free speech.[91]

B. RULE-MAKING AUTHORITY:

DLA is given rulemaking authority in the bill to implement the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 28, 2023, the Regulatory Reform & Economic Development Subcommittee adopted three amendments and reported the bill favorably as a committee substitute. The committee substitute:

- Provides that online platforms that are likely to be predominantly accessed by children may not, except under certain circumstances:
  - Process personal information of or profile a child.
  - Collect, sell, share, or retain personal information or geolocation of a child.
  - Use a child's personal information for any unstated reason.
  - Use dark patterns to obtain more information of a child than necessary.
  - Use collected information to estimate age for any other reason.
- Provides that if an online platform violates such operating requirements, such platform is liable for enforcement measures by the Department of Legal Affairs.
- Makes conforming changes.

[90] U.S. Const. amend. XIV, and Art. I, § 2, Fla. Const.
[91] U.S. Const. amend. I, and Art. I, §§ 4-5, Fla. Const.

This analysis is drafted to the committee substitute as passed by the Regulatory Reform & Economic Development Subcommittee.

A bill to be entitled

An act relating to technology transparency; creating s. 112.23, F.S.; defining terms; prohibiting officers or salaried employees of governmental entities from using their positions or state resources to make certain requests of social media platforms; prohibiting governmental entities from initiating or maintaining agreements or working relationships with social media platforms under a specified circumstance; providing exceptions; creating s. 501.173, F.S.; providing applicability; defining terms; prohibiting a controller from collecting certain consumer information without the consumer's authorization; requiring controllers that collect a consumer's personal information to disclose certain information regarding data collection and selling practices to the consumer at or before the point of collection; specifying that such information may be provided through a general privacy policy or through a notice informing the consumer that additional specific information will be provided upon a certain request; prohibiting controllers from collecting additional categories of personal information or using personal information for additional purposes without notifying the consumer; requiring controllers that collect

personal information to implement reasonable security procedures and practices to protect such information; authorizing consumers to request controllers to disclose the specific personal information the controller has collected about the consumer; requiring controllers to make available two or more methods for consumers to request their personal information; requiring controllers to provide such information free of charge within a certain timeframe and in a certain format upon receiving a verifiable consumer request; specifying requirements for third parties with respect to consumer information acquired or used; providing construction; authorizing consumers to request controllers to delete or correct personal information collected by the controllers; providing exceptions; specifying requirements for controllers to comply with deletion or correction requests; authorizing consumers to opt out of third-party disclosure of personal information collected by a controller; prohibiting controllers from selling or disclosing the personal information of consumers younger than a certain age, except under certain circumstances; prohibiting controllers from selling or sharing a consumer's information if the consumer has opted out of such disclosure; prohibiting controllers from taking

certain actions to retaliate against consumers who exercise certain rights; providing applicability; providing that a contract or agreement that waives or limits certain consumer rights is void and unenforceable; authorizing the Department of Legal Affairs to bring an action under the Florida Deceptive and Unfair Trade Practices Act and to adopt rules; requiring the department to submit an annual report to the Legislature; providing report requirements; providing that controllers must have a specified timeframe to cure any violations; providing jurisdiction; declaring that the act is matter of statewide concern; preempting the collection, processing, sharing, and sale of consumer personal information to the state; amending s. 501.171, F.S.; revising the definition of "personal information"; creating s. 501.1735, F.S.; providing definitions; providing requirements for online platforms that provide online services, products, games, or features likely to be predominantly accessed by children; providing for enforcement; providing construction; amending s. 16.53, F.S.; requiring that certain attorney fees, costs, and penalties recovered by the Attorney General be deposited in the Legal Affairs Revolving Trust Fund; providing an effective date.

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

Section 1. Section 112.23, Florida Statutes, is created to read:

112.23 Government-directed content moderation of social media platforms prohibited.—

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

(a) "Governmental entity" means any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law, including, but not limited to, the Commission on Ethics, the Public Service Commission, the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

(b) "Social media platform" means a form of electronic communication through which users create online communities to share information, ideas, personal messages, and other content.

(2) An officer or a salaried employee of a governmental entity may not use his or her position or any state resources to communicate with a social media platform to request that it remove content or accounts from the social media platform.

(3) A governmental entity, or an officer or a salaried employee acting on behalf of a governmental entity, may not

initiate or maintain any agreements or working relationships with a social media platform for the purpose of content moderation.

(4) Subsections (2) and (3) do not apply if the governmental entity or an officer or a salaried employee acting on behalf of a governmental entity is acting as part of any of the following:

(a) Routine account management of the governmental entity's account.

(b) An attempt to remove content or an account that pertains to the commission of a crime or violation of this state's public records law.

(c) An investigation or inquiry related to public safety.

Section 2. Section 501.173, Florida Statutes, is created to read:

501.173 Consumer data privacy.—

(1) APPLICABILITY.—This section does not apply to:

(a) Personal information collected and transmitted which is necessary for the sole purpose of sharing such personal information with a financial service provider solely to facilitate short term, transactional payment processing for the purchase of products or services.

(b) Personal information collected, used, retained, sold, shared, or disclosed as deidentified personal information or aggregate consumer information.

(c) Compliance with federal, state, or local laws.

(d) Compliance with a civil, criminal, or regulatory inquiry, investigation, subpoena, or summons by federal, state, or local authorities.

(e) Cooperation with law enforcement agencies concerning conduct or activity that the controller, processor, or third party reasonably and in good faith believes may violate federal, state, or local law.

(f) Exercising or defending legal rights, claims, or privileges.

(g) Personal information collected through the controller's direct interactions with the consumer, if collected in accordance with this section, which is used by the controller or the processor that the controller directly contracts with for advertising or marketing services to advertise or market products or services that are produced or offered directly by the controller. Such information may not be sold, shared, or disclosed unless otherwise authorized under this section.

(h) Personal information of a person acting in the role of a job applicant, employee, owner, director, officer, contractor, volunteer, or intern of a controller which is collected by a controller, to the extent the personal information is collected and used solely within the context of the person's role or former role with the controller. For purposes of this paragraph, personal information includes employee benefit information.

(i) Protected health information for purposes of the federal Health Insurance Portability and Accountability Act of 1996 and related regulations, and patient identifying information for purposes of 42 C.F.R. part 2, established pursuant to 42 U.S.C. s. 290dd-2.

(j) An entity or business associate governed by the privacy, security, and breach notification rules issued by the United States Department of Health and Human Services in 45 C.F.R. parts 160 and 164, or a program or a qualified service program as defined in 42 C.F.R. part 2, to the extent the entity, business associate, or program maintains personal information in the same manner as medical information or protected health information as described in paragraph (i), and as long as the entity, business associate, or program does not use personal information for targeted advertising with third parties and does not sell or share personal information to a third party unless such sale or sharing is covered by an exception under this section.

(k) Identifiable private information collected for purposes of research as defined in 45 C.F.R. s. 164.501 conducted in accordance with the Federal Policy for the Protection of Human Subjects for purposes of 45 C.F.R. part 46, the good clinical practice guidelines issued by the International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use, or the Federal

Policy for the Protection for Human Subjects for purposes of 21 C.F.R. parts 50 and 56, or personal information used or shared in research conducted in accordance with one or more of these standards.

(l) Information and documents created for purposes of the federal Health Care Quality Improvement Act of 1986 and related regulations, or patient safety work product for purposes of 42 C.F.R. part 3, established pursuant to 42 U.S.C. s. 299b-21 through 299b-26.

(m) Information that is deidentified in accordance with 45 C.F.R. part 164 and derived from individually identifiable health information as described in the Health Insurance Portability and Accountability Act of 1996, or identifiable personal information, consistent with the Federal Policy for the Protection of Human Subjects or the human subject protection requirements of the United States Food and Drug Administration.

(n) Information used only for public health activities and purposes as described in 45 C.F.R. s. 164.512.

(o) Personal information collected, processed, sold, or disclosed pursuant to the federal Fair Credit Reporting Act, 15 U.S.C. s. 1681 and implementing regulations.

(p) Nonpublic personal information collected, processed, sold, or disclosed pursuant to the Gramm-Leach-Bliley Act, 15 U.S.C. s. 6801 et seq., and implementing regulations.

(q) A financial institution as defined in the Gramm-Leach-

Bliley Act, 15 U.S.C. s. 6801 et seq., to the extent the financial institution maintains personal information in the same manner as nonpublic personal information as described in paragraph (p), and as long as such financial institution does not use personal information for targeted advertising with third parties and does not sell or share personal information to a third party unless such sale or sharing is covered by an exception under this section.

(r) Personal information collected, processed, sold, or disclosed pursuant to the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. s. 2721 et seq.

(s) Education information covered by the Family Educational Rights and Privacy Act, 20 U.S.C. s. 1232(g) and 34 C.F.R. part 99.

(t) Information collected as part of public or peer-reviewed scientific or statistical research in the public interest and which adheres to all other applicable ethics and privacy laws, if the consumer has provided informed consent. Research with personal information must be subjected by the controller conducting the research to additional security controls that limit access to the research data to only those individuals necessary to carry out the research purpose, and such personal information must be subsequently deidentified.

(u) Personal information disclosed for the purpose of responding to an alert of a present risk of harm to a person or

property or prosecuting those responsible for that activity.

(v) Personal information disclosed when a consumer uses or directs a controller to intentionally disclose information to a third party or uses the controller to intentionally interact with a third party. An intentional interaction occurs when the consumer intends to interact with the third party, by one or more deliberate interactions. Hovering over, muting, pausing, or closing a given piece of content does not constitute a consumer's intent to interact with a third party.

(w) An identifier used for a consumer who has opted out of the sale or sharing of the consumer's personal information for the sole purpose of alerting processors and third parties that the consumer has opted out of the sale or sharing of the consumer's personal information.

(x) Personal information transferred by a controller to a third party as an asset that is part of a merger, acquisition, bankruptcy, or other transaction in which the third party assumes control of all or part of the controller, provided that the information is used or shared consistently with this section. If a third party materially alters how it uses or shares the personal information of a consumer in a manner that is materially inconsistent with the commitments or promises made at the time of collection, it must provide prior notice of the new or changed practice to the consumer. The notice must be sufficiently prominent and robust to ensure that consumers can

easily exercise choices consistent with this section.

(y) Personal information necessary to fulfill the terms of a written warranty when such warranty was purchased by the consumer or the product that is warranted was purchased by the consumer. Such information may not be sold or shared unless otherwise authorized under this section.

(z) Personal information necessary for a product recall for a product purchased or owned by the consumer conducted in accordance with federal law. Such information may not be sold or shared unless otherwise authorized under this section.

(aa) Personal information processed solely for the purpose of independently measuring or reporting advertising or content performance, reach, or frequency pursuant to a contract with a controller that collected personal information in accordance with this section. Such information may not be sold or shared unless otherwise authorized under this section.

(bb) Personal information shared between a manufacturer of a tangible product and authorized third-party distributors or vendors of the product, as long as such personal information is used solely for advertising, marketing, or servicing the product that is acquired directly through such manufacturer and such authorized third-party distributors or vendors. Such personal information may not be sold or shared unless otherwise authorized under this section.

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

(a) "Aggregate consumer information" means information that relates to a group or category of consumers, from which the identity of an individual consumer has been removed and is not reasonably capable of being directly or indirectly associated or linked with any consumer, household, or device. The term does not include information about a group or category of consumers used to facilitate targeted advertising or the display of ads online. The term does not include personal information that has been deidentified.

(b) "Biometric information" means an individual's physiological, biological, or behavioral characteristics that can be used, singly or in combination with each other or with other identifying data, to establish individual identity. The term includes, but is not limited to, imagery of the iris, retina, fingerprint, face, hand, palm, vein patterns, and voice recordings, from which an identifier template, such as a faceprint, a minutiae template, or a voiceprint, can be extracted, and keystroke patterns or rhythms, gait patterns or rhythms, and sleep, health, or exercise data that contain identifying information.

(c) "Collect" means to buy, rent, gather, obtain, receive, or access any personal information pertaining to a consumer by any means. The term includes, but is not limited to, actively or passively receiving information from the consumer or by observing the consumer's behavior or actions.

(d) "Consumer" means a natural person who resides in or is domiciled in this state, however identified, including by any unique identifier, who is acting in a personal capacity or household context. The term does not include a natural person acting on behalf of a legal entity in a commercial or employment context.

(e) "Controller" means:

1. A sole proprietorship, partnership, limited liability company, corporation, association, or legal entity that meets the following requirements:

a. Is organized or operated for the profit or financial benefit of its shareholders or owners;

b. Does business in this state;

c. Collects personal information about consumers, or is the entity on behalf of which such information is collected;

d. Determines the purposes and means of processing personal information about consumers alone or jointly with others;

e. Makes in excess of $1 billion in gross revenues, as adjusted in January of every odd-numbered year to reflect any increase in the Consumer Price Index; and

f. Satisfies one of the following:

(I) Derives 50 percent or more of its global annual revenues from providing targeted advertising or the sale of ads online; or

(II) Operates a consumer smart speaker and voice command component service with an integrated virtual assistant connected to a cloud computing service that uses hands-free verbal activation. For purposes of this sub-sub-subparagraph, a consumer smart speaker and voice command component service does not include a motor vehicle or speaker or device associated with or connected to a vehicle.

2. Any entity that controls or is controlled by a controller. As used in this subparagraph, the term "control" means:

a. Ownership of, or the power to vote, more than 50 percent of the outstanding shares of any class of voting security of a controller;

b. Control in any manner over the election of a majority of the directors, or of individuals exercising similar functions; or

c. The power to exercise a controlling influence over the management of a company.

(f) "Deidentified" means information that cannot reasonably be used to infer information about or otherwise be linked to a particular consumer, provided that the controller that possesses the information:

1. Takes reasonable measures to ensure that the information cannot be associated with a specific consumer;

2. Maintains and uses the information in deidentified form

and does not attempt to reidentify the information, except that the controller may attempt to reidentify the information solely for the purpose of determining whether its deidentification processes satisfy the requirements of this paragraph;

3. Contractually obligates any recipients of the information to comply with all this paragraph to avoid reidentifying such information; and

4. Implements business processes to prevent the inadvertent release of deidentified information.

(g) "Department" means the Department of Legal Affairs.

(h) "Device" means a physical object associated with a consumer or household capable of directly or indirectly connecting to the Internet.

(i) "Genetic information" means information about an individual's deoxyribonucleic acid (DNA).

(j) "Homepage" means the introductory page of an Internet website and any Internet webpage where personal information is collected. In the case of a mobile application, the homepage is the application's platform page or download page, a link within the application, such as the "About" or "Information" application configurations, or the settings page, and any other location that allows consumers to review the notice required by subsection (7), including, but not limited to, before downloading the application.

(k) "Household" means a natural person or a group of

people in this state who reside at the same address, share a common device or the same service provided by a controller, and are identified by a controller as sharing the same group account or unique identifier.

(l) "Personal information" means information that is linked or reasonably linkable to an identified or identifiable consumer or household, including biometric information, genetic information, and unique identifiers to the consumer.

1. The term includes, but is not limited to, the following:

a. Identifiers such as a real name, alias, postal address, unique identifier, online identifier, internet protocol address, email address, account name, social security number, driver license number, passport number, or other similar identifiers.

b. Information that identifies, relates to, or describes, or could be associated with, a particular individual, including, but not limited to, a name, signature, social security number, physical characteristics or description, address, location, telephone number, passport number, driver license or state identification card number, insurance policy number, education, employment, employment history, bank account number, credit card number, debit card number, or any other financial information, medical information, or health insurance information.

c. Characteristics of protected classifications under state or federal law.

d. Commercial information, including records of personal property, products or services purchased, obtained, or considered, or other purchasing or consuming histories or tendencies.

e. Biometric information.

f. Internet or other electronic network activity information, including, but not limited to, browsing history, search history, and information regarding a consumer's interaction with an Internet website, application, or advertisement.

g. Geolocation data.

h. Audio, electronic, visual, thermal, olfactory, or similar information.

i. Inferences drawn from any of the information identified in this paragraph to create a profile about a consumer reflecting the consumer's preferences, characteristics, psychological trends, predispositions, behavior, attitudes, intelligence, abilities, and aptitudes.

2. The term does not include consumer information that is:

a. Consumer employment contact information, including a position name or title, employment qualifications, emergency contact information, business telephone number, business electronic mail address, employee benefit information, and similar information used solely in an employment context.

b. Deidentified or aggregate consumer information.

c. Publicly and lawfully available information reasonably believed to be made available to the general public in a lawful manner and without legal restrictions:

(I) From federal, state, or local government records.

(II) By a widely distributed media source.

(III) By the consumer or by someone to whom the consumer disclosed the information unless the consumer has purposely and effectively restricted the information to a certain audience on a private account.

(m) "Precise geolocation data" means information from technology, such as global positioning system level latitude and longitude coordinates or other mechanisms, which directly identifies the specific location of a natural person with precision and accuracy within a radius of 1,750 feet. The term does not include information generated by the transmission of communications or any information generated by or connected to advance utility metering infrastructure systems or equipment for use by a utility.

(n) "Processing" means any operation or set of operations performed on personal information or on sets of personal information, regardless of whether by automated means.

(o) "Processor" means a sole proprietorship, partnership, limited liability company, corporation, association, or other legal entity that is organized or operated for the profit or financial benefit of its shareholders or other owners, that

processes information on behalf of a controller and to which the controller discloses a consumer's personal information pursuant to a written contract, provided that the contract prohibits the entity receiving the information from retaining, using, or disclosing the personal information for any purpose other than for the specific purpose of performing the services specified in the contract for the controller, as authorized by this section.

(p) "Sell" means to sell, rent, release, disclose, disseminate, make available, transfer, or otherwise communicate orally, in writing, or by electronic or other means, a consumer's personal information or information that relates to a group or category of consumers by a controller to another controller or a third party for monetary or other valuable consideration.

(q) "Share" means to share, rent, release, disclose, disseminate, make available, transfer, or access a consumer's personal information for advertising or marketing. The term includes:

1. Allowing a third party to advertise or market to a consumer based on a consumer's personal information without disclosure of the personal information to the third party.

2. Monetary transactions, nonmonetary transactions, and transactions for other valuable consideration between a controller and a third party for advertising or marketing.

(r) "Targeted advertising" means marketing to a consumer

or displaying an advertisement to a consumer when the advertisement is selected based on personal information used to predict such consumer's preferences or interests.

(s) "Third party" means a person who is not a controller or a processor.

(t) "Unique identifier" means a persistent identifier that can be used to recognize a consumer, a family, or a device that is linked to a consumer or a family, over time and across different services, including, but not limited to, a device identifier; an Internet Protocol address; cookies, beacons, pixel tags, mobile ad identifiers, or similar technology; a customer number, unique pseudonym, or user alias; telephone numbers, or other forms of persistent or probabilistic identifiers that can be used to identify a particular consumer, family, or device that is linked to a consumer or family. As used in this paragraph, the term "family" means a custodial parent or guardian and any minor children of whom the parent or guardian has custody, or a household as defined in paragraph (k).

(u) "Verifiable consumer request" means a request made by a consumer, by a parent or guardian on behalf of a consumer who is a minor child, or by a person authorized by the consumer to act on the consumer's behalf, that the controller can reasonably verify to be the consumer, pursuant to rules adopted by the department. A verifiable consumer request is presumed to have

been made when requested through an established account using the controller's established security features to access the account through communication features offered to consumers, but a controller may not require the consumer to create or have an account with the controller in order to make a verifiable consumer request.

(v) "Voice recognition feature" means the function of a device which enables the collection, recording, storage, analysis, transmission, interpretation, or other use of spoken words or other sounds.

(3) CONTROLLER REQUIREMENTS; CONSUMER DATA COLLECTION REQUIREMENTS AND RESPONSIBILITIES.—

(a) A controller may not collect, without the consumer's authorization, a consumer's precise geolocation data or personal information through the operation of a voice recognition feature.

(b) A controller that operates a search engine shall provide a consumer with information of how the controller's search engine algorithm prioritizes or deprioritizes political partisanship or political ideology in its search results.

(c) A controller that collects personal information about consumers shall maintain an up-to-date online privacy policy and make such policy available on its homepage. The online privacy policy must include the following information:

1. Any Florida-specific consumer privacy rights.

2. A list of the types and categories of personal information that the controller collects, sells, or shares, or has collected, sold, or shared, about consumers.

3. The consumer's right to request deletion or correction of certain personal information.

4. The consumer's right to opt out of the sale or sharing to third parties.

(d) A controller that collects personal information from the consumer shall, at or before the point of collection, inform, or direct the processor to inform, consumers of the categories of personal information to be collected and the purposes for which such categories of personal information will be used.

(e) A controller may not collect additional categories of personal information or use personal information collected for additional purposes without providing the consumer with notice consistent with this section.

(f) A controller that collects a consumer's personal information shall implement and maintain reasonable security procedures and practices appropriate to the nature of the personal information to protect such personal information from unauthorized or illegal access, destruction, use, modification, or disclosure. A controller shall require any processors to implement and maintain the same or similar security procedures and practices for personal information.

(g) A controller shall adopt and implement a retention schedule that prohibits the use or retention of personal information not subject to an exemption by the controller or processor after the satisfaction of the initial purpose for which such information was collected or obtained, after the expiration or termination of the contract pursuant to which the information was collected or obtained, or 2 years after the consumer's last interaction with the controller. This paragraph does not apply to personal information reasonably used or retained to do any of the following:

1. Fulfill the terms of a written warranty or product recall conducted in accordance with federal law.

2. Provide a good or service requested by the consumer, or reasonably anticipate the request of such good or service within the context of a controller's ongoing business relationship with the consumer.

3. Detect security threats or incidents; protect against malicious, deceptive, fraudulent, unauthorized, or illegal activity or access; or prosecute those responsible for such activity or access.

4. Debug to identify and repair errors that impair existing intended functionality.

5. Engage in public or peer-reviewed scientific, historical, or statistical research in the public interest which adheres to all other applicable ethics and privacy laws when the

controller's deletion of the information is likely to render impossible or seriously impair the achievement of such research, if the consumer has provided informed consent.

6. Enable solely internal uses that are reasonably aligned with the expectations of the consumer based on the consumer's relationship with the controller or that are compatible with the context in which the consumer provided the information.

7. Comply with a legal obligation, including any state or federal retention laws.

8. Protect the controller's interests against existing disputes, legal action, or governmental investigations.

9. Assure the physical security of persons or property.

(4) CONSUMER RIGHT TO REQUEST COPY OF PERSONAL INFORMATION COLLECTED, SOLD, OR SHARED.—

(a) A consumer has the right to request that a controller that collects, sells, or shares personal information about the consumer disclose the following to the consumer:

1. The specific pieces of personal information which have been collected about the consumer.

2. The categories of sources from which the consumer's personal information was collected.

3. The specific pieces of personal information about the consumer which were sold or shared.

4. The third parties to which the personal information about the consumer was sold or shared.

5. The categories of personal information about the consumer which were disclosed to a processor.

(b) A controller that collects, sells, or shares personal information about a consumer shall disclose the information specified in paragraph (a) to the consumer upon receipt of a verifiable consumer request.

(c) This subsection does not require a controller to retain, reidentify, or otherwise link any data that, in the ordinary course of business is not maintained in a manner that would be considered personal information.

(d) The controller shall deliver to a consumer the information required under this subsection or act on a request made under this subsection by a consumer free of charge within 45 calendar days after receiving a verifiable consumer request. The response period may be extended once by 45 additional calendar days when reasonably necessary, provided the controller informs the consumer of any such extension within the initial 45-day response period and the reason for the extension. The information must be delivered in a portable and, to the extent technically feasible, readily usable format that allows the consumer to transmit the data to another entity without hindrance. A controller may provide the data to the consumer in a manner that does not disclose the controller's trade secrets. A controller is not obligated to provide information to the consumer if the consumer or a person authorized to act on the

consumer's behalf does not provide verification of identity or verification of authorization to act with the permission of the consumer.

(e) A controller may provide personal information to a consumer at any time, but is not required to provide personal information to a consumer more than twice in a 12-month period.

(f) This subsection does not apply to personal information relating solely to households.

(5) RIGHT TO HAVE PERSONAL INFORMATION DELETED OR CORRECTED.—

(a) A consumer has the right to request that a controller delete any personal information about the consumer or about the consumer's child younger than 18 years of age which the controller has collected.

1. A controller that receives a verifiable consumer request to delete the consumer's personal information shall delete the consumer's personal information from its records and direct any processors to delete such information within 90 calendar days after receipt of the verifiable consumer request.

2. A controller or a processor acting pursuant to its contract with the controller may not be required to comply with a consumer's request to delete the consumer's personal information if it is reasonably necessary for the controller or processor to maintain the consumer's personal information to do any of the following:

a. Complete the transaction for which the personal information was collected.

b. Fulfill the terms of a written warranty or product recall conducted in accordance with federal law.

c. Provide a good or service requested by the consumer, or reasonably anticipate the request of such good or service within the context of a controller's ongoing business relationship with the consumer, or otherwise perform a contract between the controller and the consumer.

d. Detect security threats or incidents; protect against malicious, deceptive, fraudulent, unauthorized, or illegal activity or access; or prosecute those responsible for such activity or access.

e. Debug to identify and repair errors that impair existing intended functionality.

f. Engage in public or peer-reviewed scientific, historical, or statistical research in the public interest which adheres to all other applicable ethics and privacy laws when the controller's deletion of the information is likely to render impossible or seriously impair the achievement of such research, if the consumer has provided informed consent.

g. Enable solely internal uses that are reasonably aligned with the expectations of the consumer based on the consumer's relationship with the controller or that are compatible with the context in which the consumer provided the information.

h. Comply with a legal obligation, including any state or federal retention laws.

i. Protect the controller's interests against existing disputes, legal action, or governmental investigations.

j. Assure the physical security of persons or property.

(b) A consumer has the right to request that a controller correct inaccurate personal information maintained by the controller about the consumer or about the consumer's child younger than 18 years of age. A controller that receives a verifiable consumer request to correct inaccurate personal information shall use commercially reasonable efforts to correct the inaccurate personal information as directed by the consumer and shall direct any processors to correct such information within 90 calendar days after receipt of the verifiable consumer request. If a controller maintains a self-service mechanism to allow a consumer to correct certain personal information, the controller may require the consumer to correct their own personal information through such mechanism. A controller or a processor acting pursuant to its contract with the controller may not be required to comply with a consumer's request to correct the consumer's personal information if it is reasonably necessary for the controller or processor to maintain the consumer's personal information to do any of the following:

1. Complete the transaction for which the personal information was collected.

2. Fulfill the terms of a written warranty or product recall conducted in accordance with federal law.

3. Detect security threats or incidents; protect against malicious, deceptive, fraudulent, unauthorized, or illegal activity or access; or prosecute those responsible for such activity or access.

4. Debug to identify and repair errors that impair existing intended functionality.

5. Enable solely internal uses that are reasonably aligned with the expectations of the consumer based on the consumer's relationship with the controller or that are compatible with the context in which the consumer provided the information.

6. Comply with a legal obligation, including any state or federal retention laws.

7. Protect the controller's interests against existing disputes, legal action, or governmental investigations.

8. Assure the physical security of persons or property.

(6) RIGHT TO OPT OUT OF THE SALE OR SHARING OF PERSONAL INFORMATION.—

(a) A consumer has the right at any time to direct a controller not to sell or share the consumer's personal information to a third party. This right may be referred to as the right to opt out.

(b) Notwithstanding paragraph (a), a controller may not sell or share the personal information of a minor consumer if

the controller has actual knowledge that the consumer is not 18 years of age or older. However, if a consumer who is between 13 and 18 years of age, or if the parent or guardian of a consumer who is 12 years of age or younger, has affirmatively authorized the sale or sharing of such consumer's personal information, then a controller may sell or share such information in accordance with this section. A controller that willfully disregards the consumer's age is deemed to have actual knowledge of the consumer's age. A controller that complies with the verifiable parental consent requirements of the Children's Online Privacy Protection Act, 15 U.S.C. s. 6501 et seq., shall be deemed compliant with any obligation to obtain parental consent.

(c) A controller that has received direction from a consumer opting out of the sale or sharing of the consumer's personal information is prohibited from selling or sharing the consumer's personal information beginning 4 calendar days after receipt of such direction, unless the consumer subsequently provides express authorization for the sale or sharing of the consumer's personal information.

(7) FORM TO OPT OUT OF SALE OR SHARING OF PERSONAL INFORMATION.—

(a) A controller shall:

1. In a form that is reasonably accessible to consumers, provide a clear and conspicuous link on the controller's

Internet homepage, entitled "Do Not Sell or Share My Personal Information," to an Internet webpage that enables a consumer, a parent or guardian of a minor who is a consumer, or a person authorized by the consumer, to opt out of the sale or sharing of the consumer's personal information. A controller may not require a consumer to create an account in order to direct the controller not to sell or share the consumer's personal information. A controller may accept a request to opt out received through a user-enabled global privacy control, such as a browser plug-in or privacy setting, device setting, or other mechanism, which communicates or signals the consumer's choice to opt out.

2. For consumers who opted out of the sale or sharing of their personal information, respect the consumer's decision to opt out for at least 12 months before requesting that the consumer authorize the sale or sharing of the consumer's personal information.

3. Use any personal information collected from the consumer in connection with the submission of the consumer's opt-out request solely for the purposes of complying with the opt-out request.

(b) A consumer may authorize another person to opt out of the sale or sharing of the consumer's personal information on the consumer's behalf pursuant to rules adopted by the department.

(8) ACTIONS RELATED TO CONSUMERS WHO EXERCISE PRIVACY RIGHTS.—

(a) A controller may not deny goods or services to a consumer because the consumer exercised any of the consumer's rights under this section.

(b) A controller may charge a consumer who exercised any of the consumer's rights under this section a different price or rate, or provide a different level or quality of goods or services to the consumer, only if that difference is reasonably related to the value provided to the controller by the consumer's data or is related to a consumer's voluntary participation in a financial incentive program, including a bona fide loyalty, rewards, premium features, discounts, or club card program offered by the controller.

(c) A controller may offer financial incentives, including payments to consumers as compensation, for the collection, sharing, sale, or deletion of personal information if the consumer gives the controller prior consent that clearly describes the material terms of the financial incentive program. The consent may be revoked by the consumer at any time.

(d) A controller may not use financial incentive practices that are unjust, unreasonable, coercive, or usurious in nature.

(9) CONTRACTS AND ROLES.—

(a) Any contract or agreement between a controller and a processor must:

1. Prohibit the processor from selling, sharing, retaining, using, or disclosing the personal information for any purpose that violates this section;

2. Prohibit the processor from retaining, using, or disclosing the personal information other than for the purposes specified in the contract or agreement;

3. Prohibit the processor from combining the personal information that the processor receives from or on behalf of the controller with personal information that the processor receives from or on behalf of another person or that the processor collects from its own interaction with the consumer, provided that the processor may combine personal information to perform any purpose specified in the contract or agreement and such combination is reported to the controller;

4. Govern the processor's personal information processing procedures with respect to processing performed on behalf of the controller, including processing instructions, the nature and purpose of processing, the type of information subject to processing, the duration of processing, and the rights and obligations of both the controller and processor;

5. Require the processor to return or delete all personal information under the contract to the controller as requested by the controller at the end of the provision of services, unless retention of the information is required by law; and

6. Upon request of the controller, require the processor

to make available to the controller all personal information in its possession under the contract or agreement.

(b) Determining whether a person is acting as a controller or processor with respect to a specific processing of data is a fact-based determination that depends upon the context in which personal information is to be processed. The contract between a controller and processor must reflect their respective roles and relationships related to handling personal information. A processor that continues to adhere to a controller's instructions with respect to a specific processing of personal information remains a processor.

(c) A third party that has collected personal information from a controller in accordance with this section:

1. May not sell or share personal information about a consumer unless the consumer is provided an opportunity by such third party to opt out under this section. Once a third party sells or shares personal information after providing the opportunity to opt out, the third party becomes a controller under this section if the entity meets the definition of controller in subsection (2).

2. May use such personal information from a controller to advertise or market products or services that are produced or offered directly by such third party.

(d) A processor or third party must require any subcontractor to meet the same obligations of such processor or

third party with respect to personal information.

(e) A processor or third party or any subcontractor thereof who violates any of the restrictions imposed upon it under this section is liable or responsible for any failure to comply with this section. A controller that discloses personal information to a third party or processor in compliance with this section is not liable or responsible if the person receiving the personal information uses it without complying with the restrictions under this section if, provided that at the time of disclosing the personal information, the controller does not have actual knowledge or reason to believe that the person does not intend to comply with this section.

(f) Any provision of a contract or agreement of any kind that waives or limits in any way a consumer's rights under this section, including, but not limited to, any right to a remedy or means of enforcement, is deemed contrary to public policy and is void and unenforceable. This section does not prevent a consumer from declining to exercise the consumer's rights under this section.

(10) ENFORCEMENT AND IMPLEMENTATION BY THE DEPARTMENT.—

(a) Any violation of this section is an unfair and deceptive trade practice actionable under part II of chapter 501 solely by the department against a controller, processor, or third party. If the department has reason to believe that any controller, processor, or third party is in violation of this

section, the department, as the enforcing authority, may bring an action against such controller, processor, or third party for an unfair or deceptive act or practice. For the purpose of bringing an action pursuant to this section, ss. 501.211 and 501.212 do not apply. In addition to other remedies under part II of chapter 501, the department may collect a civil penalty of up to $50,000 per violation of this section. Civil penalties may be tripled for the following violations:

1. Any violation involving a Florida consumer who the controller, processor, or third party has actual knowledge is 18 years of age or younger.

2. Failure to delete or correct the consumer's personal information pursuant to this section after receiving a verifiable consumer request or directions from a controller to delete or correct such personal information unless the controller, processor, or third party qualifies for an exception to the requirements to delete or correct such personal information under this section.

3. Continuing to sell or share the consumer's personal information after the consumer chooses to opt out under this section.

(b) After the department has notified a controller, processor, or third party in writing of an alleged violation, the department may in its discretion grant a 45-day period to cure the alleged violation. The 45-day cure period does not

apply to a violation of subparagraph (a)1. The department may consider the number and frequency of violations, the substantial likelihood of injury to the public, and the safety of persons or property when determining whether to grant 45 calendar days to cure and the issuance of a letter of guidance. If the violation is cured to the satisfaction of the department and proof of such cure is provided to the department, the department may not bring an action for the alleged violation but in its discretion may issue a letter of guidance that indicates that the controller, processor, or person will not be offered a 45-day cure period for any future violations. If the controller, processor, or third party fails to cure the violation within 45 calendar days, the department may bring an action against the controller, processor, or third party for the alleged violation.

(c) Any action brought by the department may be brought only on behalf of a Florida consumer.

(d) By February 1 of each year, the department shall submit a report to the President of the Senate and the Speaker of the House of Representatives describing any actions taken by the department to enforce this section. Such report must be made publicly available on the department's website. The report must include statistics and relevant information detailing:

1. The number of complaints received and the categories or types of violations alleged by the complainant;

2. The number and type of enforcement actions taken and

the outcomes of such actions, including the amount of penalties issued and collected;

3. The number of complaints resolved without the need for litigation; and

4. The status of the development and implementation of rules to implement this section.

(e) The department may adopt rules to implement this section, including standards for verifiable consumer requests, enforcement, data security, and authorized persons who may act on a consumer's behalf.

(f) The department may collaborate and cooperate with other enforcement authorities of the federal government or other state governments concerning consumer data privacy issues and consumer data privacy investigations if such enforcement authorities have restrictions governing confidentiality at least as stringent as the restrictions provided in this section.

(g) Liability for a tort, contract claim, or consumer protection claim that is unrelated to an action brought under this subsection does not arise solely from the failure of a controller, processor, or third party to comply with this section.

(h) This section does not establish a private cause of action.

(i) The department may employ or use the legal services of outside counsel and the investigative services of outside

personnel to fulfill the obligations of this section.

(11) JURISDICTION.—For purposes of bringing an action pursuant to subsection (10), any person who meets the definition of controller as defined in this section which collects, shares, or sells the personal information of Florida consumers is considered to be both engaged in substantial and not isolated activities within this state and operating, conducting, engaging in, or carrying on a business, and doing business in this state, and is therefore subject to the jurisdiction of the courts of this state.

(12) PREEMPTION.—This section is a matter of statewide concern and supersedes all rules, regulations, codes, ordinances, and other laws adopted by a city, county, city and county, municipality, or local agency regarding the collection, processing, sharing, or sale of consumer personal information by a controller or processor. The regulation of the collection, processing, sharing, or sale of consumer personal information by a controller or processor is preempted to the state.

Section 3. Paragraph (g) of subsection (1) of section 501.171, Florida Statutes, is amended to read:

501.171 Security of confidential personal information.—

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

(g)1. "Personal information" means either of the following:

a. An individual's first name or first initial and last

name in combination with any one or more of the following data elements for that individual:

(I) A social security number;

(II) A driver license or identification card number, passport number, military identification number, or other similar number issued on a government document used to verify identity;

(III) A financial account number or credit or debit card number, in combination with any required security code, access code, or password that is necessary to permit access to an individual's financial account;

(IV) Any information regarding an individual's medical history, mental or physical condition, or medical treatment or diagnosis by a health care professional; ~~or~~

(V) An individual's health insurance policy number or subscriber identification number and any unique identifier used by a health insurer to identify the individual;

(VI) An individual's biometric information or genetic information as defined in s. 501.173(2); or

(VII) Any information regarding an individual's geolocation.

b. A user name or e-mail address, in combination with a password or security question and answer that would permit access to an online account.

2. The term does not include information about an

individual that has been made publicly available by a federal, state, or local governmental entity. The term also does not include information that is encrypted, secured, or modified by any other method or technology that removes elements that personally identify an individual or that otherwise renders the information unusable.

Section 4. Section 501.1735, Florida Statutes, is created to read:

501.1735 Protection of children in online spaces.—

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

(a) "Child" or "children" means a consumer or consumers who are under 18 years of age.

(b) "Dark pattern" means a user interface designed or manipulated with the substantial effect of subverting or impairing user autonomy, decision-making, or choice and includes, but is not limited to, any practice the Federal Trade Commission refers to as a dark pattern.

(c) "Online platform" means a social media platform as defined in s. 112.23(1) or an online gaming platform.

(d) "Personal information" has the same meaning as in s. 501.173(2).

(e) "Precise geolocation data" has the same meaning as in s. 501.173(2).

(f) "Profile" or "profiling" means any form of automated processing performed on personal information to evaluate,

analyze, or predict personal aspects relating to the economic situation, health, personal preferences, interests, reliability, behavior, location, or movements of a child.

(g) "Substantial harm or privacy risk to children" means the processing of personal information in a manner that may result in any reasonably foreseeable substantial physical injury, economic injury, or offensive intrusion into the privacy expectations of a reasonable child under the circumstances, including:

1. Mental health disorders or associated behaviors, including the promotion or exacerbation of self-harm, suicide, eating disorders, and substance abuse disorders;

2. Patterns of use that indicate or encourage addictive behaviors;

3. Physical violence, online bullying, and harassment;

4. Sexual exploitation, including enticement, sex trafficking, and sexual abuse and trafficking of online sexual abuse material;

5. Promotion and marketing of tobacco products, gambling, alcohol, or narcotic drugs as defined in s. 102 of the Controlled Substances Act, 21 U.S.C. 802; or

6. Predatory, unfair, or deceptive marketing practices, or other financial harms.

(2) An online platform that provides an online service, product, game, or feature likely to be predominantly accessed by children may not:

(a) Process the personal information of any child if the online platform has actual knowledge or willfully disregards that the processing may result in substantial harm or privacy risk to children.

(b) Profile a child unless both of the following criteria are met:

1. The online platform can demonstrate it has appropriate safeguards in place to protect children.

2.a. Profiling is necessary to provide the online service, product, or feature requested and only with respect to the aspects of the online service, product, or feature with which the child is actively and knowingly engaged; or

b. The online platform can demonstrate a compelling reason that profiling does not pose a substantial harm or privacy risk to children.

(c) Collect, sell, share, or retain any personal information that is not necessary to provide an online service, product, or feature with which a child is actively and knowingly engaged unless the online platform can demonstrate a compelling reason that collecting, selling, sharing, or retaining the personal information does not pose a substantial harm or privacy

risk to children likely to routinely access the online service, product, or feature.

(d) Use personal information of a child for any reason other than the reason for which the personal information was collected, unless the online platform can demonstrate a compelling reason that the use of the personal information does not pose a substantial harm or privacy risk to children.

(e) Collect, sell, or share any precise geolocation data of children unless the collection of the precise geolocation data is strictly necessary for the online platform to provide the service, product, or feature requested and then only for the limited time that the collection of the precise geolocation data is necessary to provide the service, product, or feature.

(f) Collect any precise geolocation data of a child without providing an obvious sign to the child for the duration of the collection that the precise geolocation data is being collected.

(g) Use dark patterns to lead or encourage children to provide personal information beyond what is reasonably expected to provide that online service, product, game, or feature; to forego privacy protections; or to take any action that the online platform has actual knowledge or willfully disregards may result in substantial harm or privacy risk to children.

(h) Use any personal information collected to estimate age or age range for any other purpose or retain that personal

information longer than necessary to estimate age. The age estimate must be proportionate to the risks and data practice of an online service, product, or feature.

(3) If an online platform processes personal information pursuant to subsection (2), the online platform bears the burden of demonstrating that such processing does not violate subsection (2).

(4) An online platform that violates subsection (2) is subject to enforcement actions under s. 501.173 and such enforcement actions are the exclusive remedy. This section does not establish a private cause of action.

Section 5. Subsection (1) of section 16.53, Florida Statutes, is amended, and subsection (8) is added to that section, to read:

16.53 Legal Affairs Revolving Trust Fund.—

(1) There is created in the State Treasury the Legal Affairs Revolving Trust Fund, from which the Legislature may appropriate funds for the purpose of funding investigation, prosecution, and enforcement by the Attorney General of the provisions of the Racketeer Influenced and Corrupt Organization Act, the Florida Deceptive and Unfair Trade Practices Act, the Florida False Claims Act, ~~or~~ state or federal antitrust laws, or s. 501.173.

(8) All moneys recovered by the Attorney General for attorney fees, costs, and penalties in an action for a violation

of s. 501.173 must be deposited in the fund.

Section 6. This act shall take effect July 1, 2023.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1549 Pub. Rec./Investigations by the Department of Legal Affairs
SPONSOR(S): Regulatory Reform & Economic Development Subcommittee, McFarland
TIED BILLS: CS/HB 1547 **IDEN./SIM. BILLS:** CS/SB 1648

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	15 Y, 0 N, As CS	Wright	Anstead
2) State Affairs Committee	19 Y, 0 N	Poreda	Williamson
3) Commerce Committee		Wright	Hamon

SUMMARY ANALYSIS

As technologies that capture and analyze data proliferate, so, too, do businesses' abilities to contextualize consumer data. Businesses use it for a range of purposes. The European Union, California, and a few other states have enacted data privacy regulations to protect consumers' personal information and give consumers more control over how their information is used.

CS/HB 1547, to which this bill is linked, gives certain consumer rights related to personal information, including the right to access personal information collected about them; the right to delete or correct their personal information; the right to opt-out of the sale or sharing of their personal information to third parties; and online platform protections for children. The Department of Legal Affairs (DLA), upon belief that any controller, processor, third party, or online platform is in violation of CS/HB 1547's provisions, may bring an action under the Florida Unfair or Deceptive Trade Practices Act against a controller, processor, or third party.

This bill, which is linked to the passage of CS/HB 1547, provides that all information received by DLA pursuant to a notification or investigation by DLA or a law enforcement agency of a violation is confidential and exempt from public record requirements. The bill provides that the information may be released by DLA during an active investigation:

- In the furtherance of its official duties and responsibilities;
- For print, publication, or broadcast to notify the public of a data breach; or
- To another governmental entity in the furtherance of the receiving entity's official duties and responsibilities.

Once an investigation is completed, the following information remains confidential and exempt:

- All information to which another public records exemption applies;
- Personal information;
- A computer forensic report;
- Information that would otherwise reveal weaknesses in data security; and
- Information that would otherwise disclose proprietary information.

The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2028, unless reviewed and saved from repeal through reenactment by the Legislature.

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:

Present Situation

Public Records

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.[1] The Legislature, however, may provide by general law for the exemption of records from these requirements provided the exemption passes by two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption, and is no broader than necessary to meet its public purpose.[2]

Public policy regarding access to government records is also addressed by statute. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt.[3] Furthermore, the Open Government Sunset Review Act[4] provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose that is sufficiently compelling to override the strong public policy of open government and that cannot be accomplished without the exemption.[5] An identifiable public purpose is served if the exemption meets one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects 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; or
- Protects trade or business secrets.[6]

The Open Government Sunset Review Act requires the automatic repeal of a newly created exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.[7]

Technology Transparency

As technologies that capture and analyze data proliferate, so, too, do businesses' abilities to contextualize consumer data. Businesses use it for a range of purposes, including better understanding day-to-day operations, making more informed business decisions and learning about their customers.[8]

The European Union, several other countries, California, and a few other states have enacted data privacy regulations to protect such data and give consumers more control over how their information is used. Florida does not have a broad data privacy law, but there is a law which governs what actions must be taken by certain government and business entities in the event of a data breach of personal information.[9]

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[1] Art. I, s. 24(a), FLA. CONST.
[2] Art. I, s. 24(c), FLA. CONST.
[3] A "public record exemption" means a provision of general law which provides that a specified record, or portion thereof, is not subject to the access requirements of s. 119.07(1), F.S., or s. 24, Art. I of the State Constitution. *See* s. 119.011(8), F.S.
[4] S. 119.15, F.S.
[5] S. 119.15(6)(b), F.S.
[6] *Id.*
[7] S. 119.15(3), F.S.
[8] Max Freedman, How Businesses Are Collecting Data (And What They're Doing With It), Business News Daily (Jun. 17, 2020) https://www.businessnewsdaily.com/10625-businesses-collecting-data.html. (last visited Mar. 31, 2023)
[9] S. 501.171, F.S.

Department of Legal Affairs

The Office of the Attorney General, also known as the Department of Legal Affairs (DLA), provides a wide variety of legal services, including defending the state in civil litigation cases, representing the people of Florida in criminal appeals in state and federal courts, protecting rights of children, consumers, and victims through its various protection programs, and investigating and litigating against businesses that seek to limit competition and defraud taxpayers.[10]

CS/HB 1547

CS/HB 1547, to which this bill is linked, gives certain consumer rights related to personal information, including:

- The right to access personal information collected on them by a controller;
- The right to delete or correct their personal information; and
- The right to opt-out of the sale or sharing of their personal information to third parties.

A "controller" is a for profit entity doing business in Florida that:

- Collects and controls personal information;
- Has global annual gross revenues in excess of $1 billion; and
- Satisfies one of the following thresholds:
    - Derives 50 percent or more of its global annual revenues from providing targeted advertising or the sale of ads online; or
    - Operates a consumer smart speaker and voice command component service with an integrated virtual assistant connected to a cloud computing service that uses hands-free verbal activation. A consumer smart speaker and voice command component service does not include a motor vehicle or speaker or device associated with or connected to a vehicle.

Under the bill, personal information is information that identifies, relates to, or describes a particular consumer or household, or is reasonably capable of being directly or indirectly associated or linked with, a particular consumer or household. The term does not include public information from government records, certain employment information, or deidentified or aggregate consumer information.

The bill provides certain operational requirements on controllers with respect to collecting, selling, or sharing personal information with processors or third parties.

Also, the bill provides that online platforms that are predominantly accessed by children may not, except under certain circumstances:

- Process personal information of or profile a child.
- Collect, sell, share, or retain personal information or geolocation of a child.
- Use a child's personal information for any unstated reason.
- Use dark patterns to obtain more information of a child than necessary.
- Use collected information to estimate age for any other reason.

DLA, upon belief that any controller, processor, third party, or online platform is in violation of the bill, may bring an action under the Florida Unfair or Deceptive Trade Practices Act against a controller, processor, or third party.

[10] OPPAGA, Office of the Attorney General (Department of Legal Affairs), https://oppaga.fl.gov/ProgramSummary/ProgramDetail?programNumber=1026 (last visited Mar. 31, 2023).

Effect of Proposed Changes

The bill creates a public record exemption for all information received by DLA pursuant to a notification or investigation by DLA or a law enforcement agency of a violation of certain statutory requirements. Such information is made confidential and exempt[11] from public record requirements.

During an active investigation, information made confidential and exempt may be disclosed by DLA:

- In the furtherance of its official duties and responsibilities;
- For print, publication, or broadcast if DLA determines that such release would assist in notifying the public or locating or identifying a person that DLA believes to be a victim of a data breach or improper use or disposal of customer records, except that information made confidential and exempt after an investigation may not be released in this manner; or
- To another governmental entity in the furtherance of the receiving entity's official duties and responsibilities.

Once an investigation is completed or once an investigation ceases to be active, the following information received by DLA remains confidential and exempt:

- All information to which another public records exemption applies;
- Personal information;
- A computer forensic report;
- Information that would otherwise reveal weaknesses in a controller's, processor's, or third party's data security; and
- Information that would otherwise disclose a controller's, processor's, or third party's proprietary information.

The bill defines the term "proprietary information" to mean information that:

- Is owned or controlled by the controller, processor, or third party;
- Is intended to be private and is treated by the controller, processor, or third party as private because disclosure would harm the controller, processor, or third party or its business operations;
- Has not been disclosed except as required by law or a private agreement that provides that the information will not be released to the public;
- Is not publicly available or otherwise readily ascertainable through proper means from another source in the same configuration as received by DLA; and
- Includes trade secrets and competitive interests.

The bill provides a public necessity statement as required by article I, s. 24(c) of the Florida Constitution. The public necessity statement provides that, if released, information received by DLA pursuant to an investigation by DLA or a law enforcement agency could:

- Frustrate or thwart the investigation and impair the ability of DLA to perform assigned functions;
- Undo a specific statutory exemption protecting the information;
- Be used for the purpose of identity theft;
- Result in the identification of vulnerabilities; and
- Result in economic harm.

The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2028, unless the Legislature reviews and reenacts the exemption by that date.

[11] 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).

The bill will become effective on the same date that CS/HB 1547 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

B. SECTION DIRECTORY:

Section 1: Creates a public record exemption for investigations related to ss. 501.173 or 501.1735, F.S.
Section 2: Provides a public necessity statement as required by the Florida Constitution.
Section 3: Provides an effective date of the same date that CS/HB 1547 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

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

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:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record 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, s. 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. The public necessity statement provides that, if released, information received by DLA pursuant to an investigation could frustrate or thwart the investigation and impair the ability of DLA to perform assigned functions, undo a specific statutory exemption protecting the information, be used for the purpose of identity theft, result in the identification of vulnerabilities, and result in economic harm.

Breadth of Exemption

Article I, s. 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 record 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

On March 28, 2023, the Regulatory Reform & Economic Development Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment made conforming technical changes to conform to the linked bill.

This analysis is drafted to the committee substitute as adopted by the Regulatory Reform & Economic Development Subcommittee.

A bill to be entitled

An act relating to public records; amending s. 501.173, F.S.; providing an exemption from public records requirements for information relating to investigations by the Department of Legal Affairs and law enforcement agencies of certain data privacy violations; providing for future legislative review and repeal of the exemption; 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 (13) is added to section 501.173, Florida Statutes, as created by HB 1547, 2023 Regular Session, to read:

501.173 Consumer data privacy.—

(13) PUBLIC RECORDS EXEMPTION.—

(a) All information received by the department pursuant to a notification of a violation under this section, or received by the department pursuant to an investigation by the department or a law enforcement agency of a violation of this section or s. 501.1735, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, until such time as the investigation is completed or ceases to be active. This

exemption shall be construed in conformity with s. 119.071(2)(c).

(b) During an active investigation, information made confidential and exempt pursuant to paragraph (a) may be disclosed by the department:

1. In the furtherance of its official duties and responsibilities;

2. For print, publication, or broadcast if the department determines that such release would assist in notifying the public or locating or identifying a person that the department believes to be a victim of a data breach or improper use or disposal of customer records, except that information made confidential and exempt by paragraph (c) may not be released pursuant to this subparagraph; or

3. To another governmental entity in the furtherance of its official duties and responsibilities.

(c) Upon completion of an investigation or once an investigation ceases to be active, the following information received by the department shall remain confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. All information to which another public records exemption applies.

2. Personal information.

3. A computer forensic report.

4. Information that would otherwise reveal weaknesses in the data security of a controller, processor, or third party.

5. Information that would disclose the proprietary information of a controller, processor, or third party.

(d) For purposes of this subsection, the term "proprietary information" means information that:

1. Is owned or controlled by the controller, processor, or third party.

2. Is intended to be private and is treated by the controller, processor, or third party as private because disclosure would harm the controller, processor, or third party or its business operations.

3. Has not been disclosed except as required by law or a private agreement that provides that the information will not be released to the public.

4. Is not publicly available or otherwise readily ascertainable through proper means from another source in the same configuration as received by the department.

5. Includes:

a. Trade secrets as defined in s. 688.002.

b. Competitive interests, the disclosure of which would impair the competitive advantage of the controller, processor, or third party who is the subject of the information.

(e) 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 all information received by the Department of Legal Affairs pursuant to a notification of a violation of s. 501.173 or s. 501.1735, Florida Statutes, or received by the department pursuant to an investigation by the department or a law enforcement agency of a violation of s. 501.173 or s. 501.1735, Florida Statutes, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution for the following reasons:

(1) A notification of a violation of s. 501.173 or s. 501.1735, Florida Statutes, may result in an investigation of such violation. The premature release of such information could frustrate or thwart the investigation and impair the ability of the department to effectively and efficiently administer s. 501.173 or s. 501.1735, Florida Statutes. In addition, release of such information before completion of an active investigation could jeopardize the ongoing investigation.

(2) Release of information to which another public record exemption applies once an investigation is completed or ceases to be active would undo the specific statutory exemption protecting that information.

(3) An investigation of a violation of s. 501.173 or s. 501.1735, Florida Statutes, is likely to result in the gathering

of sensitive personal information, including identification numbers, unique identifiers, professional or employment-related information, and personal financial information. Such information could be used for the purpose of identity theft. The release of such information could subject possible victims of data privacy violations to further harm.

(4) Notices received by the department and information received during an investigation of a violation of s. 501.173 or s. 501.1735, Florida Statutes, are likely to contain proprietary information. Such information, including trade secrets, derives independent, economic value, actual, or potential, from being generally unknown to, and not readily ascertainable by, other persons who might obtain economic value from its disclosure or use. Allowing public access to proprietary information, including a trade secret, through a public records request could destroy the value of the proprietary information and cause a financial loss to the controller, processor, or third party submitting the information. Release of such information could give business competitors an unfair advantage and weaken the position of the entity supplying the proprietary information in the marketplace.

(5) Information received by the department may contain a computer forensic report or information that could reveal weaknesses in the data security of a controller, processor, or third party. The release of this information could result in the

identification of vulnerabilities in the cybersecurity system of the controller, processor, or third party and be used to harm the controller, processor, or third party and clients.

(6) The harm that may result from the release of information received by the department pursuant to a notification or investigation by the department or a law enforcement agency of a violation of s. 501.173 or s. 501.1735, Florida Statutes, could impair the effective and efficient administration of the investigation and thus, outweighs the public benefit that may be derived from the disclosure of the information.

Section 3. This act shall take effect on the same date that HB 1547 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

PCB COM 23-05

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB COM 23-05 Changes in Ownership of or Interest in Pari-mutuel Permits
SPONSOR(S): Commerce Committee
TIED BILLS: **IDEN./SIM. BILLS:** SB 7044

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

SUMMARY ANALYSIS

The Florida Gaming Control Commission (commission) is the regulatory body that is responsible for exercising all regulatory and executive powers of the state with respect to gambling, including pari-mutuel wagering, cardrooms, and slot machine facilities. The Florida Pari-mutuel Wagering Act (Act) provides specific permitting and licensure requirements for the pari-mutuel industry. Pari-mutuel wagering activities are limited to operators who have received a permit from the commission, which is then subject to ratification by county referendum. Permitholders apply for an operating license annually to conduct pari-mutuel wagering activities. Certain permitholders are authorized to operate cardrooms and slot machines at their facility.

The Act generally requires that any transfer or assignment of a permit receive prior approval by the commission, which must determine the eligibility of persons and entities to hold a permit. Similarly, if a permit is held by a corporation or business entity other than an individual, the transfer of ten percent or more of the stock or other evidence of ownership or equity in the permitholder may not be made without the prior approval of the transferee by the commission.

The Act restricts a pari-mutuel permitholder from holding a permit, or being issued an operating license to conduct pari-mutuel wagering, slot machine gaming, or the operation of a cardroom, if the permitholder did not hold an operating license for the conduct of pari-mutuel wagering for Fiscal Year 2020-2021. The Act exempts converted thoroughbred permits from this restriction.

The bill **relaxes the provisions in the Act that restrict pari-mutuel permitholders** from holding a permit, or being issued an operating license, regardless of whether the permitholder held an operating license for Fiscal Year 2020-2021.

Relating to permits, the bill **allows a permit, for the conduct of pari-mutuel wagering and associated cardroom and slot machine licenses, to be held** by a purchaser, transferee, or assignee of a valid permit to conduct pari-mutuel wagering, if approved by the commission before such purchase, transfer, or assignment, and provided that the commission does not approve or issue an additional permit for the conduct of pari-mutuel wagering.

Relating to cardrooms, the bill **allows a purchaser, transferee, or assignee of a valid permit to be issued** a license to operate a cardroom.

Relating to operating licenses, the bill **authorizes the issuance of an operating license** to an eligible purchaser, transferee, or assignee of a valid permit.

The bill does not appear to have a fiscal impact on state or local government. The bill may expand the sale and transfer market for pari-mutuel permitholders.

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

General Overview of Gaming in Florida

Gambling is generally prohibited in Florida, unless specifically authorized. Section 7, Art. X, of the Florida Constitution prohibits lotteries, other than pari-mutuel pools, from being conducted in Florida. Chapter 849, F.S., includes prohibitions against slot machines, keeping a gambling house and running a lottery. However, a constitutional amendment approved by voters in 1986 authorized state-operated lotteries, and a constitutional amendment in 2004 authorized slot machines in Miami-Dade and Broward Counties.

The following gaming activities are also authorized by law and regulated by the state:

- Pari-mutuel[1] wagering;[2]
- Gaming on tribal reservations in accordance with the Indian Gaming and Regulatory Act and the 2010 Gaming Compact with the Seminole Tribe of Florida;
- Slot machine gaming at certain licensed pari-mutuel locations in Miami-Dade County and Broward County;[3] and
- Cardrooms[4] at certain pari-mutuel facilities.

Chapter 849, F.S., also authorizes, under specific and limited conditions, the conduct of penny-ante games,[5] bingo,[6] charitable drawings,[7] game promotions (sweepstakes),[8] bowling tournaments,[9] and skill-based amusement games and machines at specified locations.[10]

In 2013, the legislature clarified that Internet café style gambling machines were illegal in the state. The legislation clarified existing sections of law regarding slot machines, charitable drawings, game promotions, and amusement machines and created a rebuttable presumption that machines used to simulate casino-style games in schemes involving consideration and prizes are prohibited slot machines.[11]

In 2015, the legislature determined that the regulation of the operation of skill-based amusement games and machines would ensure compliance with Florida's limitations on gambling and prevent the expansion of casino-style gambling. The legislature clarified regulations related to the operation and use of amusement games or machines to ensure that regulations would not be interpreted as creating an exception to the state's general prohibitions against gambling.[12]

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[1] "Pari-mutuel" is defined in Florida law as "a system of betting on races or games in which the winners divide the total amount bet, after deducting management expenses and taxes, in proportion to the sums they have wagered individually and with regard to the odds assigned to particular outcomes. *See* s. 550.002(22), F.S.

[2] *See* ch. 550, F.S., relating to the regulation of pari-mutuel activities.

[3] *See* FLA. CONST., art. X, s. 23, and ch. 551, F.S.

[4] S. 849.086(2)(c), F.S., defines "cardroom" to mean "a facility where authorized card games are played for money or anything of value and to which the public is invited to participate in such games and charged a fee for participation by the operator of such facility."

[5] S. 849.085, F.S.

[6] S. 849.0931, F.S.

[7] S. 849.0935, F.S.

[8] S. 849.094, F.S., authorizes game promotions in connection with the sale of consumer products or services.

[9] S. 849.141, F.S.

[10] S. 546.10, F.S.

[11] Florida House of Representatives Select Committee on Gaming, Final Bill Analysis of 2013 CS/HB 155, p. 1 (Apr. 19, 2013).

[12] S. 546.10, F.S.

Amendment to Florida Constitution Prohibiting Racing of and Wagering on Greyhounds or Other Dogs

During the 2018 General Election, the voters approved an initiative constitutional amendment, Amendment 13, Prohibition on Racing of and Wagering on Greyhounds or Other Dogs, which has been codified in the State Constitution as Article X, Section 32.[13]

Article X, Section 32 states:

> Prohibition on racing of and wagering on greyhounds or other dogs.—The humane treatment of animals is a fundamental value of the people of the State of Florida. After December 31, 2020, a person authorized to conduct gaming or pari-mutuel operations may not race greyhounds or any member of the *Canis Familiaris* subspecies in connection with any wager for money or any other thing of value in this state, and persons in this state may not wager money or any other thing of value on the outcome of a live dog race occurring in this state. The failure to conduct greyhound racing or wagering on greyhound racing after December 31, 2018, does not constitute grounds to revoke or deny renewal of other related gaming licenses held by a person who is a licensed greyhound permitholder on January 1, 2018, and does not affect the eligibility of such permitholder, or such permitholder's facility, to conduct other pari-mutuel activities authorized by general law. By general law, the legislature shall specify civil or criminal penalties for violations of this section and for activities that aid or abet violations of this section.

As of January 1, 2021, wagering on live greyhound racing in Florida is completely prohibited. However, cardroom and slot machine facilities by such permitholders may continue to operate after the closure of racing activities.

Pari-mutuel Wagering

Since approximately 1931, pari-mutuel wagering has been authorized in Florida for jai alai, greyhound racing, and horseracing. These activities are overseen and regulated[14] by the Division of Pari-Mutuel Wagering (division) at the Florida Gaming Control Commission (commission), which is housed within the Department of Legal Affairs, Office of the Attorney General.[15] The commission is tasked with exercising all regulatory and executive powers of the state on all forms of gambling authorized by the State Constitution or law including pari-mutuel wagering, card rooms, slot machine facilities, and the oversight of gaming compacts under the federal Indian Gaming Regulatory Act but excluding state lottery games authorized by the State Constitution.[16]

Pari-Mutuel Wagering State Revenue

License fees and taxes collected by pari-mutuel wagering permitholders, including slot machine and cardroom permitholders, are deposited with the Chief Financial Officer, to the credit of the Pari-mutuel Wagering Trust Fund. Slot machine tax revenue is transferred from the Pari-mutuel Wagering Trust Fund to the Educational Enhancement Trust Fund to supplement public education funding statewide. Taxes collected by cardrooms are split between the Pari-mutuel Wagering Trust Fund and the General Revenue Fund.

Pari-Mutuel Wagering Live Performance Requirements

[13] See the text of Amendment 13, now codified as art. X, s. 32, at http://www.leg.state.fl.us/Statutes/index.cfm?Mode=Constitution&Submenu=3&Tab=statutes#A10S32 (last visited Apr. 20, 2023).
[14] From 1932 to 1969, Florida's pari-mutuel industry was regulated by the State Racing Commission. In 1970, the commission became a division within the Department of Business Regulation, which, in 1993, became DBPR.
[15] *See* ss. 16.71-16.716, F.S.
[16] S. 16.712, F.S.

Currently, only thoroughbred permitholders are required to conduct live racing.[17] Greyhound permitholders may not conduct live racing, and jai alai permitholders, harness horse racing permitholders, or quarter horse racing permitholders may elect not to conduct live racing or games.

A greyhound permitholder, jai alai permitholder, harness horse racing permitholder, or quarter horse racing permitholder that does not conduct live racing or games:[18]

- Retains its permit;
- Is a pari-mutuel facility as defined in s. 550.002(23), F.S.;
- Is eligible, but not required, to be a guest track, and if the permitholder is a harness horse racing permitholder, is eligible to be a host track for purposes of intertrack wagering and simulcasting pursuant to ss. 550.3551, 550.615, 550.625, and 550.6305, F.S.; and
- Remains eligible for a cardroom license.

A permitholder or licensee may not conduct live greyhound racing or dogracing in connection with any wager for money or any other thing of value in the state. The division is authorized to deny, suspend, or revoke any permit or license in ch. 550, F.S., for conducting live greyhound racing or dogracing in violation of this provision. In addition to, or in lieu of, denial, suspension, or revocation of such permit or license, the division is authorized to impose a civil penalty of up to $5,000. All penalties imposed and collected must be deposited with the Chief Financial Officer to the credit of the General Revenue Fund.[19]

Pari-mutuel Wagering Permitting and Licensure

The Florida Pari-mutuel Wagering Act (Act)[20] provides specific permitting and licensing requirements for the conduct of the pari-mutuel industry.[21] Pari-mutuel wagering activities are limited to operators who have received a permit from the division, which is then subject to ratification by county referendum.[22] Permitholders apply for an operating license annually to conduct pari-mutuel wagering activities.[23] Certain permitholders are also authorized to operate cardrooms[24] and slot machines at their facility.[25]

During Fiscal Year 2020-2021, the following 39 pari-mutuel permitholders were licensed to operate:[26]

- Nineteen Greyhound Racing permits.
- Three Thoroughbred Horse Racing permits.
- One Harness Horse Racing permit.
- Six Quarter Horse Racing permits.
- Ten Jai-Alai permits.

The division may revoke or suspend any permit or license upon the willful violation by the permitholder or licensee of any provision of the Act, or any administrative rule adopted by the division, and may impose a civil penalty against the permitholder or license up to $1,000 for each offense.[27]

During Fiscal Year 2021-2022, the division issued 40 rulings and 14 consent orders, assessed fines totaling $16,500 and imposed three license suspensions for violations.[28]

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[17] S. 550.01215(1)(b)1., F.S.
[18] *Id.*
[19] S. 550.01215(1)(b)2., F.S.
[20] Ch. 550, F.S.
[21] S. 550.054(1), F.S.
[22] S. 550.054(2), F.S.
[23] S. 550.0115, F.S.
[24] S. 849.086, F.S.
[25] S. 551.104, F.S.
[26] Florida Gaming Control Commission, *Annual Report Fiscal Year 2021-2022*, https://flgaming.gov/pmw/annual-reports/docs/AnnualReport-2021-2022--1st%20FGCC--20221206.pdf (last visited Apr. 20, 2023.)
[27] S. 550.054(9)(b), F.S.
[28] *Id.*

Pari-Mutuel Wagering License Restrictions

The Act generally requires that any transfer or assignment of a permit receive prior approval[29] by the commission, which must determine the eligibility[30] of persons and entities to hold a permit. Similarly, if a permit is held by a corporation or business entity other than an individual, the transfer of ten percent or more of the stock or other evidence of ownership or equity in the permitholder may not be made without the prior approval of the transferee by the commission.[31]

The Act provides restrictions on which persons and entities (including but not limited to employees, officers and directors, partners, and owners of the permitholder) may hold permits, based on whether they are of "good moral character," or have been convicted of a disqualifying felony[32] or for bookmaking.[33]

The Act restricts pari-mutuel permitholders from being issued an operating license to conduct pari-mutuel wagering, slot machine gaming, or the operation of a cardroom if the permitholder did not hold an operating license for the conduct of pari-mutuel wagering for Fiscal Year 2020-2021.[34]

The Act restricts pari-mutuel permitholders from holding a permit to conduct pari-mutuel wagering and associated cardroom or slot machine licenses[35] unless the permitholder, other than a limited thoroughbred permitholder, held an operating license for the conduct of pari-mutuel wagering for Fiscal year 2020-2021.[36]

The Act restricts cardroom licenses from being issued to any permitholder, other than a limited thoroughbred permitholder, if the permitholder did not hold an operating license for Fiscal Year 2020-2021.[37]

The Act specifies that permits held on January 1, 2021 are deemed valid, but new permits for pari-mutuel wagering may not be approved or issued.[38]

The commission is required to revoke the permit of any permitholder, other than a limited thoroughbred permitholder, who did not hold an operating license for the conduct of pari-mutuel wagering for fiscal year 2020-2021. A permit revoked under this provision is void and may not be reissued.[39]

Recent Activities

In December 2022, West Flagler Associates, Ltd. applied[40] to the commission to transfer its pari-mutuel permit #155[41] and associated licenses to conduct pari-mutuel wagering, slot machine gaming, and

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[29] There is one exception to the prior-approval requirement in s. 550.054(11)(a), F.S., which is that the holder of a permit converted to a jai alai permit "may lease or build anywhere within the county in which its permit is located." As of 2021, such conversions are prohibited. *See* s. 550.054(15)(d), F.S.

[30] *See* s. 550.1815, F.S

[31] *See* s. 550.054(11), F.S.

[32] Pursuant to s. 550.1815(1)(b), F.S., the following are disqualifying felonies: (1) a felony in Florida; (2) any felony in any other state which would be a felony if committed in Florida under the laws of this state; (3) any felony under the laws of the United States; or (4) a felony under the laws of another state if related to gambling which would be a felony under Florida law if the offense was committed in Florida.

[33] The term "bookmaking" is defined in s. 849.25, F.S., to mean "the act of taking or receiving, while engaged in the business or profession of gambling, any bet or wager upon the result of any trial or contest of skill, speed, power, or endurance of human, beast, fowl, motor vehicle, or mechanical apparatus or upon the result of any chance, casualty, unknown, or contingent event whatsoever."

[34] S. 550.01215(1)(d), F.S.

[35] Under s. 551.114(4), F.S., designated slot machine gaming areas must be located at the address specified in the licensed permitholder's slot machine license issued for Fiscal Year 2020-2021.

[36] S. 550.054(15)(a), F.S.

[37] S. 849.086(5)(c), F.S.

[38] S. 550.054(15)(c), F.S.

[39] S. 550.054(9)(a), F.S.

[40] Florida Gaming Control Commission, Meetings Archive, *Discussion of application for ownership transfer 4.1 2022-048451 West Flagler Associates, LTD* (Dec. 1, 2022), https://flgaming.gov/meetings/archive/ (last visited Apr. 19, 2023).

operate a cardroom, to Wind Creek Miami, LLC, a wholly owned subsidiary of PCI Gaming Authority, an unincorporated chartered instrumentality of the Poarch Band of Creek Indians. The commission did not approve the transfer of the permit because Wind Creek Miami, LLC did not hold an operating license for the conduct of pari-mutuel wagering for Fiscal Year 2020-2021 as required by the Act.[42]

In February 2023, the commission conditionally approved the acquisition of West Flagler Associates, Ltd.'s permit after PCI Gaming Authority substituted Gretna Racing LLC as the purchaser of pari-mutuel permit #155 and the accompanying pari-mutuel, slot machine, and cardroom licenses.[43] Gretna Racing LLC did hold an operating license for pari-mutuel wagering and for the operation of a cardroom for Fiscal Year 2020-2021.[44]

Prior to 2021, Debary Real Estate Holdings, LLC, Jefferson County Kennel Club, and North American Racing Association held pari-mutuel wagering permits, but did not possess an operating license for the conduct of pari-mutuel wagering for Fiscal Year 2020–2021. Accordingly, the commission issued notices of intent to revoke their permits, pursuant to the restrictions in the Act. The three entities have challenged the commission's proposed agency action by filing petitions for formal administrative hearings that are currently being litigated at the Division of Administrative Hearings.[45]

Proposed Changes

The bill **relaxes the restrictions** on pari-mutuel permitholders from holding a permit, or being issued an operating license, **regardless of whether the permitholder held an operating license for Fiscal Year 2020-2021.**

Specifically, relating to permits, the bill **allows a permit for the conduct of pari-mutuel wagering and associated cardroom and slot machine licenses, to be held** by a purchaser, transferee, or assignee of a valid permit to conduct pari-mutuel wagering, if approved by the commission before such purchase, transfer, or assignment, and provided that the commission does not approve or issue an additional permit for the conduct of pari-mutuel wagering.

Relating to cardrooms, the bill **allows a purchaser, transferee, or assignee of a valid permit to be issued** a license to operate a cardroom.

Relating to operating licenses, the bill **authorizes the issuance of an operating license** to an eligible purchaser, transferee, or assignee of a valid permit.

The bill becomes effective upon becoming a law.

B. SECTION DIRECTORY:

Section 1: Amends s. 550.054, F.S., relating to the application for permit to conduct pari-mutuel wagering.

Section 2: Amends s. 849.086, F.S., relating to cardrooms authorized.

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[41] Florida Gaming Control Commission, *Tracks and Frontons, Permit Holders List 2021-2022, Flagler Dog Track and Magic City Casino, Permit No. 155*, https://flgaming.gov/pmw/tracks-frontons/ (last visited Apr. 19, 2023).
[42] S. 550.01215(1)(d), F.S., also prohibits the issuance of an operating license for the conduct of pari-mutuel wagering, slot machine gaming, or the operation of a cardroom, if the permitholder did not hold an operating license to conduct pari-mutuel wagering for Fiscal Year 2020-2021. Section 849.086(5)(c), F.S., also prohibits the issuance of a cardroom license under the same restrictions.
[43] Florida Gaming Control Commission, Meetings Archive, *Discussion of application for ownership transfer 2.1. 2022-048451 West Flagler Associates, LTD 3. Discussion of recommended orders* (Feb. 8, 2023), https://flgaming.gov/meetings/archive/ (last visited Apr. 19, 2023).
[44] Florida Gaming Control Commission, *Permit Holder Operating Licenses 2022-2023, Gretna Racing, LLC (542)*, https://flgaming.gov/pmw/tracks-frontons/permitholder-operating-licenses-2022-2023/ (last visited Apr. 19, 2023).
[45] Florida Gaming Control Commission, *Annual Report Fiscal Year 2021-2022, Pending Litigation*, https://flgaming.gov/pmw/annual-reports/docs/AnnualReport-2021-2022--1st%20FGCC--20221206.pdf (last visited Apr. 20, 2023).

Section 3: Amends s. 550.0125, F.S., relating to license application; periods of operation; license fees; bond.

Section 4: Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Relaxing restrictions on eligibility for pari-mutuel wagering operating licensure may expand the market related to the sale and transfer of such licenses.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to changes in ownership of or interest in pari-mutuel permits; amending s. 550.054, F.S.; revising entities authorized to hold pari-mutuel wagering permits and associated licenses; amending s. 849.086, F.S.; specifying such entities may hold a license for the operation of a cardroom; amending s. 550.01215, F.S.; providing applicability; providing an effective date.

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

Section 1. Subsection (15) of section 550.054, Florida Statutes, is amended to read:

550.054 Application for permit to conduct pari-mutuel wagering.—

(15)(a) Notwithstanding any other provision of law, a permit for the conduct of pari-mutuel wagering and associated cardroom or slot machine licenses may only be held by a permitholder who held an operating license for the conduct of pari-mutuel wagering for fiscal year 2020-2021 or who holds a permit issued pursuant to s. 550.3345 or by a purchaser, transferee, or assignee of a valid permit for the conduct of pari-mutuel wagering if approved by the commission before such purchase, transfer, or assignment and provided that the

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commission does not approve or issue an additional permit for the conduct of pari-mutuel wagering;

(b) All permits issued under this chapter held by permitholders on January 1, 2021, are deemed valid for the sole and exclusive purpose of satisfying all conditions for the valid issuance of the permits, if such permitholder held an operating license for the conduct of pari-mutuel wagering for fiscal year 2020-2021 or if such permitholder held a permit issued pursuant to s. 550.3345;

(c) Additional permits for the conduct of pari-mutuel wagering may not be approved or issued by the commission or former Division of Pari-mutuel Wagering after January 1, 2021; and

(d) A permit to conduct pari-mutuel wagering may not be converted to another class of permit.

Section 2. Paragraph (c) of subsection (5) of section 849.086, Florida Statutes, is amended to read:

849.086 Cardrooms authorized.—

(5) LICENSE REQUIRED; APPLICATION; FEES.—No person may operate a cardroom in this state unless such person holds a valid cardroom license issued pursuant to this section.

(c) Notwithstanding any other provision of law, a pari-mutuel permitholder, other than a permitholder issued a permit pursuant to s. 550.3345 or a purchaser, transferee, or assignee holding a valid permit for the conduct of pari-mutuel wagering

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approved pursuant to s. 550.054(15)(a), may not be issued a license for the operation of a cardroom if the permitholder did not hold an operating license for the conduct of pari-mutuel wagering for fiscal year 2020-2021. In order for an initial cardroom license to be issued to a thoroughbred permitholder issued a permit pursuant to s. 550.3345, the applicant must have requested, as part of its pari-mutuel annual license application, to conduct at least a full schedule of live racing. In order for a cardroom license to be renewed by a thoroughbred permitholder, the applicant must have requested, as part of its pari-mutuel annual license application, to conduct at least 90 percent of the total number of live performances conducted by such permitholder during either the state fiscal year in which its initial cardroom license was issued or the state fiscal year immediately prior thereto if the permitholder ran at least a full schedule of live racing or games in the prior year.

Section 3. Paragraph (d) of subsection (1) of section 550.01215, Florida Statutes, is amended to read:

550.01215 License application; periods of operation; license fees; bond.—

(1) Each permitholder shall annually, during the period between December 15 and January 4, file in writing with the commission its application for an operating license for a pari-mutuel facility for the conduct of pari-mutuel wagering during the next state fiscal year, including intertrack and simulcast

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race wagering. Each application for live performances must specify the number, dates, and starting times of all live performances that the permitholder intends to conduct. It must also specify which performances will be conducted as charity or scholarship performances.

(d) Notwithstanding any other provision of law, other than a permitholder issued a permit pursuant to s. 550.3345, a pari-mutuel permitholder may not be issued an operating license for the conduct of pari-mutuel wagering, slot machine gaming, or the operation of a cardroom if the permitholder did not hold an operating license for the conduct of pari-mutuel wagering for fiscal year 2020-2021. This paragraph does not apply to a purchaser, transferee, or assignee holding a valid permit for the conduct of pari-mutuel wagering approved pursuant to s. 550.054(15)(a).

Section 4. This act shall take effect upon becoming a law.

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PCS for CS/HB 669

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for CS/HB 669 Improvements to Real Property
SPONSOR(S): Commerce Committee
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

In 2010, the Legislature provided specific authority for local governments to create qualifying improvement programs, commonly referred to as Property Assessed Clean Energy (PACE) programs, to provide up-front financing for certain qualifying improvements. Under these programs, property owners may apply to the local government for funding to finance a qualifying improvement and voluntarily enter into a financing agreement with the local government. Qualifying improvements include energy conservation and efficiency improvements, renewable energy improvements, and wind resistance improvements to existing facilities. Property owners finance qualifying improvements through a non-ad valorem assessment on their property. Local governments determine whether to offer a residential or commercial qualifying improvement program, whether to administer the program directly or through a for-profit or not-for-profit administrator, or any combination thereof.

The bill makes several changes to Florida law governing qualifying improvement programs, including:

- Expanding eligible "qualifying improvements" to include:
  - For residential properties: wastewater improvements, such as advanced onsite sewage treatment and disposal systems and septic-to-sewer conversions.
  - For commercial properties: stormwater and flood resiliency improvements, including "shoreline improvements," improvements to achieve a sustainable building rating or compliance with a national model resiliency standard, improvements to achieve wind or flood insurance rate reductions, and wind-resistance improvements on new construction.
- Requiring the holder or servicer of a mortgage that encumbers an applicant's property to provide consent:
  - For residential properties: for the applicant to exceed a 97% ratio of property-related debt to the property's fair market value as determined by a licensed appraiser.
  - For commercial properties: for the applicant to finance any qualifying improvement through the program.
- Authorizing the use of a qualifying improvement program to refinance qualifying improvements.
- Strengthening underwriting requirements for residential properties, including, among other things, a determination that the property owner is able to repay the assessment and cover existing debts and expenses, subject to a maximum debt-to-income ratio of 49 percent.
- Providing new terms and requirements for residential properties, including:
  - Written disclosure requirements before execution of financing agreements and confirmation of specified terms by phone prior to initiation of work.
  - A requirement that the property owner obtain at least two estimates.
  - Maximum terms for financing agreements based on the useful life of financed improvements.
  - A rescission period of 5 business days.
  - A prohibition on the use of negative amortization schedules, balloon payments, and prepayment fees.
  - Requirements for enrolling, monitoring, and suspending program contractors.
  - Confirmation, before payment to a contractor, that all permit requirements are satisfied.
  - Requirements for program marketing, and a prohibition on kickbacks to contractors.
- Providing new terms for commercial properties, including:
  - Allowing the property owner to execute a financing agreement before a certificate of occupancy or evidence of completion is issued and allowing for progress payments.
  - Defining and providing terms for the use of qualified improvement programs by "nongovernmental lessees" on "government commercial property."
- Requiring an annual report from each local government that has authorized a PACE program.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Property Assessed Clean Energy (PACE) Programs

Generally, Property Assessed Clean Energy (PACE) laws enable local governments to establish programs to provide financing for certain qualifying improvements on real property which reduce energy consumption and increase energy efficiency. PACE allows individual property owners to contract directly with qualified contractors for energy efficiency and renewable energy projects. The local government issues revenue bonds and uses the proceeds to provide initial project funding, which bonds are repaid by non-ad valorem assessments on participating property owners' tax bills.[1] PACE programs are active in 30 states plus Washington D.C., but only California, Florida, and Missouri offer residential PACE programs.[2]

PACE in Florida

In 2010, the Legislature provided specific authority for local governments to create PACE programs.[3] The law[4] provides supplemental authority to local governments[5] concerning qualified improvements to residential and non-residential real property. The law provides that if a local government authorizes a PACE program, property owners may apply to the local government for funding to finance a qualifying improvement and voluntarily enter into a financing agreement with the local government.[6] "Qualifying improvements" include energy conservation and efficiency improvements, renewable energy improvements, and wind resistance improvements to existing facilities.[7]

At least 30 days before entering into the financing agreement, the property owner must provide notice to any mortgage holder or loan servicer of the intent to enter into the agreement, the maximum amount to be financed, and the maximum annual assessment required to repay the amount.[8] The law provides that an acceleration clause for "payment of the mortgage, note, or lien or other unilateral modification solely as a result of entering into a financing agreement … is not enforceable."[9] However, the mortgage holder or loan servicer may increase the required monthly escrow by an amount necessary to pay annually the qualifying improvement assessment.

The law authorizes a local government to provide and finance qualifying improvements, levy a non-ad valorem assessment to fund a qualifying improvement, incur debt to provide financing for qualifying improvements, and collect costs incurred from financing qualifying improvements through a non-ad valorem assessment. These non-ad valorem assessments are senior to existing mortgage debt,[10] so if the homeowner defaults on their mortgage or goes into foreclosure, the delinquent PACE assessment payments may be recovered before the mortgage. Current law also specifies that a PACE program may be administered by a for-profit entity or a not-for-profit organization on behalf of and at the discretion of the local government.

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[1] For more information, *see* http://www.pacenation.org and http://floridapace.gov/ (last visited April 5, 2023).
[2] California offers residential PACE financing for improvements related to electric vehicle charging, infrastructure, energy efficiency, renewable energy, seismic strengthening and water efficiency. Missouri offers PACE financing for improvements related to energy efficiency and renewable energy. Additionally, Maine offers residential programs without holding a lien against properties. *See* PACE Nation, *PACE Programs* https://www.pacenation.org/pace-programs/ (last visited April 5, 2023).
[3] Ch. 2010-139, Laws of Fla.
[4] S. 163.08, F.S.
[5] Section 163.08(2)(a), F.S., defines the term "local government" to mean a county, a municipality, a dependent special district as defined in s. 189.012, or a separate legal entity created pursuant to s. 163.01(7) (the Florida Interlocal Cooperation Act)."
[6] S. 163.08(4), F.S.
[7] S. 163.08(2)(b), F.S.
[8] S. 163.08(13), F.S.
[9] S. 163.08(15), F.S.
[10] *See* ss. 125.01(1)(r), 170.01 and 170.09, F.S.

In 2012, the Legislature expanded the definition of "local government" to allow a partnership of local governments formed pursuant to the Florida Interlocal Cooperation Act[11] to enter into a financing agreement wherein the partnership, as a separate legal entity, imposes the PACE assessment.[12]

Before entering into a financing agreement, the local government must reasonably determine that:

- All property taxes and other assessments on the property are paid and have not been delinquent for the preceding 3 years (or the property owner's period of ownership, if less than 3 years);
- There are no involuntary liens on the property, including, but not limited to, construction liens;
- No notices of default or other evidence of property-based debt delinquency have been recorded during the preceding 3 years (or the property owner's period of ownership, if less than 3 years); and
- The property owner is current on all mortgage debt on the property.[13]

The total assessment cannot be for an amount greater than 20 percent of the just value of the property as determined by the county property appraiser, unless consent is obtained from the mortgage holders.[14] Consideration of the property owner's ability to repay the assessment is not required.

In Florida, local governments typically have multiple non-exclusive agreements with a number of PACE providers. Generally, PACE providers are private companies that administer the local government's PACE program on behalf of the local government and provide funding from private sources. PACE providers generally act as the program administrator for special districts created pursuant to an interlocal agreement between two or more Florida local governments. Once the PACE district is created, additional counties or municipalities may join the special district as members, authorizing the PACE provider for the special district to administer PACE programs on behalf of the newly joined members.[15] PACE providers generally maintain a list of approved contractors authorized to provide qualifying improvements.[16]

For example, Broward County authorizes the following PACE providers:[17]

- Counterpointe Energy Solutions administers a commercial PACE program for the Florida PACE Funding District.
- Berkadia administers a commercial PACE program the Florida Renewable Energy District.
- CleanFund administers a commercial PACE program for the Florida Renewable Energy District.
- Dividend Finance administers the "Dividend" Program for the Florida Renewable Energy District.
- FortiFi Financial administers a residential PACE program for the Florida PACE Funding Agency District.
- Greenworks Lending administers a commercial PACE program for the Florida Resiliency and Energy District.
- Lever Energy Capital administers a commercial PACE program for the Florida Resiliency and Energy District.
- Home Run Financing administers a residential PACE Program for the Florida PACE Funding Agency District.
- Rahill administers a commercial PACE program for the Florida Resiliency and Energy District.

[11] S. 163.01(7), F.S.
[12] Ch. 2012-117, Laws of Fla.
[13] S. 163.08(9), F.S.
[14] S. 163.08(12)(a), F.S.
[15] *See, e.g.,* Green Corridor Property Assessed Clean Energy (PACE) District Town of Cutler Bay, Florida Financial Report for the Fiscal Year Ended Sept. 30, 2020, at 13, https://flauditor.gov/pages/specialdistricts_efile%20rpts/2020%20green%20corridor%20property%20assessment%20clean%20energy%20(pace)%20district.pdf (last visited April 5, 2023).
[16] *See, e.g.,* Sarasota County, *PACE*, https://www.scgov.net/government/uf-ifas-extension-and-sustainability/pace (last visited April 5, 2023).
[17] Broward County, *Property Assessed Clean Energy (PACE)* https://www.broward.org/Sustainability/Documents/PACEProviderList_2022.pdf (last visited April 5, 2023).

- Renew Financial administers PACE programs under the "RenewPACE" Program (residential and commercial) for the Florida Green Finance Authority.
- Structured Finance Associates administers a commercial PACE program for the Florida Resiliency and Energy District.
- Twain Financial Partners administers a commercial PACE program for the Florida Renewable Energy District.

Local governments may choose whether to offer a residential or commercial PACE program, whether to administer the program directly or through a third-party PACE provider, or any combination thereof.

PACE financing interest rates vary but are typically higher than traditional financing.[18] Interest rates and fees for a project are set by the PACE provider when the agreement is finalized with the property owner.[19]

Federal Housing Finance Agency and Super-Priority Liens

In 2010, and again in 2014,[20] the Federal Housing Finance Agency (FHFA) directed mortgage underwriters Fannie Mae and Freddie Mac not to purchase mortgages of homes encumbered by a first-lien PACE loan due to its senior status above a mortgage. Under normal circumstances, real estate lien priority is established by the order in which the liens are filed.[21]

According to the FHFA, such super-priority liens increase the risk of losses to taxpayers. Fannie Mae and Freddie Mac support the housing finance market by purchasing, guaranteeing, and securitizing single-family mortgages. Therefore, mortgages supported by Fannie Mae and Freddie Mac must remain in first-lien position, meaning they have first priority in receiving the proceeds from the sale of a property in foreclosure. Although FHFA generally supports energy retrofit financing programs, FHFA acknowledges that such programs should be structured to ensure protection of the core financing for the home.[22]

This restriction has two potential implications for borrowers. First, a homeowner with a first-lien PACE loan may not refinance their existing mortgage with a Fannie Mae or Freddie Mac mortgage. Second, anyone wanting to buy a home that already has a first-lien PACE loan cannot use a Fannie Mae or Freddie Mac loan for the purchase. These restrictions may reduce the marketability of the house or require the homeowner to pay off the PACE loan before selling the house.[23]

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[18] The Balance, *How PACE Loans Work*, https://www.thebalancemoney.com/pace-loans-financing-for-upgrades-4124071 (last visited April 5, 2023).
[19] *See* PACE Broward, *Frequently Asked Questions*, https://www.broward.org/Climate/Documents/PACE%20Broward%20FAQ%20Sheet_Update6_09272021.pdf (last visited April 5, 2023).
[20] Federal Housing Finance Agency, *FHFA Statement on Certain Energy Retrofit Loan Programs* (July, 6, 2010), http://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Statement-on-Certain-Energy-Retrofit-Loan-Programs.aspx (last visited April 5, 2023). *See also* Federal Housing Financial Agency, *Statement of the Federal Housing Finance Agency on Certain Super Priority Liens* (December 22, 2014)("FHFA wants to make clear to homeowners, lenders, other financial institutions, state officials, and the public that Fannie Mae and Freddie Mac's policies prohibit the purchase of a mortgage where the property has a first-lien PACE loan attached to it") http://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-of-the-Federal-Housing-Finance-Agency-on-Certain-Super-Priority-Liens.aspx (last visited April 5, 2023).
[21] "Real estate liens generally are ordered so that prior liens are paid in foreclosure before liens filed later in time. For example, a mortgage loan used to buy the property takes priority over a later mortgage loan used to remodel the home. The earliest and thus highest priority mortgage loan is known as a first lien, while the subsequent mortgage loan is deemed a second lien. If the homeowner defaults on the second lien loan, the first lien mortgage holder retains the lien even if the second lien mortgage holder forecloses; however, the converse is not true. Tax assessments are an exception to this lien priority rule. Generally, unpaid property tax assessments have priority over other liens, regardless of the date the prior liens were recorded or when the tax assessments became delinquent. This makes the lien priority for PACE financing senior to liens for mortgage loans closed prior to the homeowner's acceptance of the PACE financing. In the case of default by the homeowner on the PACE assessment, local governments and investors in PACE bonds can expect to collect the balance owed on a PACE assessment before any recovery by a mortgage lender." Prentiss Cox, *Keeping PACE? The Case Against Property Assessed Clean Energy Financing Programs*, 83 U. Colo. L. Rev. 83, 94 (2011), https://scholarship.law.umn.edu/faculty_articles/549 (last visited April 5, 2023).
[22] *FHFA Statement on Certain Energy Retrofit Loan Programs, supra*, note 20.
[23] *FHFA Statement on Certain Energy Retrofit Loan Programs*, *supra*, note 20.

Additionally, in December 2017, the United States Department of Housing and Urban Development announced that the Federal Housing Administration will no longer insure new mortgages on properties that include PACE assessments, citing concerns about the potential for increased losses to the Mutual Mortgage Insurance Fund resulting from the priority lien status given to such assessments.[24]

Some residential PACE programs are now operating with loan loss reserve funds, appropriate disclosures, or other protections meant to address FHFA's concerns.[25] For example, in 2013, California created a reserve fund to compensate first mortgage lenders in case of a foreclosure or a forced sale attributable to a PACE loan. Additionally, Oklahoma and Vermont have passed legislation to downgrade PACE from senior lien to junior lien, and there have been attempts by Congress to revise residential PACE programs at the federal level, including the 2014 PACE Assessment Protection Act.[26]

Consumer Protection

Consumer issues have surrounded the PACE programs from their inception.[27] These include the cost of funding, contractor sales techniques (notably, responding to a limited homeowner problem and marketing a full house retrofit), rolling the administrative fees for the local government into the PACE loan amount, product sales at above market interest rates, workmanship issues, inadequate disclosures, and indiscriminate lending regardless of ability to repay.[28] An administrator of residential PACE programs in California and Florida recently settled with the Federal Trade Commission and California to address complaints that the administrator recruited and authorized contractors, without adequate training or oversight, to sell its financing, leading to many consumers being deceived during the sales process and being unfairly subjected to liens on their homes without their express, informed consent.[29]

In response to these consumer issues, Congress amended the Truth in Lending Act in 2018 to direct the Consumer Financial Protection Bureau to implement federal regulations which provide more effective consumer protections relating to PACE loans, especially those related to the ability of a homeowner to repay the loan.[30]

The United States Department of Energy maintains "best practice guidelines" for residential PACE financing programs, which includes measures relating to:

- Establishing financial eligibility and verifying property ownership;
- Confirming property-based debt, tax assessments, and property valuation;
- Reviewing property owner income and debt obligations;
- Establishing consumer and lender protections;
- Establishing property owner education and disclosures;
- Providing a right to cancel the purchase;

[24] FHFA, Property Assessed Clean Energy (PACE) Program, 85 Fed. Reg. 11,2738 (Jan. 16, 2020).
[25] Commercial PACE programs were not directly affected by FHFA's actions because Fannie Mae and Freddie Mac do not underwrite commercial mortgages.
[26] NCSL, *PACE Financing* https://www.ncsl.org/research/energy/pace-financing.aspx (last visited April 5, 2023).
[27] "PACE loans, offered through home improvement contractors, often in door-to-door sales, and secured by a property tax lien, are collected through a property tax assessment that takes priority over any existing mortgage. PACE programs must be authorized by state and local governments, but are privately run with little or no government oversight. Over the last two years, there has been a sharp increase in homeowners seeking assistance from legal services and other organizations in relation to PACE loans. The goal of improving home energy efficiency is being overshadowed by the lack of adequate consumer protection for these loans. Weak PACE loan regulation enables contractors to saddle homeowners with debt they cannot afford and puts their homes at risk for foreclosure." National Consumer Law Center, *Advocates Applaud CFPB's Intention to Deal with PACE Loan Program Abuses* (Mar. 4, 2019), https://www.nclc.org/media-center/advocates-applaud-cfpbs-intention-to-deal-with-pace-loan-program-abuses.html (last visited April 5, 2023).
[28] FHFA, Property Assessed Clean Energy (PACE) Program, 85 Fed. Reg. 11,2738 (Jan. 16, 2020).
[29] Federal Trade Commission, *FTC, California Act to Stop Ygrene Energy Fund from Deceiving Consumers About PACE Financing, Placing Liens on Homes Without Consumers' Consent,* https://www.ftc.gov/news-events/news/press-releases/2022/10/ftc-california-act-stop-ygrene-energy-fund-deceiving-consumers-about-pace-financing-placing-liens (last visited April 5, 2023).
[30] FHFA, Property Assessed Clean Energy (PACE) Program, 85 Fed. Reg. 11,2738 (Jan. 16, 2020). *See also* Public Law 115–174 (2018), section 307; codified at 15 U.S.C. 1639c(b)(3)(C). and Bureau of Consumer Financial Protection, Advance Notice of Proposed Rulemaking on Residential Property Assessed Clean Energy Financing, 84 FR 8479 (Mar. 8, 2019).

- Determining appropriate minimum equity requirements and appropriate maximum assessments;
- Providing equipment specifications and energy assessments;
- Defining the relationship between PACE assessments and mortgage financing;
- Providing for non-acceleration upon property owner default;
- Notifying mortgage holders of record; and
- Addressing the needs and potential vulnerabilities of low-income and elderly households.[31]

Some local governments in Florida have implemented more stringent consumer protections than those required by Florida law.[32]

Wastewater Treatment Improvements

The Florida Department of Health provides "Onsite sewage treatment and disposal systems (OSTDS), commonly referred to as septic systems, are a safe and effective means of wastewater disposal for 30 percent of Florida's population. The OSTDS program ensures that the OSTDS is properly designed, constructed, and maintained through permitting and inspection and contributes to safe ground water, which provides 90 percent of Florida's drinking water."[33]

There are estimated, however, to be thousands of septic tanks that are old and at risk of failing.[34] These systems risk leaking phosphorus and nitrogen into the water system, which can promote harmful algal blooms, aquatic weeds, and the alteration of the natural fauna and flora. Serious algal blooms can also cause human health issues.

For this reason, there has been a push over time to move from individual septic systems to community sewage treatment. Such a transition can cost in the range of $15,000 to $20,000.[35]

[31] Department of Energy, *Best Practice Guidelines for Residential PACE Financing Programs* (Nov. 18, 2016), https://www.energy.gov/sites/prod/files/2016/11/f34/best-practice-guidelines-RPACE.pdf (last visited April 5, 2023).
[32] *See, e.g.,* Palm Beach County, Ord. No. 2017-012, Section 6. Disclosure Requirements https://discover.pbcgov.org/resilience/PDF/PACE_ORDINANCE_2017-012%20-%20ADA%20Compliant.pdf (last visited April 5, 2023).
[33] Onsite Sewage, Florida Department of Health, last modified Oct 20, 2020, available at http://www.floridahealth.gov/environmental-health/onsite-sewage/index.html (last accessed April 14, 2023)
[34] Benita Goldstein, "Failing septic tanks damaging state's environment; will cost billions of dollars to replace," Apr. 22, 2019, South Florida Sun Sentinel, available at https://www.sun-sentinel.com/opinion/commentary/fl-op-com-septic-tanks20190422-story.html (last accessed April 14, 2023).
[35] Terri Lowery, "Cities, Counties Need Plan to Switch Septic to Sewer," May 14, 2016, Florida Today, available at https://www.floridatoday.com/story/opinion/columnists/guest-columns/2016/05/14/cities-counties-need-plan-switch-septicsewer/84295648/ (last accessed April 14, 2023).

Effect of the Bill

The bill makes several changes to Florida's PACE law.

Definitions

The bill creates and uses the term "qualifying improvement program" to refer to the programs used in Florida to finance qualifying improvements and creates definitions for additional terms related to these programs, as follows:

- *Qualifying improvement program* means a program established by a local government, alone or in partnership with other local governments or a program administrator, to finance qualifying improvements on residential or commercial real property.
- *Program administrator* means an entity, including, but not limited to, a for-profit or not-for-profit entity, with which a local government has contracted to administer a qualifying improvement program.
- *Residential property* means a residential real property composed of four or fewer dwelling units which has been or will be improved by a qualifying improvement.
- *Commercial property* means real property not defined as residential property which will be or has been improved by a qualifying improvement, including, but not limited to, the following:
    - A multifamily residential property composed of five or more dwelling units;
    - A commercial real property;
    - An industrial building or property;
    - An agricultural property;
    - A nonprofit-owned property;
    - A long-term care facility, including nursing homes and assisted living facilities; or
    - A government commercial property.
- *Government commercial property* means real property owned by a local government and leased to a nongovernmental lessee where the usage by the lessee meets the definition of commercial property.
- *Nongovernmental lessee* means a person or an entity other than a local government which leases government commercial property.
- *Qualifying improvement contractor* means an independent contractor who has been enrolled under a qualifying improvement program to install or otherwise perform work on qualifying improvements financed through the program.

Eligible Qualifying Improvements

The bill amends the definition of "qualifying improvements" to expand the types of projects a qualifying improvement program may finance.

For residential property, the bill adds wastewater improvements as qualifying improvements. Wastewater improvements include the following:

- The removal, replacement or improvement of an onsite sewage treatment and disposal system with a secondary or advanced onsite sewage treatment and disposable system or technology;
- The replacement or conversion of an onsite sewage and disposal system to a central sewerage system or distributed sewerage system; and
- Any removal, repair, or modification made to an onsite sewage treatment and disposal system.

For commercial property, the bill adds the following as qualifying improvements:

- Energy conservation and efficiency improvements necessary to achieve a sustainable building rating or compliance with a national model green building code; and
- Resiliency improvements, including creation or improvement of stormwater and flood resiliency (including shoreline improvements) and any other improvements: (a) necessary to achieve a sustainable building rating or compliance with a national model resiliency standard; or (b) made to achieve wind or flood insurance rate reductions, including building elevation.

Other Uses for PACE Financing

The bill expands the authorized uses of PACE financing. First, the bill specifies that PACE financing may be used to *refinance* qualifying improvements on any eligible property. Second, the bill authorizes new uses for PACE financing on commercial property, including wind resistance improvements on property under new construction and improvements by nongovernmental lessees to government commercial property. The bill provides that a financing agreement for government commercial property must be executed by the nongovernmental lessee with the written consent of the governmental lessor, with evidence of this consent provided to the local government operating the qualifying improvement program. A financing agreement with the nongovernmental lessee must provide that the lessee is the only party obligated to pay the assessment.

Eligibility Requirements for PACE Financing

The bill provides that a financing agreement for a residential property may not be approved unless the local government or program administrator acting on its behalf has reasonably determined that, in addition to the requirements in current law, the following conditions have been met:

- The property owner is current on all mortgage debt on the property and has had no more than one late payment exceeding 30 days during the 12 months immediately preceding the application date.
- The property owner has acknowledged in writing disclosure statements required by the bill, as described below.
- The property is within the geographic boundaries of the applicable qualifying improvement program.
- The term of the financing agreement does not exceed:
    - For a single qualifying improvement, the estimated useful life[36] of the qualifying improvement.
    - For multiple qualifying improvements, the lesser of (a) thirty years or (b) the greater of either the weighted average estimated useful life of all qualifying improvements being financed or the estimated useful life of the qualifying improvements to which the greatest portion of funds is disbursed.
- The property owner has not been subject to a bankruptcy proceeding within the last 5 years unless it was discharged or dismissed more than 2 years before the application date for financing.
- The property is not subject to an existing home equity conversion mortgage or reverse mortgage product.
- The property is not currently a residential property gifted to a homeowner for free by a nonprofit entity as may be disclosed by the property owner. The failure of a property owner to disclose information set forth in this paragraph does not invalidate a financing agreement or any obligation thereunder.
- The property owner has obtained estimates from at least two unaffiliated, competitive entities, one of which is a qualifying improvement contractor, for the qualifying improvement to be financed.
- The local government or program administrator, as applicable, has asked if the property owner has obtained or sought to obtain additional qualifying improvements on the same property that have not yet been recorded.[37]

The bill modifies eligibility requirements for commercial property as follows:

- Delinquency in payment of property taxes or other assessments on a property during the preceding 3 years do not preclude the use of PACE financing if such taxes and assessments are current.
- Involuntary liens on a property do not preclude the use of PACE financing if not greater than $10,000.

[36] The bill provides that the useful life of a qualifying improvement must be established third-party standards, including certification criteria from government agencies or nationally recognized standards and testing organizations.

[37] The bill provides that the failure of a property owner to disclose this information does not invalidate a financing agreement or any obligation thereunder, even if the total financed amount of the qualifying improvement exceeds the amount that would otherwise be authorized.

- Recorded notices of default or other evidence of property-based debt delinquency during the preceding 3 years do not preclude use of PACE financing if released during that time.

Further, the bill requires that, prior to entering into a financing agreement with a commercial property owner, the local government must have the written consent of the current holders or servicers of any mortgage that encumbers or is otherwise secured by the property (or that will be secured by the property at the time the financing agreement is executed by the local government).

Ability to Repay for Residential Property Owners

The bill requires that, prior to approval of financing for a qualifying improvement on residential property, the local government or program administrator, as applicable, must reasonably determine that the property owner has the ability to pay the annual non-ad valorem assessment for the qualifying improvement, based on information contained in the property owner's application, reasonably reliable third-party records, or an automated verification system. To make this determination, the local government or program administrator must review the property owner's household income,[38] housing expenses, assets, and other debt obligations. In reviewing ability to pay, the local government or program administrator:

- When determining household income, may include the income of any property owner aged 18 years old or older whose name is on the property title, provided that if a person's income is considered, that person's debt obligations must also be considered.
- May not consider the equity in the property that will secure the non-ad valorem assessment.
- Must determine the property owner's debt obligations using reasonably reliable third-party records, including, at a minimum, one consumer credit report from an agency that meets the requirements of 15 U.S.C. s. 1681a(p). Debt obligations to be reviewed include secured and unsecured debt, housing expenses,[39] and stated alimony or child support obligations.
- Must determine whether the property owner has sufficient income to pay the annual non-ad valorem assessment and that he or she has sufficient residual income to meet his or her household living expenses.

To participate in a qualifying improvement program, the bill requires that a residential property owner must have a total debt-to-income ratio no higher than 49 percent.

Debt-to-Value Limitations on PACE Assessments for Residential Property Owners

Under current law, the total amount of any PACE assessment on residential property may not exceed 20 percent of a property's just value, without consent of the holder or servicer of a mortgage secured by a property. The bill replaces the "just value" standard in current law[40] with a "fair market value" standard. The bill requires that fair market value be determined by the written report of a certified residential appraiser under ch. 475, F.S.

The bill further provides that, for residential property, the combined mortgage-related debt and the total amount of any PACE assessments on the property may not exceed 97 percent of the property's fair market value, absent consent of the holder or servicer of a mortgage secured by the property. However, this limit can be exceeded if a property owner fails to disclose whether other PACE assessments have already been recorded, or funded but no yet recorded, on the property.

Disclosures to Residential Property Owners

The bill requires that local government or program administrator, as applicable, to develop a written disclosure form that must be provided to a residential property owner before executing a financing

[38] The bill provides that if the local government or program administrator uses an automated verification system, it must be a s ystem that can verify the property owner's income, is not based on predictive or estimation methodologies, and has been determined sufficient for such verification purposes by a federal mortgage lending authority or regulator.
[39] The bill provides that the local government or program administrator must make a reasonable estimate of the basic housing expenses based on the number of persons in the household.
[40] Under current law, "just value" is the value of the property as determined by the county property appraiser.

agreement. This disclosure may be presented to the property owner in electronic format and must contain the following key terms:

- A description of the qualifying improvement;
- The estimated total financed amount, including the cost of the qualifying improvement, ancillary work, program fees, and prepaid interest, if any;
- The annual non-ad valorem assessment process and estimated annual payment schedule;
- The estimated amount of the annual non-ad valorem assessment;
- The term of the total financed amount;
- The interest rate for the financed amount;
- The estimated annual percentage rate;
- The total estimated annual costs that the residential property owner will have to pay under the assessment contract, including program fees;
- The total estimated average monthly equivalent of funds the residential property owner would have to save per month in order to pay the annual costs of the non-ad valorem assessment, including program fees;
- The estimated date when the residential property owner's first property tax payment that includes the non-ad valorem assessment, will be due.

The bill requires that the written disclosure form must also contain the following statements, which must be individually acknowledged in writing by the residential property owner :

- "I UNDERSTAND THAT IF I SELL OR REFINANCE THE PROPERTY, I MAY BE REQUIRED TO PAY OFF THE OUTSTANDING FINANCED AMOUNT AS A CONDITION OF THE SALE OR THE REFINANCE OF THE PROPERTY." (This disclosure must be made in 24-point, bold font.)
- "I understand that the annual non-ad valorem assessment will be paid when property taxes are paid and will result in a lien being placed on my property."
- "I understand that the annual non-ad valorem assessment will be added to my property tax bill, and if I pay my property taxes through my mortgage payment using an escrow account, I must notify my mortgage lender."
- "I understand that if I fail to pay the annual non-ad valorem assessment, I may incur penalties and fees and the local government could issue a tax certificate which might result in the loss of my property."
- “I understand that any potential utility or insurance savings are not guaranteed and will not reduce the annual non-ad valorem assessment or total assessment amount.”
- "I understand that I have 5 days to cancel the financing agreement. The 5-day right expires on midnight of the fifth business day after I sign the agreement."
- “I understand that the local government, program administrator, or qualifying improvement contractor do not provide tax advice and that I should seek professional tax advice if I have questions regarding tax credits, tax deductibility, or other tax impacts of the qualifying improvement or the assessment contract.
- "I understand that I cannot be assessed a penalty if I prepay the outstanding financed amount."

The bill provides that a printed or electronic cancellation form must be provided to the property owner no later than the time the property owner signs the financing agreement which allows the property owner to cancel the contract.

The bill provides that the local government or program administrator, before a notice to proceed is issued on residential property, must conduct an oral, recorded telephone call with the property owner or an authorized representative. The program administrator must ask the property owner or authorized representative if he or she would like to communicate primarily in a language other than English and must use plain language. On the telephone call, the local government or program administrator must confirm all of the following with the property owner or authorized representative:

- That at least one property owner has access to a copy of the financing agreement and financing estimates and disclosures.
- The qualifying improvements being financed.

- The total estimated annual costs that the property owner will have to pay under the financing agreement, including program fees.
- The total estimated average monthly equivalent amount of funds the property owner would have to save in order to pay the annual costs of the assessment, including program fees.
- The estimated due date for the property owner's first property tax payment that includes the assessment.
- The term of the financing agreement.
- That payments for the financing agreement will cause the property owner's annual property tax bill to increase, and that payments will be made through an additional annual non-ad valorem assessment on the property and either will be paid directly to the county tax collector's office as part of the total annual secured property tax bill or may be paid through the property owner's mortgage escrow account.
- That the property owner has disclosed whether the property has received, or the owner is seeking, additional non-ad valorem assessments funded under this program and that the owner has disclosed all other such assessments which are or will be placed on the property.
- That the property will be subject to a lien during the term of the financing agreement and that the obligations under the agreement may be required to be paid in full before the property owner sells or refinances the property.
- That any potential utility or insurance savings are not guaranteed and will not reduce the annual non-ad valorem assessment or total assessment amount.
- That the local government, program administrator, or qualifying improvement contractor does not provide tax advice, and the property owner should seek professional tax advice if he or she has questions regarding tax credits, tax deductibility, or other tax impacts of the qualifying improvement or the financing agreement.

The local government or program administrator may not leave a voicemail to satisfy this requirement.

Financing Agreements

The bill limits the term of a financing agreement for a single qualifying improvement to the estimated useful life[41] of the improvement. For multiple qualifying improvements, the term of a financing agreement is limited to the lesser of: (1) 30 years; or (2) the greater of either the weighted average estimated useful life of all qualifying improvements being financed or the estimated useful life of the qualifying improvements to which the greatest portion of funds is disbursed.

The bill prohibits a financing agreement on residential property from including a negative amortization schedule,[42] a balloon payment, or prepayment fees other than nominal administrative costs.

The bill allows a residential property owner to cancel a financing agreement, without any financial penalty from the program administrator, within 5 business days after signing the financing agreement. The bill provides for relief to such property owners if a contractor has begun work on, or delivered chattel or fixtures to, the property when the property owner has exercised timely its right to cancel the financing agreement.

For qualifying improvements to commercial property, the bill provides that a financing agreement may be executed before a certificate of occupancy or similar evidence of substantial completion of new construction or improvement is issued. Further, the bill provides that progress payments, or payments made before completion, are allowed for commercial property if the property owner, upon request for a final progress payment, subsequently provides written verification that the qualifying improvements are completed and operating as intended.

Qualifying Improvement Contractors

[41] The bill provides that the local government or program administrator, as applicable, shall determine the useful life of a qualifying improvement using established third-party standards, including certification criteria from government agencies or nationally recognized standards and testing organizations.

[42] The bill provides that capitalized interest included in the original balance of the assessment financing agreement does not constitute negative amortization.

The bill establishes terms for the enrollment and oversight of qualifying improvement contractors by the local governments or program administrator, as applicable. These provisions apply only with respect to improvements to residential property.

Before enrolling a contractor to install qualifying improvements, the bill provides that a local government or program administrator, as applicable, must make a reasonable effort to review that the contractor maintains in good standing an appropriate license from the state, if applicable, as well as any other permit, license, or registration required for engaging in business in the jurisdiction in which he or she operates and that the contractor maintains all state-required bond and insurance coverage. Each local government or program administrator must also obtain the contractor's written agreement that the contractor will act in accordance with all applicable laws, including applicable advertising and marketing laws and regulations.

The bill further provides that each local government or program administrator must maintain a process to enroll new contractors which includes reasonable review of the following for each contractor: relevant work or project history; financial and reputational background checks; a criminal background check; and status on the Better Business Bureau online platform or another online platform that tracks contractor reviews. Each local government or program administrator must also establish and maintain a process for monitoring qualifying improvement contractors with regard to performance and compliance with program policies and must implement policies for suspending, reinstating, and terminating qualifying improvement contractors based on violations of program policies or unscrupulous behavior.

The bill prohibits a program administrator, either directly or through an affiliate, from becoming enrolled as a qualifying improvement contractor.

Before disbursing funds to a contractor for a qualifying improvement on residential property, the local government or program administrator must first confirm that the applicable work or service has been completed and that the final permit for the qualifying improvement has been closed with all permit requirements satisfied.

The bill prohibits a local government or program administrator from disclosing to a qualifying improvement contractor or to a third party engaged in soliciting assessment contracts the maximum financing amount for which a residential property owner is eligible. Program administrators are also prohibited from providing a qualifying improvement contractor with any payment, fee, or kickback in exchange for referring financing business relating to a financing agreement on residential property. The bill provides, however that a local government or program administrator may provide information or services to a qualifying improvement contractor to facilitate the installation of a qualifying improvement for a property owner.

The bill prohibits a qualifying improvement contractor from providing a different price for a qualifying improvement financed under a qualifying improvement program than the contractor would otherwise reasonably provide if the qualifying improvement was not being financed through a financing agreement under a qualifying improvement program.

Qualifying Improvement Program Marketing

The bill prohibits local governments, program administrators, or qualifying improvement contractors, or any third party engaged in marketing on behalf of these entities, from representing to residential property owners:

- A non-ad valorem assessment under a qualifying improvement program is a government assistance program;
- qualifying improvements are free or that financing related to a non-ad valorem assessment under a qualifying improvement program is free or provided at no cost;
- The financing of a qualifying improvement under a qualifying improvement program does not require the property owner to repay the financial obligation; or
- The tax deductibility of a non-ad valorem assessment under a qualifying improvement program.

The bill provides that a qualifying improvement contractor or third party engaged in marketing a qualifying improvement program may not advertise the availability of financing agreements or solicit residential property owners on behalf of the local government or program administrator unless:

- The qualifying improvement contractor or third party maintains the appropriate registration or certification from the Construction Industry Licensing Board or any other permit, license, or registration required to conduct business in the jurisdiction in which it operates and provides proof of having the required bond and insurance coverage amounts; and
- The local government or program administrator, as applicable, obtains the qualifying improvement contractor's or third party's written agreement that the qualifying improvement contractor or third party will comply with applicable laws and rules and qualifying improvement program policies and procedures, including those on advertising and marketing.

The bill also provides that a local government or program administrator may not reimburse a qualifying improvement contractor or third party for its expenses in advertising and marketing campaigns and materials. However, a local government or program administrator, as applicable, and a qualifying improvement contractor may share expenses in connection with joint advertising and marketing campaigns and materials if the expenses are shared on a commercially reasonable basis.

Under the bill, a program administrator may not provide any direct cash payment or other thing of material value to a property owner explicitly conditioned upon the property owner entering into a financing agreement. However, a program administrator may offer programs or promotions that provide reduced fees or interest rates if the reduced fees or interest rates are reflected in the financing agreements and are not provided to the property owners as cash consideration.

Annual Report

The bill requires each local government that has authorized a qualifying improvement program to post on its website, by April 1 of each year, an annual report for the previous calendar year. Each annual report must include the following information:

- The number of qualifying improvements funded.
- The aggregate, average, and median dollar amounts of annual non-ad valorem assessments and the total number of non-ad valorem assessments that funded qualifying improvements.
- The percentage, number, and dollar value of non-ad valorem assessments that funded qualifying improvements, aggregated by the category types consisting of energy efficiency, renewable energy, wind resistance, residential property wastewater, commercial property resiliency, and other commercial property qualifying improvements.
- The number of defaulted non-ad valorem assessments, including the total number and defaulted amount, the number and dates of missed payments, the total number of parcels defaulted and the years in default, and the percentage of defaults by total assessments.
- A summary of all reported complaints received by the local government and its program administrators related to authorized qualifying improvements programs, including the resolution of each complaint.
- Estimated number of jobs created.
- The number and percentage of homeowners 60 years of age or older participating in a qualifying improvement program.

Other Provisions

The bill updates disclosures required by sellers of real property for which a non-ad valorem assessment has been levied under a qualifying improvement program to reflect the additional types of qualifying improvements authorized by the bill.

The bill provides that a notice of lien for the full amount of the financing may be recorded in the public records of the county where the property is located and that the lien shall not be enforceable in a manner that results in the acceleration of the remaining nondelinquent unpaid balance under the financing agreement.

The bill provides that an assessment on commercial property for a qualifying improvement is subject to a maximum annual fee of 1 percent of the annual assessment collected or $5,000, whichever is less.

The bill requires program administrators to develop and implement policies and procedures for responding to, tracking, and helping to resolve questions and property owner complaints.

The bill provides that it is prospective only and does not affect or amend any existing PACE assessment or interlocal agreement between local governments.

B. SECTION DIRECTORY:

Section 1. Amends s. 163.08, F.S., relating to supplemental authority for improvements to real property.

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:

To the extent that a local government or program administrator does not already impose measures similar to those in the bill, the bill may impose costs on qualifying improvement program administrators. However, by expanding eligible uses for PACE financing, the bill may result in expanded use of PACE financing, and, in turn, program administrators may earn additional revenues on PACE loans.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not require or authorize rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to improvements to real property; amending s. 163.08, F.S.; revising legislative intent; defining and revising terms; authorizing a residential or commercial property owner to apply to a qualifying improvement program for funding to finance an improvement and to enter into a financing agreement with the local government or program administrator; providing that a non-ad valorem assessment on certain commercial property is subject to a certain fee; specifying requirements of a financing agreement for government commercial property; revising and specifying public recording requirements for assessment financing agreements and notices of lien; revising requirements that apply to local governments and program administrators in determining eligibility for assessment financing; revising requirements for qualifying improvements; revising the calculation of non-ad valorem assessment limits; providing construction; specifying underwriting, financing estimate, disclosure, and confirmation requirements for program administrators; restricting what improvements may be covered in certain agreements between local governments and commercial property owners; revising notice and consent requirements

regarding a property owner's intent to enter into a financing agreement; revising the seller's disclosure statement for residential and commercial properties offered for sale; authorizing a residential real property owner, under certain circumstances and within a certain timeframe, to cancel a financing agreement without financial penalty; specifying limitations on financing agreement terms for residential real property; prohibiting certain financing terms for residential real property; specifying requirements for, and certain prohibited acts by, program administrators relating to financing agreements and contractors for qualifying improvements to residential real property; specifying annual reporting requirements for local governments; providing construction; providing an effective date.

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

Section 1. Section 163.08, Florida Statutes, is amended to read:

163.08 Supplemental authority for improvements to real property.—

(1)(a) In chapter 2008-227, Laws of Florida, the Legislature amended the energy goal of the state comprehensive

plan to provide, in part, that the state shall reduce its energy requirements through enhanced conservation and efficiency measures in all end-use sectors and reduce atmospheric carbon dioxide by promoting an increased use of renewable energy resources. That act also declared it the public policy of the state to play a leading role in developing and instituting energy management programs that promote energy conservation, energy security, and the reduction of greenhouse gases. In addition to establishing policies to promote the use of renewable energy, the Legislature provided for a schedule of increases in energy performance of buildings subject to the Florida Energy Efficiency Code for Building Construction. In chapter 2008-191, Laws of Florida, the Legislature adopted new energy conservation and greenhouse gas reduction comprehensive planning requirements for local governments. In the 2008 general election, the voters of this state approved a constitutional amendment authorizing the Legislature, by general law, to prohibit consideration of any change or improvement made for the purpose of improving a property's resistance to wind damage or the installation of a renewable energy source device in the determination of the assessed value of residential real property.

(b) The Legislature finds that all energy-consuming-improved properties that are not using energy conservation strategies contribute to the burden affecting all improved

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property resulting from fossil fuel energy production. Improved property that has been retrofitted with energy-related qualifying improvements receives the special benefit of alleviating the property's burden from energy consumption. All improved properties not protected from wind damage by wind resistance qualifying improvements contribute to the burden affecting all improved property resulting from potential wind damage. Improved commercial property constructed or ~~that has been~~ retrofitted with resiliency qualifying improvements and improved residential property retrofitted with wind ~~resistance~~ qualifying improvements receive ~~receives~~ the special benefit of reducing the property's burden from potential ~~wind~~ damage. Further, the installation and operation of qualifying improvements not only benefit the affected properties for which the improvements are made, but also assist in fulfilling the goals of the state's energy and hurricane mitigation policies. Residential properties that do not use advanced technologies for wastewater removal contribute to the water quality problems affecting this state, particularly the coastal areas. Improved residential property that has been retrofitted with an advanced onsite sewage treatment and disposal system or has been converted to central sewerage significantly benefits the quality of water that may enter streams, lakes, rivers, aquifers, or coastal areas.

(c) In order to make qualifying improvements more

affordable and assist property owners who wish to undertake such improvements, the Legislature finds that there is a compelling state interest in enabling property owners to voluntarily finance such improvements with local government assistance.

(d) ~~(c)~~ The Legislature determines that the actions authorized under this section, including, but not limited to, the financing of qualifying improvements through the execution of financing agreements and the related imposition of voluntary assessments are reasonable and necessary to serve and achieve a compelling state interest and are necessary for the prosperity and welfare of the state and its property owners and inhabitants.

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

(a) "Commercial property" means real property not defined as residential property which will be or has been improved by a qualifying improvement, including, but not limited to, the following:

1. A multifamily residential property composed of five or more dwelling units;

2. A commercial real property;

3. An industrial building or property;

4. An agricultural property;

5. A nonprofit-owned property;

6. A long-term care facility, including nursing homes and assisted living facilities; or

7. A government commercial property.

(b) "Facility" means any portion of a building, structure, or site improvement located on a site as defined in s. 202 of the 2020 Florida Building Code.

(c) "Government commercial property" means real property owned by a local government and leased to a nongovernmental lessee where the usage by the lessee meets the definition of commercial property.

(d) ~~(a)~~ "Local government" means a county, a municipality, a dependent special district as defined in s. 189.012, or a separate legal entity created pursuant to s. 163.01(7).

(e) "Nongovernmental lessee" means a person or an entity other than a local government which leases government commercial property.

(f) "Program administrator" means an entity, including, but not limited to, a for-profit or not-for-profit entity, with which a local government has contracted to administer a qualifying improvement program.

(g) "Qualifying improvement contractor" means an independent contractor who has been enrolled under a qualifying improvement program to install or otherwise perform work on qualifying improvements financed through the program.

(h) "Qualifying improvement program" means a program established by a local government, alone or in partnership with other local governments or a program administrator, to finance

qualifying improvements on residential or commercial real property.

(i) ~~(b)~~ "Qualifying improvements": ~~improvement"~~

1. For residential property, includes any:

a. ~~1.~~ Energy conservation and efficiency improvement, which is a measure to reduce consumption through conservation or a more efficient use of electricity, natural gas, propane, or other forms of energy on the property, including, but not limited to, air sealing; installation of insulation; installation of energy-efficient heating, cooling, or ventilation systems; building modifications to increase the use of daylight; replacement of windows; installation of energy controls or energy recovery systems; installation of electric vehicle charging equipment; and installation of efficient lighting equipment.

b. ~~2.~~ Renewable energy improvement, which is the installation of any system in which the electrical, mechanical, or thermal energy is produced from a method that uses one or more of the following fuels or energy sources: hydrogen, solar energy, geothermal energy, bioenergy, and wind energy.

c. ~~3.~~ Wind resistance improvement, which includes, but is not limited to:

(I) ~~a.~~ Improving the strength of the roof deck attachment;

(II) ~~b.~~ Creating a secondary water barrier to prevent water intrusion;

(III) ~~c.~~ Installing wind-resistant shingles;

(IV) ~~d.~~ Installing gable-end bracing;

(V) ~~e.~~ Reinforcing roof-to-wall connections;

(VI) ~~f.~~ Installing storm shutters; or

(VII) ~~g.~~ Installing opening protections.

d. Wastewater improvement, which includes, but is not limited to:

(I) The removal, replacement, or improvement of an onsite sewage treatment and disposal system with a secondary or advanced onsite sewage treatment and disposal system or technology;

(II) The replacement or conversion of an onsite sewage treatment and disposal system to a central sewerage system or distributed sewerage system, including, but not limited to, the installation of a sewer lateral and anything necessary to connect the onsite sewage treatment and disposal system or the building's plumbing to a central sewerage system or distributed sewerage system; or

(III) Any removal, repairs, or modifications made to an onsite sewage treatment and disposal system, including any repair, modification, or replacement of a system required under a local ordinance enacted pursuant to ss. 381.0065 and 381.00651.

2. For commercial property, includes any:

a. Energy conservation and efficiency improvement, which

is a measure to reduce consumption through conservation or a more efficient use of electricity, natural gas, propane, or other forms of energy on the property, including, but not limited to, air sealing; installation of insulation; installation of energy-efficient heating, cooling, or ventilation systems; building modifications to increase the use of daylight; replacement of windows; installation of energy controls or energy recovery systems; installation of electric vehicle charging equipment; installation of efficient lighting equipment; or any other improvements necessary to achieve a sustainable building rating or compliance with a national model green building code.

b. Renewable energy improvement, which is the installation of any system in which the electrical, mechanical, or thermal energy is produced from a method that uses one or more of the following fuels or energy sources: hydrogen, solar energy, geothermal energy, bioenergy, and wind energy.

c. Resiliency improvement, which includes, but is not limited to:

(I) Improving the strength of the roof deck attachment;

(II) Creating a secondary water barrier to prevent water intrusion;

(III) Installing wind-resistant shingles;

(IV) Installing gable-end bracing;

(V) Reinforcing roof-to-wall connections;

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(VI) Installing storm shutters;

(VII) Installing opening protections;

(VIII) Creating or improving stormwater and flood resiliency, including shoreline improvements; or

(IX) Making any other improvements necessary to achieve a sustainable building rating or compliance with a national model resiliency standard and any improvements to a structure to achieve wind or flood insurance rate reductions, including building elevation.

(j) "Residential property" means a residential real property composed of four or fewer dwelling units which has been or will be improved by a qualifying improvement.

(3) A local government may levy non-ad valorem assessments to fund qualifying improvements.

(4) Subject to local government ordinance or resolution, a residential or commercial property owner may apply to the qualifying improvement program ~~local government~~ for funding to finance a qualifying improvement and enter into a financing agreement with the local government. Costs incurred by the local government for such purpose may be collected as a non-ad valorem assessment. A non-ad valorem assessment must ~~shall~~ be collected pursuant to s. 197.3632 and, notwithstanding s. 197.3632(8)(a), is ~~shall~~ not ~~be~~ subject to discount for early payment. However, the notice and adoption requirements of s. 197.3632(4) do not apply if this section is used and complied with, and the intent

resolution, publication of notice, and mailed notices to the property appraiser, tax collector, and Department of Revenue required by s. 197.3632(3)(a) may be provided on or before August 15 in conjunction with any non-ad valorem assessment authorized by this section, if the property appraiser, tax collector, and local government agree. A non-ad valorem assessment on a commercial property securing financing for a qualifying improvement, notwithstanding ss. 192.091(2)(b) and 197.3632(8)(c), is subject to a maximum annual fee of 1 percent of the annual non-ad valorem assessment collected or $5,000, whichever is less.

(5) Pursuant to this section or as otherwise provided by law or pursuant to a local government's home rule power, a local government may enter into a partnership with one or more local governments for the purpose of providing and financing qualifying improvements.

(6) A qualifying improvement program may be administered by a for-profit entity or a not-for-profit organization on behalf of and at the discretion of the local government.

(7) A local government may incur debt for the purpose of providing financing for qualifying ~~such~~ improvements, which debt is payable from revenues received from the improved property~~,~~ or any other available revenue source authorized by law.

(8)(a) A local government may enter into a financing agreement to finance or refinance a qualifying improvement only

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with the record owner of the affected property. For government commercial property, the financing agreement must be executed by the nongovernmental lessee with the written consent of the governmental lessor. Evidence of such consent must be provided to the local government. The financing agreement with a nongovernmental lessee must provide that the nongovernmental lessee is the only party obligated to pay the assessment.

(b) Any financing agreement entered into pursuant to this section or a summary memorandum of such agreement must ~~shall~~ be submitted for recording ~~recorded~~ in the public records of the county within which the property is located by the sponsoring unit of local government within 10 ~~5~~ days after execution of the agreement. The recorded agreement provides ~~shall provide~~ constructive notice that the non-ad valorem assessment to be levied on the property constitutes a lien of equal dignity to county taxes and assessments from the date of recordation. A notice of lien for the full amount of the financing may be recorded in the public records of the county where the property is located. Such lien shall not be enforceable in a manner that results in the acceleration of the remaining nondelinquent unpaid balance under the assessment financing agreement.

(9)(a) ~~Before entering into~~ A financing agreement for a residential property may not be approved unless~~,~~ the local government, or the program administrator acting on its behalf, has ~~shall~~ reasonably determined ~~determine~~ that all of the

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following conditions have been met:

1. All property taxes and any other assessments levied on the same bill as property taxes are current ~~paid~~ and have not been delinquent for the preceding 3 years or the property owner's period of ownership, whichever is less.~~; that~~

2. There are no involuntary liens, including, but not limited to, construction liens on the property.~~; that~~

3. No notices of default or other evidence of property-based debt delinquency have been recorded during the preceding 3 years or the property owner's period of ownership, whichever is less.~~; and that~~

4. The property owner is current on all mortgage debt on the property and has had no more than one late payment exceeding 30 days during the 12 months immediately preceding the application date.

5. The property owner has acknowledged in writing the disclosure statements required by paragraph (12)(b).

6. The property is within the geographic boundaries of the applicable qualifying improvement program.

7. The term of the financing agreement does not exceed:

a. For a single qualifying improvement, the estimated useful life of the qualifying improvement.

b. For multiple qualifying improvements, the lesser of:

(I) Thirty years; or

(II) The greater of either the weighted average estimated

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useful life of all qualifying improvements being financed or the estimated useful life of the qualifying improvements to which the greatest portion of funds is disbursed.

The local government or program administrator, as applicable, shall determine the useful life of a qualifying improvement using established third-party standards, including certification criteria from government agencies or nationally recognized standards and testing organizations.

8. The property owner has not been subject to a bankruptcy proceeding within the last 5 years unless it was discharged or dismissed more than 2 years before the date on which the property owner applied for funding as set forth in subsection (4);

9. The property is not subject to an existing home equity conversion mortgage or reverse mortgage product.

10. The property is not currently a residential property gifted to a homeowner for free by a nonprofit entity as may be disclosed by the property owner. The failure of a property owner to disclose information set forth in this paragraph does not invalidate a financing agreement or any obligation thereunder.

11. The property owner has obtained estimates from at least two unaffiliated, competitive entities, one of which is a qualifying improvement contractor, for the qualifying improvement to be financed.

12. The local government or program administrator, as applicable, has asked if the property owner has obtained or sought to obtain additional qualifying improvements on the same property that have not yet been recorded. The failure of a property owner to disclose information set forth in this subsection does not invalidate a financing agreement or any obligation thereunder, even if the total financed amount of the qualifying improvement exceeds the amount that would otherwise be authorized under paragraph (15)(a).

The existence of a prior qualifying improvement non-ad valorem assessment or a prior financing agreement is not evidence that the financing agreement under consideration is affordable or meets other program requirements.

(b) A financing agreement for a commercial property may not be approved unless the local government, or the program administrator acting on its behalf, has reasonably determined that all of the following conditions have been met:

1. All property taxes and any other assessments levied on the same bill as property taxes are current.

2. There are no involuntary liens greater than $10,000, including, but not limited to, construction liens on the property.

3. No notices of default or other evidence of property-based debt delinquency have been recorded and not released

during the preceding 3 years or the property owner's period of ownership, whichever is less.

4. The property owner is current on all mortgage debt on the property.

(10) In addition to obtaining the information in subsection (9)(a), and before a local government or program administrator, as applicable, approves a qualifying improvement on residential property, the local government or program administrator must use information contained in the property owner's application, reasonably reliable third-party records, or an automated verification system to reasonably determine whether the property owner has the ability to pay the annual non-ad valorem assessment for the qualifying improvement. The local government or program administrator, as applicable, must review the property owner's household income, housing expenses, assets, and other debt obligations. If the local government or program administrator, as applicable, uses an automated verification system, it must be a system that can verify the property owner's income, is not based on predictive or estimation methodologies, and has been determined sufficient for such verification purposes by a federal mortgage lending authority or regulator. In reviewing the property owner's ability to pay, the local government or program administrator, as applicable:

(a) When determining the household income, may include the income of any property owner aged 18 years old or older whose

name is on the property title. If a person's income is considered, that person's debt obligations must also be considered.

(b) May not consider the equity in the property that will secure the non-ad valorem assessment.

(c) Shall determine the property owner's debt obligations using reasonably reliable third-party records, including, at a minimum, one consumer credit report from an agency that meets the requirements of 15 U.S.C. s. 1681a(p). Debt obligations to be reviewed include:

1. Secured and unsecured debt.

2. Housing expenses. The local government or program administrator, as applicable, shall make a reasonable estimate of the basic housing expenses based on the number of persons in the household.

3. Stated alimony or child support obligations.

(d) Shall determine whether the property owner has sufficient income to pay the annual non-ad valorem assessment and that he or she has sufficient residual income to meet his or her household living expenses. To participate in a qualifying improvement program, a residential property owner must have a total debt-to-income ratio no higher than 49 percent.

(11) Each local government or program administrator that offers a qualifying improvement program for residential properties must:

(a) Develop a written disclosure form, which may be presented in electronic format, that must be provided to the residential property owner before the property owner executes the financing agreement and which contains the key terms of the agreement, including:

1. A description of the qualifying improvement;

2. The estimated total financed amount, including the cost of the qualifying improvement, ancillary work, program fees, and prepaid interest, if any;

3. The annual non-ad valorem assessment process and estimated annual payment schedule;

4. The estimated amount of the annual non-ad valorem assessment;

5. The term of the total financed amount;

6. The interest rate for the financed amount;

7. The estimated annual percentage rate;

8. The total estimated annual costs that the residential real property owner will have to pay under the assessment contract, including program fees;

9. The total estimated average monthly equivalent amount of funds the residential real property owner would have to save in order to pay the annual costs of the non-ad valorem assessment, including program fees; and

10. The estimated due date of the residential property owner's first property tax payment that includes the non-ad

valorem assessment.

(b) Include the following statements in the written disclosure form, using the same order as listed in this paragraph, each of which must be individually acknowledged in writing by the residential property owner:

1. "I UNDERSTAND THAT IF I SELL OR REFINANCE THE PROPERTY, I MAY BE REQUIRED TO PAY OFF THE OUTSTANDING FINANCED AMOUNT AS A CONDITION OF THE SALE OR THE REFINANCE OF THE PROPERTY."

The previous statement must be made in at least 24-point boldfaced type.

2. "I understand that the annual non-ad valorem assessment will be paid when property taxes are paid and will result in a lien being placed on my property."

3. "I understand that the annual non-ad valorem assessment will be added to my property tax bill, and if I pay my property taxes through my mortgage payment using an escrow account, I must notify my mortgage lender."

4. "I understand that if I fail to pay the annual non-ad valorem assessment, I may incur penalties and fees, and the local government could issue a tax certificate which might result in the loss of my property."

5. "I understand that any potential utility or insurance savings are not guaranteed and will not reduce the annual non-ad valorem assessment or total assessment amount."

6. "I understand that I have 5 days to cancel the financing agreement. The 5-day right expires at midnight of the third business day after I sign the agreement."

7. "I understand that the local government, program administrator, or qualifying improvement contractor do not provide tax advice and that I should seek professional tax advice if I have questions regarding tax credits, tax deductibility, or other tax impacts of the qualifying improvement or the assessment contract.

8. "I understand that I cannot be assessed a penalty if I prepay the outstanding financed amount."

(c) Provide a printed or electronic cancellation form to the residential property owner no later than the date on which the property owner signs the financing agreement which allows the property owner to cancel the contract, within the 5-day period specified in subparagraph (b)6.

(d) Before a notice to proceed is issued, conduct, with at least one residential property owner or an individual legally authorized to act on behalf of the property owner, who is not affiliated or associated with the local government, program administrator, or qualifying improvement contractor, an oral, recorded telephone call during which time the local government or program administrator, as applicable, must use plain language. The local government or program administrator, as applicable, must ask the residential property owner or

authorized representative if he or she would like to communicate primarily in a language other than English and, if so, must conduct the call in the owner's or representative's preferred language. A local government or program administrator, as applicable, may not leave a voicemail for the residential property owner or authorized representative to satisfy this requirement. A local government or program administrator, as applicable, as part of this telephone call, must confirm with the residential property owner or authorized representative:

1. That at least one residential property owner has access to a copy of the assessment contract and financing estimates and disclosures.

2. The qualifying improvement that is being financed.

3. The total estimated annual costs that the residential property owner will have to pay under the assessment contract, including program fees.

4. The total estimated average monthly equivalent amount of funds the residential property owner would have to save in order to pay the annual costs of the non-ad valorem assessment, including program fees.

5. The estimated due date of the residential property owner's first property tax payment that includes the non-ad valorem assessment.

6. The term of the assessment contract.

7. That payments for the assessment contract will cause

the residential property owner's annual tax bill to increase and that payments will be made through an additional annual non-ad valorem assessment on the property and will be paid either directly to the county tax collector's office as part of the total annual secured property tax bill or may be paid through the residential property owner's mortgage escrow account.

8. That the qualifying residential property owner has disclosed whether the property has received or is seeking additional non-ad valorem assessments and has disclosed all other assessments or special taxes that are or will be placed on the property.

9. That the property will be subject to a lien during the term of the assessment contract and that the obligations under the contract may be required to be paid in full before the residential property owner sells or refinances the property.

10. That any potential utility or insurance savings are not guaranteed and will not reduce the annual non-ad valorem assessment or total assessment amount.

11. That the local government, program administrator, or qualifying improvement contractor does not provide tax advice and that the residential property owner should seek professional tax advice regarding questions about tax credits, tax deductibility, or other tax impacts of the qualifying improvement or the assessment contract.

(12)(a) A residential property owner may cancel a

financing agreement within 5 business days after signing the financing agreement without any financial penalty from the program administrator for doing so.

(b) A contract to sell or install a qualifying improvement that is related to an application for financing in a qualifying improvement program for a residential property is unenforceable, and a qualifying improvement contractor may not begin work under such a contract, if the property owner applied for, accepted, and canceled a qualifying improvement financing agreement within the 5-day right-to-cancel period set forth in paragraph (a).

(c) If a qualifying improvement contractor has initiated work on a residential property under a contract deemed unenforceable under this subsection, the qualifying improvement contractor:

1. May not receive compensation for that work under the financing agreement.

2. Must restore the property to its original condition at no cost to the property owner.

3. Must immediately return any money, property, and other consideration given by the property owner. If the property owner provided any property and the qualifying improvement contractor does not or cannot return it, the qualifying improvement contractor shall immediately return the fair market value of the property or its value as designated in the contract, whichever is greater.

(d) If the qualifying improvement contractor has delivered chattel or fixtures to the residential property pursuant to a contract deemed unenforceable under this subsection, the qualifying improvement contractor shall have 90 days from the date on which the contract was executed to retrieve the chattel or fixtures, provided that:

1. The qualifying improvement contractor has fulfilled the requirements of subparagraphs (c)2. and 3.

2. The chattel and fixtures can be removed at the qualifying improvement contractor's expense without damaging the property owner's property and practically returned.

(e) If a qualifying improvement contractor fails to comply with this subsection, the residential property owner may retain any chattel or fixtures provided pursuant to a contract deemed unenforceable under this subsection.

(f) A contract which is otherwise unenforceable under this subsection remains enforceable if the residential property owner waives his or her right to cancel the contract, allows the qualifying improvement contractor to proceed with the installation of the qualifying improvement, and cancels the financing agreement.

(13) ~~(10)~~ To constitute an improvement to a building or facility, a qualifying improvement must ~~shall~~ be affixed to a building or facility that is part of the property ~~and shall constitute an improvement to the building or facility~~ or a

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fixture attached to the building or facility.

(a) A financing ~~an~~ agreement between a local government and a residential ~~qualifying~~ property owner may not cover wind-resistance improvements in buildings or facilities under new construction or construction for which a certificate of occupancy or similar evidence of substantial completion of new construction or improvement has not been issued.

(b) A financing agreement may be executed for qualifying improvements in the construction of a commercial property before a certificate of occupancy or similar evidence of substantial completion of new construction or improvement is issued. Progress payments, or payments made before completion, are allowed for commercial properties, provided that the property owner subsequently provides, upon request for a final progress payment disbursement, written verification to the local government confirming that the qualifying improvements are completed and operating as intended. A financing agreement with a commercial property owner may cover wind-resistance improvements in buildings or facilities under new construction or construction for which a certificate of occupancy or similar evidence of substantial completion of new construction or improvement has not been issued.

(14) ~~(11)~~ Any work requiring a license under any applicable law to make a qualifying improvement shall be performed by a contractor properly certified or registered pursuant to ~~part I~~

~~or part II of~~ chapter 489, as applicable.

(15) ~~(12)~~(a) Without the consent of the holders or loan servicers of any mortgage encumbering or otherwise secured by residential ~~the~~ property:~~,~~

1. The total amount of any non-ad valorem assessment for a residential property under this section may not exceed 20 percent of the fair market ~~just~~ value of the real property ~~as determined by the county property appraiser~~.

2. The combined mortgage-related debt and total amount of any non-ad valorem assessments funded under this section for residential property may not exceed 97 percent of the fair market value of the residential real property.

The failure of a property owner to disclose information set forth in subparagraph (9)(a)12. does not invalidate a financing agreement or any obligation thereunder, even if the total financed amount of the qualifying improvements exceeds the amount that would otherwise be authorized under this paragraph. For purposes of this paragraph, fair market value shall be established by a written appraisal report prepared by a certified residential appraiser under chapter 475.

(b) Before entering into a financing agreement with the owner of a commercial property, the local government or program administrator, as applicable, must be in receipt of the written consent of the current holders or loan servicers of any mortgage

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that encumbers or is otherwise secured by the property or that will otherwise be secured by the property at the time the financing agreement is executed by the local government or program administrator. ~~Notwithstanding paragraph (a), a non-ad valorem assessment for a qualifying improvement defined in subparagraph (2)(b)1. or subparagraph (2)(b)2. that is supported by an energy audit is not subject to the limits in this subsection if the audit demonstrates that the annual energy savings from the qualified improvement equals or exceeds the annual repayment amount of the non-ad valorem assessment.~~

(16) ~~(13)~~ At least 30 days before entering into a financing agreement, the property owner must ~~shall~~ provide to the holders or loan servicers of any existing mortgages encumbering or otherwise secured by the property a written notice of the owner's intent to enter into a financing agreement together with the maximum principal amount to be financed and the maximum annual assessment necessary to repay that amount. A verified copy or other proof of such notice must ~~shall~~ be provided to the local government or program administrator, as applicable. A provision in any agreement between a mortgagee or other lienholder and a property owner, or otherwise now or hereafter binding upon a property owner, which allows for acceleration of payment of the mortgage, note, or lien or other unilateral modification solely as a result of entering into a financing agreement as provided for in this section is not enforceable.

This subsection does not limit the authority of the holder or loan servicer to increase the required monthly escrow by an amount necessary to ~~annually~~ pay the annual ~~qualifying improvement~~ assessment.

(17) ~~(14)~~ At or before the time a seller ~~purchaser~~ executes a contract for the sale ~~and purchase~~ of any property for which a non-ad valorem assessment has been levied under this section and has an unpaid balance due, the seller must ~~shall~~ give the prospective purchaser a written disclosure statement in either of the following forms ~~form~~, which must ~~shall~~ be set forth in the contract or in a separate writing.

(a) For a residential property:

QUALIFYING IMPROVEMENTS FOR ENERGY EFFICIENCY, RENEWABLE ENERGY, ADVANCED TECHNOLOGIES FOR WASTEWATER REMOVAL, OR WIND RESISTANCE.—The property being purchased is located within the jurisdiction of a local government that has placed an assessment on the property pursuant to s. 163.08, Florida Statutes. The assessment is for a qualifying improvement to the property relating to energy efficiency, renewable energy, advanced technologies for wastewater removal, or wind resistance, and is not based on the value of property. You are encouraged to contact the county property appraiser's office to learn more about this

and other assessments that may be provided by law.

(b) For a commercial property:

QUALIFYING IMPROVEMENTS FOR ENERGY EFFICIENCY, RENEWABLE ENERGY, OR RESILIENCY.—The property being purchased is located within the jurisdiction of a local government that has placed an assessment on the property pursuant to s. 163.08, Florida Statutes. The assessment is for a qualifying improvement to the property relating to energy efficiency, renewable energy, or resiliency, and is not based on the value of property. You are encouraged to contact the county property appraiser's office to learn more about this and other assessments that may be provided by law.

(18) A financing agreement authorized under this section on residential property may not include any of the following financing terms:

(a) A negative amortization schedule. Capitalized interest included in the original balance of the assessment financing agreement does not constitute negative amortization.

(b) A balloon payment.

(c) Prepayment fees, other than nominal administrative costs.

(19) For residential property, a local government or program administrator, as applicable:

(a) May not enroll a qualifying improvement contractor who contracts with residential property owners to install qualifying improvements unless:

1. The local government or program administrator, as applicable, determines that the qualifying improvement contractor maintains in good standing an appropriate license from the state, if applicable, as well as any other permits, licenses, or registrations required for engaging in its business in the jurisdiction in which it operates and maintains all state-required bond and insurance coverage.

2. The local government or program administrator, as applicable, obtains the qualifying improvement contractor's written agreement that the qualifying improvement contractor will comply with all applicable laws, including applicable advertising and marketing laws and regulations and the requirements of this section.

(b) Must maintain a process to enroll new qualifying improvement contractors that includes reasonable review of the following for each contractor:

1. Relevant work or project history.

2. Financial and reputational background checks, including a criminal background check.

3. The contractor's status on the Better Business Bureau

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platform or other online platforms that track contractor reviews.

(c) Must establish and maintain a process for monitoring qualifying improvement contractors with regard to performance and compliance with program policies and must implement policies for suspending, reinstating, and terminating qualifying improvement contractors based on violations of program policies or unscrupulous behavior.

A program administrator, either directly or through an affiliate, may not be enrolled as a qualifying improvement contractor.

(20)(a) Before disbursing funds to a qualifying improvement contractor for a qualifying improvement on residential property, the local government or program administrator, as applicable, must confirm that the applicable work or service has been completed and that the final permit for the qualifying improvement has been closed with all permit requirements satisfied.

(b) A local government or program administrator, as applicable, may not disclose the maximum financing amount for which a residential property owner is eligible to a qualifying improvement contractor or to a third party engaged in soliciting assessment contracts financed pursuant to this section.

(21) When communicating with residential property owners,

a local government, program administrator, or qualifying improvement contractor, or a third party engaged in marketing on behalf of these entities, must comply with the following marketing and communications guidelines and may not:

(a) Suggest or imply:

1. That a non-ad valorem assessment authorized under this section is a government assistance program;

2. That qualifying improvements are free or provided at no cost or that the financing related to a non-ad valorem assessment authorized under this section is free or provided at no cost; or

3. That the financing of a qualifying improvement using a qualifying improvement program authorized pursuant to this section does not require the property owner to repay the financial obligation.

(b) Make any representation as to the tax deductibility of a non-ad valorem assessment on residential real property. A local government, program administrator, or qualifying improvement contractor, or a third party engaged in marketing on behalf of these entities, may encourage a property owner to seek the advice of a tax professional regarding tax matters related to assessments.

(22)(a) A qualifying improvement contractor or third party engaged in marketing a qualifying improvement program may not advertise the availability of financing agreements or solicit

property owners on behalf of the local government or program administrator unless:

1. The qualifying improvement contractor or third party maintains the appropriate registration or certification from the Construction Industry Licensing Board or any other permit, license, or registration required to conduct business in the jurisdiction in which it operates and provides proof of having the required bond and insurance coverage amounts.

2. The local government or program administrator, as applicable, obtains the qualifying improvement contractor's or third party's written agreement that the qualifying improvement contractor or third party will comply with applicable laws and rules and qualifying improvement program policies and procedures, including those on advertising and marketing.

(b) A local government or program administrator may not provide any payment, fee, or kickback to a qualifying improvement contractor for referring financing business relating to any financing agreement on residential property. However, a program administrator may provide information or services to a qualifying improvement contractor to facilitate the installation of a qualifying improvement for a property owner.

(c) A local government or program administrator may not reimburse a qualifying improvement contractor or third party for its expenses in advertising and marketing campaigns and materials. A local government or program administrator, as

applicable, and a qualifying improvement contractor may share expenses in connection with joint advertising and marketing campaigns and materials if the expenses are shared on a commercially reasonable basis.

(d) A local government or program administrator may not provide to a qualifying improvement contractor any information that discloses the amount of funds for which a property owner is eligible for qualifying improvements or the amount of equity in a property.

(e) For residential properties, a qualifying improvement contractor may not provide a different price for a qualifying improvement financed under this section than the qualifying improvement contractor would otherwise reasonably provide if the qualifying improvement was not being financed through a financing agreement under this section.

(f) A program administrator may not provide any direct cash payment or other thing of material value to a property owner explicitly conditioned upon the property owner entering into a financing agreement. However, a program administrator may offer programs or promotions that provide reduced fees or interest rates if the reduced fees or interest rates are reflected in the financing agreements and are not provided to the property owners as cash consideration.

(23) Each local government and program administrator must develop and implement policies and procedures for responding to,

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tracking, and resolving questions and complaints about its qualifying improvement program.

(24) Each local government that has authorized a qualifying improvement program shall post on its website an annual report for the period ending December 31 each year containing the following information:

(a) The number of qualifying improvements funded.

(b) The aggregate, average, and median dollar amounts of annual non-ad valorem assessments and the total number of non-ad valorem assessments that funded qualifying improvements.

(c) The percentage, number, and dollar value of non-ad valorem assessments that funded qualifying improvements, aggregated by the category types consisting of energy efficiency, renewable energy, wind resistance, residential property wastewater, commercial property resiliency, and other commercial property qualifying improvements.

(d) The number of defaulted non-ad valorem assessments, including the total number and defaulted amount, the number and dates of missed payments, the total number of parcels defaulted and the years in default, and the percentage of defaults by total assessments.

(e) A summary of all reported complaints received by the local government and its program administrators related to authorized qualifying improvements programs, including the resolution of each complaint.

(f) Estimated number of jobs created.

(g) The number and percentage of homeowners 60 years of age or older participating in a qualifying improvement program.

This report shall be posted no later than April 1 of the year following the calendar year covered by the report.

(25) ~~(15)~~ A provision in any agreement between a local government and a public or private power or energy provider or other utility provider is not enforceable to limit or prohibit any local government from exercising its authority under this section.

(26) ~~(16)~~ This section is additional and supplemental to county and municipal home rule authority and not in derogation of such authority or a limitation upon such authority.

(27) This section is prospective only and does not affect or amend any existing non-ad valorem assessment or any existing interlocal agreement between local governments.

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

PCS for HB 917

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 917 Wage and Employment Benefits
SPONSOR(S): Commerce Committee
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

The federal Fair Labor Standards Act (FLSA) provides workers with minimum wage, overtime pay, and child labor protections. The FLSA authorizes the U.S. Secretary of Labor to administer the FLSA provisions, including workplace inspections, investigations, and enforcement of violations. The current federal minimum wage rate under the FLSA is $7.25 an hour. Most wage and salary workers are covered by the FLSA. The FLSA exempts certain employers and employees from the federal minimum wage and overtime requirements, including minor league baseball players.

Pursuant to the State Constitution, on September 30, 2021, Florida's minimum wage increased to $10 per hour. Each year, thereafter, Florida's minimum wage will increase by $1 until the minimum wage reaches $15 per hour on September 30, 2026. Beginning in 2027, the minimum wage will be adjusted annually for inflation, as it had from 2005-2021.

The Florida Minimum Wage Act (Act) was enacted in 2005 to implement the minimum wage provisions in the State Constitution. The Act designates the Department of Economic Opportunity (DEO) as the state agency that implements the minimum wage requirements and establishes procedures with respect to enforcement of violations. The Act specifies that:

- Only those individuals entitled to receive the federal minimum wage under the FSLA, and its implementing regulations, are eligible to receive the state minimum wage.
- Federal minimum wage exemptions in the FLSA are considered incorporated into the Act.

Florida's wage and employment benefits law preempts the establishment of a minimum wage to the state. Thus, local governments cannot establish a minimum wage for employers in their jurisdiction. Local governments are also prohibited from requiring an employer to provide employment benefits not required by state or federal law. However, local governments have limited authority to establish a minimum wage and to require specific employment benefits for their own employees and those of their vendors or contractors.

The bill amends the Act to clarify that the state minimum wage will track the federal minimum wage, as set forth and "as amended," in the FLSA. This aligns Florida's minimum wage exemptions with recent amendments to federal exemptions.

The bill amends Florida's wage and employment benefits law to:

- Prohibit local governments from seeking to control or affect the wages or employment benefits, or awarding preferences on the basis of wages or employment benefits, provided by their vendors, contractors, service providers, or other parties doing business with the local government through purchasing and contracting procedures.
- Remove the ability of local governments to establish a minimum wage for the employees of an employer contracting to provide goods or services for the local government, or for the employees of a subcontractor of such an employer, under the terms of a contract with the local government.

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

The bill is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Fair Labor Standards Act

The federal Fair Labor Standards Act (FLSA), enacted in 1938, provides covered workers with minimum wage, overtime pay, and child labor protections.[1] In 1938, the FLSA established a minimum wage of $.25 an hour. The current federal minimum wage rate is $7.25 an hour, which went into effect July 24, 2009.[2] The FLSA applies to employment within any state in the U.S., the District of Columbia or any territory or possession of the U.S.[3]

The FLSA covers most private and public sector employees. However, certain employers and employees are exempt from coverage, including: individuals with disabilities, youth workers, tipped workers and executive, administrative and professional workers. The FLSA covers businesses if the business has annual sales of at least $500,000.[4] It also covers certain individual employees if such employee is engaged in interstate commerce.

Regardless of the dollar amount of revenues of a business, the FLSA applies to:[5]

- **Governments**: Federal, state, or local government agencies.
- **Hospitals**: Hospitals, or institutions primarily engaged in the care of the sick, the aged, or the mentally ill or disabled who live on the premises. (It does not matter if the hospital or institution is public or private or is operated for profit or not-for-profit.)
- **Schools**: Pre-schools, elementary or secondary schools or institutions of higher learning (e.g., college), or a school for mentally or physically handicapped or gifted children. (It does not matter if the school or institution is public or private or operated for profit or not-for-profit.)

The FLSA includes several exemptions from the federal minimum wage provisions, including:[6]

- Executive, administrative and professional employees;
  - Teachers and academic administrative personnel in elementary and secondary schools, outside sales employees, and employees in certain computer-related occupations.
- Employees in certain seasonal amusement or recreational establishments, employees in certain small newspapers, seamen employed on foreign vessels, employees engaged in fishing operations, and employees engaged in newspaper delivery;
- Farm workers employed by certain employers;
- Causal babysitters and persons employed as companions for the elderly or infirm;
- Border patrol agents[7]; and

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[1] 29 U.S.C. § 201-219 and 29 C.F.R. ch. V.

[2] Congressional Research Service, CRS Report R42713, *The Fair Labor Standards Act (FLSA): An Overview*, https://crsreports.congress.gov/product/pdf/R/R42713#:~:text=The%20Fair%20Labor%20Standards%20Act%20(FLSA)%20provides%20workers%20with%20minimum,employees%20are%20exempt%20from%20coverage, (last visited Mar. 14, 2023). (The main FLSA provisions and accompanying Department of Labor (DOL) regulations constitute what is commonly known as federal wage and hour laws and federal child labor law.).

[3] Congressional Research Service, CRS Report R42713, *The Fair Labor Standards Act (FLSA): An Overview*, https://crsreports.congress.gov/product/pdf/R/R42713#:~:text=The%20Fair%20Labor%20Standards%20Act%20(FLSA)%20provides%20workers%20with%20minimum,employees%20are%20exempt%20from%20coverage, (last visited Mar. 14, 2023). (The FLSA does not apply to employees working in a foreign country even if the employer has its main office in the U.S.).

[4] The size of an enterprise is measured by its "annual sales or business done." Annual sales or business done includes all business activities that can be measured in dollars. Thus, retailers are covered by the FLSA if their annual sales are at least $500,000. Owners of rental properties are covered if they collect at least $500,000 annually in rent. 29 C.F.R.§§779.258-779.259.

[5] U.S. Department of Labor, Fair Labor Standards Act Advisor, https://webapps.dol.gov/elaws/whd/flsa/scope/screen10.asp, (last visited Mar. 15, 2023).

[6] 29 U.S.C. § 213. (It also includes separate exemptions from overtime pay.)

[7] Border Patrol Agent Pay Reform Act of 2014, S.1691, 113th Cong, (2014).

- Baseball players who are compensated pursuant to a contract that provides for a weekly salary for services performed during the league's championship season at a rate that is not less than a weekly salary equal to the minimum wage.

The FLSA was amended in 2014, related to border patrol agents, and again in 2018, to exempt minor league baseball players who are paid at least $290 per week during the 2018 championship season from the federal minimum wage rate and overtime pay.[8] These two amendments were the only amendments made to the minimum wage exemptions provisions of the FLSA since Florida passed its minimum wage law in 2005.[9]

The FLSA provides that if states enact worker protections, including minimum wage rates, that are more protective of employees than what is provided by the FLSA, the state law applies.[10] Consequently, no state law may weaken the worker protections in the FLSA. However, state laws that impose greater worker protections will supersede those in the FLSA.[11]

Thirty states plus Washington DC, Guam, Puerto Rico, and the Virgin Islands provide a minimum wage greater than the federal minimum wage. Thirteen states provide a minimum wage that is equal to the federal minimum wage. Five states have not adopted a minimum wage and two states have a minimum wage that is below the federal minimum wage.[12] For those seven states, the federal minimum wage applies, but only to those workers covered by the FLSA.

Article X, Section 24 of the Florida Constitution

On November 2, 2004, Floridians voted to amend the Florida Constitution by adding a minimum wage provision (Section 24) that established the state minimum wage.[13] Prior to this date Florida did not have a law on minimum wage so the FLSA applied for covered workers. Section 24 provides the amount of the minimum wage and the procedure for calculating increases in the minimum wage.[14]

Florida voters again on November 3, 2020, voted to approve a constitutional amendment related to the state's minimum wage, Amendment 2, to gradually increase the state's minimum wage to $15 an hour by the year 2026.[15] Pursuant to the passage of Amendment 2, on September 30, 2021, Florida's minimum wage increased to $10 per hour. Each year, thereafter, Florida's minimum wage will increase

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[8] *See* Levi Weaver, On Minor-League Pay, *MLB's Stance Doesn't Line Up with the Facts*, ATHLETIC (Apr. 4, 2018), https://www.theathletic.com/293189/%202018/04/04/on-minor-league-pay-mlbs-stance-doesnt-line-up-with-the-facts// (last visited March 1, 2023). (When recounting salary scale per level of minor league baseball, the article notes "federally-recognized poverty line is $12,140 per year for single-individual households." According to the article, a not-insignificant percentage of minor league players are able to subsidize their relatively meager monthly salaries by drawing upon the signing bonuses they received from their MLB clubs when first entering the professional ranks. These bonuses can range anywhere from $10,000 to several million dollars. "The top 64 picks [in the MLB draft] last year all received a bonus of over $1,000,000 before taxes, but roughly 40% of players signed for one-time bonuses of $10,000 or less."

[9] S. 448.110, F.S., expressly references ss. 213 and 214 of the FLSA, which address minimum wage exemptions and employment under special certificates, respectively. However, s. 214 has not been amended since 1989. (*See* Pub. L. 101–157, § 4(d), Nov. 17, 1989, 103 Stat. 941.)

[10] 29 U.S.C. §218.

[11] Congressional Research Service, CRS Report R42713, *The Fair Labor Standards Act (FLSA): An Overview, Updated March 2, 2023*, https://crsreports.congress.gov/product/pdf/R/R42713#:~:text=The%20Fair%20Labor%20Standards%20Act%20(FLSA)%20provides%20workers%20with%20minimum,employees%20are%20exempt%20from%20coverage, (last visited Mar. 14, 2023).

[12] U.S. Department of Labor, Consolidated Minimum Wage Table, https://www.dol.gov/agencies/whd/mw-consolidated (last visited Mar. 15, 2023).

[13] Art. X, s. 24., Fla. Const.

[14] Art. X, s. 24 (c), Fla. Const.

[15] U.S. Department of State, *Notice of Increase to State of Florida's Minimum Wage*, https://www.state.gov/wp-content/uploads/2021/01/2021-01-29-Notice-FL-Minimum-Wage-Increase.pdf (last visited Mar. 3, 2023).

by $1 until the minimum wage reaches $15 per hour on September 30, 2026.[16] Beginning in 2027, the minimum wage will be adjusted annually for inflation, as it had been done from 2004 - 2021.

Related to minimum wage, the Florida Constitution states, "All working Floridians are entitled to be paid a minimum wage sufficient to provide a decent and healthy life, that protects their employers from unfair low wage competition, and that does not force them to rely on taxpayer-funded public services."[17]

The Florida Constitution references the FLSA and specifically ties the meaning[18] of certain terms, "Employer," "Employee" and "Wage," to have the meanings established under the FLSA and its implementing regulations.[19] It also indicates that that case law, administrative interpretations, and other guiding standards developed under the federal FLSA must guide the construction of Florida's Constitution related to Section 24 and any implementing statutes or regulations.[20]

Florida Minimum Wage Act

The Florida Minimum Wage Act (Act) was enacted in 2005 to implement the minimum wage provisions in the State Constitution.[21] The Act designates the Department of Economic Opportunity (DEO) as the state agency that implements the minimum wage requirements, establishes procedures with respect to civil actions alleging violations, and provides that it is the exclusive remedy under state law for violations of Section 24.[22]

The Act provides that effective May 2, 2005, employers are required to pay employees a minimum wage at an hourly rate of $6.15 for all hours worked in Florida. Only those individuals entitled to receive the federal minimum wage under the FSLA and its implementing regulations are eligible to receive the state minimum wage pursuant to the State Constitution and this statute. The provisions of ss. 213 and 214 of the federal Fair Labor Standards Act, as interpreted by applicable federal regulations and implemented by the Secretary of Labor, are incorporated by reference.[23]

The Act requires DEO to calculate an adjusted state minimum wage rate and requires the Department of Revenue (DOR) and DEO to annually publish the amount of the adjusted state minimum wage and the effective date on their websites. The Act authorizes persons to file a complaint or inform any person of his or her potential rights pursuant to Section 24 regarding unpaid wages.[24] The Act also authorizes the Attorney General (AG) to bring a civil action to enforce these provisions. The AG may seek injunctive relief, and for willful violations, may seek to impose a fine of $1,000 per violation, payable to the state.[25]

As it relates to the federal minimum wage and the FLSA, the Act specifies that:[26]

- Only those individuals entitled to receive the federal minimum wage under the FSLA, and its implementing regulations, are eligible to receive the state minimum wage; and
- Provisions related to federal minimum wage exemptions in the FLSA are considered incorporated in the Act.

[16] Department of Economic Opportunity, *Florida's Minimum Wage*, https://floridajobs.org/docs/default-source/business-growth-and-partnerships/for-employers/posters-and-required-notices/2022-minimum-wage/2022-florida-minimum-wage-announcement.pdf?sfvrsn=961754b0_2 (last visited Mar. 3, 2023).
[17] Art. X, s. 24 (a), Fla. Const.
[18] *In re Advisory Opinion to the Atty. Gen. re Fla. Minimum Wage Amend.*, 880 So. 2d 636, 641–42 (Fla. 2004). ("The proposed amendment does not state that it is adopting the FLSA's *definition* of the term "employee," but provides that it is adopting the *meaning* of the term "employee," which is a much broader concept.")
[19] Art. X, s. 24(b), Fla. Const.
[20] Art. X, s. 24(f), Fla. Const.
[21] Ch. 2005-353, Laws of Fla., codified in s. 448.110, F.S.
[22] S. 448.110(10), F.S.
[23] S. 448.110(3), F.S.
[24] S. 448.110(6), F.S.
[25] S. 448.110(7), F.S.
[26] S. 448.110(3), F.S.

Professional Baseball in Florida

Currently, there are 12 minor league baseball teams that are affiliated with Major League Baseball (MLB) in Florida. There are approximately 500 players currently rostered, employed, and being paid by the 12 Florida Minor League Baseball teams.[27] Additionally, 15 MLB teams conduct major and minor league spring training in Florida at thirteen different spring training facilities, a decrease from 18 teams in 2008 and 16 teams in 2009. The Cleveland Indians (previously playing at Winter Haven), Los Angeles Dodgers (Vero Beach) and Cincinnati Reds (Sarasota) have all moved to Arizona in recent years.[28] Two teams that play in the MLB, the Miami Marlins and the Tampa Bay Rays, are permanently located in Florida.

The main baseball season runs from early April to early October with teams typically playing six days a week. There are also play-offs which take place at the end of the normal season for the top-ranking teams. The main season is preceded by spring training which typically starts around the middle of February. Many of Florida's baseball parks host other MLB teams every Spring as part of the Grapefruit League Spring Training season. According to a 2018 economic impact study, the 2018 Florida Grapefruit League generated an economic impact of approximately $687 million, $348 million in direct spending, 7,152 jobs, and $253 million in earned wages, for the State of Florida.[29]

According to the industry, baseball players hours vary widely based on a number of factors, which can vary. Players often perform extra activities, work longer hours than regularly scheduled, and perform different activities than their teammates.[30] As a result, the MLB has argued that the nature of the sport stymies conventional attempts at categorizing "work hours."[31]

Recently, MLB agreed to pay $185 million to current and former minor league baseball players to settle a federal class action lawsuit in California alleging violations of minimum wage laws.[32] In the lawsuit, the players sued MLB and the MLB Clubs claiming they failed to pay the players minimum wage and overtime pay in violation of the FLSA and state wage-and-hour laws in California, Arizona, and Florida.

MLB also agreed to rescind any prohibitions against teams paying wages to minor league players outside of the season. The MLB also committed to issuing a memorandum advising their clubs to compensate minor leaguers in compliance with wage-and-hour laws in effect in Arizona and Florida during spring training, extended spring training, instructional leagues, and the championship season in those states, including any minimum wage laws that apply.[33]

The Court held the final approval hearing related to the settlement on February 17, 2023. A late filed motion to object to the settlement was filed and the Court has taken the motion under consideration. A ruling is not expected until late March 2023.[34]

Local Wage Ordinances

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[27] *See* Michael Avallone, *Then and now: Florida State League*, MiLB.com, https://www.milb.com/news/florida-state-league-overview (last visited Mar. 3, 2023).
[28] FloridaReview.co.uk, *FLORIDA SPRING TRAINING 2023*, https://floridareview.co.uk/florida-events/florida-spring-training (last visited Mar. 15, 2023).
[29] Florida Sports Foundation, *2018 MLB SPRING TRAINING ECONOMIC IMPACT STUDY*, http://playinflorida.com/wp-content/uploads/2018/08/GFL-IS-Page-by-Page-Booklet-spread.pdf (last visited Mar. 15, 2023).
[30] Bleacher Report, Pregame Routines: *A Typical Day in the Life of a Professional Baseball Player*, https://bleacherreport.com/articles/1061824-pregame-routines-a-typical-day-in-the-life-of-a-professional-baseball-player (last visited Mar. 15, 2023).
[31] Pew Trusts, Baseball Players Press Lawmakers for Minor League Labor Standards, https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2022/03/30/baseball-players-press-lawmakers-for-minor-league-labor-standards (last visited Mar. 19, 2023).
[32] *Aaron Senne et al vs. Office of the Commissioner of Baseball et al*., Civil Case No. 14-cv-00608.
[33] NBC News, MLB settles minor league players' wage-and-hour class action suit for $185 million, https://www.nbcnews.com/news/us-news/mlb-settles-minor-league-players-wage-hour-class-action-suit-185-milli-rcna38554 (last visited Mar. 15, 2023).
[34] JND Legal Administration, *WELCOME TO THE SENNE V. OFFICE OF THE COMMISSIONER OF BASEBALL SETTLEMENT WEBSITE*, https://www.baseballplayerwagecase.com/ (last visited Mar. 15, 2023).

The federal Fair Labor Standards Act does not preempt state laws or municipal ordinances from establishing a higher minimum wage. *See* s. 18(a) of the federal Fair Labor Standards Act of 1938, as amended, 29 U.S.C. s. 218:

> No provision of [the Fair Labor Standards Act] or of any order thereunder shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under [the federal act].

In Florida, the State Constitution authorizes counties to enact ordinances that are not inconsistent with state law.[35] The State Constitution also grants municipalities the power to enact ordinances on any subject that state law may address, except:[36]

- The subjects of annexation, merger, and exercise of extraterritorial power;
- Any subject expressly prohibited by the State Constitution;
- Any subject expressly preempted to state or county government by the State Constitution or by law; or
- Any subject preempted to a county under a county charter.

In 2003, the Legislature preempted the establishment of minimum wages to the state.[37] However, a political subdivision (local government)[38] retains the authority to establish a minimum wage other than a state or federal minimum wage or to provide employment benefits not otherwise required under state or federal law for:[39]

- Its employees;
- The employees of an employer contracting to provide goods or services for the local government, or for the employees of a subcontractor of such an employer, under the terms of a contract with the local government; or
- The employees of an employer receiving a direct tax abatement or subsidy from the local governments, as a condition of the direct tax abatement or subsidy.

The law also provides an exception for domestic violence or sexual abuse ordinances, orders, rules, or policies adopted by a local government.[40]

The law contains an exception for situations where compliance with the law would prevent a local government from receiving federal funds. This allows compliance with the Davis-Bacon and related acts,[41] which direct the federal Department of Labor to determine fair wages for contractors and subcontractors working on public buildings and public works. Florida law only allows non-compliance with regard to local minimum wage alterations to the extent necessary to allow receipt of federal funds.[42]

Additionally, local governments are prohibited from requiring an employer to provide employment benefits[43] not required by state or federal law.[44]

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[35] Section 1(f) and (g), Art. VIII of the State Constitution; *see also* s. 125.01, F.S.

[36] Section 2(b), Art. VIII of the State Constitution.

[37] S. 218.077(2), F.S.

[38] "Political subdivision" is defined to mean a county, municipality, department, commission, district, board, or other public body, whether corporate or otherwise, created by or under state law. S. 218.077(1)(f), F.S.

[39] S. 218.077(3)(a), F.S.

[40] S. 218.077(3)(b), F.S.

[41] *See, e.g.*, 40 U.S.C. 3141 *et seq*.

[42] S. 218.077(4), F.S.

[43] "Employment benefits" is defined to mean anything of value that an employee may receive from an employer in addition to wages and salary. The term includes, but is not limited to, health benefits; disability benefits; death benefits; group accidental death and dismemberment benefits; paid or unpaid days off for holidays, sick leave, vacation, and personal necessity; retirement benefits; and profit-sharing benefits. S. 218.077(1)(d), F.S.

[44] S. 218.077(2), F.S. Federally authorized and recognized tribal governments, however, are not prohibited from requiring employment benefits for a person employed within a territory over which the tribe has jurisdiction. S. 218.077(5), F.S.

Recent Court Ruling

In 2016, the city of Miami Beach enacted a local ordinance establishing a minimum hourly wage significantly exceeding the current Florida minimum wage. The ordinance applied to all employers operating with the city. The ordinance, which was scheduled to take effect on January 1, 2018, established both a local minimum wage of $10.31 an hour and annual increases to $13.31 an hour effective January 2021. Subsequently, the ordinance was challenged on the grounds that it was preempted by Florida's wage and employment benefits law that preempts the establishment of minimum wages to the state, and Florida's Third District Court of Appeals struck down the ordinance. The court held that the Florida Constitution authorizes the state legislature to preempt municipal powers by statute. The court also rejected the city's principal argument that Article X, Section 24 of the Florida Constitution, raising the state minimum wage, made the statute unconstitutional. In 2018, the Florida Supreme Court agreed to take up the case.[45] However, in 2019, the Florida Supreme Court issued an order that discharged jurisdiction over the case. As a result, the Third District's decision invalidating Miami Beach's local wage ordinance appears to currently stand.[46]

Effect of Proposed Changes

The bill amends the Act to incorporate current and future amendments made to the FLSA into the Act, aligning Florida's minimum wage exemptions with federal exemptions.

Specifically, the bill:

- Deletes an unnecessary date;
- Adds "as amended" to the reference to the FLSA; and
- Provides that this specific amendment to the Act is intended to "clarify existing law."

The bill amends Florida's wage and employment benefits law to address local wage and employment benefits mandates. Specifically, the bill prohibits political subdivisions or local governments from seeking to control or affect the wages or employment benefits provided by their vendors, contractors, service providers, or other parties doing business with the political subdivision:

- Through their purchasing or contracting procedures, or
- Through the use of evaluation factors, qualification of bidders, or otherwise from awarding preferences on the basis of wages or employment benefits provided by their vendors, contractors, service providers, or other parties doing business with the political subdivision.

The bill removes the exception allowing political subdivisions to establish a minimum wage or employment benefits not otherwise required under state or federal law for the employees of an employer contracting to provide goods or services for the political subdivision, or for the employees of a subcontractor of such an employer, under the terms of a contract with the political subdivision.

B. SECTION DIRECTORY:

Section 1: Amends s. 448.110, F.S., relating to state minimum wage; annual wage adjustment; enforcement.

Section 2: Provides applicability.

Section 3: Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

[45] *City of Miami Beach v. Florida Retail Federation, Inc.*, 233 So.3d 1236 at 1238 (Fla. 3d DCA 2017) (declined for review February 5, 2019).

[46] JDSUPRA, *Can Cities Set a Local Minimum Wage? Florida Supreme Court Says No* (Feb. 14, 2019), https://www.jdsupra.com/legalnews/can-cities-set-a-local-minimum-wage-67192/ (last visited Apr. 21, 2023).

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 effect on salaries paid to minor league baseball players.

The bill will no longer allow political subdivisions or local governments to establish a minimum wage greater than a state or federal minimum wage for their vendors or contractors nor would they be allowed to require employers that have contracts or subcontracts with a political subdivision to provide employment benefits not otherwise required under state or federal law. This change may lower operating costs for these private employers.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to wage and employment benefits; amending s. 218.077, F.S.; prohibiting political subdivisions from controlling, affecting, or awarding preferences, related to wages or employment benefits of entities contracting with the political subdivision; amending s. 448.110, F.S.; providing that the state minimum wage only applies to individuals who are entitled to receive the federal minimum wage under the federal Fair Labor Standards Act, as amended; providing applicability; providing an effective date.

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

Section 1. Subsection (2) and paragraph (a) of subsection (3) of section 218.077, Florida Statutes, are amended to read:

218.077 Wage and employment benefits requirements by political subdivisions; restrictions.—

(2) Except as otherwise provided in subsection (3), a political subdivision may not establish, mandate, maintain, or otherwise require an employer to pay a minimum wage, other than a state or federal minimum wage, to apply a state or federal minimum wage to wages exempt from a state or federal minimum wage, or to provide employment benefits not otherwise required by state or federal law. No political subdivision may through

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

its purchasing or contracting procedures seek to control or affect the wages or employment benefits provided by its vendors, contractors, service providers, or other parties doing business with the political subdivision. A political subdivision shall not through the use of evaluation factors, qualification of bidders, or otherwise award preferences on the basis of wages or employment benefits provided by its vendors, contractors, service providers, or other parties doing business with the political subdivision.

(3) This section does not:

(a) Limit the authority of a political subdivision to establish a minimum wage other than a state or federal minimum wage or to provide employment benefits not otherwise required under state or federal law:

1. For the employees of the political subdivision; or

2. ~~For the employees of an employer contracting to provide goods or services for the political subdivision, or for the employees of a subcontractor of such an employer, under the terms of a contract with the political subdivision; or~~

~~3.~~ For the employees of an employer receiving a direct tax abatement or subsidy from the political subdivision, as a condition of the direct tax abatement or subsidy.

Section 2. Subsection (3) of section 448.110, Florida Statutes, is amended to read:

448.110 State minimum wage; annual wage adjustment;

enforcement.—

(3) ~~Effective May 2, 2005,~~ Employers shall pay employees a minimum wage at an hourly rate of $6.15 for all hours worked in Florida. Only those individuals entitled to receive the federal minimum wage under the federal Fair Labor Standards Act, as amended, and its implementing regulations shall be eligible to receive the state minimum wage pursuant to s. 24, Art. X of the State Constitution and this section. The provisions of ss. 213 and 214 of the federal Fair Labor Standards Act, as interpreted by applicable federal regulations and implemented by the Secretary of Labor, are incorporated herein.

Section 3. The amendments to s. 448.110, Florida Statutes, in this act are intended to clarify existing law.

Section 4. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for CS/HB 1013 Protection from Discrimination Based on Health Care Choices
SPONSOR(S): Commerce Committee
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

The COVID-19 pandemic caused millions of deaths around the world, including over 1.1 million in the U.S. Currently, hospitalizations and deaths from COVID-19 remain relatively low nationwide. In response, the federal government issued Emergency Use Authorizations (EUAs) and full approvals, for vaccines and treatments. The federal government also required vaccination and other preventive measures in certain settings. The pandemic led to a worldwide debate on the role of government and private employers in such public health emergencies.

Current Florida law prohibits: businesses and governments from requiring employees to be vaccinated; businesses, governments and educational institutions from requiring proof of vaccination or post-infection recovery; and schools from requiring students to wear masks or be vaccinated. Enforcement is by the Department of Legal Affairs (DLA) within the Office of the Attorney General, by the Department of Health (DOH), or by private court action, depending on the provision.

The BILL amends current prohibitions and creates additional prohibitions. The bill:

- Prohibits businesses, governmental entities, and educational institutions from requiring a person to take a COVID-19 test, wear a facial covering to gain access to or use their services or document vaccination status for any COVID-19 vaccine, mRNA vaccine, or EUA vaccine.
- Prohibits businesses, governmental entities, and educational institutions from discriminating against a person for refusing to comply with a requirement prohibited by the bill, or current law, and specifically prohibits employment discrimination by businesses and governmental entities.
- Requires businesses, governmental entities, and educational institutions to provide exemptions and reasonable accommodations related to other (non-COVID-19, non-EUA and non-mRNA) vaccines.
- Prohibits business, governmental entities, and educational institutions from using polices of international public health organizations, unless expressly authorized by state government.
- Prohibits the use of facial coverings in health care settings, except in compliance with emergency rules required by the bill to be adopted by DOH and the Agency for Health Care Administration (AHCA).

The bill requires DLA to enforce the provisions against businesses and governmental entities, and moves enforcement of the current prohibitions against documentation requirements related to vaccination status or post-infection recovery from DOH to DLA. Similarly, the bill requires DOH to enforce the provisions against educational institutions, and repeals the current authority for parents and adult students to pursue declaratory and injunctive relief to enforce the current prohibitions against requiring documentation of COVID-19 vaccination or post-infection recovery.

The bill requires express informed patient consent for the use of COVID-19 treatment alternatives. Practitioners must consider treatment alternatives approved or authorized by the U.S. Food and Drug Administration, and explain the risks and benefits. It prohibits hospitals from interfering with the patient's right to choose treatment alternatives, under certain circumstances. Finally, the bill grants pharmacists licensure discipline immunity for dispensing a prescribed COVID-19 treatment alternative.

The bill has a significant, negative fiscal impact on DLA and DOH, and no impact on local government.

The bill is effective June 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

mRNA Vaccines

Vaccines help prevent infection by preparing the body to fight foreign bacteria, viruses, or other pathogens. All vaccines introduce a harmless piece of a particular bacteria or virus into the body, triggering an immune response.[1]

Messenger ribonucleic acid (mRNA) is a molecule that contains instructions directing cells in the human body to make a certain protein. To enter cells smoothly, mRNA travels within a protective bubble called a lipid nanoparticle. mRNA vaccines introduce a piece of mRNA that corresponds to a viral protein, usually a small piece of a protein found on the virus's outer membrane. By using this mRNA instruction, cells can build the protein, which matches parts of the pathogen called antigens.[2] Once cells finish making this protein, they quickly break down the mRNA. mRNA from a vaccine does not enter the nucleus and does not alter DNA.[3]

The immune system sees these foreign antigens as invaders, dispatching defenders called antibodies and T-cells, and training the immune system for potential future attacks. If the real virus attacks the body, the body's cells should recognize it, alerting the defender cells.

Though many people first became aware of mRNA technology because of COVID-19 vaccines, the technology is not new to the scientific community. For decades, scientists have studied mRNA, looking for ways to unlock its potential to prevent and treat disease. While the mechanism of action for mRNA technology is relatively simple, researchers have worked for years to develop technologies to allow mRNA to work in practical applications in the real world.[4]

mRNA vaccines have been used successfully to attain strong immunity in animals against influenza virus, Zika virus, rabies virus and others.[5] Current research is ongoing for human mRNA vaccines for various infectious diseases, including HIV, Hepatitis C, Influenza, Malaria, and Tuberculosis. Additionally, researchers are working on mRNA vaccines for cancer and genetic diseases as well as treatments for food-based and environmental allergies.[6]

COVID-19

Beginning in late 2019, a coronavirus, identified as SARS-CoV-2, caused a pandemic of respiratory illness, called COVID-19, to spread worldwide. COVID-19 can be severe, and has caused millions of deaths around the world, including over 1.1 million deaths in the United States (US). It can be spread from person to person and has caused lasting health problems in some.

COVID-19 Vaccines

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[1] National Library of Medicine, Medline Plus, "What are mRNA vaccines and how do they work?" https://medlineplus.gov/genetics/understanding/therapy/mrnavaccines/#:~:text=mRNA%20vaccines%20work%20by%20introducing,the%20virus%20by%20the%20vaccine

[2] Pfizer, Harnessing the Potential of mRNA, available at https://www.pfizer.com/science/innovation/mrna-technology, (last visited April 22, 2023).

[3] *Id.* at note 1.

[4] *Id.* at note 2

[5] Pardi, N., Hogan, M., Porter, F. et al. mRNA Vaccines — a New Era in Vaccinology, Nat Rev Drug Discov 17, 261–279, April 2018, available at https://www.nature.com/articles/nrd.2017.243#citeas (last visited April 22, 2023),

[6] Penn Medicine, The Future of mRNA Vaccines, available at https://www.pennmedicine.org/mrna, (last visited April 22, 2023).

In 2020, the federal Food and Drug Administration (FDA) issued an Emergency Use Authorization (EUA)[7] for COVID-19 vaccines by Pfizer/BioNTech and Moderna;[8] the EUA for the J&J/Janssen vaccine was issued in 2021.[9] The FDA issued full approval for the Pfizer vaccine in August 2021,[10] and for the Moderna vaccine in January 2022.[11]

In the U.S., approximately 69 percent of the population have completed a primary series; approximately 70 percent of Floridians have completed a primary series.[12] It is estimated that 16.5 percent[13] of Florida's population and 16.5 percent of the U.S. population[14] have had an updated (bivalent) booster dose.

COVID-19 Treatments

The U.S. Food and Drug Administration (FDA) approves medications for use following a review of clinical data on safety and effectiveness. In instances of public health emergency, the FDA also issues EUAs for the use of medical countermeasures; both new drugs not fully approved by the FDA, or existing drugs not approved by the FDA for this specific purpose.[15]

Since 2020, the FDA issued both approvals and EUAs for medications to treat COVID-19, listed in the table below.[16]

Drug	FDA Action	Use
Actemra (Tocilizumab)	Approved	Actemra (Tocilizumab) is approved for the treatment of COVID-19 in hospitalized adults who are receiving systemic corticosteroids and require supplemental oxygen, non-invasive or invasive mechanical ventilation, or extracorporeal membrane oxygenation (ECMO).
Veklury (Remdesivir)	Approved	Veklury (Remdesivir) is approved for the treatment of COVID-19 in adults and pediatric patients (28 days of age and older and weighing at least 3 kilograms) with positive results of direct SARS-CoV-2 viral testing, who are: hospitalized, or not hospitalized and have mild-to-moderate COVID-19 and are at high risk for progression to severe COVID-19, including hospitalization or death.
Olumiant (baricitinib)	Approved	Olumiant (baricitinib) is approved for the treatment of COVID-19 in hospitalized adults requiring supplemental oxygen, non-invasive or invasive mechanical ventilation, or extracorporeal membrane oxygenation (ECMO).
Paxlovid (nirmatrelvir & ritonavir)	Emergency Use Authorization	Antiviral uses

[7] U.S. Food and Drug Administration, *Emergency Use Authorization,* https://www.fda.gov/emergency-preparedness-and-response/mcm-legal-regulatory-and-policy-framework/emergency-use-authorization (last visited Nov. 8, 2021). Medical countermeasures are FDA-regulated products (biologics, drugs, and devices) that may be used in the event of a public health emergency. A determination that a public health emergency exists is insufficient to enable the FDA to issue EUAs ; *See* 21 U.S.C. § 360bbb-3; EUA allows the FDA to facilitate the availability and use of medical countermeasures during public health emergencies.
[8] U.S. Centers for Disease Control and Prevention, How CDC Is Making COVID-19 Vaccine Recommendations | CDC (last visited Nov. 11, 2021)
[9] U.S. Food and Drug Administration, Janssen COVID-19 Vaccine | FDA (last visited April 5, 2023).
[10] U.S. Food and Drug Administration, FDA Approves First COVID-19 Vaccine | FDA (last visited April 5, 2023).
[11] Moderna COVID-19 Vaccines, https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/moderna-covid-19-vaccines, (last visited April 5, 2023).
[12] U.S. Centers for Disease Control and Prevention, *COVID Data Tracker, Daily Update for the United States,* https://covid.cdc.gov/covid-data-tracker/#datatracker-home, (last visited April 5, 2023); *See also COVID-19 Integrated County View, Vaccinations in Florida*, https://covid.cdc.gov/covid-data-tracker/#county-view?list_select_state=Florida&data-type=CommunityLevels, (last visited April 5, 2023).
[13] *Id.*
[14] U.S. Centers for Disease Control and Prevention, *COVID Data Tracker*, *COVID-19 Vaccinations in the United States,* https://covid.cdc.gov/covid-data-tracker/#vaccinations_vacc-people-booster-percent-total
[15] U.S. Food and Drug Administration, *Emergency Use Authorization,* https://www.fda.gov/emergency-preparedness-and-response/mcm-legal-regulatory-and-policy-framework/emergency-use-authorization (last visited April 5, 2023). Medical countermeasures are FDA-regulated products (biologics, drugs, and devices) that may be used in the event of a public health emergency. A determination that a public health emergency exists is insufficient to enable the FDA to issue EUAs ; *See* 21 U.S.C. § 360bbb-3; EUA allows the FDA to facilitate the availability and use of medical countermeasures during public health emergencies.
[16] U.S. Food and Drug Administration, Coronavirus (COVID-19) Drugs, available at https://www.fda.gov/drugs/emergency-preparedness-drugs/coronavirus-covid-19-drugs#:~:text=Veklury%20(Remdesivir)%20is%20approved%20for,are%20at%20high%20risk%20for (last viewed April 1, 2023).

Lagevrio (molnupiravir)	Emergency Use Authorization	Antiviral uses
Kineret (anakinra) (Immune Modulator)	Emergency Use Authorization	Kineret (anakinra) is authorized for the treatment of COVID-19 in hospitalized adults with pneumonia requiring supplemental oxygen (low- or high-flow oxygen) who are at risk of progressing to severe respiratory failure and likely to have an elevated plasma soluble urokinase plasminogen activator receptor (suPAR).
Olumiant (baricitinib) (Immune Modulator)	Emergency Use Authorization	Olumiant (baricitinib) is authorized for the treatment of COVID-19 in pediatric patients 2 to less than 18 years of age requiring supplemental oxygen, invasive mechanical ventilation, or extracorporeal membrane oxygen (ECMO).
Actemra (tocilizumab) (Immune modulator)	Emergency Use Authorization	Actemra (tocilizumab) is authorized for the treatment of COVID-19 in hospitalized pediatric patients 2 to less than 18 years of age who are receiving systemic corticosteroids and require supplemental oxygen, non-invasive or invasive mechanical ventilation, or extracorporeal membrane oxygenation (ECMO).
REGEN-COV (casirivimab & imdevimab) SARS-COV-2-targeting Monoclonal Antibodies	Emergency Use Authorization	ARS-COV-2-targeting monoclonal antibodies (mAbs) are laboratory-produced antibodies that can help the immune system's attack on SARS-COV-2. These mAbs block entry into human cells, thus neutralizing the virus like other infectious organisms, SARS-CoV-2 can mutate over time, resulting in genetic variation in the population of circulating viral strains. Some variants can cause resistance to one or more of the mAb therapies authorized to treat COVID-19. Due to the high frequency of variants circulating within the United States that are not susceptible to the following mAbs, this product is not currently authorized in any U.S. region until further notice by FDA and may not be administered for the pre-exposure prophylaxis for prevention or the treatment of COVID-19 under the EUA.
Sotrovimab SARS-COV-2-targeting Monoclonal Antibodies	Emergency Use Authorization	ARS-COV-2-targeting monoclonal antibodies (mAbs) are laboratory-produced antibodies that can help the immune system's attack on SARS-COV-2. These mAbs block entry into human cells, thus neutralizing the virus like other infectious organisms, SARS-CoV-2 can mutate over time, resulting in genetic variation in the population of circulating viral strains. Some variants can cause resistance to one or more of the mAb therapies authorized to treat COVID-19. Due to the high frequency of variants circulating within the United States that are not susceptible to the following mAbs, this product is not currently authorized in any U.S. region until further notice by FDA and may not be administered for the pre-exposure prophylaxis for prevention or the treatment of COVID-19 under the EUA.
Bamlanivimab & Etesevimab SARS-COV-2-targeting Monoclonal Antibodies	Emergency Use Authorization	ARS-COV-2-targeting monoclonal antibodies (mAbs) are laboratory-produced antibodies that can help the immune system's attack on SARS-COV-2. These mAbs block entry into human cells, thus neutralizing the virus like other infectious organisms, SARS-CoV-2 can mutate over time, resulting in genetic variation in the population of circulating viral strains. Some variants can cause resistance to one or more of the mAb therapies authorized to treat COVID-19. Due to the high frequency of variants circulating within the United States that are not susceptible to the following mAbs, this product is not currently authorized in any U.S. region until further notice by FDA and may not be administered for the pre-exposure prophylaxis for prevention or the treatment of COVID-19 under the EUA.
Bebtelovimab SARS-COV-2-targeting Monoclonal Antibodies	Emergency Use Authorization	ARS-COV-2-targeting monoclonal antibodies (mAbs) are laboratory-produced antibodies that can help the immune system's attack on SARS-COV-2. These mAbs block entry into human cells, thus neutralizing the virus like other infectious organisms, SARS-CoV-2 can mutate over time, resulting in genetic variation in the population of circulating viral strains. Some variants can cause resistance to one or more of the mAb therapies authorized to treat COVID-19. Due to the high frequency of variants circulating within the United States that are not susceptible to the following mAbs, this product is not currently authorized in any U.S. region until further notice by FDA and may not be administered for the pre-exposure prophylaxis for prevention or the treatment of COVID-19 under the EUA.
Evusheld (tixagevimab co-packaged with cilgavimab) SARS-COV-2-targeting Monoclonal Antibodies	Emergency Use Authorization	ARS-COV-2-targeting monoclonal antibodies (mAbs) are laboratory-produced antibodies that can help the immune system's attack on SARS-COV-2. These mAbs block entry into human cells, thus neutralizing the virus like other infectious organisms, SARS-CoV-2 can mutate over time, resulting in genetic variation in the population of circulating viral strains. Some variants can cause resistance to one or more of the mAb therapies authorized to treat COVID-19. Due to the high frequency of variants circulating within the United States that are not susceptible to the following mAbs, this product is not currently authorized in any U.S. region until further notice by FDA and may not be administered for the pre-exposure prophylaxis for prevention or the treatment of COVID-19 under the EUA.
Propofol-Lipuro 1% (Sedative)	Emergency Use Authorization	Maintains sedation, generally via continuous intravenous infusion, in patients who are intubated and require mechanical ventilation in an intensive care unit (ICU) setting.

Regiocit (Renal replacement therapy)	Emergency Use Authorization	Continuous renal replacement therapy (CRRT) is a type of "dialysis," which is a machine treatment that filters and purifies the blood when a patient's kidneys are damaged or are not functioning normally. CRRT is used for patients with kidney injury in acute care settings.
Fresenius Medical multiFiltrate/multi Bic/multiPlus (Renal replacement therapy)	Emergency Use Authorization	Continuous renal replacement therapy (CRRT) is a type of "dialysis," which is a machine treatment that filters and purifies the blood when a patient's kidneys are damaged or are not functioning normally. CRRT is used for patients with kidney injury in acute care settings.

Some practitioners and patients advocate for the use of other drug and non-drug remedies to treat COVID-19, with or without the use of the above FDA-approved or -authorized drugs, including, for example:

- Hydroxychloroquine[17]
- Ivermectin[18]
- Methanol
- Herbal medicines
- Vitamins
- Minerals
- Probiotics
- Nasal saline irrigation and gargling
- Ultraviolet light
- Green tea
- Elderberry syrup
- Ginger

Federal COVID-19 Vaccination and Prevention Requirements

In addition to approving vaccines and treatments, the federal government adopted policies to require vaccination and other preventive measures for businesses and health care facilities.

OSHA COVID-19 Emergency Temporary Standards

On November 4, 2021, the federal Occupational Safety and Health Administration (OSHA) issued "COVID-19 Vaccination and Testing; Emergency Temporary Standards" (OSHA ETS), along with a number of Fact Sheets, FAQs, and templates for a mandatory vaccination policy, and a vaccination, testing, and face covering policy. The OSHA ETS was published in the Federal Register on November 5, 2021. [19]

In summary, the OSHA ETS required all employers with 100 or more employees to ensure their workforce is fully vaccinated or require any workers who remain unvaccinated to produce a negative test result at least weekly and wear a mask. These employers are also required to provide paid time off to workers who decide to be vaccinated so they can recover in the event of experiencing any short-term side effects from the vaccination. The OSHA ETS provides penalties of up to $14,000 per violation. According to the Administration, the requirement was expected to impact over 80 million workers in private sector businesses with 100 or more employees.[20]

[17] See, U.S. Food and Drug Administration, "FDA cautions against use of hydroxychloroquine or chloroquine for COVID-19 outside of the hospital setting or a clinical trial due to risk of heart rhythm problems", Jan. 12, 2022, available at https://www.fda.gov/drugs/fda-drug-safety-podcasts/fda-cautions-against-use-hydroxychloroquine-or-chloroquine-covid-19-outside-hospital-setting-or (last viewed April 1, 2023).
[18] See, U.S. Food and Drug Administration, "FAQ: COVID-19 and Ivermectin Intended for Animals", current as of March 10, 2023, available at https://www.fda.gov/animal-veterinary/product-safety-information/faq-covid-19-and-ivermectin-intended-animals#:~:text=A%3A%20No.,acquired%20from%20a%20legitimate%20source (last viewed April 1, 2023).
[19] COVID–19 Vaccination and Testing; Emergency Temporary Standard, 86 Fed. Reg. 61402, https://www.federalregister.gov/d/2021-23643
[20] The White House, *Path Out of the Pandemic: President Biden's COVID-19 Action Plan*, (Sep. 2021), https://www.vsba.org/wp-content/uploads/2021/09/Path-out-of-the-Pandemic-POTUS-COVID-19-Action-Plan.pdf (last visited April 5, 2023).

Challenges to the new OSHA ETS and applications for a stay on its enforcement were brought in almost every federal circuit in the US. On November 6, 2021, a panel of the US Court of Appeal for the Fifth Circuit granted a nationwide stay of the OSHA ETS pending further action of that court, because the "petitions give cause to believe there are grave statutory and constitutional issues with the mandate." On November 12th, the Fifth Circuit reaffirmed the initial stay finding that the OSHA ETS was "overbroad" and "flawed," and determined that it exceeded OSHA's statutory authority.[21]

All the cases were consolidated and transferred to the Sixth Circuit Court of Appeal,[22] which has the authority to modify, rescind, or leave in place the stay issued by the Fifth Circuit.[23] As of April, 2023, OSHA has withdrawn the vaccination and testing ETS as an enforceable emergency temporary standard and suspended enforcement and implementation activities regarding the ETS pending further development in the litigation.[24]

CMS Vaccination Rule

On November 5, 2021, CMS issued a new regulation (CMS Rule)[25] governing Medicare certification and Medicaid provider enrollment. As a condition of receiving Medicare and Medicaid funds, health care providers must establish and implement policies that will ensure that all workers are fully vaccinated[26] against COVID-19.[27] In 2022, CMS revised its guidance and survey procedures for all provider types related to assessing and maintaining compliance with the staff vaccination regulatory requirements. The revisions address frequency of review of the staff vaccination requirements to ensure that deficiency citations recognize good faith efforts by providers/suppliers.[28] CMS estimated the rule would apply to 13,050,000 health care staff in the first year, nationwide.[29]

State survey agencies conduct provider surveys to ensure compliance with CMS regulations; in Florida, federal enforcement surveys are conducted by the Agency for Health Care Administration.

On November 10, 2021, ten states[30] filed a lawsuit in federal court challenging the CMS rule. The states argue the rule violates the federal Administrative Procedure Act, is not authorized by Congress, and violates Medicare laws requiring consultation with state officials prior to issuing certain types of rules. The states also make constitutional claims related to spending powers, the anti-commandeering doctrine and the Tenth Amendment, and requested declaratory and injunctive relief.[31] The court granted the plaintiffs' request for expedited briefing, but a hearing date on the preliminary injunction has not yet been set.

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[21] National Law Review, *Fifth Circuit Hits Pause on OSHA COVID-19 Vaccine or Testing Emergency Standard,* https://www.natlawreview.com/article/fifth-circuit-hits-pause-osha-covid-19-vaccine-or-testing-emergency-standard

[22] The 6th Circuit hears cases from federal district courts in Kentucky, Michigan, Ohio, and Tennessee.

[23] Consolidation Order, *In Re: Occupational Safety and Health Agency, Interim Final Rule: COVID-19 Vaccination and Testing; Emergency Temporary Standard, 86 Fed. Reg. 61402, Issued On November 4, 2021* , MCP No. 165, J.P.M.L. (November 16, 2021).

[24] U.S. Dept. of Labor, OSHA, *COVID-19 Vaccination and Testing ETS*, January 25, 2022, https://www.osha.gov/coronavirus/ets2, (last visited April 5, 2023); See Also, JDSupra, *Navigating the Uncertainties of the ETS: What Employers Should Do Now,* https://www.jdsupra.com/legalnews/navigating-the-uncertainties-of-the-ets-4266782/ (last visited April 5, 2023).

[25] The regulation was issued as an Interim Final Rule. Under Medicare law, Interim Final Rules expire three years after issuance, unless finalized. The Interim Final Rule was effective on the day of publication in the Federal Register (Nov. 5, 2021). *See*, Social Security Act § 1871(a)(3) (42 U.S.C. § 1395hh(a)(3)).

[26] "Fully vaccinated" means a person 14 days after receipt of either a single-dose vaccine or the second of a two-dose vaccinations sequence. Receiving a booster is not required to be considered "fully vaccinated." 61563, citing Centers for Disease Control and Prevention, *Frequently Asked Questions about COVID-19 Vaccination,* , Mar. 29, 2023, https://www.cdc.gov/coronavirus/2019-ncov/vaccines/faq.html, (lastvisited April 5, 2023).

[27] Medicare and Medicaid Programs; Omnibus COVID-19 Health Care Staff Vaccination, 86 Fed. Reg. 61555 to 61627 (Nov. 5, 2021) (to be codified at 42 C.F.R. pts. 416, 418, 441, 460, 482-486, 491, and 494), available at 2021-23831.pdf (govinfo.gov) (last visited April 5, 2023).

[28] Centers for Medicare & Medicaid Services, Memorandum, *Revised Guidance for Staff Vaccination Requirements*, https://www.cms.gov/files/document/qs0-23-02-all.pdf, Oct. 26, 2022, (last visited April 5, 2023).

[29] Health Care Staff Vaccination, 86 Fed. Reg. 61603, Table 6.

[30] Missouri, Nebraska, Arkansas, Kansas, Iowa, Wyoming, Alaska, South Dakota, North Dakota, New Hampshire.

[31] *Missouri, et al, v. Joseph Biden, Jr., et al*, No. 21-01329, (E.D. Missouri filed on Nov. 10, 2021).

On November 18, 2021, the State of Florida filed a lawsuit in the Northern District of Florida challenging the CMS Rule.[32] The state argues the CMS action:

- Exceeds its authority under federal law;
- Was issued without consulting the states as required under law;[33]
- Was issued without the notice and comment period required by law;
- Is arbitrary and capricious; and
- Is a condition of receiving federal funds which violates the Spending Clause of the U.S. Constitution.[34]

Florida requested the court issue a temporary restraining order and preliminary and permanent injunctive relief prohibiting defendants from enforcing the mandate which was denied for failure to make a showing of irreparable harm to justify such an order.[35]

On January 13, 2022, the U.S. Supreme Court upheld the validity of the CMS rule.[36] Thereafter, Florida moved to dismiss its appeal, and the case was terminated.[37]

In response to these federal actions, the Florida Legislature, in Special Session 2021-B, adopted legislation to regulate businesses, government entities and educational institutions related to requirements for vaccination, proof of vaccination or infection recovery, and the use of face masks. (See below.)

COVID-19 Vaccination Mandates in Florida

Private Businesses

Section 381.00317, F.S., generally prohibits businesses from requiring any employee or contracted worker to be vaccinated for COVID-19. This prohibition applies to any form of corporation, partnership, association, cooperative, joint venture, business trust, or sole proprietorship that conducts business in this state, and any charitable organization.

Businesses can require employee vaccination, if they allow the employees to opt out of vaccination for these or any other reasons:

- for medical or religious reasons;
- based on immunity to COVID-19 (as determined by testing methods set by DOH rule);
- if the employee agrees to periodic testing; or
- if the employee uses employer-provided personal protective equipment (PPE).

The statute lays out specific criteria for claiming each of the above exemptions, and requires employer to use DOH forms for employees to submit statements of exemption.

This prohibition is enforced by the Department of Legal Affairs (DLA) within the Office of the Attorney General. Employees may file complaints with DLA, which investigates them. DLA must offer the employer the opportunity to comply with the law. However, DLA is required to fine an employer who violates this prohibition and terminates an employee due to a vaccination mandate: up to $10,000 per violation for employers with under 100 employees; and up to $50,000 per violation for employers with 100 or more employees. The statute authorizes the Attorney General to consider various factors and mitigating circumstances when determining the amount of the fine.

[32] *Florida v. Dep't. of Health and Human Srvcs., et al.*, No. 21-2722 (N.D. Fla. filed on November 17, 2021).
[33] 42 U.S.C. s. 1395z
[34] U.S. Const. art. I, s. 8
[35] *Florida v. Dep't. of Health and Human Srvcs., et al*., No. 21-2722 (N.D. Fla.) (See Order denying Motion for Preliminary Injunction, November 20, 2021).
[36] *Biden. v. Missouri,* 142 S.Ct. 647 (2022).
[37] *Florida v. Dep't. of Health and Human Srvcs., et al.* No. 21- 2722 (N.D. Fla.) *(See* Notice of Voluntary Dismissal by State of Florida, February 4, 2022).

An employer can avoid fines by reinstating employee back pay, if accomplished prior to the issuance of a final order.

In addition, an employee terminated for failure to comply with an employer vaccination mandate is eligible for reemployment assistance under ch. 443, F.S., and that refusal to comply does not disqualify the employee based on misconduct.[38]

Section 381.00318, F.S., provides a public records exemption for information related to vaccination mandate investigation of a private business. All such information is both confidential and exempt from disclosure during an active investigation, and remains so when the investigation is no longer active if the disclosure, as determined by the Attorney General, would jeopardize another, active, investigation, or result in certain harms to the complaining employee.

Since enactment, DLA has received 927 complaints, the majority of which were closed due to lack of a statutory violation. DLA found probable cause for nine complaints, and filed a single administrative complaint against an employer.[39]

Government Entities and Educational Institutions

Section 112.0441 prohibits governmental entities and educational institutions from requiring any employee or contracted worker to be vaccinated for COVID-19. This prohibition applies to the state and any political subdivision of the state, including local governments, boards and commissions; and to schools governed by school districts, charter schools, state universities, state college system institutions, developmental research schools, the Florida Virtual School and the Florida School for the Deaf and Blind.

The Department of Health (DOH) enforces this prohibition: current law authorizes DOH to impose a fine up to $5,000 per violation. In addition, an employee terminated for failure to comply with an employer vaccination mandate is eligible for reemployment assistance under ch. 443, F.S.

Similarly, s. 381.00319, F.S., prohibits educational institutions from requiring students to be vaccinated. Unlike the other vaccination mandate prohibitions, this prohibition is not enforced by any state agency. Instead, the law establishes a cause of action for adult students, or parents of minor students, to obtain injunctive relief against the educational institution. If the parent or student prevails, the law requires the court to award attorney fees and court costs to the plaintiff.

Sections 381.00317, 112.0441 and 381.00319, F.S., expire on June 1, 2023, unless saved by the Legislature, thereby ending these prohibitions on COVID-19 vaccination mandates by private businesses, governmental entities and educational institutions.

Documentation of Vaccination or Post-Infection Recovery

Private Businesses, Government Entities and Educational Institutions

[38] The Federal-State Unemployment Insurance Program provides unemployment benefits to eligible workers unemployed through no fault of their own, as determined by state law. The program is administered as a partnership between the federal government and the states. Florida's program, administered by the Department of Economic Opportunity (DEO) under ch. 443, F.S., requires claimants to meet certain eligibility criteria. Applications may be disqualified if the employee:

- Voluntarily left work without good cause attributable to his or her employer;
- Has been discharged by his or her employer for misconduct;
- Is unemployed due to a suspension for misconduct connected to his or her work;
- Is unemployed due to a leave of absence initiated by the individual; or
- Is discharged for misconduct connected with the individual's work, consisting of drug use, confirmed by a positive drug test
- Failed without good cause to apply for available suitable work, accept suitable work when offered to him or her, or return to his or her customary self-employment when directed by DEO.

[39] Department of Legal Affairs, email to committee staff from Libby Guzzo, Legislative Affairs Director, Feb. 7, 2023 (on file with committee staff).

Section 381.00316, F.S., prohibits private businesses, government entities and educational institutions from requiring people to provide documentation certifying COVID-19 vaccination or post-infection recovery to access the business, governmental operations or school attendance or enrollment, or to access the institution and its services.

Current law does not prohibit the use of screening protocols, and expressly states that it should not be construed to restrict businesses, governments and educational institutions from using protocols, if used in a manner consistent with "authoritative or controlling" government guidance.

DOH enforces this prohibition: current law authorizes DOH to impose a fine up to $5,000 per violation.

DOH received a combined total of 4,396 notifications of potential violations since enactment of the prohibitions on vaccination mandates and requirements for documentation of vaccination or post-infection recovery, as follows:

- Business Entities – 3,216
- Governmental Entities – 174
- Educational Institutions – 231
- Other (not specific) – 775

DOH issued 14 warning letters and 5 Notices of Violation, resulting in collection of two fines.[40]

Masks and Quarantine or Isolation

Schools

Section 1002.20(2)(n), F.S., prohibits K-12 public schools from requiring students to wear face masks or other facial coverings at school, other than when necessary for occupational or laboratory safety. Students are allowed to wear face masks if their parents allow it.

Current law also prohibits K-12 public schools from requiring students and employees to stay home from school if exposed to COVID-19, if they are asymptomatic and have not tested positive for COVID-19.

As with the student vaccination law, this prohibition is enforced by civil litigation, rather than by a state agency. Parents and adult students may bring an action for declaratory and injunctive relief against the school district for violations; and, if they prevail, will be awarded attorney fees and costs.

Section 1002.20(2)(n), F.S., expires on June 1, 2023, unless saved by the Legislature, thereby ending this prohibition on mask requirements and COVID-19 quarantine requirements by private businesses, public K-12 schools.

Private Businesses and Government Entities

Current law does not address mask or quarantine requirements by other (non-educational) government entities, or by private businesses.

Effect of the Bill

The bill significantly expands regulation of COVID-19-related policies, and other vaccine-related policies, for private businesses, governmental entities and educational institutions.

Facial Coverings, Vaccination Status, and COVID-19 Tests and Post-Infection Recovery Status

Businesses and Governments

[40] Department of Health, email from Gangul Gabadage, April 5, 2023, on file with committee staff.

The bill amends s. 381.0016, F.S., to add prohibitions for private businesses and government entities on requiring any person to take a COVID-19 test to gain entry to, or services from, the business or government entity, or as a condition of contracting with, employing, or promoting, anyone. The bill expands these COVID-19-related prohibitions to include business-imposed, and government-imposed, mandates related to any EUA or mRNA vaccine; not just those related to COVID-19. Under the bill, the provisions related to mRNA vaccines will sunset July 1, 2025, unless reenacted by the Legislature.

In addition, the bill prohibits businesses and governments from discriminating against employees or applicants for employment, or otherwise discriminate against any person, based COVID-19 vaccination, post-infection recovery status, failure to take a COVID-19 test, or vaccination status related to any EUA or mRNA vaccine.

Facial Coverings

Similarly, the bill adds prohibitions for private businesses and government entities on requirements to wear a facial covering, including a cloth or surgical face mask, a face shield, or any other device that covers the mouth and nose. This prohibition does not apply to health care providers and practitioners, if they are in compliance with facial covering prohibitions and regulations elsewhere in the bill (see below).

Other Vaccines

The bill also addresses business and government policies related to vaccines other than COVID-19, EUA and mRNA vaccines: it requires businesses and governments to provide for exemptions and accommodations for religious and medical reasons, in accordance with federal law.[41]

Enforcement

The bill requires DLA to enforce these new prohibitions, and enforce the current prohibition on requiring documentation of COVID-19 vaccination or post-infection recovery (which is currently enforced by DOH). The DLA may impose an administrative fine up to $5,000 for each violation, which revenues must be deposited into the General Revenue Fund, consistent with the enforcement provisions in current law. The bill authorizes DLA to take certain administrative actions when investigating a complaint of a violation of these provisions, such as administering oaths, taking depositions, conducting inspections, issuing subpoenas, etc.

Consistent with current law, the bill authorizes reemployment assistance under ch. 443, F.S., for an employee terminated for failure to comply with prohibited mandates.

Educational Institutions

The bill amends s. 381.0016, F.S., to add prohibitions for educational institutions on requiring any person to take a COVID-19 test to gain access to, or services from, the educational institution. The bill expands these COVID-19-related prohibitions to include vaccination mandates imposed by educational institutions related to any EUA or mRNA vaccine; not just those related to COVID-19. Under the bill, the provisions related to mRNA vaccines will sunset July 1, 2025, unless reenacted by the Legislature.

The bill prohibits educational institutions from discriminating against any person based on COVID-19 vaccination, post-infection recovery status, failure to take a COVID-19 test or wear a facial covering, or vaccination status related to any EUA or mRNA vaccine.

[41] See, e.g., the federal Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act, Title VII of the Civil Rights Act of 1964, the Pregnancy Discrimination Act and the Genetic Information Nondiscrimination Act of 2008. This group of federal laws contain various protections from discrimination on the basis of disability, medical condition, sex, race, age, pregnancy, and religion. Employers are required to provide reasonable accommodation when requested, and are authorized to make sufficient inquiry about the nature and justification of the request to make a determination, within parameters that protect the worker from discrimination.

Facial Coverings

Similarly, the bill adds a prohibition on requirements to wear a facial covering, including a cloth or surgical face mask, a face shield, or any other device that covers the mouth and nose. This prohibition does not apply to facial covering requirements necessary for classes with occupational or laboratory safety requirements.

Other Vaccines

The bill also addresses educational institution policies related to vaccines other than COVID-19, EUA and mRNA vaccines: it requires such institutions to provide for exemptions and accommodations for religious and medical reasons, in accordance with federal law.[42]

Enforcement

The bill requires DOH to enforce these new prohibitions, and enforce the current prohibition on requiring documentation of COVID-19 vaccination or post-infection recovery, consistent with the enforcement provision in current law. The DOH may impose an administrative fine up to $5,000 for each violation, which revenues must be deposited into the General Revenue Fund, consistent with the enforcement provisions in current law. The bill authorizes DOH to take certain administrative actions when investigating a complaint of a violation of these provisions, such as administering oaths, taking depositions, conducting inspections, issuing subpoenas, etc.

The bill repeals the current enforcement provision for violations of the COVID-19 vaccination or post-infection recovery documentation prohibition. Under the bill, parents (and adult children) will no longer be expressly authorized to bring an action against the educational institution for declaratory and injunctive relief.

The bill does not save s. 381.00317, F.S., or s. 112.0441, F.S., from repeal on June 1, 2023, so the current law prohibitions against private businesses and government entities requiring employee vaccination will terminate on that date.

Facial Coverings and Health Care Facilities

The bill creates s. 408.833, F.S., to address facial covering requirements in health care facilities.

First, it requires the Agency for Health Care Administration (AHCA) and DOH to jointly develop standards for facial coverings for infection control in health care settings, and adopt them in the form of emergency rules by July 1, 2023, and publish the standards on their websites. The bill exempts the agencies from current law making emergency rules effective for only 90 days, and provides that the emergency rules will remain in effect until the agencies adopt rules under the non-emergency procedures of ch. 120.

Second, the bill prohibits health care providers and practitioners from requiring facial coverings inconsistent with the AHCA/DOH standards. This applies to all health care practitioners and health care settings regulated by DOH and its boards, to facilities licensed by AHCA, certain AHCA-regulated health care clinics exempt from regulation, and certain providers regulated by the Agency for Persons with Disabilities.

Instead, the bill requires health care providers and practitioners to adopt facial covering policies and procedures based on the AHCA/DOH standards by August 1, 2023, publish them online, and post them in their offices or facilities.

[42] *See, Id.*

The bill makes violations of this provision grounds for licensure discipline under the applicable practice acts or facility licensure acts.

COVID-19 Treatment Alternatives

The bill creates s. 456.62, F.S., to regulate interactions between practitioners and patients diagnosed with COVID-19 related to treatment medication decisions.

Heath care practitioners must obtain informed consent from the patient (or the patient's legal representative) before prescribing medication to treat COVID-19. The practitioner must explain the "alternative medications" to treat COVID-19, including the benefits and risks, sufficiently to allow the patient to make a "prudent" decision, taking into account the patient's physical state and ability to understand the information.

The bill does not define "alternative medications"; instead, it requires the practitioner to consider medications currently authorized or approved by the federal Food and Drug Administration (see table above, pp. 3-4). The practitioner must use best clinical judgment to identify, among those alternatives, which would benefit the patient.

The bill creates s. 395.1057, F.S., to establish a patient right to choose COVID-19 treatment alternatives in a hospital, and prohibits hospitals from interfering with that right, if the treatment is recommended by a health care practitioner with privileges at that hospital. Interference with the patient's right is grounds for discipline under the hospital licensure act.

Current law related to pharmacy practice obligates pharmacies to exercise independent professional judgment when dispensing a prescription. The bill grants license disciplinary immunity to a pharmacist when properly dispensing a COVID-19 treatment alternative.

Policies of International Health Organizations

The bill prohibits businesses, governments and educational institutions from adopting, implementing, and enforcing public health policies issued by international organizations as guides for their internal policies. Businesses, governments and educational institutions may use such policies only if authorized by the legislature in law, by an executive branch rule, or by a gubernatorial executive order issued under a declared emergency under s. 252.36, F.S.

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

B. SECTION DIRECTORY:

Section 1: Amending s. 381.00316, F.S., relating to discrimination based on health care choices; prohibition.
Section 2: Amending s. 381.00319, F.S., relating to prohibition on mask mandates and vaccination and testing mandates.
Section 3: Creating s. 381.00321, F.S., relating to international health organization policies.
Section 4: Creating s. 395.1057, F.S., relating to patients' rights to choose COVID-19 treatment alternatives.
Section 5: Creating s. 408.824, F.S. relating to facial covering requirements for health care practitioners and health care providers.
Section 6: Creating s. 456.62, relating to communication of COVID-19 treatment alternatives.
Section 7: Amending s. 465.0266, F.S., relating to common database.
Section 8: Amending s. 1002.20, F.S., relating to K-12 student and parent rights.
Section 9: Creating an unnumbered section of law establishing a statutory sunset.
Section 10: Providing an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   DOH and DLA may experience increased revenue from fines, which the bill requires to be deposited into the General Revenue Fund.

2. Expenditures:

   The Department of Legal Affairs (DLA) expended $519,758.77 in personnel costs to date enforcing the current law prohibition against vaccine mandates by private employers. DLA received 927 complaints, the majority of which were closed due to lack of a statutory violation. DLA found probable cause for nine complaints, and filed a single administrative complaint against an employer.[43] DLA estimates the need for an additional 6.2 FTE to implement the bill's provisions, totaling $275,080.99 in recurring general revenue, as indicated in the table below.[44]

Class Code	Position Working Title	# FTE	Base Pay	Fringe Benefits	Total	% time spent	Estimated Cost
7747	Senior Assistant Attorney General	1.2	$94,786.69	$33,175.34	$127,962.03	100%	$153,554.44
	OPS Paralegal Specialist	2	$41,600.00	$12,480.00	$54,080.00	100%	$108,160.00
2117	Systems Programming Administrator-SES	1	$88,181.17	$30,863.41	$119,044.58	9%	$10,860.60
3128	Paralegal Specialist I	1	$38,000.04	$13,300.01	$51,300.05	1%	$569.47
3126	Legal Assistant III	1	$33,721.74	$11,802.61	$45,524.35	4%	$1,936.48
					Annual Cost		**$275,080.99**

   As of April 11, DLA has 83 vacancies, so can address this need using existing positions. The Fiscal Year 2023-2024 House and Senate budgets both provide $5 million in nonrecurring General Revenue to DLA for COVID-related litigation, including the work required of DLA by this bill.[45]

   Due to the potential increase of notifications and based on the number of complaints received during the implementation of the COVID-19 Vaccine Documentation Program, DOH projects a need for two positions at a professional level. The Department can initiate budget amendment actions during Fiscal Year 2023-2024 to address this need using existing positions.[46]

   The bill provisions related to AHCA enforcement of the patients' right to choose COVID-19 treatment alternatives in hospitals has no fiscal impact on AHCA.

   The bill provisions requiring AHCA and DOH to establish emergency rules has an insignificant negative impact on those agencies, which can be absorbed within current resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

[43] Department of Legal Affairs, email to committee staff from Libby Guzzo, Legislative Affairs Director, Feb. 7, 2023 (on file with committee staff).
[44] Department of Legal Affairs, Agency Bill Analysis of HB 1013, March 7, 2023. Note that this fiscal impact estimate is based on the bill as originally filed, and may require adjustment to accurately estimate the impact of the CS/HB content.
[45] House Fiscal Year 2023-2024 GAA Section 82, reverting and appropriating the unexpended funds for Fiscal Year 2022-2023 for COVID-19 related litigation.
[46] Department of Health, Agency Bill Analysis for HB 1013, April 5, 2023.

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. 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:

The bill and current law provide DLA, DOH and AHCA sufficient rule-making authority to implement the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to protection from discrimination based on health care choices; amending s. 381.00316, F.S.; providing legislative intent and findings; defining terms; prohibiting business entities and governmental entities from requiring certain documentation or COVID-19 testing to gain access to, entry upon, or service from such entities or as a condition of contracting, hiring, promotion, or continued employment; prohibiting business and governmental entities from refusing to hire persons, discharging persons, depriving or attempting to deprive persons of employment opportunities, adversely affecting persons with respect to employment, or otherwise discriminating against any person based on knowledge or belief of a person's vaccination or COVID-19 postinfection recovery status or failure to take a COVID-19 test; requiring such entities to provide exemptions and reasonable accommodations for religious and medical reasons; prohibiting such entities from requiring persons to wear face coverings in order to gain access to, entry upon, services from, or admission to such entities or from otherwise discriminating against persons based on their refusal to wear a facial covering; providing exceptions;

requiring the Department of Health to adopt certain emergency rules; providing administrative penalties; authorizing the Department of Legal Affairs to take specified actions for purposes of conducting investigations or proceedings; requiring that collected fines be deposited in the General Revenue Fund; providing construction; providing that certain terminated employees are eligible for reemployment assistance; amending s. 381.00319, F.S.; revising and defining terms; revising provisions related to the prohibition on COVID-19-related mandates by educational institutions; prohibiting educational institutions from imposing certain vaccine mandates on any person; prohibiting educational institutions from requiring a person to provide certain documentation or requiring a COVID-19 test to gain admission to, access to, entry upon, or service from such institutions or otherwise discriminating against any person based on such person's vaccination or COVID-19 postinfection recovery status or failure to take a COVID-19 test; requiring educational institutions to provide exemptions and reasonable accommodations for religious and medical reasons; prohibiting educational institutions from requiring persons to wear face coverings, from denying persons access to, entry upon,

services from, or admission to such institutions, or from otherwise discriminating against persons based on their refusal to wear a facial covering; providing exceptions; requiring the Department of Health to adopt certain emergency rules; providing administrative penalties; authorizing the department to take specified actions for purposes of conducting investigations or proceedings; requiring that collected fines be deposited in the General Revenue Fund; providing construction; authorizing the department to adopt rules; creating s. 381.00321, F.S.; prohibiting governmental entities and educational institutions from adopting, implementing, or enforcing certain public health policies or guidelines unless authorized by state law, rule, or executive order; creating s. 395.1057, F.S.; prohibiting hospitals from interfering with patients' right to choose COVID-19 treatment alternatives if certain conditions are met; providing for disciplinary action; creating s. 408.824, F.S.; defining terms; requiring the Agency for Health Care Administration and the Department of Health to jointly develop standards for the appropriate use of facial coverings in health care settings by a specified date; requiring the agency and the department to adopt emergency rules

to develop such standards; requiring the agency and the department to post such standards on their respective websites and provide a link for reporting related violations; requiring certain health care practitioners and all health care providers to establish facial covering policies and procedures by a specified date; providing requirements for such policies and procedures; requiring such health care practitioners and health care providers to make their policies and procedures easily accessible on their respective websites; beginning on a specified date, prohibiting health care practitioners and health care providers from requiring persons to wear a facial covering for any reason unless the requirement is in accordance with specified policies and procedures; providing for disciplinary action; creating s. 456.62, F.S.; requiring health care practitioners treating patients diagnosed with COVID-19 to obtain patients' informed consent before prescribing any medications for treatment of COVID-19; providing a requirement for obtaining such informed consent; requiring health care practitioners to include certain information and use their best clinical judgment when making certain determinations related to alternative medications for treatment of COVID-19; requiring health care

practitioners to indicate certain information in their patients' medical records; providing construction; amending s. 465.0266, F.S.; exempting certain pharmacists from disciplinary action under certain circumstances; amending s. 1002.20, F.S.; conforming provisions to changes made by the act; abrogating the future repeal of specified provisions; providing for the future repeal of specified provisions; providing effective dates.

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

Section 1. Section 381.00316, Florida Statutes, is amended to read:

381.00316 Discrimination by governmental and business entities based on health care choices; prohibition ~~COVID-19 vaccine documentation~~.—

(1)(a) It is the intent of the Legislature that Floridians be free from mandated facial coverings, mandates of any kind relating to vaccines as provided in this section, and discrimination based on such vaccination status.

(b) The Legislature finds that society is harmed by discrimination based on vaccination status as provided in this section when healthy persons are prevented from participating in society and accessing employment opportunities. The Legislature

further finds that remedies to prevent such discrimination are in the best interest of this state.

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

(a) "Business entity" has the same meaning as in s. 606.03. The term also includes a charitable organization as defined in s. 496.404, a corporation not for profit as defined in s. 617.01401, or any other business operating in this state.

(b) "COVID-19" means the novel coronavirus identified as SARS-CoV-2; any disease caused by SARS-CoV-2, its viral fragments, or a virus mutating therefrom; and all conditions associated with the disease which are caused by SARS-CoV-2, its viral fragments, or a virus mutating therefrom.

(c) "COVID-19 vaccine" means a preparation designed to stimulate the human body's immune response against COVID-19.

(d) "Department" means the Department of Legal Affairs.

(e) "Emergency use authorization vaccine" means any vaccine that is authorized for emergency use under 21 U.S.C. 360bbb-3(a)(1) and qualifies as an unapproved product under 21 U.S.C. 360bbb-3(a)(2)(A).

(f) "Governmental entity" means the state or any political subdivision thereof, including the executive, legislative, and judicial branches of government; the independent establishments of the state, counties, municipalities, districts, authorities, boards, or commissions; or any agencies that are subject to chapter 286. The term does not include an educational

institution as defined in s. 381.00319.

(g) "Messenger ribonucleic acid vaccine" means any vaccine that uses laboratory-produced messenger ribonucleic acid to trigger the human body's immune system to generate an immune response.

(3)(a) ~~(1)~~ A business entity~~, as defined in s. 768.38 to include any business operating in this state,~~ may not require any person ~~patrons or customers~~ to provide any documentation certifying ~~COVID-19~~ vaccination with any vaccine defined under subsection (2) or postinfection recovery from COVID-19, or require a COVID-19 test, to gain access to, entry upon, or service from the business operations in this state or as a condition of contracting, hiring, promotion, or continued employment with the business entity.

(b) A business entity may not discharge or refuse to hire a person; deprive or attempt to deprive a person of employment opportunities; adversely affect a person's status as an employee or as an applicant for employment; or otherwise discriminate against a person based on knowledge or belief of the person's status relating to vaccination with any vaccine defined under subsection (2) or COVID-19 postinfection recovery, or a person's failure to take a COVID-19 test.

(c) For matters relating to vaccines other than those defined under subsection (2), a business entity shall provide for exemptions and reasonable accommodations for religious and

medical reasons in accordance with federal law ~~This subsection does not otherwise restrict businesses from instituting screening protocols consistent with authoritative or controlling government-issued guidance to protect public health~~.

(4)(a)~~(2)~~ A governmental entity ~~as defined in s. 768.38~~ may not require any person ~~persons~~ to provide any documentation certifying ~~COVID-19~~ vaccination with any vaccine defined under subsection (2) or postinfection recovery from COVID-19, or require a COVID-19 test, to gain access to, entry upon, or service from the governmental entity's operations in this state or as a condition of contracting, hiring, promotion, or continued employment with the governmental entity.

(b) A governmental entity may not discharge or refuse to hire a person; deprive or attempt to deprive a person of employment opportunities; adversely affect a person's status as an employee; or otherwise discriminate against a person based on the knowledge or belief of the person's status relating to vaccination with any vaccine defined under subsection (2) or a person's failure to take a COVID-19 test.

(c) For matters relating to vaccines other than those defined under subsection (2), a governmental entity shall provide for exemptions and reasonable accommodations for religious and medical reasons in accordance with federal law.

(5)(a) A business entity or governmental entity may not require a person to wear a face mask, a face shield, or any

other facial covering that covers the mouth and nose. A business entity or governmental entity may not deny any person access to, entry upon, service from, or admission to such entity or otherwise discriminate against a person based on such person's refusal to wear a face mask, a face shield, or any other facial covering that covers the mouth and nose.

(b) Paragraph (a) does not apply to:

1. A health care provider or health care practitioner as those terms are defined in s. 408.824, provided that such health care provider or health care practitioner is in compliance with that section.

2. A business entity or governmental entity when a face mask, a face shield, or any other facial covering that covers the mouth and nose is required safety equipment consistent with occupational or laboratory safety requirements, in accordance with standards adopted by the Department of Health. The Department of Health shall adopt emergency rules to develop such standards. Emergency rules adopted under this subparagraph are exempt from s. 120.54(4)(c) and shall remain in effect until replaced by rules adopted under the nonemergency rulemaking procedures of the Administrative Procedure Act ~~This subsection does not otherwise restrict governmental entities from instituting screening protocols consistent with authoritative or controlling government-issued guidance to protect public health~~.

~~(3) An educational institution as defined in s. 768.38 may~~

~~not require students or residents to provide any documentation certifying COVID-19 vaccination or postinfection recovery for attendance or enrollment, or to gain access to, entry upon, or service from such educational institution in this state. This subsection does not otherwise restrict educational institutions from instituting screening protocols consistent with authoritative or controlling government-issued guidance to protect public health.~~

(6)(a) ~~(4)~~ The department may impose an administrative ~~a~~ fine not to exceed $5,000 for each individual and separate ~~per~~ violation of this section.

(b) For purposes of conducting an investigation or a proceeding, the department may administer oaths, take depositions, make inspections when authorized by law, issue subpoenas supported by affidavit, serve subpoenas and other process, and compel the attendance of witnesses and the production of books, papers, documents, and other evidence. Challenges to and enforcement of subpoenas or orders shall be in accordance with s. 120.569.

(c) Fines collected pursuant to this section must be deposited into the General Revenue Fund.

(7) This section does not limit the right of the person aggrieved by a violation of this section to recover damages or other relief under any other applicable law.

(8) If a governmental entity fails to comply with

subsection (4), an employee terminated based on such noncompliance may be eligible for reemployment assistance under chapter 443 in addition to any other remedy available to the employee for a violation of this section.

~~(5) This section does not apply to a health care provider as defined in s. 768.38; a service provider licensed or certified under s. 393.17, part III of chapter 401, or part IV of chapter 468; or a provider with an active health care clinic exemption under s. 400.9935.~~

(9)~~(6)~~ The department may adopt rules pursuant to ss. 120.536 and 120.54 to implement this section.

Section 2. Section 381.00319, Florida Statutes, is amended to read:

381.00319 Prohibition on mask mandates and ~~COVID-19~~ vaccination and testing mandates for educational institutions ~~students~~.—

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

(a) "COVID-19" has the same meaning as in s. 381.00316 ~~381.00317(1)~~.

(b) "COVID-19 vaccine" has the same meaning as in s. 381.00316.

(c) "Educational institution" means a public or private school, including a preschool, elementary school, middle school, junior high school, secondary school, career center, or postsecondary school ~~has the same meaning as in s. 112.0441(1)~~.

(d) "Emergency use authorization vaccine" has the same meaning as in s. 381.00316.

(e) "Messenger ribonucleic acid vaccine" has the same meaning as in s. 381.00316.

~~(c) "Parent" has the same meaning as in s. 1000.21(5).~~

(2)(a) ~~Notwithstanding any other law to the contrary,~~ An educational institution ~~or elected or appointed local official~~ may not impose a ~~COVID-19 vaccination~~ mandate on ~~for~~ any person requiring vaccination with any vaccine defined under subsection (1) ~~student~~.

(b) An educational institution may not require any person to provide any documentation certifying vaccination with any vaccine defined under subsection (1) or postinfection recovery from COVID-19, or require a COVID-19 test, to gain admission or access to, entry upon, or service from the educational institution in this state or as a condition of contracting, hiring, promotion, or continued employment with the educational institution. An educational institution may not discharge or refuse to hire a person; deprive or attempt to deprive a person of employment opportunities; adversely affect a person's status as an employee or as an applicant for employment; or otherwise discriminate against a person based on knowledge or belief of the person's status relating to vaccination with any vaccine defined under subsection (1) or COVID-19 postinfection recovery, or a person's failure to take a COVID-19 test.

(c) For matters relating to vaccines other than those defined under subsection (1), an educational institution shall provide for exemptions and reasonable accommodations for religious and medical reasons in accordance with federal law.

(3)(a) An educational institution may not require a person to wear a face mask, a face shield, or any other facial covering that covers the mouth and nose. An educational institution may not deny any person access to, entry upon, service from, or admission to such educational institution or otherwise discriminate against a person based on such person's refusal to wear a face mask, a face shield, or any other facial covering that covers the mouth and nose.

(b) Paragraph (a) does not apply to:

1. A health care provider or health care practitioner as those terms are defined in s. 408.824, provided such health care provider or health care practitioner is in compliance with that section.

2. An educational institution when a face mask, a face shield, or any other facial covering that covers the mouth and nose is used as required safety equipment in a course of study consistent with occupational or laboratory safety requirements, in accordance with standards adopted by the Department of Health. The Department of Health shall adopt emergency rules to develop such standards. Emergency rules adopted under this subparagraph are exempt from s. 120.54(4)(c) and shall remain in

effect until replaced by rules adopted under the nonemergency rulemaking procedures of the Administrative Procedure Act.

(4)(a) Notwithstanding s. 768.39, the Department of Health may impose an administrative fine not to exceed $5,000 for each individual and separate violation of this section.

(b) For the purpose of conducting an investigation or a proceeding, the Department of Health may administer oaths, take depositions, make inspections when authorized by law, issue subpoenas supported by affidavit, serve subpoenas and other process, and compel the attendance of witnesses and the production of books, papers, documents, and other evidence. Challenges to and enforcement of subpoenas or orders shall be in accordance with s. 120.569.

(c) Fines collected pursuant to this section must be deposited in the General Revenue Fund.

(5) This section does not limit the right of the person aggrieved by a violation of this section to recover damages or other relief under any other applicable law.

(6) The Department of Health may adopt rules to implement this section.

~~(3) A parent of a student, a student who is an emancipated minor, or a student who is 18 years of age or older may bring an action against the educational institution to obtain a declaratory judgment that an act or practice violates this section and to seek injunctive relief. A prevailing parent or~~

~~student, as applicable, must be awarded reasonable attorney fees and court costs.~~

~~(4) This section expires June 1, 2023.~~

Section 3. Section 381.00321, Florida Statutes, is created to read:

381.00321 International health organization policies.—A governmental entity as defined in s. 381.00316 or an educational institution as defined in s. 381.00319 may not adopt, implement, or enforce an international health organization's public health policies or guidelines unless authorized to do so under state law, rule, or executive order issued by the Governor under s. 252.36.

Section 4. Section 395.1057, Florida Statutes, is created to read:

395.1057 Patients' right to choose COVID-19 treatment alternatives.—A hospital may not interfere with a patient's right to choose COVID-19 treatment alternatives as recommended by a health care practitioner with privileges at the hospital if the health care practitioner has obtained informed consent from the patient in accordance with s. 456.62. Any hospital that violates this section by preventing a health care practitioner from exercising his or her sound judgment is subject to agency disciplinary action under s. 395.1065(2).

Section 5. Effective upon this act becoming a law, section 408.824, Florida Statutes, is created to read:

408.824 Facial covering requirements for health care practitioners and health care providers.—

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

(a) "Department" means the Department of Health.

(b) "Facial covering" means a cloth or surgical face mask, a face shield, or any other facial covering that covers the mouth and nose.

(c) "Health care practitioner" has the same meaning as in s. 456.001.

(d) "Health care provider" means a provider as defined in s. 408.803; a service provider licensed or certified under s. 393.17, part III of chapter 401, or part IV of chapter 468; a provider with an active health care clinic exemption under s. 400.9935; an optical establishment permitted under s. 484.007; a massage establishment licensed under s. 480.043; a pharmacy as defined in s. 465.003; or an office registered under s. 458.328 or s. 459.0138.

(e) "Office" means an office maintained for the practice of a health care practitioner's profession, as provided in his or her practice act.

(2)(a) By July 1, 2023, the agency and the department shall jointly develop standards for the appropriate use of facial coverings for infection control in health care settings.

(b) The agency and the department shall adopt emergency rules for the standards developed under paragraph (a). Emergency

rules adopted under this section are exempt from s. 120.54(4)(c) and shall remain in effect until replaced by rules adopted under the nonemergency rulemaking procedures of the Administrative Procedure Act.

(c) The agency and the department shall publish the standards developed under paragraph (a) on their respective websites and provide a link for persons to report violations of the standards.

(3) By August 1, 2023, each health care practitioner who owns or operates an office and each health care provider shall establish facial covering policies and procedures for their respective health care settings, if such health care practitioner or health care provider requires any individual to wear a facial covering for any reason. Such policies and procedures must comply with the standards developed under subsection (2) and must be accessible from the home page of such health care practitioner's or health care provider's website or conspicuously displayed in the lobby of its health care service setting or settings.

(4) Effective August 1, 2023:

(a) Health care practitioners and health care providers may not require any person to wear a facial covering for any reason unless the requirement is in accordance with the standards developed under subsection (2) and the policies and procedures established under subsection (3).

(b) A health care practitioner or a health care provider in violation of paragraph (a) or subsection (3) is subject to disciplinary action by the agency or a board as defined in s. 456.001, or the department if there is no board, as applicable.

Section 6. Section 456.62, Florida Statutes, is created to read:

456.62 Communication of COVID-19 treatment alternatives.—

(1) A health care practitioner treating a patient diagnosed with COVID-19 shall obtain the informed consent of the patient or the patient's legal representative before prescribing any medication for the treatment of COVID-19.

(2) To obtain informed consent, the health care practitioner must provide an explanation of alternative medications for the treatment of COVID-19 and the relative advantages, disadvantages, and risks associated with such alternative medications to the extent necessary to allow the patient or the patient's legal representative to make a prudent decision regarding treatment.

(3) In determining which alternative medications to present to a patient for purposes of obtaining informed consent, the health care practitioner must include any medications currently authorized or approved by the United States Food and Drug Administration for the treatment of COVID-19 and use his or her best clinical judgment to identify any alternative medications that could reasonably be expected to benefit the

patient.

(4) In providing such information regarding alternative medications, the health care practitioner shall take into consideration the physical state of the patient and the patient's ability to understand the information.

(5) A health care practitioner treating a patient diagnosed with COVID-19 shall indicate on such patient's medical record the health care practitioner's compliance or noncompliance with this section.

(6) This section does not supersede any other provision of law regarding informed consent.

Section 7. Section 465.0266, Florida Statutes, is amended to read:

465.0266 Common database.—Nothing contained in this chapter may ~~shall~~ be construed to prohibit the dispensing by a pharmacist licensed in this state or another state of a prescription contained in a common database, and such dispensing does ~~shall~~ not constitute a transfer as defined in s. 465.026(1)-(6), provided that the following conditions are met:

(1) All pharmacies involved in the transactions pursuant to which the prescription is dispensed are under common ownership and utilize a common database.

(2) All pharmacies involved in the transactions pursuant to which the prescription is dispensed and all pharmacists engaging in dispensing functions are properly licensed,

permitted, or registered in this state or another state.

(3) The common database maintains a record of all pharmacists involved in the process of dispensing a prescription.

(4) The owner of the common database maintains a policy and procedures manual that governs its participating pharmacies, pharmacists, and pharmacy employees and that is available to the board or its agent upon request. The policy and procedures manual must ~~shall~~ include the following information:

(a) A best practices model detailing how each pharmacy and each pharmacist accessing the common database will comply with applicable federal and state laws, rules, and regulations.

(b) The procedure for maintaining appropriate records for regulatory oversight for tracking a prescription during each stage of the filling and dispensing process, identifying the pharmacists involved in filling and dispensing the prescription and counseling the patient, and responding to any requests for information made by the board under s. 465.0156.

(c) The policy and procedure for providing adequate security to protect the confidentiality and integrity of patient information.

(d) A quality assurance program designed to objectively and systematically monitor, evaluate, and improve the quality and appropriateness of patient care through the use of the common database.

Any pharmacist dispensing a prescription has at all times the right and obligation to exercise his or her independent professional judgment. Any pharmacist properly dispensing an alternative medication prescribed for the treatment of COVID-19 is not subject to disciplinary action by the board or the department based solely on such dispensing. Notwithstanding ~~other provisions in~~ this section, a ~~no~~ pharmacist licensed in this state ~~participating in the~~ dispensing ~~of~~ a prescription pursuant to this section is not ~~shall be~~ responsible for the acts and omissions of another person participating in the dispensing process provided such person is not under the direct supervision and control of the pharmacist licensed in this state.

Section 8. Paragraph (n) of subsection (3) of section 1002.20, Florida Statutes, is amended to read:

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

(3) HEALTH ISSUES.—

(n) *Face covering mandates and quarantine mandates in response to COVID-19.*—

1. A district school board, a district school superintendent, an elected or appointed local official, or any district school board employee may not:

a. Require a student to wear a face mask, a face shield, or any other facial covering that fits over the mouth or nose. However, a parent, at the parent's sole discretion, may allow his or her child to wear a face mask, a face shield, or any other facial covering that fits over the mouth or nose. This prohibition does not apply to safety equipment required as part of a course of study consistent with occupational or laboratory safety requirements.

b. Prohibit a student from attending school or school-sponsored activities, prohibit a student from being on school property, or subject a student to restrictions or disparate treatment, based on an exposure to COVID-19, so long as the student remains asymptomatic and has not received a positive test for COVID-19 as defined in s. 381.00319(1) ~~s. 381.00317(1)~~.

A parent of a student, a student who is an emancipated minor, or a student who is 18 years of age or older may bring an action against the school district to obtain a declaratory judgment that an act or practice violates this subparagraph and to seek injunctive relief. A prevailing parent or student, as applicable, must be awarded reasonable attorney fees and court costs.

2. A district school board, a district school superintendent, an elected or appointed local official, or any school district employee may not prohibit an employee from returning to work or subject an employee to restrictions or disparate treatment based on an exposure to COVID-19 so long as the employee remains asymptomatic and has not received a positive test for COVID-19 as defined in s. 381.00319(1) ~~s. 381.00317(1)~~.

~~3. This paragraph expires June 1, 2023.~~

Section 9. Sections 381.00316(2)(g) and 381.00319(1)(e), Florida Statutes, as created by this act, are repealed on June 1, 2025.

Section 10. Except as otherwise provided in this act, and except for this section, which shall take effect upon this act becoming a law, this act shall take effect June 1, 2023.

PCS for CS/HB 1015

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for CS/HB 1015 Pub.Rec./ Protection from Discrimination Based on Health Care Choices
SPONSOR(S): Commerce Committee
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

Current law prohibits a private employer from imposing a COVID-19 vaccination mandate for any employee without providing certain exemptions, or terminating such an employee who refuses to comply. Employees may file a complaint with Department of Legal Affairs (DLA) within the Office of the Attorney General alleging violations, for investigation and enforcement. Similarly, current law prohibits private businesses, governmental entities and educational institutions from requiring a person to document COVID-19 vaccination or post-infection recovery. The Department of Health (DOH) investigates complaints of violations of this provision.

Current law makes complaint and investigation materials held by DLA confidential and exempt public record information; there is no public records exemption for similar records held by DOH.

HB 1013, to which this bill is linked, establishes additional prohibitions against businesses, governmental entities and educational institutions, related to requirements for COVID-19 testing and face masks, and authorizes DLA and DOH to enforce these provisions.

This bill establishes a public records exemption for complaint and investigation information related to violations of the new prohibitions established in the linked bill, held by either DLA or DOH. The exemption applies until the investigation is completed or ceases to be active, after which, the information remains confidential and exempt if disclosure would jeopardize the integrity of another active investigation, reveal medical information, or reveal information regarding religious beliefs.

Information made confidential and exempt may be released to another business, governmental entity, or educational institution in the furtherance of that entity's lawful duties and responsibilities. Additionally, the bill provides that it does not prohibit the disclosure of information in an aggregated format.

The bill provides a public necessity statement as required by the Florida Constitution. It also provides that the public record exemption is repealed on October 2, 2028.

The bill has an insignificant negative fiscal impact on the state and no impact on local government.

The bill is effective on the same date as in HB 1013 or similar legislation, which is July 1, 2023.

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:

Background

Public Records

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

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

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

Florida Attorney General and the Department of Legal Affairs

The Attorney General is an elected constitutional officer who serves as the chief state legal officer and as a member of the cabinet.[6] The Attorney General must perform the duties prescribed by the Florida Constitution and any other duties appropriate to his or her office as may from time to time be required of the Attorney General by law or by resolution of the Legislature.[7]

The Attorney General is the head of the Department of Legal Affairs (DLA),[8] which is responsible for providing all legal services required by any department, unless otherwise provided by law,[9] including defending the state in civil litigation cases; representing the people of Florida in criminal appeals in state and federal courts; protecting the rights of children, consumers, and victims through its various protection programs; and investigating and litigating against businesses that seek to limit competition and defraud taxpayers.[10]

[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] S. 119.15(6)(b), F.S.
[6] Art. IV, s. 4, FLA. CONST.
[7] *See s.* 16.01(2), F.S.
[8] S. 20.11, F.S.
[9] S. 16.015, F.S.
[10] OPPAGA, *Office of the Attorney General (Department of Legal Affairs)*, https://oppaga.fl.gov/ProgramSummary/ProgramDetail?programNumber=1026 (last visited Nov. 8, 2021).

Department of Health

The Department of Health (DOH) is established under s. 20.43, F.S., to "protect and promote the health of all residents and visitors in the state through organized state and community efforts, including cooperative agreements with counties". The head of DOH is the Surgeon General, also designated as the State Health Officer. DOH also administers state epidemiology functions, and is required to identify, diagnose, and conduct surveillance of diseases and health conditions in the state and accumulate the health statistics necessary to establish trends. As part of those functions, DOH maintains vital statistics and other health data, including vaccination information. Current law also requires DOH to conduct a communicable disease prevention and control program as part of fulfilling its public health mission.[11]

COVID-19 Vaccination Mandate Investigations

Private Business Prohibition

Section 381.00317, F.S., generally prohibits businesses from requiring any employee or contracted worker to be vaccinated for COVID-19. This prohibition applies to any form of corporation, partnership, association, cooperative, joint venture, business trust, or sole proprietorship that conducts business in this state, and any charitable organization.

Businesses can require employee vaccination, if they allow the employees to opt out of vaccination for these or any other reasons:

- for medical or religious reasons;
- based on immunity to COVID-19;
- if the employee agrees to periodic testing; or
- if the employee uses employer-provided personal protective equipment (PPE).

The statute lays out specific criteria for claiming each of the above exemptions, and requires employers to use DOH forms for employees to submit statements of exemption.

Enforcement

This prohibition is enforced by the Department of Legal Affairs (DLA) within the Office of the Attorney General. Employees may file complaints with DLA, which investigates them. DLA must offer the employer the opportunity to comply with the law. However, DLA is required to fine an employer who violates this prohibition and terminates an employee due to a vaccination mandate: up to $10,000 per violation for employers with under 100 employees; and up to $50,000 per violation for employers with 100 or more employees. The statute authorizes the Attorney General to consider various factors and mitigating circumstances when determining the amount of the fine.

Since enactment, DLA has received 927 complaints, the majority of which were closed due to lack of a statutory violation. DLA found probable cause for nine complaints, and filed a single administrative complaint against an employer.[12]

Public Records Exemption

Section 381.00318, F.S., provides a public records exemption for information related to vaccination mandate investigation of a private business. All such information is both confidential and exempt from disclosure during an active investigation, and remains so when the investigation is no longer active if the disclosure, as determined by the Attorney General, would jeopardize another, active, investigation, or result in certain harms to the complaining employee.

Documentation of COVID-19 Vaccination or Post-Infection Recovery

[11] 2 S. 381.003, F.S. A communicable disease is any disease caused by transmission of a specific infectious agent, or its toxic products, from an infected person, an infected animal, or the environment to a susceptible host, either directly or indirectly.
[12] Department of Legal Affairs, email to committee staff from Libby Guzzo, Legislative Affairs Director, Feb. 7, 2023 (on file with committee staff).

Section 381.00316, F.S., prohibits business, governmental entities and educational institutions from requiring customers, persons seeking access to government operations, and students or residents, respectively, from requiring documentation of COVID-19 vaccination or post-infection recovery.

This provision is enforced by DOH, which is authorized to impose a fine up to $5,000 for each incident.

Face Masks

Section 1002.20(1)(n), F.S., prohibits public schools from requiring a student to wear a face mask, other than when required by occupational or laboratory safety standards.

This provision is enforced by private actions for declaratory and injunctive relief by parents or adult students.

Current law does not prohibit face mask requirements by private businesses or governmental entities.

House Bill 1013 (2023)

The HB 1013, to which this bill is linked, adds to current COVID-19-related prohibitions on private businesses, governmental entities, and educational institutions, and expands enforcement functions. That bill prohibits private businesses, governmental entities, and educational institutions from imposing requirements to take a COVID-19 test or wear a facial covering as a condition of accessing the business or governmental or educational services.

That bill prohibits businesses and governmental entities from refusing to hire, terminating, or adversely affecting a person's status as an employee or applicant, or otherwise discriminate in any way against a person for failing to comply with a prohibited requirement.

That bill authorizes DLA to enforce these provisions against private businesses and governmental entities, authorizes DOH to enforce these provisions against educational institutions, and moves enforcement from DOH to DLA to enforce the current law prohibition against requiring documentation of COVID-19 vaccination or post-infection recovery against all three types of entities.

That bill expands current ss. 381.00316 and 381.00319, F.S., for these purposes.

Effect of the Bill

This bill, which is linked to the passage of HB 1013 (2023), amends s. 381.00318 to create a public records exemption for records related to violations of ss. 381.00316 and 381.00319, F.S., as amended by HB 1013 or similar legislation.

Specifically, the bill makes records related to violations of s. 381.00316, F.S., or s. 381.00319, F.S., by business entities, governmental entities and educational institutions, held by DLA or DOH, confidential and exempt. The exemptions and confidentiality applies to complaints and investigation records related to testing and mask mandates, vaccination or post-infection recovery status, and COVID-19-related discrimination.

Provisions in the current public records exemption applicable to investigations of violations of s. 381.00017, F.S., will apply to this new exemption. The complaint and investigative information are confidential and exempt[13] from public records requirements until the investigation is completed or

[13] There is a difference between records the Legislature designates exempt from public records 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. 04-09 (2004).

ceases to be active. For purposes of the public record exemption, an investigation is considered "active" while such investigation is being conducted by DLA with a reasonable, good faith, belief that it may lead to a determination of whether there was a violation of either s. 381.00316 or s. 381.00319, F.S. An investigation does not cease to be active if DLA is proceeding with reasonable dispatch and there is a good faith belief that action may be initiated by DLA.

After an investigation is completed or ceases to be active, information relating to the investigation remains confidential and exempt from public records requirements if disclosure of that information would jeopardize the integrity of another active investigation, reveal medical information about an employee, or reveal information regarding an employee's religious beliefs.

Information made confidential and exempt may be released to another governmental entity in the furtherance of that entity's lawful duties and responsibilities. In addition, the bill provides that it does not prohibit the disclosure of information in an aggregated format.

The bill also provides a public necessity statement as required by art. I, s. 24(c) of the Florida Constitution. In part, the public necessity statement provides that protection of the complaint or investigative information

> is required to safeguard an individual's private information regarding medical information or religious beliefs and to ensure the integrity of an active investigation [….]

Lastly, the bill provides that the public record exemption repeals on October 2, 2028.

The bill is effective on the same date that HB 1013 or similar legislation takes effect in the same legislative session.

B. SECTION DIRECTORY:

Section 1: Amending s. 381.00318, F.S., relating to complaints and investigations regarding COVID-19 vaccination mandates; public records exemption.
Section 2: Provides a public necessity statement as required by the Florida Constitution.
Section 3: Provides a contingent effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill could have an insignificant negative fiscal impact on DLA and DOH staff for training and complying with the newly-created public record exemption. These costs, however, would be absorbed, as they are part of the day-to-day responsibilities of DLA and DOH.

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. 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:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record 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, s. 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 I, s. 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 record exemption for an employee complaint alleging a private employer's violation of state law regarding such employer's COVID-19 vaccination policies or practices, and all information relating to an investigation of such complaint, until the investigation is completed or ceases to be active. As such, the public record exemption does not appear to be broader than necessary to accomplish its stated purpose.

B. RULE-MAKING AUTHORITY:

The bill does not confer rulemaking authority nor require rulemaking.

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. 381.00318, F.S.; providing an exemption from public records requirements for certain information held by the Department of Legal Affairs and the Department of Health; authorizing the disclosure of such information under certain circumstances; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Section 381.00318, Florida Statutes, is amended to read:

381.00318 Complaints and investigations regarding ~~private employer~~ COVID-19 vaccination and testing and facial covering mandates; public records exemption.—

(1)(a) An employee complaint alleging a private employer's violation of s. 381.00317 regarding employer COVID-19 vaccination policies or practices, and all information relating to an investigation of such complaint, held by the Department of Legal Affairs is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the investigation is completed or ceases to be active. For purposes

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

of this subsection ~~section~~, an investigation is considered "active" while such investigation is being conducted by the department with a reasonable good faith belief that it may lead to a determination of whether there was a violation of s. 381.00317. An investigation does not cease to be active if the department is proceeding with reasonable dispatch and there is a good faith belief that action may be initiated by the department.

(b) ~~(2)~~ After an investigation is completed or ceases to be active, information in records relating to the investigation remains confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if disclosure of that information would do any of the following:

1. ~~(a)~~ Jeopardize the integrity of another active investigation.

2. ~~(b)~~ Reveal medical information about an employee.

3. ~~(c)~~ Reveal information regarding an employee's religious beliefs.

(c) ~~(3)~~ Information made confidential and exempt under this subsection ~~section~~ may be released to another governmental entity in the furtherance of that entity's lawful duties and responsibilities.

(d) ~~(4)~~ This subsection ~~section~~ does not prohibit the disclosure of information in an aggregated format.

(e) ~~(5)~~ This subsection ~~section~~ shall stand repealed on

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

October 2, 2023.

(2)(a) A complaint alleging a business entity's, a governmental entity's, or an educational institution's violation of s. 381.00316 or s. 381.00319, and all information relating to an investigation of such complaint, held by the Department of Legal Affairs or the Department of Health is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the investigation is completed or ceases to be active. For purposes of this subsection, an investigation is considered "active" while such investigation is being conducted by the Department of Legal Affairs or the Department of Health with a reasonable good faith belief that it may lead to a determination of whether there was a violation of s. 381.00316 or s. 381.00319. An investigation does not cease to be active if the Department of Legal Affairs or the Department of Health is proceeding with reasonable dispatch and there is a good faith belief that action may be initiated by the Department of Legal Affairs or the Department of Health.

(b) After an investigation is completed or ceases to be active, information in records relating to the investigation remains confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if disclosure of that information would do any of the following:

1. Jeopardize the integrity of another active investigation.

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

2. Reveal medical information about an individual.

3. Reveal information regarding an individual's religious beliefs.

(c) Information made confidential and exempt under this subsection may be released to another governmental entity in the furtherance of that entity's lawful duties and responsibilities.

(d) This subsection does not prohibit the disclosure of information in an aggregated format.

(e) 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 a complaint alleging a business entity's, a governmental entity's, or an educational institution's violation of s. 381.00316, Florida Statutes, or s. 381.00319, Florida Statutes, and all information relating to an investigation of such complaint, held by the Department of Legal Affairs or the Department of Health be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution until the investigation is completed or ceases to be active. The Legislature further finds that it is a public necessity to maintain the confidential and exempt status of information that would jeopardize the integrity of another active investigation, reveal medical information about an

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

individual, or reveal information regarding an individual's religious beliefs after an investigation is completed or ceases to be active. Protection of such information is required to safeguard an individual's private information regarding medical information or religious beliefs and to ensure the integrity of an active investigation, if applicable.

Section 3. This act shall take effect on the same date that HB 1013 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

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

PCS for HB 1617

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1617 Immigration
SPONSOR(S): Commerce Committee
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

Florida law requires state and local law enforcement entities to cooperate and assist the federal government in the enforcement of federal immigration laws, provides criminal penalties for human smuggling into the state, and provides employment verification requirements for public and private employers.

The bill, in part:

- Beginning July 1, 2023, requires private employers, with 25 or more employees, to use E-Verify for new employees.
- Expands violations and penalties related to human smuggling when smuggling a minor, more than five people, or when a defendant has a prior conviction for human smuggling, and allows prosecution of human smuggling under the Florida Racketeer Influenced and Corrupt Organization (RICO) Act.
- Prohibits a county or municipality from providing funds to issue community ID cards for individuals who are not lawfully in the country.
- Invalidates driver's licenses that are exclusively issued by another state to undocumented immigrants, and requires the Department of Highway Safety and Motor Vehicles (DHSMV) to issue citations and maintain a list of out of state classes of driver licenses that are invalid.
- Removes the authority for unauthorized immigrants to be admitted to the Florida Bar, effective November 1, 2028.
- Requires persons who are in the custody of a law enforcement agency and subject to an immigration detainer to submit DNA to the statewide DNA database.
- Requires hospitals that accept Medicaid to collect immigration status data related to admissions and emergency room visits and report to the Agency of Health Care Administration (AHCA).
- For the 2023-2024 fiscal year, provides a $12 million nonrecurring appropriation to the Division of Emergency Management for the Unauthorized Alien Transport Program.

The bill has a negative fiscal impact on state and local government, and the private sector.

The effective date of the bill is July 1, 2023, except as otherwise expressly provided.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Immigration Laws

The Federal Government establishes and enforces immigration laws. The federal Immigration and Nationality Act (INA) contains many of the most important provisions of immigration law.[1]

The Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations, is responsible for enforcing the immigration laws and identifying, apprehending, and removing aliens who are a risk to national security or public safety, who are in the country illegally, or who undermine the integrity of the country's immigration laws or border control efforts.[2]

U.S. Customs and Border Protection (Border Patrol) is the federal law enforcement agency responsible for securing the nation's borders and facilitating international travel and trade. The Border Patrol's top priority is to keep terrorists and their weapons from entering the United States.

In 2020, The Border Patrol had 646,822 enforcement actions. In 2021, that total increased to over 1.9 million actions, an increase of over 200 percent. The Border Patrol's total enforcement actions in 2022 was about 2.8 million, another 41 percent increase, and to date for 2023, the total is already over 1 million.

These statistics include individuals "encountered at ports of entry who are seeking lawful admission into the United States but are determined to be inadmissible, individuals presenting themselves to seek humanitarian protection under our laws, and individuals who withdraw an application for admission and return to their countries of origin within a short timeframe." The total also includes encounters that led to apprehensions or expulsions, including individuals who were physically controlled or temporarily detained due to being unlawfully present in the United States.[3]

In addition to the dramatic increase in border encounters, the recidivism rate has also increased. According to the Border Patrol webpage, "recidivism refers to percentage of individuals apprehended more than one time by the Border Patrol within a fiscal year." In 2019, the rate was only 7 percent. However, that climbed to an increase of 26 percent in 2020 and 27 percent in 2021.[4]

Encounters with criminal noncitizens in 2020 were 9,447, in 2021 were 17,330, in 2022 were 29,021, and so far in 2023 are 11,785. "Criminal noncitizens refers to noncitizens who have been convicted of crime, whether in the United States or abroad, so long as the conviction is for conduct which is deemed criminal by the United States."[5]

Governor's Executive Orders on Immigration

The Governor has issued two Executive Orders attempting to address the enforcement of immigration

[1] 8 U.S.C. §§ -1401 Suppl. 2 1964.
[2] U.S. Immigration and Customs Enforcement, *Enforcement and Removal Operations, Mission*, https://www.ice.gov/ero (last visited Mar. 21, 2023).
[3] U.S. Customs and Border Protection, *CBP Enforcement Statistics Fiscal Year 2023*, https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics (last visited Mar. 21, 2023).
[4] *Id*.
[5] *Id*.

laws and the immigration crisis the state has on its borders.[6]

On September 28, 2021, the Governor issued Executive Order No. 21-223, Biden Border Crisis. Finding that the detrimental effects of an unsecured southwest border of the United States would reverberate beyond border states, including increased crime, such as drug trafficking and human trafficking and smuggling, diminished economic opportunities for American workers, and stresses on education and healthcare systems. The order prohibited state agencies from assisting with the transport of aliens apprehended at the southwest border into Florida, and required state agencies to use the federal Systematic Alien Verification for Entitlements (SAVE) program to confirm the eligibility of persons before providing any funds, resources, or other benefits.

Specifically, the executive order:

- Directs the Florida Department of Law Enforcement (FDLE) and the Florida Highway Patrol (FHP) to determine on an ongoing basis the number and identities of all illegal aliens[7] whom the DHS, as well as any other federal departments or agencies, federal contractors, or affiliated non-governmental organizations, transport to Florida and to detain any aircraft, bus, or other vehicle used to transport illegal aliens to the state in the commission of a state offense, including state laws against human trafficking.
- Requests state attorneys and statewide prosecutor to report monthly to the Governor's Office and the FDLE on information related to illegal aliens and crimes, which FDLE was to make available on its website.
- Directs the Agency for Health Care Administration (AHCA), in coordination with the Department of Children and Families (DCF), the Department of Health (DOH), and county health departments, to use all lawful means to determine the amount of state and local funds spent on health care, including emergency care, for illegal aliens each fiscal year. AHCA was also directed to require managed care plans and hospitals to report any Medicaid or other governmental expenditures incurred for illegal aliens for each fiscal year beginning in 2021. Such information was to be made available to the Governor's Office and posted on the websites for AHCA and DOH.
- Directs DCF to determine the amount and purpose of state funds expended by the department on illegal aliens for each fiscal year. Such information was to be made available to the Governor's Office and posted on the website for the department. The department was also directed to review resettlement of unaccompanied alien children[8] in Florida and make determinations on resettlement under state laws; to the extent that such resettlement did not constitute "evidence of need" under Florida law, the department was directed to not grant or renew licenses to family foster homes, residential child-caring agencies, or child-placing agencies that applied to house unaccompanied minors and to prohibit these entities from accepting additional children if they already housed unaccompanied alien children. These entities were also required, as a part of licensure, to conduct in-person welfare checks on these children and report to the department, if the department determined that such checks were permitted by state law.
- Directs the FDLE, in consultation with the Attorney General, to conduct regular audits of businesses in Florida to ensure that businesses were complying with state law to verify the employment eligibility of new employees. The department was ordered to prioritize audits of publicly traded corporations or companies with more than 200 employees that operate in sectors of the economy known for employing illegal aliens. If any violation was found, the department was to notify the Department of Economic Opportunity (DEO) to take appropriate action under state law.
- Requires any executive agency to report any evidence found of a crime perpetuated by an illegal alien to the FDLE; and to take all appropriate action under state law, including the

[6] *See* State of Florida, Office of the Governor, *Executive Order No. 21-223*, September 28, 2021, https://www.flgov.com/wp-content/uploads/2021/09/EO_21-223.pdf (last visited Mar. 21, 2023), and *Executive Order No. 23-03*, January 6, 2023, https://www.flgov.com/wp-content/uploads/2023/01/EO-23-03.pdf (last visited Mar. 21, 2023).

[7] "Illegal Aliens" are defined in section 11 of the order to have the same meaning as provided in 8 U.S.C. s. 1101(a)(3); except that the order specified that lawful immigration status does not include parole under 8 U.S.C. s. 1182(d)(5).

[8] Defined in the order to have the same meaning as under 6 U.S.C. s. 279(g)(2).

imposition of fines or revocation of licenses, of any violation of law by a private contractor or non-governmental organization involved in the resettlement of illegal aliens.[9]

On January 6, 2023, the Governor issued Executive Order No. 23-03, Emergency Management – Illegal Migration. Based on findings of unprecedented interdictions, attempts of entry, and border patrol encounters, the Governor designated the migration of unauthorized aliens to Florida as likely to constitute a major disaster and designated the director of the Division of Emergency Management as the state coordinating officer for the disaster with direction to execute response, recovery, and mitigation plans necessary to cope with the emergency. The order also activates the Florida National Guard, as needed, to assist with the efforts. The order waives contracting policies and requirements, allows for expenditure of state funds through the Emergency Preparedness and Response Fund, and authorizes medical professionals, social workers, and counselors with good and valid licenses issued by other states to provide humanitarian aid services.[10]

Federal Immigration Law

The federal government has broad power over immigration and alien status.[11] This power is enforced through an extensive set of rules governing alien admission, removal, and conditions for continued presence within the United States, including the INA.[12] While the federal government's authority over immigration is well established, the United States Supreme Court has recognized that not "every state enactment which in any way deals with aliens is a regulation of immigration and thus per se preempted" by the federal government.[13]

Human Smuggling

It is estimated that there are 3 million illegal entries into the United States each year, over and above the amount of encounters that the Border Patrol has with border-crossers. Full-time professional criminals are facilitating the smuggling of immigrants across the border. Human smuggling is estimated to generate over $6.75 billion a year.[14]

Federal law governs whether a person is legally authorized to enter or remain in this country and provides criminal penalties for illegally transporting a person into the country. Specifically, the law prohibits a person from:[15]

- Knowing that a person is an alien, bringing or attempting to bring to the United States in any manner whatsoever such person at a place other than a designated port of entry or place other than as designated by the Commissioner of Immigration and Naturalization, regardless of whether such alien has received prior official authorization to come to, enter, or reside in the United States and regardless of any future official action which may be taken with respect to such alien.
- Knowing or in reckless disregard of the fact than an alien has come to, entered, or remains in the United States in violation of law, conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, such alien in any place, including any building or any means of transportation.
- Encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.

[9] State of Florida, Office of the Governor, *Executive Order No. 21-223*, September 28, 2021, https://www.flgov.com/wp-content/uploads/2021/09/EO_21-223.pdf (last visited Mar. 21, 2023)
[10] State of Florida, Office of the Governor, *Executive Order No. 23-03*, January 6, 2023, https://www.flgov.com/wp-content/uploads/2023/01/EO-23-03.pdf (last visited Mar. 21, 2023).
[11] *Arizona v. United States*, 567 U.S. 387 (2012).
[12] 8 U.S.C. s. 1108, et seq.
[13] *De Canas v. Bica*, 424 U.S. 351, 355 (1976).
[14] United Nations Office on Drugs and Crime, *Transnational Organized Crime: Let's put them out of business,* https://www.unodc.org/toc/en/crimes/migrant-smuggling.html (last visited Mar. 21, 2023).
[15] 8 U.S.C. s. 1324(a).

- Engages in any conspiracy to commit any of the preceding acts or aids or abets the commission of any of the preceding acts.

Before 2009, Florida did not specifically provide criminal penalties for transporting a person into the state who is illegally entering or remaining in the United States. In 2009, the Florida Legislature created criminal penalties for human smuggling.[16] Current law makes it a third degree felony[17] for a person to transport an individual into this state, when the person, who is doing the transporting, knows or should know that the person he or she is transporting is illegally entering the United States from another country.[18]

A person who violates the prohibition against concealing, harboring, or shielding an alien is generally subject to up to five years imprisonment, but may punishment can be increased as follows:

- Up to 10 years imprisonment if the violation was done for the purpose of commercial advantage or private financial gain.
- Up to 20 years imprisonment if the violation causes seriously bodily injury to, or places in jeopardy, the life of any person.
- Death or life imprisonment if a violation results in the death of any person.[19]

However, the federal law provides an exception to the offense of concealing, harboring, or shielding an alien which allows a religious organization to invite, call, allow, or enable an alien who is present in the United States to perform the vocation of minister or missionary as a volunteer who is not compensated as an employee, notwithstanding the provision of room, board, travel, medical assistance, and other basic living expenses, provided he or she has been a member of the denomination for at least one year.[20]

Federal law also requires the Secretary of Homeland Security, in consultation with the Attorney General and the Secretary of State, to develop and implement an outreach program to educate the public about the penalties for unlawfully bringing in and harboring aliens.[21]

Statewide Grand Jury Recommendations – Human Smuggling

In June of 2022, a Statewide Grand Jury was impaneled at the request of Governor Desantis for the purpose of investigating the impact of illegal immigration on Florida. In its First Presentment filed in December of 2022, the Twenty-First Statewide Grand Jury concluded that the smuggling of illegal aliens not only endangers Floridians, but also generates huge sums of money for transnational criminal organizations which is used to further other criminal activities, including drug trafficking and human trafficking. The Grand Jury concluded that "[s]ince smuggling of illegal aliens into and within Florida involves multiple individuals, [transnational criminal organizations], and other criminals, the human smuggling statute must be revised."[22]

[16] Chapter 2009-160, L.O.F.
[17] A third degree felony is punishable by up to five years imprisonment and up to a $5,000 fine. Sections 775.082, 775.083, and 775.084, F.S.
[18] S. 787.07, F.S.
[19] 8 U.S.C. §1324(a)(1)(A) and (B).
[20] 8 U.S.C. § 1324(a)(1)(C).
[21] 8 U.S.C. § 1324(e).
[22] The Supreme Court of Florida, *First Presentment of the Twenty-First Statewide Grand Jury (s. 787.07, F.S.)*, https://supremecourt.flcourts.gov/News-Media/Statewide-Grand-Jury (last visited Mar. 21, 2023).

Cooperation with Federal Immigration Authorities

In 2019, the Legislature passed federal immigration enforcement legislation.[23] The law requires a law enforcement agency[24] to use its best efforts to support the enforcement of federal immigration law and applies to any official, representative, agent, or employee of an entity or agency when he or she is acting within the scope of his or her official duties or employment. Unless expressly required by federal law, a state entity, local government entity, or law enforcement agency, or any employee, agent, or representative of the entity or agency, may not prohibit or restrict a law enforcement agency from taking any of the following actions with respect to information regarding a person's immigration status:

- Sending the information to or requesting, receiving, or reviewing the information from a federal immigration agency for the purposes of ch. 908, F.S.
- Recording and maintaining the information for the purposes of ch. 908, F.S.
- Exchanging the information with a federal immigration agency or another state entity, local governmental entity, or law enforcement agency for the purposes of ch. 908, F.S.
- Using the information to comply with an immigration detainer.
- Using the information to confirm the identity of a person who is detained by a law enforcement agency.

In specified criminal cases in which a detained offender is subject to an immigration detainer and transfer to the custody of the federal government, a sentencing judge must issue an order requiring the secure detention facility[25] in which the defendant is to be confined to reduce his or her sentence by up to 12 days when the facility determines such a reduction will facilitate the seamless transfer of the defendant to federal custody. When a secure correctional facility receives verification from a federal immigration agency that a person subject to an immigration detainer is in the law enforcement agency's custody, the agency may securely transport the person to a federal facility in Florida or to another point of transfer to federal custody outside the jurisdiction of the law enforcement agency.[26] Such a transfer may occur no earlier than within 12 days of the person's release date. A law enforcement agency transferring an alien to a point of transfer outside of Florida must obtain judicial authorization before completing such a transfer.

Section 908.104(5), F.S., provides an exception to the requirement that a law enforcement agency must provide a federal immigration agency with information regarding a detained person and applies when such a person is also a victim or witness to a criminal offense if the person timely and in good faith responds to the entity or agency's request for information and cooperation in the investigation or prosecution of the offense. If any state entity, local governmental entity, or law enforcement agency, withholds information pursuant to this exception, it must document the victim's or witness's cooperation in the related investigative records and retain the records for at least 10 years for the purpose of audit, verification, or inspection by the Auditor General. A law enforcement agency may not detain an alien who is unlawfully present in the United States pursuant to an immigration detainer solely because the alien witnessed or reported a crime or was a victim of a crime.[27] Finally, the requirements of s. 908.104, F.S., do not apply when the alien who is unlawfully present is or has been a necessary witness or victim of a crime of domestic violence, rape, sexual exploitation, sexual assault, murder, manslaughter, assault, battery, human trafficking, kidnapping, false imprisonment, involuntary servitude, fraud in foreign labor contracting, blackmail, extortion, or witness tampering.[28]

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[23] Chapter 2019-102, L.O.F. The law was challenged in *City of South Miami v. DeSantis*, 408 F.Supp.3d 1266 (S.D. Fla. Sept. 21, 2021). Three provisions were enjoined but severable from the remainder of the law. The case was appealed to the Eleventh Circuit Court of Appeals on October 20, 2021, and is now pending.

[24] "Law enforcement agency" means an agency in this state charged with enforcement of state, county, municipal, or federal laws or with managing custody of detained persons in this state and includes municipal police departments, sheriffs' offices, state police departments, state university and college police departments, county correctional agencies, and the Department of Corrections. S. 908.102(4), F.S.

[25] "Secure detention facility" means a state correctional facility as defined in s. 944.02, F.S., or a county detention facility or municipal detention facility as defined in s. 951.23, F.S.

[26] S. 908.104(4), F.S.

[27] S. 908.104(7), F.S.

[28] S. 908.104(8), F.S.

Statewide Grand Jury Recommendations – Qualifying Victims

In January 2023, the Twenty-First Statewide Grand Jury reviewed county compliance with s. 908.104, F.S., specifically the process by which inmates in some county jails seek to lift a detainer issued by U.S. Immigration and Customs Enforcement. The Grand Jury concluded that s. 908.104(8), F.S., is being intentionally and flagrantly abused, leading to the lifting of detainers contrary to the plain meaning of the statute and the statute's intent. The Grand Jury further found that unproven claims of being a qualifying victim are being submitted and approved allowing county officials to disregard and lift federal detainers. To combat further abuse, the Grand Jury concluded that s. 908.104(8), F.S, must be deleted in its entirety and that s. 908.104(5), F.S., must be limited to crimes occurring in the United States and be time barred to five years prior to an alien's claim for relief under the statute. The Grand Jury also found that persons seeking relief under the statute need to provide credible sworn supporting evidence of eligibility.[29]

Florida RICO (Racketeer Influenced and Corrupt Organization) Act

The Florida RICO (Racketeering Influenced and Corrupt Organization) Act[30] is the area of Florida law that governs the crime of "racketeering activity."[31]

The RICO Act defines a "pattern of racketeering activity" to mean engaging in at least two incidents of racketeering conduct[32] having the same or similar intents, results, accomplices, victims, or methods of commission or that otherwise are interrelated by distinguishing characteristics and are not isolated incidents.[33]

The RICO Act provides that it is unlawful for any person:[34]

- With criminal intent to receive any proceeds derived, directly or indirectly, from a pattern of racketeering activity or through the collection of an unlawful debt[35] to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise.[36]
- Through a pattern of racketeering activity or through the collection of an unlawful debt, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property.
- Employed by, or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt.
- To conspire or endeavor to violate any of the previously-described activity.

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[29] The Supreme Court of Florida, Second Presentment of the Twenty-First Statewide Grand Jury (s. 908.104, F.S.), https://efactssc-public.flcourts.org/casedocuments/2022/796/2022-796_miscdoc_375408_e99.pdf (last visited Mar. 21, 2023).

[30] Ss. 895.01-895.06, F.S.

[31] S. 895.02(8), F.S., defines "racketeering activity" to include crimes that are chargeable by petition, indictment, or information under the certain specified provisions of law, any conduct defined as "racketeering activity" in 18 U.S.C. § 1961, and any violation of Title 68, Florida Administrative Code, relating to the illegal sale, purchase, collection, harvest, capture, or possession of wild animal life, freshwater aquatic life, or marine life, and related crimes.

[32] At least one of such incidents of racketeering conduct must have occurred after October 1, 1977, and the last incident of racketeering conduct must have occurred within five years after a prior incident. S. 895.02(7), F.S.

[33] S. 895.02(7), F.S.

[34] S. 895.03, F.S.

[35] "Unlawful debt" means any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in this state in whole or in part because the debt was incurred or contracted in violation of specified Florida laws (e.g., various gambling offenses) as well as any gambling activity in violation of federal law or in the business of lending money at a rate usurious under state or federal law. S. 895.02(12), F.S.

[36] "Enterprise" means any individual, sole proprietorship, partnership, corporation, business trust, union chartered under the laws of this state, or other legal entity, or any unchartered union, association, or group of individuals associated in fact although not a legal entity; and it includes illicit as well as licit enterprises and governmental, as well as other, entities. A criminal gang as defined in s. 874.03, F.S., constitutes an enterprise. S. 895.02(5), F.S.

A person convicted of any of the illegal activities commits a first degree felony,[37] and may be subject to civil remedies including forfeiture to the state of all property, including money, if the property is intended for use in the course of, derived from, or realized through acts in violation of the Florida RICO Act.[38]

In *Bowden v. State*, the Florida Supreme Court considered the definition of "pattern of racketeering activity" in s. 895.02(7), F.S., construing the definition to not only require "similarity and interrelatedness of racketeering activities," but also "proof that a continuity of a particular criminal activity exists."[39] The court in *Bowden* reasoned that requiring continuity of criminal activity ensures that RICO prosecutions are of professional or career criminals and not individuals who have committed minor crimes.[40]

In cases where the defendant is charged under s. 895.03, F.S., Florida courts have analyzed the continuity requirement by turning to U.S. Supreme Court precedent.[41] When considering the elements necessary to satisfy the pattern requirement[42] of the federal RICO Act[43] in *H.J. Inc. v. Northwestern Bell Telephone Co.*, the U.S. Supreme Court held that the predicate offenses must amount to, or otherwise constitute a threat of, continuing racketeering activity in order to establish a pattern.[44] The Court described continuity as "both a closed- and open-ended concept, referring either to a closed period of repeated conduct, or to past conduct that by its nature projects into the future with a threat of repetition."[45]

Unauthorized Alien Transport Program

The Unauthorized Alien Transport Program within the Division of Emergency Management (DEM) within the Executive Office of the Governor facilitates the transport of inspected unauthorized aliens within the United States, consistent with federal law. DEM is authorized to contract for services to implement the program. The program will expire on June 30, 2025.[46]

Federal Immigration Enforcement

In 2019, the Legislature passed federal immigration enforcement legislation.[47] The law ensures that state and local entities and law enforcement agencies cooperate with federal government officials to enforce, and not obstruct, immigration laws. In its most general and broad terms, the law prohibits sanctuary policies and requires law enforcement agencies to support the enforcement of federal immigration law.[48] When local law enforcement agencies work with federal immigration officials, aliens who have committed serious crimes are more easily identified and removed.

Specifically, the law allows a law enforcement agency[49] to take the following actions with respect to information regarding a person's immigration status:

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[37] S. 895.04, F.S. A first degree felony is punishable by up to 30 years imprisonment and a $10,000 fine. Ss. 775.082 and 775.083, F.S.
[38] S. 895.05(2), F.S.
[39] *Bowden v. State*, 402 So. 2d 1173, 1174 (Fla. 1981).
[40] *Id*.
[41] *See State v. Lucas*, 600 So. 2d 1093, 1094 (Fla. 1992) (reasoning that the state sufficiently alleged a threat of criminal activity to constitute open-ended continuity as described by federal precedent).
[42] 18 U.S.C. § 1962 discusses prohibited activities, which all require a pattern of racketeering activity or collection of an unlawful debt.
[43] The Racketeer Influenced and Corrupt Organizations Act is found in 18 U.S.C. §§1961-1968.
[44] *H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 240 (1989).
[45] *Id*. at 241.
[46] Ch. 2023-3, Laws of Fla.
[47] Ch. 2019-102, L.O.F. The law was challenged in *City of South Miami v. DeSantis*, 408 F.Supp.3d 1266 (S.D. Fla. Sept. 21, 2021). Three provisions were enjoined but severable from the remainder of the law. The case was appealed to the Eleventh Circuit Court of Appeals on October 20, 2021, and is now pending.
[48] *See* ch. 908, F.S.
[49] S. 908.102(4), F.S., defines a "law enforcement agency" to mean an agency in this state charged with enforcement of state, county, municipal, or federal laws or with managing custody of detained persons in this state and includes municipal police departments, sheriffs' offices, state police departments, state university and college police departments, county correctional agencies, and the Department of Corrections.

- Sending the information to or requesting, receiving, or reviewing the information from a federal immigration agency for purposes of ch. 908, F.S.
- Recording and maintaining the information for purposes of ch. 908, F.S.
- Exchanging the information with a federal immigration agency or another state entity, local governmental entity, or law enforcement agency for purposes of ch. 908, F.S.
- Using the information to comply with an immigration detainer.
- Using the information to confirm the identity of a person who is detained by a law enforcement agency.

Domestic Security

The mission of FDLE is to "promote public safety and strengthen domestic security by providing services in partnership with local, state, and federal criminal justice agencies to prevent, investigate, and solve crimes while protecting Florida's citizens and visitors."[50] FDLE's Executive Director serves as the Chief of Domestic Security in Florida and oversees Office of Domestic Security. The office works with federal, state, and local officials to prepare for, prevent, protect, respond to, and recover from domestic security incidents within or affecting the state.[51]

The three primary components of Florida's domestic security governance structure include:[52]
- Regional domestic security task forces.
- Domestic security coordinating group.
- Domestic security oversight council.

The regional domestic security task forces consist of local and multi-disciplinary representatives who collectively support the domestic security mission and provide the necessary link between the state and local communities. There are seven regional domestic security task forces located in Pensacola, Tallahassee, Jacksonville, Orlando, Tampa, Ft. Myers, and Miami.[53]

Regional domestic security task forces advise the FDLE and the Chief of Domestic Security on the development and implementation of a statewide strategy to address prevention, preparation, protection, response, and recovery efforts related to the state's domestic security. The task forces also coordinate the resources of local, state, and federal to ensure that such efforts are not fragmented and duplicative.[54]

The domestic security coordinating group (DSCG) provides the structure for federal, state, and local response to domestic security incidents. The DSCG is made up of representatives and subject matter experts from the regional domestic security task forces, designated urban areas, other key organization liaisons and private sector representatives who come together to address domestic security incidents.[55]

The domestic security oversight council was established in 2004 to provide direction, leadership, and recommendations to the Governor and the Legislature on domestic security.[56] The council's membership is made up of voting and nonvoting members. Voting members include but are not limited to the Executive Director of the Division of Emergency Management, the Attorney General, and the Adjutant General of the Florida National Guard. Nonvoting membership includes but is not limited to, the Executive Director of the Department of Highway Safety and Motor Vehicles, a representative of the

[50] Florida Department of Law Enforcement, FDLE Home, *About FDLE*, available at https://www.fdle.state.fl.us/About-Us (last visited Mar. 10, 2023).
[51] S. 943.0311(1), F.S.
[52] Florida Department of Law Enforcement, FDLE Home, Domestic Security, Domestic Security Organization, *Organization*, available at http://www.fdle.state.fl.us/Domestic-Security/Organization.aspx (last visited Mar.10, 2023).
[53] *Id*.
[54] S. 943.0312, F.S.
[55] 2021 Domestic Security Annual Report, *Making Florida Safer*, p. 3, available at https://www.fdle.state.fl.us/Domestic-Security/Documents/2021DSAnnualReportFINAL.aspx (last visited Mar. 10, 2023).
[56] *Id*.

United States Coast Guard, and a special agency in charge from an office of the Federal Bureau of Investigations within Florida.[57]

The council duties include providing guidance to the regional domestic security task forces and the DSCG with respect to statewide policies and operational protocols that support domestic security efforts. The council must also review statewide or multiagency mobilizations and responses to major domestic security incidents and recommend suggestions for training, improvement of response efforts, or improvement of coordination within the state.[58]

Employment Verification

Under the Immigration Reform and Control Act of 1986 (IRCA),[59] it is illegal for any United States employer to knowingly:

- Hire, recruit, or refer for a fee an alien knowing he or she is unauthorized to work;
- Continue to employ an alien knowing he or she has become unauthorized; or
- Hire, recruit or refer for a fee, any person (citizen or alien) without following the record keeping requirements of the IRCA.[60]

The employment verification process begins when an employee accepts an offer of employment.[61] Between this point and the employee's first day on the job, an **employee** must present documents that establish his or her identity and eligibility to work[62] by completing Section 1 of the Form I-9, which requires the employee's name, address, social security number (SSN), and citizenship status under penalty of perjury.[63]

By the end of the third day on the job, the **employer** is required to complete Section 2, which states under penalty of perjury that certain employee-provided documents that establish the employee's eligibility were reviewed.[64] Most employers are not required to continue the verification of employment eligibility process beyond this step. However, for those who choose to use or are required to use E-Verify, the process continues.

E-Verify Federal Law

In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA),[65] which, among other provisions, created various employment eligibility verification programs, including the Basic Pilot program, now referred to as E-Verify. E-Verify is an Internet-based system through which an employer can verify that a newly hired employee is authorized to work in the United States. E-Verify is administered by DHS in partnership with the Social Security Administration (SAA). It is free for employers to use and provides an automated link to Government records to help employers confirm the employment eligibility of new hires.[66]

Originally, the program was available in five of the seven states that had the highest populations of unauthorized aliens and was initially authorized for only 4 years. However, Congress has consistently

[57] S. 943.0313(1), F.S.
[58] S. 943.0313(5), F.S.
[59] Pub. L. No. 99-603, 100 Stat. 3359.
[60] 8 U.S.C. s. 1324a.
[61] U.S. Citizenship and Immigration Services, *Complete and Correct Form I-9*, https://www.uscis.gov/i-9-central/complete-and-correct-form-i-9 (last visited Mar. 11, 2023).
[62] An employer may rely on a U.S. passport; resident alien card, alien registration card, or other document designated by the U.S. Attorney General that contains a photograph and other personal identifying information, authorizes employment in the U.S., and is tamper resistant. Alternatively, an employer may review a combination of documents that establish the individual's identity, e.g., a SSN, and a document that establishes the individual's identity, e.g., a driver's license.
[63] *See* 8 C.F.R. § 274a.2(b)(1)(i)(A).
[64] 8 U.S.C. s. 1324a. *See* 8 C.F.R. § 274a.2(b)(1)(ii).
[65] Pub. L. No. 104-208.
[66] U.S. Citizenship and Immigration Services, *How do I use E-Verify?* https://www.e-verify.gov/sites/default/files/everify/guides/E4en.pdf (last visited Mar. 21, 2023).

extended the program's life. It expanded the program in 2004, making it available in all 50 states. In 2008, the federal government began requiring any entity that maintained or applied for federal contracts to use E-Verify.[67] As of December 31, 2022, there were 1,093,292 employers enrolled in the system with a usage rate of 16.51 percent and a total of 296,690 case checks for the calendar year. As of March 2023, Florida accounts for 81,511 employer accounts with 66,385 actively enrolled employers.[68]

To use the E-Verify system, an employer must open a "case" for the employee on the system and enter basic information from the employee's Form I-9 (name, address, SSN) into the case.[69] Then, the system checks the submitted information to records that are available to the DHS and SSA, and issues one of the following possible results to the employer:

- **Employment Authorized** - The employee's information matched records available to the DHS and/or SSA.
- **E-Verify Needs More Time** - This case was referred to the DHS for further verification.
- **Tentative Nonconfirmation (Mismatch)** - Information did not match records available to the DHS and/or SSA. Additional action is required.
- **Case in Continuance** - The employee has contacted the DHS or visited an SSA field office, but more time is needed to determine a final case result.
- **Close Case and Resubmit** – The DHS or SSA requires that the employer to close the case and create a new case for the employee. This result may be issued when the employee's United States passport, passport card, or driver's license information is incorrect.
- **Final Nonconfirmation** - E-Verify cannot confirm the employee's employment eligibility after the employee contacted the DHS or SSA, the time for resolving the case expired, or the DHS closed the case without confirming the employee's employment eligibility for some other reason.[70]

If the result is Tentative Nonconfirmation, then the employer must notify the employee, who must take further action to verify his or her eligibility. If the result is E-Verify Needs More Time or Case in Continuance, then the E-Verify system needs more time to process the case.[71]

E-Verify Defenses for Employers

According to federal law, an employer using the I-9 Form, establishing good faith compliance with the law, has established an affirmative defense that the person or entity has not violated the federal law with respect to such hiring, recruiting, or referring.[72]

An employer taking the additional steps to use the E-Verify system to verify employment eligibility may establish a rebuttable presumption that the person or entity has not violated the federal law with respect to such hiring, recruiting, or referring.[73]

The IRCA provides sanctions to be imposed on employers who knowingly employ aliens who are not authorized to work.[74] Federal law contains no criminal sanction for working without authorization,

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[67] E-Verify, *History and Milestones*, https://www.e-verify.gov/about-e-verify/history-and-milestones (last visited Mar. 21, 2023).
[68] E-Verify, *E-Verify Usage Statistics*, click "Show the Data Table" for a download csv, https://www.e-verify.gov/about-e-verify/e-verify-data/e-verify-usage-statistics and *How To Find Participating Employers*, https://www.e-verify.gov/about-e-verify/e-verify-data/how-to-find-participating-employers?hiringstates[]=11&field_account_status_value=All&items_per_page=10 (last visited Mar. 21, 2023).
[69] E-Verify, *Verification Process*, for details on how the system works, https://www.e-verify.gov/employers/verification-process (last visited Mar. 21, 2023). Before using E-Verify, an employer must enroll and sign a Memorandum of Understanding that provides the terms of agreement between the employer and the DHS. *See* E-Verify, *The E-Verify Memorandum of Understanding for Employers*, https://www.e-verify.gov/sites/default/files/everify/memos/MOUforEVerifyEmployer.pdf (last visited Mar. 21, 2023).
[70] *Id*.
[71] *Id*.
[72] 8 U.S.C. s. 1324a(a)(3).
[73] 8 U.S.C. s. 1324a notes, *Pilot Programs for Employment Eligibility Confirmation*.
[74] 8 U.S.C. s. 1324a(a)(1)-(2).

although document fraud is a civil violation.[75] The United States Citizenship and Immigration Services (USCIS) enforces these provisions.[76]

E-Verify Results in 2022

In 2022, E-Verify processed 48,042,413 cases, 98.43 percent of which were automatically confirmed as "work authorized." Another 1.61 percent were confirmed after an initial "mismatch" and of these 1.54 percent were ultimately found to be not work authorized.[77]

In the remaining 1.54 percent of cases, the employees were not found to be authorized to work in the United States. The majority of these were cases that were not resolved by the end of 2019 for various reasons, including because the case was awaiting further action by either the employer or employee at the end of the fiscal year or because the employer closed the case as "self-terminated."[78]

E-Verify Operational Disturbances

During the January 2019 partial federal government shut down, the E-Verify system was unavailable. As a result, employers were unable to enroll in E-Verify, contact customer support representatives, create an E-Verify case, or view or take action on a case, among other functions.[79] The DHS issued guidance that extended the 3-day rule to permit employers additional time to submit new employee information to E-Verify and gave employees additional time to resolve a case.[80]

E-Verify Florida Law

Since January 1, 2021, in Florida, all public employers and their contractors and subcontractors have been required to register and use E-Verify to verify the work authorization status of all newly hired employees.[81] Subcontractors must provide an affidavit to their contractor stating that they do not employ, contract with, or subcontract with unauthorized aliens. The contractor must keep a copy of such affidavit for the duration of the contract.[82]

Since January 1, 2021, in Florida, private employers have been required to use the I-9 Form or E-Verify or a substantially equivalent system to verify that new hires or retained contract employees are authorized to work in the United States.[83] If the employer uses the I-9 system, the employer must retain a copy of the documentation for at least 3 years after the individual's initial date of employment.[84] The

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[75] 8 U.S.C. s. 1324c.
[76] 8 U.S.C. s. 1324a.
[77] E-Verify, *E-Verify Performance*, https://www.e-verify.gov/about-e-verify/e-verify-data/e-verify-performance (last visited Mar. 21, 2023).
[78] *Id*.
[79] National Law Review, *When the Government Shuts Down: The Impact on E-Verify, I-9's, and Visas*, January 25, 2019, https://www.natlawreview.com/article/when-government-shuts-down-impact-e-verify-i-9-s-and-visas (last visited Mar. 21, 2023).
[80] U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, *E-Verify Resumes Operation*, January 27, 2019, https://www.e-verify.gov/e-verify-resumes-operation (last visited Mar. 21, 2023). Due to the lapse in federal funding, the E-Verify system was not in operation from December 22, 2018, to January 26, 2019. E-Verify restarted on Sunday, January 27, 2019. Department of Homeland Security, U.S. Citizenship and Immigration Services, *January 2019, E-Verify Incidents*, April 23, 2019, https://www.e-verify.gov/about-e-verify/e-verify-data/e-verify-enhancements/january-2019 (last visited Mar. 21, 2023).
[81] S. 448.095(2), F.S. This section was enacted in 2020. Previously, pursuant to Executive Order 11-116, state agencies under the direction of the Governor were required to use E-Verify for all newly hired employees. The order also required an agency to include a provision in contracts to require a contractor (and any subcontractors) to use E-Verify for all new hires for the duration of the contract. State of Florida, Office of the Governor, *Executive Order No. 11-116*, May 27, 2011, http://edocs.dlis.state.fl.us/fldocs/governor/orders/2011/11-116-suspend.pdf (last visited Mar. 21, 2023).
[82] S. 448.095(2)(b), F.S.
[83] S. 448.095(3), F.S., provides that a private employer does not include a public employer, an employee leasing company that has a written agreement or understanding with its client company that places the primary obligation for compliance with this section upon the client company; or an occupant or owner of a private residence that hires casual labor or a licensed independent contractor.
[84] S. 448.095(3), F.S.

law applies to all private employers and does not appear to specify application based on a minimum amount of employees.

A private employer that complies with the law may not be held civilly or criminally liable under state law for hiring, continuing to employ, or refusing to hire an unauthorized alien if the information obtained indicated that the individual's work authorization status was not that of an unauthorized alien. Further, using either the I-9 Form or E-Verify creates a rebuttable presumption that the private employer did not knowingly employ an unauthorized alien.[85]

A person may not knowingly employ, hire, recruit, or refer an alien for private or public employment within the state if the alien is not authorized to work under "the immigration laws" or by the United States Attorney General.[86] A first offense of this prohibition is a noncriminal violation punishable by a fine of up to $500, regardless of the number of aliens with respect to which the violation occurred; each subsequent offense is a second degree misdemeanor, punishable by up to 60 days in jail and a fine not to exceed $500, with each unauthorized alien employed as a separate violation.[87]

The FDLE, the Attorney General, a state attorney, or the statewide prosecutor is authorized to request documentation from a private employer used to verify an individual's employment eligibility. Ultimately, the federal government's determination of verification of an individual's employment status stands and one of the authorized state agencies may not make an independent determination as to whether a person is an unauthorized alien.[88]

A private employer that does not use the I-9 Form or E-Verify, or does not maintain the I-9 Form documentation for three years, will be required by the DEO to provide an affidavit stating that the private employer will comply with the law, has terminated the employment of all unauthorized aliens in this state, and will not intentionally or knowingly employ an unauthorized alien in this state.[89]

If the private employer does not provide the required affidavit within 30 days after the request by the DEO, the appropriate licensing agency[90] must suspend all applicable licenses held by the private employer until the private employer provides the DEO with the required affidavit. If a private employer does not provide the required affidavit within the required time period three times within any 36-month period, then the appropriate licensing agency must revoke all applicable licenses held by the private employer. The licenses subject to suspension or revocation are:

- All licenses that are held by the private employer specific to the business location where the unauthorized alien performed work.
- If the private employer does not hold a license specific to the business location where the unauthorized alien performed work, but a license is necessary to operate the private employer's business in general, then the provision applies to all licenses that are held by the private employer at the private employer's primary place of business.[91]

E-Verify in Other States

Currently, 22 states require the use of E-Verify for at least some public and/or private employers. These states include Alabama, Arizona, Colorado, Florida, Georgia, Idaho, Indiana, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Virginia and West Virginia.[92]

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[85] *Id*.
[86] S. 448.09(1), F.S.
[87] S. 448.09(2), F.S. *See* ss. 775.082 and 775.083, F.S.
[88] S. 448.095(3), F.S.
[89] *Id*.
[90] The term "agency" means any agency, department, board, or commission of this state or a county or municipality in this state that issues a license to operate a business in this state.
[91] *Id*.
[92] National Conference of State Legislatures, State E-Verify Action, https://www.ncsl.org/immigration/state-e-verify-action (last visited Mar. 21, 2023).

The following states require private employers, as well as public employers and their contractors and subcontractors, to use E-Verify: North Carolina;[93] Mississippi;[94] Georgia;[95] Arizona;[96] Alabama;[97] Utah;[98] and South Carolina.[99]

The following states require only public employers and their contractors to use E-Verify: Indiana;[100] Nebraska;[101] Missouri;[102] Colorado;[103] Oklahoma;[104] Texas;[105] and Virginia.[106]

Some states' approaches do not fall squarely into the above categories. For example, Tennessee requires only private employers that have 50 or more employees to use E-Verify.[107] Pennsylvania requires public contractors and private *construction* employers to use E-Verify.[108] In Michigan, only contractors of the Michigan Department of Transportation must use E-Verify.[109] Finally, West Virginia requires contractors whose employees work on the Capitol grounds to use E-Verify.[110]

County and Municipal Community ID Cards

Article VIII of the Florida Constitution establishes the authority for home rule by counties and municipalities. Pursuant to general or special law, a county government may be adopted by charter approved by the county voters.[111] A county without a charter has such powers of self-government as provided by general[112] or special law.[113] A county with a charter has all powers of self-government not inconsistent with general law or special law approved by the county voters.[114] The Florida Constitution

[93] N.C.G.S. § 160A-169.1 (municipalities); 153A-99.1 (counties); 143-48.5, 143-133.3 (public contractors); 64-26 (private employers that have more than 25 employees); 126-7.1 (state agencies).
[94] Miss. Code § 71-11-3.
[95] Ga. Code § 13-10-91 (public employers and contractors); 36-60-6 (private employers that have more than 10 employees).
[96] Ariz. Rev. Stat. § 41-4401 (public contractors); 23-214 (private and public employers).
[97] Ala. Code § 31-13-15.
[98] Utah Code § 63G-12-301 (private employers having 15 or more employees, unless the employee has a guest worker permit), 63G-12-302 (public employers and contractors). Under both statutes, the employers may use E-Verify or another federal verification program.
[99] S.C. Code § 41-8-20 (private employers); 8-14-20 (public employers and contractors).
[100] Ind. Code § 22-5-1.7-11.1.
[101] Nev. Rev. St. § 4-114.
[102] Miss. Stat. § 285.530.
[103] Colo. Rev. Stat. § 8-17.5-102.
[104] 25 Okl. St. § 1313 (public employers and contractors must use E-Verify or another federal verification program).
[105] Tex. Nat. Res. Code § 81.072 (public contractors); Tex. Gov. Code § 673.002 (state agencies)
[106] Va. Code § 40.1-11.2 (state agencies), 2.2-4308.2 (public contractors).
[107] Tenn. Code § 50-1-703.
[108] 43 Penn. Stat. § 167.3 (public contractors); 43 Penn. Stat. §168.3 (private construction employers).
[109] Act 200, Public Acts of 2012, Sec. 381.
[110] W. Va. Code, § 15-2D-3.
[111] S. 125.60, F.S.
[112] Ch. 125, Part I, F.S.
[113] Art. VIII, s. 1(f), FLA. CONST.
[114] Art. VIII, s. 1(g), FLA. CONST.

provides unique authorization[115] for specific home rule charters including those of Duval [116] and Miami-Dade Counties.[117] Currently, 20 Florida counties have adopted charters.[118]

Municipalities have all governmental, corporate, and proprietary powers necessary to conduct municipal government, functions, and services, and may exercise any power for municipal purposes[119] except as otherwise provided by general law.[120]

Counties and municipalities are authorized to set and control their respective budgets subject to general law.[121] For example, all county and municipal budgets must be balanced.[122]

A county commissioner voting to approve paying an illegal charge or claim not authorized by law is guilty of malfeasance[123] and is subject to suspension by the Governor.[124] A clerk of the court serving as county auditor[125] who willfully or knowingly signs a warrant to pay an illegal charge is personally liable for the entire amount of such payment.[126] An elected or appointed municipal official who commits malfeasance or misfeasance in office also is subject to gubernatorial suspension.[127]

Recently, certain private organizations, like the FaithAction International House, in conjunction with local communities, have been issuing community IDs, with the goal of providing ID cards to individuals who may not currently have access to government issued forms of ID, including new immigrants and refugees, homeless and elderly individuals, and those recently returning from jail. According the FaithAction International House webpage, "The FaithAction ID provides card holders with a verifiable form of identification that can be used as a tool by law enforcement, health centers, schools, nonprofits, businesses, and cultural arts organizations to better identify, serve, and protect them."[128] FaithAction International House provides that ID card is not a state issued form of identification, which is noted on the back of the card; therefore it cannot be used to vote, does not entitle the cardholder to any social welfare benefits; does not have any impact on an individual's immigration status. Individuals may pay a

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[115] Article VIII, s. 6(e), FLA. CONST., incorporating by reference ss. 9, 10, 11, 24 from article VIII of the 1885 Constitution, states that these specific provisions respectively for Duval, Miami-Dade, Monroe, and Hillsborough Counties "shall remain in full force and effect as to each county affected, as if this article had not been adopted, until that county shall expressly adopt a charter or home rule plan pursuant to this article."

[116] The consolidated government of the City of Jacksonville was created by ch. 67-1320, Laws of Florida, adopted pursuant to Art. VIII, s. 9, FLA. CONST. (1885).

[117] In 1956, an amendment to the 1885 Florida Constitution provided Dade County with the authority to adopt, revise, and amend from time to time a home rule charter government for the county. The voters of Dade County approved that charter on May 21, 1957. Dade County, now known as Miami-Dade County, has unique home rule status. Article VIII, s. 11(5) of the 1885 State Constitution, now incorporated by reference in art. VIII, s. 6(e), Fla. Const. (1968), further provided the Metropolitan Dade County Home Rule Charter, and any subsequent ordinances enacted pursuant to the charter, may conflict with, modify, or nullify any existing local, special, or general law applicable only to Dade County. Accordingly, Miami-Dade County ordinances enacted pursuant to the Charter may implicitly, as well as expressly, amend or repeal a special act that conflicts with a Miami-Dade County ordinance. Effectively, the Miami Dade Charter can only be altered through constitutional amendment, general law, or County actions approved by referendum. Chase v. Cowart, 102 So. 2d 147, 149-50 (Fla. 1958).

[118] Alachua, Brevard, Broward, Charlotte, Clay, Columbia, Duval (consolidated government with the City of Jacksonville, ch. 67-1320, Laws of Fla.), Hillsborough, Lee, Leon, Miami-Dade, Orange, Osceola, Palm Beach, Pinellas, Polk, Sarasota, Seminole, Volusia, and Wakulla Counties. The Local Government Formation Manual, Appendix C, p. 106, at https://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3227&Session=2023&DocumentType=General+Publications&FileName=2022+Local+Government+Formation+Manual.pdf (last visited March 17, 2023).

[119] S. 166.021(2), F.S., which defines "municipal purpose" as "any activity or power which may be exercised by the state or its political subdivisions."

[120] Art. VIII, s. 2(b), FLA. CONST.

[121] *See* ss. 129.01, 129.02, F.S. for counties, s. 166.241, F.S., for municipalities.

[122] Ss. 129.01(2)(b), 166.241(2), F.S.

[123] S. 129.08, F.S.

[124] Art. IV, s. 7, FLA. CONST.

[125] Art. VIII, s. 1(d), FLA. CONST.

[126] S. 129.09, F.S.

[127] S. 112.51, F.S.

[128] FaithAction International House, *FaithAction ID Program and Network*, https://faithaction.org/faithaction-id-program-and-network/ (last visited Mar. 21, 2023).

small fee for the card, or the card may be issued for free, and must attend an ID drive event that provide an orientation on the benefits and limitations of the card.[129]

In Florida, several local governments have partnered with organizations to offer Community ID cards. In 2019 the City of West Palm Beach passed a resolution authorizing the city to accept identification cards issued by People Engaged in Active Community Efforts, affiliated with Legal Aid in Palm Beach County. The city appropriated $40,000 to the program to issue identification cards to those without access to other forms of identification, including undocumented immigrants. Cards are issued under this program for a fee of $20.[130]

On January 31, 2023, the Board of County Commissioners for Miami-Dade County adopted a plan to fund $200,000 to Branches, a non-profit tax preparation entity, to issue county identification cards to those without access to other forms of identification, including individuals who are homeless or who are undocumented immigrants.[131]

Broward County approved a program for Legal Aid Service of Broward County to issue the Broward Community ID Card for a fee of $20. The card is provided to individuals who can present a particular form of current or expired identification[132] and prove they are a Broward County resident with an address effective within the past three months. The program cautions that the card neither authorizes driving or entitlement to social welfare benefits nor affects the cardholder's immigration status.[133]

The City of Aventura and other municipalities offer resident ID cards that are conditioned on presentation of a government-issued ID like a valid driver's license or passport and proof of residency. Cardholders can access discounted rates at fishing piers, city-owned recreational facilities, reduced pricing on programs and activities, and free entrance to certain events. Cards may require a small fee or may be provided for free and require renewal annually or may be valid for up to three years, depending on the locality.[134]

Driver Licenses

Current law prohibits a person from driving any motor vehicle upon a Florida highway unless such person has a valid driver license issued under ch. 322, F.S.[135] However, an individual is exempt from obtaining a Florida driver license if he or she is a nonresident who is:[136]

- At least 16 years of age and possesses a valid noncommercial driver license issued to him or her in his or her home state or country and operating a type of motor vehicle for which a Class E driver license is required in this state.
- At least 18 years of age and possesses a valid noncommercial driver license issued to him or her in his or her home state or country and operating a motor vehicle, other than a commercial motor vehicle, in this state.

Current law establishes requirements governing the issuance of driver licenses by DHSMV.[137] An applicant for a driver license or identification card is required to provide his or her SSN for the purpose

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[129] *Id*.

[130] WPTV West Palm Beach, *New IDs for undocumented immigrants in Palm Beach County*, https://www.wptv.com/news/local-news/immigrants-in-south-florida/new-ids-for-undocumented-immigrants-in-palm-beach-county (last visited Mar. 21, 2023).

[131] Newsweek, Florida County to Issue IDs to Undocumented Immigrants Through Third Party, https://www.newsweek.com/florida-county-issue-ids-undocumented-immigrants-through-third-party-1675585 (last visited Mar. 21, 2023).

[132] Examples given include a passport, driver's license, foreign national ID, consular or embassy ID, or military ID.

[133] Legal Aid Service of Broward County, *Broward Community ID*, https://www.browardlegalaid.org/communityid/ (last visited March 17, 2023).

[134] City of Aventura, *Aventura ID Card*, https://www.cityofaventura.com/221/Aventura-ID-Card; City of Delray Beach, *Residency (Activities) Identification Cards*, https://www.delraybeachfl.gov/government/city-departments/city-clerk/residency-identification-cards; City of Sunny Isles Beach, *Resident ID Card*, https://www.sibfl.net/ccs/residentid/; The Villages, *Resident ID Card Information*, https://districtgov.org/departments/Community-Service/idCards.aspx (last visited Mar. 21, 2023).

[135] *See* s. 322.03, F.S.

[136] S. 322.04(1)(c) and (d), F.S.

[137] *See* s. 322.08, F.S.

of identification. This information is electronically verified with the federal SSA to confirm identity, as required by the Real ID Act of 2005. Applicants are required to provide proof of identity that is satisfactory to the DHSMV. The following documents constitute acceptable proof of identification:[138]

- A certified copy of a United States birth certificate;
- A valid, unexpired passport or passport card;
- A Certificate of Naturalization issued by the DHS;
- A valid, unexpired alien registration receipt card (green card);
- A Consular Report of Birth Abroad; and
- A valid, employment authorization card issued by the DHSMV.

DHSMV is authorized to require an applicant for an original driver license to produce certain DHS or foreign documents to prove nonimmigrant classification for the sole purpose of establishing continuous lawful presence in the United States.[139]

DHSMV is authorized to waive the Class E knowledge (written) and skills requirements if an applicant for an original driver license presents a valid driver license from another state, province of Canada, or the United States Armed Forces when applying for a Florida driver license of equal or lesser classification.[140]

Driver License Compact and Reciprocity

The Driver License Compact was created to provide uniformity among member jurisdictions when exchanging information with other members on convictions, records, licenses, withdrawals, and other data pertinent to the licensing process. Uniformity helps ease administrative costs and meets the underlying tenet of the agreement that each driver nationwide have only one driver license and one driver control record.

DHSMV is authorized to enter into reciprocal driver license agreements with other jurisdictions within the United States and its territories and possessions and with foreign countries or political entities equivalent to Florida state government within a foreign country.[141] Generally, valid driver licenses issued by any state in the United States are valid when visiting another state. However, exceptions do exist for state-specific laws, such as required driving ages.[142]

States Issuing Driver Licenses to Undocumented Immigrants

States issue driver's licenses under the constitutional authority of the 10th Amendment. In 2005, Congress enacted the Real ID Act, creating standards for state-issued driver's licenses, including evidence of lawful status. Currently, 18 states and the District of Columbia have enacted laws to allow undocumented immigrants to obtain driver's licenses. These states include, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maryland, Massachusetts, Nevada, New Jersey, New Mexico, New York, Oregon, Rhode Island, Utah, Vermont, Virginia, and Washington. The states issue a license (or a "driving privilege card") if an applicant provides certain documentation, such as a foreign birth certificate, foreign passport, or consular card and evidence of current residency in the state.[143]

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[138] S. 322.08(2)(c), F.S.
[139] S. 322.08(2)(c)8., F.S.
[140] S. 322.12, F.S.
[141] S. 322.02(4), F.S.
[142] FindLaw, *Driver's Licenses FAQ*, November 27, 2017, https://www.findlaw.com/traffic/drivers-license-vehicle-info/driver-s-licenses-faq.html (last visited Mar. 21, 2023).
[143] National Conference of State Legislatures, *States Offering Driver's Licenses to Immigrants*, January 16, 2023, https://www.ncsl.org/immigration/states-offering-drivers-licenses-to-immigrants (last visited Mar. 21, 2023).

Since 1993, beginning in the State of Washington, states have offered undocumented immigrants the ability to obtain a state driver license to encourage otherwise unlicensed drivers to pass driver license testing and obtain vehicle insurance.[144]

Following the Real ID Act, noncompliant cards must have a recognizable feature on their face to distinguish the license from those issued to legal residents. Possession of a Real ID compliant driver license is not federally required for operating a motor vehicle. The DHS cautions against assuming that possession of a noncompliant card indicates that an individual is undocumented. Individuals may choose to obtain a noncompliant card for reasons unrelated to lawful presence in the United States.[145]

Admission to Practice Law

In 2014 the Legislature authorized applicants to the Florida Bar who are unauthorized immigrants to be admitted to the Bar by the Florida Supreme Court if certain conditions are met.[146] The Legislature acted following an advisory opinion from the Florida Supreme Court that related to whether undocumented immigrants are eligible for admission to the Florida Bar.[147] The Court held that federal law prohibits specified categories of aliens from obtaining certain public benefits, which includes a professional license that is provided by appropriated funds of a state. However, the federal law in question allows a state to provide such a benefit through the enactment of a state law that affirmatively provides for such eligibility.[148]

Current law allows the Florida Supreme Court to admit an applicant for admission to the Florida Bar if such applicant has:[149]

- Been brought to the United States as a minor;
- Been present in the United States for more than 10 years;
- Received documented employment authorization from the U.S. Citizenship and Immigration Services;
- Been issued a SSN;
- Registered with the Selective Service System if required to do so under the federal Military Selective Service Act; and
- Otherwise fulfilled all requirements for admission to practice law in this state.

Statewide DNA Database

The Legislature established the Statewide DNA database (statewide database) in 1989, which is administered by the Florida Department of Law Enforcement (FDLE) and capable of classifying, matching, and storing analyses of DNA and other biological material and related data.[150] The statewide database contains DNA samples, including those:[151]

- Submitted by persons convicted of or arrested for felony offenses and specified misdemeanor offenses; and
- Necessary for identifying missing persons and unidentified human remains, including samples voluntarily contributed by relatives of missing persons.

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[144] Britannica ProCon, *States (and DC) That Allow Undocumented Immigrants to Obtain Driver's Licenses*, November 14, 2022, States (and DC) That Allow Undocumented Immigrants to Obtain Driver's Licenses - Immigration - ProCon.org (last visited Mar. 21, 2023).

[145] Department of Homeland Security, *Real ID Frequently Asked Questions for the Public*, https://www.dhs.gov/archive/real-id-public-faqs (last visited Mar. 21, 2023).

[146] Chapter 2014-35, L.O.F.

[147] *Florida Board of Bar Examiners Re: Question as to Whether Undocumented Immigrants are Eligible for Admission to the Florida Bar*. No. SC11-2568 (Mar. 6, 2014).

[148] 8 U.S.C. s. 1621(d) (2012).

[149] S. 454.021(3), F.S.

[150] Ch. 89-335, Laws of Fla., codified in s. 943.325, F.S.

[151] S. 943.325(3), F.S.

All accredited local government crime laboratories in Florida have access to the statewide database in accordance with rules and agreements established by FDLE.[152] Local laboratories can access the statewide database through the FBI's Combined DNA Index System (CODIS),[153] allowing for the storage and exchange of DNA records submitted by federal, state, and local forensic DNA laboratories.[154]

The statewide database may contain DNA data obtained from the following types of biological samples:[155]

- Crime scene samples.
- Samples required by law to be obtained from qualifying offenders.
- Samples lawfully obtained during the course of a criminal investigation, including those from deceased victims or deceased suspects.
- Samples from unidentified human remains.
- Samples from persons reported missing.
- Samples voluntarily contributed by relatives of missing persons.
- Other samples approved by FDLE.

A "qualifying offender" is defined as any person, including a juvenile or adult:[156]

- Who is:
  - Committed to a county jail;
  - Committed to or under the supervision of the Department of Corrections (DOC), including a private correctional institution;
  - Committed to or under the supervision of the Department of Juvenile Justice (DJJ); or
  - Transferred to Florida under the Interstate Compact on Juveniles or the Interstate Corrections Compact; and
- Who is:
  - Convicted of any felony offense or attempted felony offense in Florida or a similar offense in another jurisdiction;
  - Convicted of a specified misdemeanor violation;[157] or
  - Arrested for any felony offense or attempted felony offense in Florida.[158]

A qualifying offender is required to submit a DNA sample for inclusion in the statewide database if he or she is:

- Arrested in Florida;
- Incarcerated in Florida; or
- On probation, community control, parole, conditional release, control release, or any other type of court-ordered supervision in Florida.[159]

An arrested offender is required to submit a DNA sample at the time he or she is booked into a jail, correctional facility, or juvenile facility. An incarcerated person and a juvenile in the custody of DJJ must submit a DNA sample at least 45 days before his or her presumptive release date.[160]

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[152] S. 943.325(4), F.S.
[153] "CODIS" means the Federal Bureau of Investigation's Combined DNA Index System that allows the storage and exchange of DNA records submitted by federal, state, and local forensic DNA laboratories. S. 943.325(2)(b), F.S.
[154] S. 943.325(2), F.S.
[155] S. 943.325(6), F.S.
[156] S. 943.325(2)(g), F.S.
[157] Including a misdemeanor violation of s. 784.048 (stalking), s. 810.14 (voyeurism), s. 847.013 (exposing minors to harmful motion pictures, exhibitions, shows, presentations, or representations), s. 847.0135 (owner or operator of computer service used for child pornography violation), or s. 877.26 (observing or taping in dressing room), or an offense that was found, pursuant to s. 874.04, to have been committed for the purpose of benefiting, promoting, or furthering the interests of a criminal gang as defined in s. 874.03. See s. 943.325(2)(g)2.b., F.S.
[158] S. 943.325(2)(g), F.S.
[159] S. 943.325(7), F.S.
[160] *Id*.

FDLE is required to retain all DNA samples submitted to the statewide database and such samples may be used for any lawful purpose.[161] Because submission requirements have been expanded since the creation of the statewide database, an offender arrested or convicted before the enactment of the current requirements may not have submitted a DNA sample at the time of his or her initial booking.

FDLE specifies database procedures to maintain compliance with national quality assurance standards to ensure that DNA records will be accepted into the National DNA Index System (NDIS).[162] Results of any DNA analysis must be entered into the statewide database and may only be released to criminal justice agencies. Otherwise, the information is confidential and exempt from state public records disclosure requirements under s. 119.07(1), F.S., and article I, s. 24(a), of the Florida Constitution.[163]

The collection of samples from a person booked into a jail, correctional facility, or juvenile facility for a felony has been a phased-in process. The process started in January 2011 and was completed 2020.[164]

Heath Data

In response to Executive Order No. 21-223, AHCA issued a corresponding data request to all Florida hospitals with an attached questionnaire.[165] On August 18, 2022, AHCA reported the results of the data request finding that total costs attributed to illegal aliens were $312.92 million and that hospitals were paid for $103.49 million of those costs. The local funds expended for inpatient and outpatient services cost $700,000, while state and federal funds expended were $104.91 million and $5.30 million, respectively. The report also stated that 142 of 316 facilities indicated that charity care provided included illegal aliens.[166] There is some indication that the reported data may be incomplete, however, as many health care facilities do not question patients about their immigration status and struggled to meet the data reporting requirement.[167]

Hospitals

Hospitals are regulated by the AHCA under ch. 395, F.S., and the general licensure provisions of part II, of ch. 408, F.S. Hospitals offer a range of health care services with beds for use beyond 24 hours by individuals requiring diagnosis, treatment, or care.[168] Hospitals must make regularly available at least clinical laboratory services, diagnostic X-ray services, and treatment facilities for surgery or obstetrical care, or other definitive medical treatment.[169]

AHCA must maintain an inventory of hospitals with an emergency department.[170] The inventory must list all services within the capability of each hospital, and such services must appear on the face of the hospital's license. As of March 2, 2023, there were 323 licensed hospitals in the state.[171]

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[161] *Id*.
[162] The DNA Index System is a national index of permissible DNA records input by federal, state and local participating criminal justice agency forensic laboratories, FBI FAQ, https://www.fbi.gov/how-we-can-help-you/dna-fingerprint-act-of-2005-expungement-policy/codis-and-ndis-fact-sheet (last visited Mar. 21, 2023).
[163] S. 943.325(14), F.S.
[164] S. 943.325(3)(b), F.S. and FDLE Long Range Program Plan, September 30, 2021, p. 12, http://floridafiscalportal.state.fl.us/Document.aspx?ID=23192&DocType=PDF (last visited Mar. 21, 2023).
[165] Agency for Health Care Administration, *AHCA Data Request - EO 21-223*, https://ahca.myflorida.com/content/download/4724/file/AHCA_Data_Request-EO_21-223.pdf (last visited Mar. 21, 2023).
[166] Agency for Health Care Administration, *Cost of Services on the Health Care System, Executive Order 21-223, Data for SFY 2020-2021, August 18, 2022*, https://ahca.myflorida.com/content/download/20792/file/Executive_Order_21-223_Update_01302023.pdf (last visited Mar. 21, 2023).
[167] Hospitals unable to meet undocumented patient data demand from Gov. DeSantis, The Gainesville Sun, Javon L. Harris, June 9, 2022, https://www.gainesville.com/story/news/2022/06/09/florida-hospitals-unable-meet-immigration-data-demand-desantis/7499186001/ (last visited Mar. 21, 2023).
[168] S. 395.002(12), F.S.
[169] *Id*.
[170] S. 395.1041(2), F.S.
[171] Agency for Health Care Administration, *Florida Health Finder Report*, https://quality.healthfinder.fl.gov/facilitylocator/ListFacilities.aspx (last visited Mar. 21, 2023).

AHCA is authorized to adopt rules for the licensing and regulation of hospitals.[172] Separate standards may be provided for general and specialty hospitals.[173] The rules for general and specialty hospitals must include minimum standards to ensure:[174]

- A sufficient number of qualified types of personnel and occupational disciplines are on duty and available at all times to provide necessary and adequate patient care;
- Infection control, housekeeping, sanitary conditions, and medical record procedures are established and implemented to adequately protect patients;
- A comprehensive emergency management plan is prepared and updated annually;
- Licensed facilities are established, organized, and operated consistent with established standards and rules; and
- Licensed facility beds conform to minimum space, equipment, and furnishing standards.

The minimum standards for hospital licensure are contained in Chapter 59A-3, F.A.C.

The Emergency Medical Treatment and Labor Act

In 1986, Congress enacted the Emergency Medical Treatment and Labor Act (EMTALA) to ensure public access to emergency services regardless of ability to pay.[175] Section 1867 of the Social Security Act imposes specific obligations on Medicare-participating hospitals that offer emergency services to provide a medical screening examination when a request is made for examination or treatment for an emergency medical condition (EMC), including active labor, regardless of an individual's ability to pay. Hospitals are then required to provide stabilizing treatment for patients with EMCs. If a hospital is unable to stabilize a patient within its capability, or if the patient requests, an appropriate transfer should be implemented.[176]

Impermissible Delays

EMTALA prohibits a participating hospital from delaying providing the appropriate medical screening examination or treatment required for specified reasons. The act allows a hospital to follow "reasonable registration processes;" however, such registration processes "may not unduly discourage individuals from remaining for further evaluation."[177] Interpretive guidelines issued by the federal Centers for Medicare and Medicaid Services for these provisions state that "the registration process permitted in the dedicated [emergency department] typically consists of collecting demographic information, insurance information, whom to contact in an emergency and other relevant information."[178]

Proposed Changes

ID Cards

The bill prohibits counties and municipalities from providing funding to any person, entity, or organization for the purpose of issuing an identification card or document to an individual who cannot provide proof of lawful presence in the United States. The bill does not prohibit counties or municipalities from accepting such identification produced by a third party for local governmental purposes.

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[172] See s. 395.1055, F.S.
[173] S. 395.1055(2), F.S.
[174] S. 395.1055(1), F.S.
[175] *See* 42 U.S. Code § 1395dd.
[176] Centers for Medicare and Medicaid Services, *Emergency Medical Treatment & Labor Act (EMTALA),* https://www.cms.gov/regulations-and-guidance/legislation/emtala (last visited Mar. 21, 2023).
[177] *See* 42 CFR s. 489.24(d)(4)(iv).
[178] Centers for Medicare and Medicaid Services, *State Operations Manual Appendix V – Interpretive Guidelines – Responsibilities of Medicare Participating Hospitals in Emergency Cases,* p. 56, https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/som107ap_v_emerg.pdf (last visited Mar. 21, 2023).

Driver Licenses

The bill provides that if a driver license is of a class of licenses issued by another state exclusively to undocumented immigrants who are unable to prove lawful presence in the United States when the license was issued, the driver license, or other permit purporting to authorize the holder to operate a motor vehicle on public roadways, is invalid in this state and does not authorize the holder to operate a motor vehicle in this state. Such classes of licenses include licenses that are issued exclusively to undocumented immigrants or licenses that are substantially the same as licenses issued to citizens, residents, or those lawfully present in the United States but have markings establishing that the license holder did not exercise the option of providing proof of lawful presence.

The bill requires a law enforcement officer or other authorized representative of DHSMV who stops a person driving with such an invalid license to issue a citation to the driver for driving without a license in violation of s. 322.03, F.S., which provides that a person convicted of a violation of ch. 322, F.S., is guilty of a second degree misdemeanor, punishable by a fine of up to $500 or a term of imprisonment of up to 60 days.[179]

In order to facilitate the enforcement of the new provision related to invalid licenses issued by other states to undocumented immigrants and to aid in providing notice to the public and visitors of these invalid licenses, the bill requires DHSMV to maintain on its website a list of out-of-state classes of driver licenses that are invalid in this state.

The bill revises the circumstances under which certain nonresidents are exempt from obtaining a Florida driver license to specify that the nonresident's license must not be invalid under the new provisions contained in s. 322.033, F.S., relating to proof of the licensee's lawful presence in the United States.

Health Data

The bill requires any hospital that accepts Medicaid to include a question on its patient admission or registration forms, that may be answered by the patient or the patient's representative, inquiring about whether the patient is a United States citizen, is lawfully present in the United States, or is not lawfully present in the United States. The question must be followed by a statement indicating that the response to the question will not affect patient care or result in a report of the patient's immigration status to immigration authorities.

The bill requires each hospital to provide a quarterly report to AHCA, within 30 days of the end of each quarter, detailing the number of admissions or emergency department visits by patients who responded to the required question. AHCA must, in turn, provide a report to the Governor and the Legislature by March 1 of each year compiling the data received from the hospitals. The annual report must describe the costs of uncompensated care provided to patients not lawfully in the country, the impact of uncompensated care on the cost or ability of hospitals to provide services to the public and on hospital funding needs, and other related information.

AHCA is authorized to adopt rules specific to the format of the quarterly report and the format of the question that hospitals must include on their admission or registration forms. The bill specifies that the rules may not require disclosure of patient names or other personal identifying information to AHCA.

Employment Prohibitions

Effective July 1, 2024, the bill amends penalties for violation of laws prohibiting the employment of unauthorized aliens, as follows:

- If DEO finds or is notified by FDLE, the Attorney General, the state attorney in the circuit in which the new employee works, or the statewide prosecutor that an employer employed an unauthorized alien without verifying the employment eligibility of such person, then DEO must

[179] *See* ss. 775.082 or 775.083, F.S.

enter an order making a determination of violation and require repayment of any economic development incentive as required in s. 288.061, F.S.
- For a first violation, DEO must place the employer on a one-year probation and require quarterly reporting to demonstrate compliance.
- Subsequent violations that take place within 24 months after a previous violation constitute grounds for the suspension or revocation of all licenses issued by a licensing agency subject to the administrative procedure act.

DEO is required to take the following actions based on violations involving:
- One to 10 unauthorized aliens: suspension of all applicable licenses held by a private employer for up to 30 days by the respective agencies that issued them.
- Eleven to 50 unauthorized aliens: suspension of all applicable licenses held by a private employer for up to 60 days by the respective agencies that issued them.
- More than 50 unauthorized aliens: revocation of all applicable licenses held by a private employer by the respective agencies that issued them.

The bill creates a third degree felony for an alien who is not duly authorized to work by the immigration laws of the United States, the Attorney General of the United States, or the United States Secretary of the Department of Homeland Security and who knowingly uses a false identification document or who fraudulently uses an identification document of another person for the purpose of obtaining employment.

E-Verify

The bill revises the E-Verify employment verification law as follows:
- Maintains the requirement that public employers use the E-Verify system.
- Beginning July 1, 2023, requires private employers with 25 or more employees to use the E-Verify system to verify employment eligibility of new employees instead of allowing the use of E-Verify or a Form I-9.
- Requires each employer required to use the E-Verify system to certify on its first return each calendar year to the tax service provider that it is in compliance when making contributions to or reimbursing the state's unemployment compensation or reemployment assistance system.
- Requires employers to use the Employment Eligibility Verification form (Form I-9) to verify employment eligibility if the E-Verify system is unavailable for 3 business days after the first day that the new employee begins working for pay and an employer cannot access the system to verify a new employee's employment eligibility.
    - Provides that the unavailability of the E-Verify system does not bar the employer from using the rebuttable presumption.
    - Requires the employer to document the unavailability of the E-Verify system by retaining a screenshot from each day which shows the employer's lack of access to the system, a public announcement that the E-Verify system is not available, or any other communication or notice recorded by the employer regarding the unavailability of the system.
- Provides that an employee leasing company licensed under part XI of chapter 468, F.S., which enters into a written agreement or understanding with a client company which places the primary obligation for compliance with the E-Verify provisions upon the client company is not required to verify employment eligibility of any new employees of the client company.
    - Provides that in the absence of a written agreement or understanding, the employee leasing company is responsible for compliance with these provisions.
    - Requires such employee leasing company to, at all times, remain an employer as otherwise defined in federal laws or regulations.

The bill revises the list of entities that are authorized to request copies of documentation relied upon by a private employer for verification of a person's employment eligibility, to:
- Add DEO.
- Specify that the state attorney must be in the circuit in which the new employee works.

The bill clarifies the defenses for employers, as follows:

- An employer that complies with the E-Verify laws establishes an affirmative defense that the employer has not violated s. 448.09, F.S., which prohibits employment of unauthorized aliens, with respect to such employment.

The bill provides the following compliance requirements:

- In addition to the requirements under s. 288.061(6), F.S., which require DEO to enforce E-Verify requirements for businesses applying for economic incentives, beginning on July 1, 2024, if DEO determines that an employer failed to use the E-Verify system to verify the employment eligibility of employees:
  - DEO must notify the employer of the department's determination of noncompliance and provide the employer with 30 days to cure the noncompliance.
  - If an employer is determined to not have used the E-Verify system as required three times in any 24-month period, the department must impose a fine of $1,000 per day until the employer provides sufficient proof to the department that the noncompliance is cured.
  - Noncompliance constitutes grounds for the suspension of all licenses issued by a licensing agency subject to the administrative procedure act until the noncompliance is cured.
  - Fines collected must be deposited into the State Economic Enhancement and Development Trust Fund for use by the department for employer outreach and public notice of the state's employment verification laws.

The bill specifies that the requirements to use the E-Verify system do not apply in any federal fiscal year in which the system is not funded by the Federal Government.

The bill also revises definitions as follows:

- Revises the definition of “employee” to:
  - Address individuals filling permanent positions.
- Defines “public agency" as any office, department, agency, division, subdivision, political subdivision, board, bureau, commission, authority, district, public body, body politic, state, county, city, town, village, municipality, or any other separate unit of government created or established pursuant to law, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.
- Revises the definition of “unauthorized alien” to reference individuals instead of persons.

Admission to Practice Law

The bill repeals the provisions that allow an applicant to the Florida Bar who is an unauthorized immigrant to be admitted to the Bar by the Florida Supreme Court if certain conditions are met. The bill specifies that such repeal does not affect the validity of any license to practice law issued pursuant to this provision before November 1, 2028.

Human Smuggling

The bill clarifies current prohibitions against human smuggling to specify that the law applies to persons who **knowingly and willfully** transport **individuals into this state** that the person **reasonably** should know has entered the United States in violation of law and has not been inspected by the United States Government since her or her unlawful entry.

Under the bill, a violation for human smuggling remains a third degree felony. The bill strengthens penalties for human smuggling, making it a second degree felony[180] in the following cases:

- Transporting a minor into the state in violation of the human smuggling provisions.
- Committing five or more separate offenses of human smuggling during a single episode.
- Committing subsequent violations with a prior conviction.

[180] A second degree felony is punishable by up to 15 years imprisonment and a $10,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

The bill provides that proof that a person knowingly and willfully presented false identification or gave false information to a law enforcement officer who is conducting an investigation for a violation of these provisions gives rise to an inference that such person was aware that the transported, concealed, harbored, or shielded individual has entered the United States in violation of the law and had not been inspected by the Federal Government since his or her unlawful entry.

The bill requires a person arrested for a human smuggling offense to be held in custody until brought before the court for admittance to pretrial release in accordance with ch. 903, F.S., which is the chapter of law governing bail.

The bill adds the crime of human smuggling to the list of crimes that allow for prosecution under the RICO Act.

Cooperation with Federal Immigration Authorities

The bill adds to the actions a law enforcement agency may take regarding a person's immigration status. Specifically, the bill allows a law enforcement agency to send relevant information obtained pursuant to enforcement of the E-Verify requirements to a federal immigration agency.[181]

FDLE Domestic Security

The bill adds immigration coordination and assistance with the Federal Government in the enforcement of federal immigration laws and response to immigration incidents that are within or affecting the state to FDLE's duties with respect to domestic security.

Domestic Security

The bill amends FDLE's domestic security statutes to provide the necessary authority for the department to coordinate with and provide assistance to the Federal Government in the enforcement of federal immigration laws, responses to immigration enforcement incidents within or affecting the state.

Specifically, the bill:

- Revises Legislative findings to include immigration enforcement coordination and assistance to the Federal Government in the enforcement of federal immigration laws, and responses to immigration enforcement incidents within or affecting the state.
- Requires the Chief of Domestic Security of FDLE to ensure compliance with the E-Verify requirements, by regularly coordinating random audits and notifying the DEO of any violations found.
- Requires the regional domestic security task forces to:
    - Cooperate with and provide assistance to the Federal Government in the enforcement of federal immigration laws within or affecting Florida;
    - Facilitate responses to immigration enforcement incidents within or affecting Florida;
    - Establish training standards including curricula and materials related to effective response to immigration enforcement incidents; and
    - Work to ensure that hate-driven acts against ethnic groups that may have been targeted as a result of immigration enforcement incidents within or affecting Florida are appropriately investigated and responded to.
- Requires the domestic security oversight council to:
    - Include the need of executive direction and leadership as it relates to immigration enforcement incidents to the council's legislative findings;

[181] S. 908.102(1), F.S., defines "federal immigration agency" as the United States Department of Justice and the United States Department of Homeland Security, a division within such an agency, including United States Immigration and Customs Enforcement and United States Customs and Border Protection, any successor agency, and any other federal agency charged with the enforcement of immigration law.

    - Include in their guidance to the regional domestic security task forces and other domestic security working groups recommendations to the Governor and the Legislature regarding expenditure of funds and resources related to cooperating with and providing assistance to the Federal Government in the enforcement of federal immigration laws.
- Include representatives from the DHS, ICE, and U.S. Customs and Border Protection as nonvoting members of the council.
- Specify immigration enforcement incidents and coordination with and providing assistance to the Federal Government in the enforcement of federal immigration laws are part of the council's duties of oversight of the state's domestic security efforts.

Statewide DNA Database

The bill expands the definition of a "qualifying offender" who is subject to having a DNA sample taken and submitted to the statewide database when the offender is a person:

- Who is:
    - Committed to a county jail;
    - Committed to or under the supervision of the Department of Corrections, including a private correctional institution;
    - Committed to or under the supervision of the Department of Juvenile Justice; or
    - Transferred to Florida under the Interstate Compact on Juveniles or the Interstate Corrections Compact; and
- Who is in the custody of a law enforcement agency and is subject to an immigration detainer issued by a federal immigration agency.

The bill requires a person who becomes a qualifying offender solely because of the issuance of an immigration detainer by a federal immigration agency to submit a DNA sample, and the law enforcement agency to immediately take the DNA sample, when the law enforcement agency having custody of the offender receives the detainer. Additionally, the bill requires the agency to secure and transmit the sample to FDLE in a timely manner.

Unauthorized Alien Transport Program Appropriation

For the 2023-2024 fiscal year, the bill appropriates a nonrecurring sum of $12 million from the General Revenue Fund to the Division of Emergency Management within the Executive Office of the Governor for the Unauthorized Alien Transport Program.

Effective Date

The bill provides an effective date of July 1, 2023, except as otherwise expressly provided.

B. SECTION DIRECTORY:

Section 1. Creates s. 125.0156, F.S., relating to restrictions on providing funds for identification documents.

Section 2. Creates s. 166.246, F.S., relating to restrictions on providing funds for identification documents.

Section 3. Creates s. 322.033, F.S., relating to unauthorized aliens; invalid out-of-state driver licenses.

Section 4. Amends s. 322.04, F.S., relating to persons exempt from obtaining a driver license.

Section 5. Creates s. 395.3027, F.S., relating to patient immigration status data collection for hospitals that accept Medicaid.

Section 6. Amends s. 448.09, F.S., relating to unauthorized aliens; employment prohibited.

Section 7 Amends s. 448.095, F.S., relating to private employer's requirements of using the E-Verify system.

Section 8. Amends s. 454.021, F.S., relating to the authority for an unauthorized immigrant to obtain a license to practice law in this state.

Section 9. Provides applicability relating to the revision to s. 454.021, F.S.

Section 10. Amends s. 787.07, F.S., relating to human smuggling.

Section 11: Amends s. 895.02, F.S., relating to racketeering activity.

Section 12. Amends s. 908.104, F.S., relating to cooperation with federal immigration authorities.

Section 13: Amends s. 943.03, F.S., relating to the Department of Law Enforcement.

Section 14: Amends s. 943.03101, F.S., relating to counter-terrorism and immigration enforcement.

Section 15: Amends s. 943.0311, F.S., relating to Chief of Domestic Security; duties of FDLE with respect to domestic security.

Section 16: Amends s. 943.0312, F.S., relating to regional domestic security task forces.

Section 17: Amends s. 943.0313, F.S., relating to Domestic Security Oversight Council.

Section 18: Amends s. 943.325, F.S., relating to DNA database.

Section 19: Amends s. 394.9082, F.S., conforming provisions relating to behavioral health managing entities.

Section 20: Amends s. 409.996, F.S., conforming provisions relating to Duties of the Department of Children and Families.

Section 21. Prohibits an appropriation to the Division of Emergency Management.

Section 22. Provides an effective date of July 1, 2023, except as otherwise provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Indeterminate.

2. Expenditures:

   For the 2023-2024 fiscal year, provides a $12 million nonrecurring appropriation to the Division of Emergency Management for the Unauthorized Alien Transport Program.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

Indeterminate. Local governments that administer a community ID card program may experience a reduction in expenditures resulting from being prohibited from funding such programs.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Businesses may have additional workload related to the employment verification requirements and may be subject to fines related to employment verification violations.

Hospitals may be required to change their forms.

The bill may reduce criminal conduct and related negative social and economic impacts.

D. FISCAL COMMENTS:

The bill may have an indeterminate fiscal impact on state agencies related to enforcement of the provisions in the bill.

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:

AHCA is authorized to adopt rules specific to the format of the quarterly report and the format of the question that hospitals must include on their admission or registration forms.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to immigration; creating ss. 125.0156 and 166.246, F.S.; prohibiting counties and municipalities, respectively, from providing funds to any person, entity, or organization to issue identification documents to an individual who does not provide proof of lawful presence in the United States; creating s. 322.033, F.S.; specifying that certain driver licenses and permits issued by other states exclusively to unauthorized immigrants are not valid in this state; requiring law enforcement officers and authorized representatives of the Department of Highway Safety and Motor Vehicles to cite a person driving with a specified invalid license; requiring the department to maintain a list on its website of out-of-state classes of driver licenses that are invalid in this state; amending s. 322.04, F.S.; revising the circumstances under which certain persons are exempt from obtaining a driver license; creating s. 395.3027, F.S.; requiring certain hospitals to collect patient immigration status data information on admission or registration forms; requiring hospitals to submit quarterly reports to the Agency for Health Care Administration containing specified information; requiring the agency to submit an annual report to the

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Governor and the Legislature containing specified information; authorizing the agency to adopt rules; prohibiting rules requiring the disclosure of certain information; amending s. 448.09, F.S.; requiring the Department of Economic Opportunity to enter a certain order and require repayment of certain economic development incentives if the department finds or is notified that an employer has knowingly employed an unauthorized alien without verifying the employment eligibility of such person; deleting provisions relating to a first violation of specified provisions; providing penalties, including a probationary period and suspension and revocation of all licenses of employers; deleting criminal penalties for second and subsequent violations of specified provisions; deleting a provision providing construction; providing criminal penalties for certain aliens who knowingly use false identification documents or who fraudulently use identification documents of another person for the purpose of obtaining employment; making technical changes; amending s. 448.095, F.S.; revising definitions; requiring an employer to verify a new employee's employment eligibility within 3 business days after the first day the new employee begins working for pay; requiring public agencies to use the

E-Verify system to verify a new employee's employment eligibility; requiring private employers with a certain number of employees to use the E-Verify system to verify a new employee's employment eligibility, beginning on a certain date; requiring employers to certify use of the E-Verify system on unemployment compensation or reemployment assistance system returns; requiring employers to use a certain form if the E-Verify system is unavailable; requiring employers to retain specified documentation for a certain number of years; prohibiting an employer from continuing to employ an unauthorized alien after obtaining knowledge that a person is or has become an unauthorized alien; providing an exception; authorizing specified persons or entities to request, and requiring an employer to provide, copies of specified documentation; creating a certain rebuttable presumption that the employer has not violated specified provisions with respect to the employment of an unauthorized alien; establishing an affirmative defense to an allegation that the employer has not violated specified provisions with respect to the employment of an unauthorized alien; requiring a public agency to require in any contract that a contractor or subcontractor register with and use the

E-Verify system; prohibiting a public agency, contractor, or subcontractor from entering into a contract unless each party to the contract registers with and uses the E-Verify system; requiring the termination of certain contracts under specified conditions; authorizing a public agency, contractor, or subcontractor to file a cause of action to challenge a termination; specifying required departmental action to ensure compliance with specified provisions; requiring the department to impose fines against employers under certain circumstances; providing for the deposit of such fines; providing construction; conforming provisions to changes made by the act; amending s. 454.021, F.S.; deleting a provision authorizing an unauthorized immigrant to obtain a license to practice law in this state under certain circumstances; providing applicability; amending s. 787.07, F.S.; providing criminal penalties for persons who knowingly and willfully violate, or who reasonably should know and violate, certain provisions relating to the transporting into this state of individuals who entered the United States unlawfully and without inspection by the Federal Government; providing criminal penalties for persons who transport minors

into this state in violation of certain provisions; providing for enhanced criminal penalties; defining the term "conviction"; providing circumstances that give rise to a certain inference; requiring that persons who violate certain provisions be held in custody; making technical changes; amending s. 895.02, F.S.; revising the definition of the term "racketeering activity"; amending s. 908.104, F.S.; specifying that a state entity, local governmental entity, or law enforcement agency, or an employee, an agent, or a representative of the entity or agency, may not prohibit or in any way restrict a law enforcement agency from sending the applicable information obtained pursuant to certain provisions to a federal immigration agency; amending s. 943.03, F.S.; requiring the Department of Law Enforcement to coordinate and direct the law enforcement, initial emergency, and other initial responses in matters dealing with the Federal Government in federal immigration law enforcement and responses to immigration enforcement incidents within or affecting this state; amending s. 943.03101, F.S.; revising legislative findings and determinations; amending s. 943.0311, F.S.; revising the required duties of the Chief of Domestic Security; requiring the chief to

regularly coordinate random audits pursuant to specified provisions and notify the Department of Economic Opportunity of any violations; amending s. 943.0312, F.S.; revising legislative findings; requiring that each task force cooperate with and provide assistance to the Federal Government in the enforcement of federal immigration laws within or affecting this state in compliance with specified provisions, in accordance with the state's domestic security strategic goals and objectives; requiring the Chief of Domestic Security to, in conjunction with specified entities, identify appropriate equipment and training needs, curricula, and materials related to the effective response to immigration enforcement incidents; requiring that each regional domestic security task force, working in conjunction with specified entities, work to ensure that hate-driven acts against ethnic groups that may have been targeted as a result of immigration enforcement incidents within or affecting this state are appropriately investigated and responded to; amending s. 943.0313, F.S.; revising legislative findings; requiring the Domestic Security Oversight Council to make recommendations to the Governor and the Legislature regarding the expenditure of funds and allocation of

resources related to cooperating with and providing assistance to the Federal Government in the enforcement of federal immigration laws; expanding the list of persons whom the council may invite to attend and participate in its meetings as ex officio, nonvoting members; revising the duties of the council; amending s. 943.325, F.S.; revising the definition of the term "qualifying offender" to include certain persons who are the subject of an immigration detainer issued by a federal immigration agency; requiring certain qualifying offenders to submit DNA samples at a specified time; requiring law enforcement agencies to immediately take DNA samples from certain qualifying offenders under certain circumstances; amending ss. 394.9082 and 409.996, F.S.; conforming provisions to changes made by the act; providing an appropriation; providing an effective date.

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

Section 1. Section 125.0156, Florida Statutes, is created to read:

125.0156 Restriction on providing funds for identification documents.—A county may not provide funds to any person, entity, or organization for the purpose of issuing an identification

card or document to an individual who does not provide proof of lawful presence in the United States.

Section 2. Section 166.246, Florida Statutes, is created to read:

166.246 Restriction on providing funds for identification documents.—A municipality may not provide funds to any person, entity, or organization for the purpose of issuing an identification card or document to an individual who does not provide proof of lawful presence in the United States.

Section 3. Section 322.033, Florida Statutes, is created to read:

322.033 Unauthorized aliens; invalid out-of-state driver licenses.—

(1) If a driver license is of a class of licenses issued by another state exclusively to undocumented immigrants who are unable to prove lawful presence in the United States when the licenses are issued, the driver license, or other permit purporting to authorize the holder to operate a motor vehicle on public roadways, is invalid in this state and does not authorize the holder to operate a motor vehicle in this state. Such classes of licenses include licenses that are issued exclusively to undocumented immigrants or licenses that are substantially the same as licenses issued to citizens, residents, or those lawfully present in the United States but have markings establishing that the license holder did not exercise the option

of providing proof of lawful presence.

(2) A law enforcement officer or other authorized representative of the department who stops a person driving with an invalid license as described in subsection (1) and driving without a valid license shall issue a citation to the driver for driving without a license in violation of s. 322.03.

(3) The department, to facilitate the enforcement of this section and to aid in providing notice to the public and visitors of invalid licenses, shall maintain on its website a list of out-of-state classes of driver licenses that are invalid in this state.

Section 4. Section 322.04, Florida Statutes, is amended to read:

322.04 Persons exempt from obtaining driver license.—

(1) The following persons are exempt from obtaining a driver license:

(a) Any employee of the United States Government, while operating a noncommercial motor vehicle owned by or leased to the United States Government and being operated on official business.

(b) Any person while driving or operating any road machine, farm tractor, or implement of husbandry temporarily operated or moved on a highway.

(c) A nonresident who is at least 16 years of age and who has in his or her immediate possession a valid noncommercial

driver license issued to the nonresident in his or her home state or country operating a motor vehicle of the type for which a Class E driver license is required in this state, if the nonresident's license is not invalid under s. 322.033 relating to proof of the licensee's lawful presence in the United States.

(d) A nonresident who is at least 18 years of age and who has in his or her immediate possession a valid noncommercial driver license issued to the nonresident in his or her home state or country operating a motor vehicle, other than a commercial motor vehicle, in this state, if the nonresident's license is not invalid under s. 322.033 relating to proof of the licensee's lawful presence in the United States.

(e) Any person operating a golf cart, as defined in s. 320.01, which is operated in accordance with the provisions of s. 316.212.

(2) This section does not apply to any person to whom s. 322.031 applies.

(3) Any person working for a firm under contract to the United States Government whose residence is outside this state and whose main point of employment is outside this state may drive a noncommercial vehicle on the public roads of this state for periods up to 60 days while in this state on temporary duty, if the person has a valid driver license from the state of the person's residence and if the license is not invalid under s. 322.033 relating to proof of the licensee's lawful presence in

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the United States.

Section 5. Section 395.3027, Florida Statutes, is created to read:

395.3027 Patient immigration status data collection.—

(1) Each hospital that accepts Medicaid must include a provision on its patient admission or registration forms for the patient or the patient's representative to state or indicate whether the patient is a United States citizen or lawfully present in the United States or is not lawfully present in the United States. The inquiry must be followed by a statement that the response will not affect patient care or result in a report of the patient's immigration status to immigration authorities.

(2) Each hospital must submit a quarterly report to the agency within 30 days after the end of each calendar quarter which reports the number of hospital admissions or emergency department visits within the previous quarter which were made by a patient who indicated that he or she was a citizen of the United States or lawfully present in the United States, was not lawfully present in the United States, or declined to answer.

(3) By March 1 of each year, the agency shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives which includes the total number of hospital admissions and emergency department visits for the previous calendar year for which the patient or patient's representative reported that the patient was a citizen

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of the United States or lawfully present in the United States, was not lawfully present in the United States, or declined to answer. The report must also describe information relating to the costs of uncompensated care for aliens who are not lawfully present in the United States, the impact of uncompensated care on the cost or ability of hospitals to provide services to the public, hospital funding needs, and other related information.

(4) The agency may adopt rules relating to the format and information to be contained in quarterly reports and the acceptable formats for hospitals to use in requesting information regarding a patient's immigration status on hospital admission or registration forms. The rules may not require the disclosure of patient names or any other personal identifying information to the agency.

Section 6. Effective July 1, 2024, section 448.09, Florida Statutes, is amended to read:

448.09 Unauthorized aliens; employment prohibited.—

(1) It is ~~shall be~~ unlawful for any person to knowingly ~~to~~ employ, hire, recruit, or refer, either for herself or himself or on behalf of another, for private or public employment within this ~~the~~ state, an alien who is not duly authorized to work by the immigration laws of the United States, ~~or~~ the Attorney General of the United States, or the United States Secretary of the Department of Homeland Security.

(2) If the Department of Economic Opportunity finds or is

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notified by an entity specified in s. 448.095(3)(a) that an employer has knowingly employed an unauthorized alien without verifying the employment eligibility of such person, the department must enter an order pursuant to chapter 120 making such determination and require repayment of any economic development incentive pursuant to s. 288.061(6) ~~The first violation of subsection (1) shall be a noncriminal violation as defined in s. 775.08(3) and, upon conviction, shall be punishable as provided in s. 775.082(5) by a civil fine of not more than $500, regardless of the number of aliens with respect to whom the violation occurred~~.

(3) For a violation of this section, the department shall place the employer on probation for a 1-year period and require that the employer report quarterly to the department to demonstrate compliance with the requirements of subsection (1) and s. 448.095.

(4) Any violation of this section which takes place within 24 months after a previous violation constitutes grounds for the suspension or revocation of all licenses issued by a licensing agency subject to chapter 120. The department shall take the following actions for a violation involving:

(a) One to 10 unauthorized aliens, suspension of all applicable licenses held by a private employer for up to 30 days by the respective agencies that issued them.

(b) Eleven to 50 unauthorized aliens, suspension of all

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applicable licenses held by a private employer for up to 60 days by the respective agencies that issued them.

(c) More than 50 unauthorized aliens, revocation of all applicable licenses held by a private employer by the respective agencies that issued them ~~Any person who has been previously convicted for a violation of subsection (1) and who thereafter violates subsection (1), shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Any such subsequent violation of this section shall constitute a separate offense with respect to each unauthorized alien~~.

(5) An alien who is not duly authorized to work by the immigration laws of the United States, the Attorney General of the United States, or the United States Secretary of the Department of Homeland Security and who knowingly uses a false identification document or who fraudulently uses an identification document of another person for the purpose of obtaining employment commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 7. Effective upon becoming law, section 448.095, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 448.095, F.S., for present text.)

448.095 Employment eligibility.—

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

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(a) "Contractor" means a person or an entity that has entered or is attempting to enter into a contract with a public agency to provide labor, supplies, or services to such agency in exchange for salary, wages, or other remuneration.

(b) "Employee" means an individual filling a permanent position who performs labor or services under the control or direction of an employer that has the power or right to control and direct the employee in the material details of how the work is to be performed in exchange for salary, wages, or other remuneration. An individual hired for casual labor, as defined in s. 443.036, which is to be performed entirely within a private residence is not an employee of an occupant or owner of a private residence. An independent contractor, as defined in federal laws or regulations, hired to perform a specified portion of labor or services is not an employee.

(c) "E-Verify system" means an Internet-based system operated by the United States Department of Homeland Security which allows participating employers to electronically verify the employment eligibility of new employees.

(d) "Public agency" means any office, department, agency, division, subdivision, political subdivision, board, bureau, commission, authority, district, public body, body politic, state, county, city, town, village, municipality, or any other separate unit of government created or established pursuant to law, and any other public or private agency, person,

partnership, corporation, or business entity acting on behalf of any public agency.

(e) "Subcontractor" means a person or an entity that provides labor, supplies, or services to or for a contractor or another subcontractor in exchange for salary, wages, or other remuneration.

(f) "Unauthorized alien" means an individual who is not authorized under federal law to be employed in the United States, as described in 8 U.S.C. s. 1324a(h)(3). The term must be interpreted consistently with that section and any applicable federal rules or regulations.

(2) EMPLOYMENT VERIFICATION.—

(a) An employer shall verify each new employee's employment eligibility within 3 business days after the first day that the new employee begins working for pay as required under 8 C.F.R. s. 274a.

(b)1. A public agency shall use the E-Verify system to verify a new employee's employment eligibility as required under paragraph (a).

2. Beginning on July 1, 2023, a private employer with 25 or more employees shall use the E-Verify system to verify a new employee's employment eligibility as required under paragraph (a).

3. Each employer required to use the E-Verify system under this paragraph must certify on its first return each calendar

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year to the tax service provider that it is in compliance with this section when making contributions to or reimbursing the state's unemployment compensation or reemployment assistance system. An employer that voluntarily uses the E-Verify system may also make such a certification on its first return each calendar year in order to document such use.

(c) If the E-Verify system is unavailable for 3 business days after the first day that the new employee begins working for pay and an employer cannot access the system to verify a new employee's employment eligibility, the employer must use the Employment Eligibility Verification form (Form I-9) to verify employment eligibility. The unavailability of the E-Verify system does not bar the employer from using the rebuttable presumption established in paragraph (4)(a). An employer must document the unavailability of the E-Verify system by retaining a screenshot from each day which shows the employer's lack of access to the system, a public announcement that the E-Verify system is not available, or any other communication or notice recorded by the employer regarding the unavailability of the system.

(d) The employer must retain a copy of the documentation provided and any official verification generated, if applicable, for at least 3 years.

(e) An employer may not continue to employ an unauthorized alien after obtaining knowledge that a person is or has become

an unauthorized alien.

(f) An employee leasing company licensed under part XI of chapter 468 which enters into a written agreement or understanding with a client company which places the primary obligation for compliance with this section upon the client company is not required to verify employment eligibility of any new employees of the client company. In the absence of a written agreement or understanding, the employee leasing company is responsible for compliance with this section. Such employee leasing company shall, at all times, remain an employer as otherwise defined in federal laws or regulations.

(3) ENFORCEMENT.—

(a) For the purpose of enforcement of this section, any of the following persons or entities may request, and an employer must provide, copies of any documentation relied upon by the employer for the verification of a new employee's employment eligibility:

1. The Department of Law Enforcement;

2. The Attorney General;

3. The state attorney in the circuit in which the new employee works;

4. The statewide prosecutor; or

5. The Department of Economic Opportunity.

(b) A person or an entity that makes a request under paragraph (a) must rely upon the Federal Government to verify an

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employee's employment eligibility and may not independently make a final determination as to whether an employee is an unauthorized alien.

(4) DEFENSES.—

(a) An employer that uses the E-Verify system or, if that system is unavailable, the Employment Eligibility Verification form (Form I-9) as provided in paragraph (2)(c), with respect to the employment of an unauthorized alien has established a rebuttable presumption that the employer has not violated s. 448.09 with respect to such employment.

(b) An employer that uses the same documentation that is required by the United States Citizenship and Immigration Services on its Employment Eligibility Verification form (Form I-9) with respect to the employment of an unauthorized alien, has established an affirmative defense that the employer has not violated s. 448.09 with respect to such employment.

(5) PUBLIC AGENCY CONTRACTING.—

(a) A public agency must require in any contract that the contractor, and any subcontractor thereof, register with and use the E-Verify system to verify the work authorization status of all new employees of the contractor or subcontractor. A public agency or a contractor or subcontractor thereof may not enter into a contract unless each party to the contract registers with and uses the E-Verify system.

(b) If a contractor enters into a contract with a

subcontractor, the subcontractor must provide the contractor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. The contractor shall maintain a copy of such affidavit for the duration of the contract.

(c)1. A public agency, contractor, or subcontractor who has a good faith belief that a person or an entity with which it is contracting has knowingly violated s. 448.09(1) shall terminate the contract with the person or entity.

2. A public agency that has a good faith belief that a subcontractor knowingly violated this subsection, but the contractor otherwise complied with this subsection, shall promptly notify the contractor and order the contractor to immediately terminate the contract with the subcontractor.

3. A contract terminated under this paragraph is not a breach of contract and may not be considered as such. If a public agency terminates a contract with a contractor under this paragraph, the contractor may not be awarded a public contract for at least 1 year after the date on which the contract was terminated. A contractor is liable for any additional costs incurred by a public agency as a result of the termination of a contract.

(d) A public agency, contractor, or subcontractor may file a cause of action with a circuit or county court to challenge a termination under paragraph (c) no later than 20 calendar days

after the date on which the contract was terminated.

(6) COMPLIANCE.—

(a) In addition to the requirements under s. 288.061(6), beginning on July 1, 2024, if the Department of Economic Opportunity determines that an employer failed to use the E-Verify system to verify the employment eligibility of employees as required under this section, the department must notify the employer of the department's determination of noncompliance and provide the employer with 30 days to cure the noncompliance.

(b) If the Department of Economic Opportunity determines that an employer failed to use the E-Verify system as required under this section three times in any 24-month period, the department must impose a fine of $1,000 per day until the employer provides sufficient proof to the department that the noncompliance is cured. Noncompliance constitutes grounds for the suspension of all licenses issued by a licensing agency subject to chapter 120 until the noncompliance is cured.

(c) Fines collected under this subsection must be deposited into the State Economic Enhancement and Development Trust Fund for use by the department for employer outreach and public notice of the state's employment verification laws.

(7) CONSTRUCTION.—

(a) This section must be enforced without regard to race, color, or national origin and must be construed in a manner so as to be fully consistent with any applicable federal laws or

regulations.

(b) The requirements to use the E-Verify system under this section do not apply in any federal fiscal year in which the system is not funded by the Federal Government.

(c) This section shall expire 60 days after the E-Verify system is no longer a pilot program, and the Federal Government requires the use of the E-Verify system by all employers in the United States.

Section 8. Effective November 1, 2028, subsection (3) of section 454.021, Florida Statutes, is amended to read:

454.021 Attorneys; admission to practice law; Supreme Court to govern and regulate.—

~~(3) Upon certification by the Florida Board of Bar Examiners that an applicant who is an unauthorized immigrant who was brought to the United States as a minor; has been present in the United States for more than 10 years; has received documented employment authorization from the United States Citizenship and Immigration Services (USCIS); has been issued a social security number; if a male, has registered with the Selective Service System if required to do so under the Military Selective Service Act, 50 U.S.C. App. 453; and has fulfilled all requirements for admission to practice law in this state, the Supreme Court of Florida may admit that applicant as an attorney at law authorized to practice in this state and may direct an order be entered upon the court's records to that effect.~~

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Section 9. The repeal of s. 454.021(3), Florida Statutes, by this act does not affect the validity of any license to practice law issued pursuant to that subsection before November 1, 2028.

Section 10. Section 787.07, Florida Statutes, is amended to read:

787.07 Human smuggling.—

(1) Except as provided in subsections (3), (4), and (5), a person who knowingly and willfully transports into this state an individual whom ~~who~~ the person knows, or reasonably should know, has entered ~~is illegally entering~~ the United States in violation of law and has not been inspected by the Federal Government since his or her unlawful entry from another country commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) A person commits a separate offense for each individual he or she transports into this state in violation of this section.

(3) A person who transports a minor into this state in violation of subsection (1) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) A person who commits five or more separate offenses under this section during a single episode commits a felony of the second degree, punishable as provided in s. 775.082, s.

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775.083, or s. 775.084.

(5)(a) A person with a prior conviction under this section who commits a subsequent violation of this section commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) As used in paragraph (a), the term "conviction" means a determination of guilt that is the result of a plea agreement or a trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered.

(6) Proof that a person knowingly and willfully presented false identification or gave false information to a law enforcement officer who is conducting an investigation for a violation of this section gives rise to an inference that such person was aware that the individual had entered the United States in violation of the law and had not been inspected by the Federal Government since his or her unlawful entry.

(7) A person who is arrested for a violation of this section must be held in custody until brought before the court for admittance to pretrial release in accordance with chapter 903.

Section 11. Paragraph (a) of subsection (8) of section 895.02, Florida Statutes, is amended to read:

895.02 Definitions.—As used in ss. 895.01-895.08, the term:

(8) "Racketeering activity" means to commit, to attempt to

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commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit:

(a) Any crime that is chargeable by petition, indictment, or information under the following provisions of the Florida Statutes:

1. Section 210.18, relating to evasion of payment of cigarette taxes.

2. Section 316.1935, relating to fleeing or attempting to elude a law enforcement officer and aggravated fleeing or eluding.

3. Chapter 379, relating to the illegal sale, purchase, collection, harvest, capture, or possession of wild animal life, freshwater aquatic life, or marine life, and related crimes.

4. Section 403.727(3)(b), relating to environmental control.

5. Section 409.920 or s. 409.9201, relating to Medicaid fraud.

6. Section 414.39, relating to public assistance fraud.

7. Section 440.105 or s. 440.106, relating to workers' compensation.

8. Section 443.071(4), relating to creation of a fictitious employer scheme to commit reemployment assistance fraud.

9. Section 465.0161, relating to distribution of medicinal drugs without a permit as an Internet pharmacy.

10. Section 499.0051, relating to crimes involving contraband, adulterated, or misbranded drugs.

11. Part IV of chapter 501, relating to telemarketing.

12. Chapter 517, relating to sale of securities and investor protection.

13. Section 550.235 or s. 550.3551, relating to dogracing and horseracing.

14. Chapter 550, relating to jai alai frontons.

15. Section 551.109, relating to slot machine gaming.

16. Chapter 552, relating to the manufacture, distribution, and use of explosives.

17. Chapter 560, relating to money transmitters, if the violation is punishable as a felony.

18. Chapter 562, relating to beverage law enforcement.

19. Section 624.401, relating to transacting insurance without a certificate of authority, s. 624.437(4)(c)1., relating to operating an unauthorized multiple-employer welfare arrangement, or s. 626.902(1)(b), relating to representing or aiding an unauthorized insurer.

20. Section 655.50, relating to reports of currency transactions, when such violation is punishable as a felony.

21. Chapter 687, relating to interest and usurious practices.

22. Section 721.08, s. 721.09, or s. 721.13, relating to real estate timeshare plans.

23. Section 775.13(5)(b), relating to registration of persons found to have committed any offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang.

24. Section 777.03, relating to commission of crimes by accessories after the fact.

25. Chapter 782, relating to homicide.

26. Chapter 784, relating to assault and battery.

27. Chapter 787, relating to kidnapping, human smuggling, or human trafficking.

28. Chapter 790, relating to weapons and firearms.

29. Chapter 794, relating to sexual battery, but only if such crime was committed with the intent to benefit, promote, or further the interests of a criminal gang, or for the purpose of increasing a criminal gang member's own standing or position within a criminal gang.

30. Former s. 796.03, former s. 796.035, s. 796.04, s. 796.05, or s. 796.07, relating to prostitution.

31. Chapter 806, relating to arson and criminal mischief.

32. Chapter 810, relating to burglary and trespass.

33. Chapter 812, relating to theft, robbery, and related crimes.

34. Chapter 815, relating to computer-related crimes.

35. Chapter 817, relating to fraudulent practices, false pretenses, fraud generally, credit card crimes, and patient

brokering.

36. Chapter 825, relating to abuse, neglect, or exploitation of an elderly person or disabled adult.

37. Section 827.071, relating to commercial sexual exploitation of children.

38. Section 828.122, relating to fighting or baiting animals.

39. Chapter 831, relating to forgery and counterfeiting.

40. Chapter 832, relating to issuance of worthless checks and drafts.

41. Section 836.05, relating to extortion.

42. Chapter 837, relating to perjury.

43. Chapter 838, relating to bribery and misuse of public office.

44. Chapter 843, relating to obstruction of justice.

45. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or s. 847.07, relating to obscene literature and profanity.

46. Chapter 849, relating to gambling, lottery, gambling or gaming devices, slot machines, or any of the provisions within that chapter.

47. Chapter 874, relating to criminal gangs.

48. Chapter 893, relating to drug abuse prevention and control.

49. Chapter 896, relating to offenses related to financial transactions.

50. Sections 914.22 and 914.23, relating to tampering with or harassing a witness, victim, or informant, and retaliation against a witness, victim, or informant.

51. Sections 918.12 and 918.13, relating to tampering with jurors and evidence.

Section 12. Paragraph (f) is added to subsection (2) of section 908.104, Florida Statutes, to read:

908.104 Cooperation with federal immigration authorities.—

(2) Except as otherwise expressly prohibited by federal law, a state entity, local governmental entity, or law enforcement agency, or an employee, an agent, or a representative of the entity or agency, may not prohibit or in any way restrict a law enforcement agency from taking any of the following actions with respect to information regarding a person's immigration status:

(f) Sending the applicable information obtained pursuant to enforcement of s. 448.095 to a federal immigration agency.

Section 13. Subsection (14) of section 943.03, Florida Statutes, is amended to read:

943.03 Department of Law Enforcement.—

(14) The department, with respect to counter-terrorism efforts, responses to acts of terrorism within or affecting this state, coordinating with and providing assistance to the Federal Government in the enforcement of federal immigration laws, responses to immigration enforcement incidents within or

affecting this state, and other matters related to the domestic security of Florida as it relates to terrorism and immigration enforcement incidents, shall coordinate and direct the law enforcement, initial emergency, and other initial responses. The department shall work closely with the Division of Emergency Management, other federal, state, and local law enforcement agencies, fire and rescue agencies, first-responder agencies, and others involved in preparation against acts of terrorism in or affecting this state, immigration enforcement incidents within or affecting this state, and in the response to such acts or incidents. The executive director of the department, or another member of the department designated by the director, shall serve as Chief of Domestic Security for the purpose of directing and coordinating such efforts. The department and Chief of Domestic Security shall use the regional domestic security task forces as established in this chapter to assist in such efforts.

Section 14. Section 943.03101, Florida Statutes, is amended to read:

943.03101 Counter-terrorism and immigration enforcement coordination.—The Legislature finds that with respect to counter-terrorism efforts, ~~and~~ initial responses to acts of terrorism within or affecting this state, coordinating with and providing assistance to the Federal Government in the enforcement of federal immigration laws, and responses to

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immigration enforcement incidents within or affecting this state, specialized efforts of emergency management which are unique to such situations are required and that these efforts intrinsically involve very close coordination of federal, state, and local law enforcement agencies with the efforts of all others involved in emergency-response efforts. In order to best provide this specialized effort, the Legislature has determined that such efforts should be coordinated by and through the Department of Law Enforcement, working closely with the Division of Emergency Management and others involved in preparation against acts of terrorism in or affecting this state, immigration enforcement incidents within or affecting this state, and in the initial response to such acts, in accordance with the state comprehensive emergency management plan prepared pursuant to s. 252.35(2)(a).

Section 15. Present subsections (2) through (7) of section 943.0311, Florida Statutes, are redesignated as subsections (3) through (8), respectively, a new subsection (2) is added to that section, and subsection (1) and present subsection (3) of that section are amended, to read:

943.0311 Chief of Domestic Security; duties of the department with respect to domestic security.—

(1) The executive director of the department, or a member of the department designated by the executive director, shall serve as the Chief of Domestic Security. The Chief of Domestic

Security shall:

(a) Coordinate the efforts of the department in the ongoing assessment of this state's vulnerability to, and ability to detect, prevent, prepare for, respond to, and recover from, acts of terrorism within or affecting this state and immigration enforcement incidents within or affecting this state.

(b) Prepare recommendations for the Governor, the President of the Senate, and the Speaker of the House of Representatives, which are based upon ongoing assessments to limit the vulnerability of the state to terrorism and immigration enforcement incidents.

(c) Coordinate the collection of proposals to limit the vulnerability of the state to terrorism and immigration enforcement incidents.

(d) Use regional task forces to support the duties of the department set forth in this section.

(e) Use public or private resources to perform the duties assigned to the department under this section.

(2) The chief shall regularly coordinate random audits pursuant to s. 448.095 to ensure compliance and enforcement and shall notify the Department of Economic Opportunity of any violations.

(4) ~~(3)~~ The chief shall report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by November 1 of each year suggestions for

specific and significant security enhancements of any building, facility, or structure owned or leased by a state agency, state university, or community college or any entity that has conducted an assessment under subsection (6) ~~(5)~~. The chief may utilize the assessments provided under subsection (6) ~~(5)~~ in making his or her suggestions. The report shall suggest strategies to maximize federal funds in support of building or facility security if such funds are available.

Section 16. Section 943.0312, Florida Statutes, is amended to read:

943.0312 Regional domestic security task forces.—The Legislature finds that there is a need to develop and implement a statewide strategy to address prevention, preparation, protection, response, and recovery efforts by federal, state, and local law enforcement agencies, emergency management agencies, fire and rescue departments, first-responder personnel, and others in dealing with potential or actual terrorist acts within or affecting this state and potential or actual immigration enforcement incidents within or affecting this state.

(1) To assist the department and the Chief of Domestic Security in performing their roles and duties in this regard, the department shall establish a regional domestic security task force in each of the department's operational regions. The task forces shall serve in an advisory capacity to the department and

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the Chief of Domestic Security and shall provide support to the department in its performance of functions pertaining to domestic security.

(a) Subject to annual appropriation, the department shall provide dedicated employees to support the function of each regional domestic security task force.

(b) Each task force shall be co-chaired by the department's special agent in charge of the operational region in which the task force is located and by a local sheriff or chief of police from within the operational region.

(c) Each task force membership may also include representatives of state and local law enforcement agencies, fire and rescue departments, or first-responder personnel; representatives of emergency management agencies and health, medical, and hospital agencies; representatives of local emergency planning committees; and other persons as deemed appropriate and necessary by the task force co-chairs.

(d) The co-chairs of each task force may appoint subcommittees and subcommittee chairs as necessary in order to address issues related to the various disciplines represented on the task force, except that subcommittee chairs for emergency management shall be appointed with the approval of the director of the Division of Emergency Management. A subcommittee chair shall serve at the pleasure of the co-chairs.

(2) In accordance with the state's domestic security

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strategic goals and objectives, each task force shall coordinate efforts to counter terrorism~~,~~ as defined by s. 775.30~~,~~ and cooperate with and provide assistance to the Federal Government in the enforcement of federal immigration laws within or affecting this state in compliance with chapter 908, among local, state, and federal resources to ensure that such efforts are not fragmented or unnecessarily duplicated; coordinate training for local and state personnel to counter terrorism as defined in ~~by~~ s. 775.30; and cooperate with and provide assistance to the Federal Government in the enforcement of federal immigration laws within or affecting this state in compliance with chapter 908; coordinate the collection and dissemination of investigative and intelligence information; and facilitate responses to terrorist incidents within or affecting each region and immigration enforcement incidents within or affecting each region. With the approval of the Chief of Domestic Security, the task forces may incorporate other objectives reasonably related to the goals of enhancing the state's domestic security and ability to detect, prevent, and respond to acts of terrorism within or affecting this state or immigration enforcement incidents within or affecting this state. Each task force shall take into account the variety of conditions and resources present within its region.

(3) The Chief of Domestic Security, in conjunction with the Division of Emergency Management, the regional domestic

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security task forces, and the various state entities responsible for establishing training standards applicable to state law enforcement officers and fire, emergency, and first-responder personnel shall identify appropriate equipment and training needs, curricula, and materials related to the effective response to suspected or actual acts of terrorism, immigration enforcement incidents, or incidents involving real or hoax weapons of mass destruction as defined in s. 790.166. Recommendations for funding for purchases of equipment, delivery of training, implementation of, or revision to basic or continued training required for state licensure or certification, or other related responses shall be made by the Chief of Domestic Security to the Domestic Security Oversight Council, the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives as necessary to ensure that the needs of this state with regard to the preparing, equipping, training, and exercising of response personnel are identified and addressed. In making such recommendations, the Chief of Domestic Security and the Division of Emergency Management shall identify all funding sources that may be available to fund such efforts.

(4) Each regional domestic security task force, working in conjunction with the department, the Office of the Attorney General, and other public or private entities, shall work to ensure that hate-driven acts against ethnic groups that may have

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been targeted as a result of acts of terrorism in or affecting this state, or as a result of immigration enforcement incidents within or affecting this state, are appropriately investigated and responded to.

(5) Members of each regional domestic security task force may not receive any pay other than their salaries normally received from their employers, but are entitled to reimbursement for per diem and travel expenses in accordance with s. 112.061.

(6) Subject to annual appropriation, the department shall provide staff and administrative support for the regional domestic security task forces.

Section 17. Section 943.0313, Florida Statutes, is amended to read:

943.0313 Domestic Security Oversight Council.—The Legislature finds that there exists a need to provide executive direction and leadership with respect to terrorism and immigration enforcement incident prevention, preparation, protection, response, and recovery efforts by state and local agencies in this state. In recognition of this need, the Domestic Security Oversight Council is hereby created. The council shall serve as an advisory council pursuant to s. 20.03(7) to provide guidance to the state's regional domestic security task forces and other domestic security working groups and to make recommendations to the Governor and the Legislature regarding the expenditure of funds and allocation of resources

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related to counter-terrorism and cooperating with and providing assistance to the Federal Government in the enforcement of federal immigration laws and domestic security efforts.

(1) MEMBERSHIP.—

(a) The Domestic Security Oversight Council shall consist of the following voting members:

1. The executive director of the Department of Law Enforcement.

2. The director of the Division of Emergency Management.

3. The Attorney General.

4. The Commissioner of Agriculture.

5. The State Surgeon General.

6. The Commissioner of Education.

7. The State Fire Marshal.

8. The adjutant general of the Florida National Guard.

9. The state chief information officer.

10. Each sheriff or chief of police who serves as a co-chair of a regional domestic security task force pursuant to s. 943.0312(1)(b).

11. Each of the department's special agents in charge who serve as a co-chair of a regional domestic security task force.

12. Two representatives of the Florida Fire Chiefs Association.

13. One representative of the Florida Police Chiefs Association.

14. One representative of the Florida Prosecuting Attorneys Association.

15. The chair of the Statewide Domestic Security Intelligence Committee.

16. One representative of the Florida Hospital Association.

17. One representative of the Emergency Medical Services Advisory Council.

18. One representative of the Florida Emergency Preparedness Association.

19. One representative of the Florida Seaport Transportation and Economic Development Council.

(b) In addition to the members designated in paragraph (a), the council may invite other ex officio, nonvoting members to attend and participate in council meetings. Those nonvoting members may include, but need not be limited to:

1. The executive director of the Department of Highway Safety and Motor Vehicles.

2. The Secretary of Health Care Administration.

3. The Secretary of Environmental Protection.

4. The director of the Division of Law Enforcement within the Fish and Wildlife Conservation Commission.

5. A representative of the Commission on Human Relations.

6. A representative of the United States Coast Guard.

7. A United States Attorney from a federal judicial

circuit within this state.

8. A special agent in charge from an office of the Federal Bureau of Investigation within this state.

9. A representative of the United States Department of Homeland Security.

10. A representative of United States Immigration and Customs Enforcement.

11. A representative of United States Customs and Border Protection.

(2) ORGANIZATION.—

(a) The Legislature finds that the council serves a legitimate state, county, and municipal purpose and that service on the council is consistent with a member's principal service in public office or employment. Membership on the council does not disqualify a member from holding any other public office or being employed by a public entity, except that a member of the Legislature may not serve on the council.

(b) The executive director of the Department of Law Enforcement shall serve as chair of the council, and the director of the Division of Emergency Management shall serve as vice chair of the council. In the absence of the chair, the vice chair shall serve as chair. In the absence of the vice chair, the chair may name any member of the council to perform the duties of the chair if such substitution does not extend beyond a defined meeting, duty, or period of time.

(c) Any absent voting member of the council may be represented by a designee empowered to act on any issue before the council to the same extent that the designating member is empowered. If a co-chair of a regional domestic security task force is absent from a council meeting, the co-chair shall appoint a subcommittee chair of that task force as the designee.

(d) The council shall establish bylaws for its general governance.

(e) Any member of the council serving by reason of the office or employment held by the member shall cease to serve on the council at such time as he or she ceases to hold the office or employment which was the basis for appointment to the council.

(f) Representatives from agencies or organizations other than those designated by title shall be chosen by the entity. Except for those individuals designated by title, council members shall be certified annually to the chair by the organization they represent.

(g) Members of the council or their designees shall serve without compensation but are entitled to reimbursement for per diem and travel expenses pursuant to s. 112.061.

(h) The department shall provide the council with the staff support necessary to assist in the performance of its duties.

(3) MEETINGS.—The council must meet at least semiannually.

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Additional meetings may be held as necessary. A majority of the members of the council constitutes a quorum.

(4) EXECUTIVE COMMITTEE.—

(a) The council shall establish an executive committee consisting of the following members:

1. The executive director of the Department of Law Enforcement.

2. The director of the Division of Emergency Management.

3. The Attorney General.

4. The Commissioner of Agriculture.

5. The State Surgeon General.

6. The Commissioner of Education.

7. The State Fire Marshal.

(b) The executive director of the Department of Law Enforcement shall serve as the chair of the executive committee, and the director of the Division of Emergency Management shall serve as the vice chair of the executive committee.

(c) The executive committee shall approve all matters brought before the council prior to consideration. When expedited action of the council is deemed necessary by the chair or vice chair, the executive committee may act on behalf of the council.

(5) DUTIES OF THE COUNCIL.—

(a) The Domestic Security Oversight Council shall serve as an advisory council to the Governor, the Legislature, and the

Chief of Domestic Security. The council shall:

1. Review the development, maintenance, and operation of a comprehensive multidisciplinary domestic security strategy that will guide the state's prevention, preparedness, protection, response, and recovery efforts against terrorist attacks and immigration enforcement incidents and make appropriate recommendations to ensure the implementation of that strategy.

2. Review the development of integrated funding plans to support specific projects, goals, and objectives necessary to the state's domestic security strategy and make appropriate recommendations to implement those plans.

3. Review and recommend approval of prioritized recommendations from regional domestic security task forces and state working groups on the use of available funding to ensure the use of such funds in a manner that best promotes the goals of statewide, regional, and local domestic security through coordinated planning and implementation strategies.

4. Review and recommend approval of statewide policies and operational protocols that support the domestic security efforts of the regional domestic security task forces and state agencies.

5. Review the overall statewide effectiveness of domestic security efforts, ~~and~~ counter-terrorism efforts, and efforts of coordinating with and providing assistance to the Federal Government in the enforcement of federal immigration laws in

order to provide suggestions to improve or enhance those efforts.

6. Review the efforts of any agency or entity involved in state or local domestic security efforts, ~~and~~ counter-terrorism efforts, and efforts of coordination with and providing assistance to the Federal Government in the enforcement of federal immigration laws that requests assistance or that appears to need such review in order to provide suggestions to improve or enhance those efforts.

7. Review efforts within the state to better secure state and local infrastructure against terrorist attack or immigration enforcement incidents and make recommendations to enhance the effectiveness of such efforts.

8. Review and recommend legislative initiatives related to the state's domestic security and provide endorsement or recommendations to enhance the effectiveness of such efforts.

9. Review statewide or multiagency mobilizations and responses to major domestic security incidents and recommend suggestions for training, improvement of response efforts, or improvement of coordination or for other strategies that may be derived as necessary from such reviews.

10. Conduct any additional review or inquiry or make recommendations to the Governor and Legislature in support of other initiatives, as may be necessary, to fulfill the function of general oversight of the state's domestic security efforts,

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~~and~~ counter-terrorism efforts, and efforts of coordinating with and providing assistance to the Federal Government in the enforcement of federal immigration laws and to promote increased security.

11. Promote and preserve intergovernmental cooperation and consensus among state and local agencies, the Federal Government, private entities, other states, and other nations, as appropriate, under the guidance of the Governor.

(b) The Domestic Security Oversight Council shall make an annual funding recommendation to the Governor and Legislature which shall prioritize funding requests based on allocations from all available sources for implementing the state's domestic security strategy. This recommendation must include the prioritized recommendations of each of the regional domestic security task forces and the various working groups that participate in the prioritization process for funding allocations. The recommendation must reflect the consideration of strategic priorities and allocations that best serve the state's overall domestic security needs. The recommendation shall be transmitted to the Governor and the Legislature by December 31 of each year. If additional funds become available, or reallocation of funding is required beyond current spending authorizations, the council may make recommendations to the Governor for consideration by the Legislative Budget Commission.

(6) REPORTS.—The council shall report annually on its

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activities, on or before December 31 of each calendar year, to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the committees having principal jurisdiction over domestic security in the Senate and the House of Representatives.

(7) AGENCY DESIGNATION.—For purposes of this section, the Domestic Security Oversight Council shall be considered a criminal justice agency within the definition of s. 119.011(4).

Section 18. Paragraph (g) of subsection (2) and paragraph (a) of subsection (3) of section 943.325, Florida Statutes, are amended, and paragraph (f) is added to subsection (7) of that section, to read:

943.325 DNA database.—

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

(g) "Qualifying offender" means any person, including juveniles and adults, who is:

1.a. Committed to a county jail;

b. Committed to or under the supervision of the Department of Corrections, including persons incarcerated in a private correctional institution operated under contract pursuant to s. 944.105;

c. Committed to or under the supervision of the Department of Juvenile Justice;

d. Transferred to this state under the Interstate Compact on Juveniles, part XIII of chapter 985; or

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e. Accepted under Article IV of the Interstate Corrections Compact, part III of chapter 941; and who is:

2.a. Convicted of any felony offense or attempted felony offense in this state or of a similar offense in another jurisdiction;

b. Convicted of a misdemeanor violation of s. 784.048, s. 810.14, s. 847.011, s. 847.013, s. 847.0135, or s. 877.26, or an offense that was found, pursuant to s. 874.04, to have been committed for the purpose of benefiting, promoting, or furthering the interests of a criminal gang as defined in s. 874.03; ~~or~~

c. Arrested for any felony offense or attempted felony offense in this state; or

d. In the custody of a law enforcement agency and is subject to an immigration detainer issued by a federal immigration agency.

(3) COLLECTION OF SAMPLES.—

(a) Each qualifying offender shall submit a DNA sample at the time he or she is booked into a jail, correctional facility, or juvenile facility. A person who becomes a qualifying offender solely because of the issuance of an immigration detainer by a federal immigration agency must submit a DNA sample when the law enforcement agency having custody of the offender receives the detainer.

(7) COLLECTION OF DNA SAMPLES FROM OFFENDERS.—

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(f) A law enforcement agency having custody of a person who becomes a qualifying offender solely because of the issuance of an immigration detainer by a federal immigration agency shall ensure that a DNA sample is taken from the offender immediately after the agency receives the detainer and shall secure and transmit the sample to the department in a timely manner.

Section 19. Paragraph (m) of subsection (3) of section 394.9082, Florida Statutes, is amended to read:

394.9082 Behavioral health managing entities.—

(3) DEPARTMENT DUTIES.—The department shall:

(m) Collect and publish, and update annually, all of the following information on its website for each managing entity:

1. All compensation earned or awarded, whether paid or accrued, regardless of contingency, by position, for any employee, and any other person compensated through a contract for services whose services include those commonly associated with a chief executive, chief administrator, or other chief officer of a business or corporation, who receives compensation from state-appropriated funds in excess of 150 percent of the annual salary paid to the secretary of the department. For purposes of this paragraph, the term "employee" means a person filling an authorized and established position who performs labor or services for a public or private employer in exchange for salary, wages, or other remuneration ~~has the same meaning as in s. 448.095(1)~~.

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2. The most recent 3 years of the Return of Organization Exempt from Income Tax, Internal Revenue Service Form 990 and related documents filed with the Internal Revenue Service, auditor reports, and annual reports for each managing entity or affiliated entity.

Section 20. Paragraph (a) of subsection (4) of section 409.996, Florida Statutes, is amended to read:

409.996 Duties of the Department of Children and Families.—The department shall contract for the delivery, administration, or management of care for children in the child protection and child welfare system. In doing so, the department retains responsibility for the quality of contracted services and programs and shall ensure that, at a minimum, services are delivered in accordance with applicable federal and state statutes and regulations and the performance standards and metrics specified in the strategic plan created under s. 20.19(1).

(4)(a) The department shall collect and publish on its website, and annually update, all of the following information for each lead agency under contract with the department:

1. All compensation earned or awarded, whether paid or accrued, regardless of contingency, by position, for any employee, and any other person who is compensated through a contract for services whose services include those commonly associated with a chief executive, chief administrator, or other

chief officer of a business or corporation, who receives compensation from state-appropriated funds in excess of 150 percent of the annual salary paid to the secretary of the department. For purposes of this paragraph, the term "employee" means a person filling an authorized and established position who performs labor or services for a public or private employer in exchange for salary, wages, or other remuneration ~~has the same meaning as in s. 448.095~~.

2. All findings of the review under subsection (3).

Section 21. For the 2023-2024 fiscal year, the nonrecurring sum of $12 million from the General Revenue Fund is appropriated to the Division of Emergency Management within the Executive Office of the Governor for the Unauthorized Alien Transport Program.

Section 22. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon becoming a law, this act shall take effect July 1, 2023.