

Regulatory Reform & Economic Development Subcommittee

Thursday, January 11, 2023
11:00 AM - 1:00 PM
Webster Hall (212 Knott)

Meeting Packet

Paul Renner
Speaker

Tyler Sirois
Chair

The Florida House of Representatives

Commerce Committee

Regulatory Reform & Economic Development Subcommittee

Paul Renner
Speaker

Tyler Sirois
Chair

Meeting Agenda

Thursday, January 11, 2024
11:00 am – 1:00 pm
Webster Hall (212 Knott)

I. Call to Order

II. Roll Call

III. Welcome and Opening Remarks

IV. Consideration of the following bill(s):
- HB 1 Social Media Use for Minors by Sirois
- HB 3 Online Access to Materials Harmful to Minors by Tramont
- HB 849 Veterinary Practices by Killebrew, Buchanan
- HB 1377 Pub. Rec./Investigations by the Department of Legal Affairs by Sirois
- HB 1491 Pub. Rec./Investigations by the Department of Legal Affairs by Tramont

V. Consideration of the following proposed committee substitute(s):
- PCS for HB 433 -- Employment Regulations

VI. Closing Remarks

VII. Adjournment

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

HB 1

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1 Social Media Use for Minors
SPONSOR(S): Sirois and others
TIED BILLS: HB 1377 **IDEN./SIM. BILLS:** SB 1788

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

SUMMARY ANALYSIS

In 2023, an estimated 4.9 billion people worldwide used social media. Bipartisan groups, professional associations, teachers and parents across the world have recently sounded the alarm about the dangers of social media use by children. The U.S. Surgeon General and the American Psychological Association have issued advisories urging action to protect children online.

Many experts have tied the increased use of social media in our society with the increase in rates of depression, anxiety, and stress of adolescents. Studies also indicate that social media may trigger an array of negative emotions in users that contribute to or worsen their depression symptoms.

The bill requires social media platforms to prohibit children under the age of 16 from creating an account and to perform reasonable age verification methods to verify that the age of a person attempting to create an account is 16 years of age or older. The reasonable age verification method must be conducted by an independent third-party not affiliated with the commercial entity, and any information used to verify age must be deleted after it is verified.

The bill requires a social media platform to do the following related to existing accounts belonging to a minor younger than 16 years of age:

- Terminate any such account that it reasonably knows to be held by a minor younger than 16 years of age.
- Allow such an account holder or the confirmed parent or guardian to terminate the account.
- Permanently delete all personal information held by the social media platform relating to the terminated account, unless there are legal requirements to maintain such information.

If the social media platform allows minors younger than 18 years of age to create an account on the platform, the bill requires the platform to include a link on its Internet homepage or platform login page that contains:

- Disclosure of use of addictive designs, deceptive patterns, and manipulated images.
- Informative resources on suicide prevention, domestic violence, law enforcement, and bullying.
- A reporting mechanism related to bullying, harassment, and threats of violence or self-harm.
- Whether the platform collects or sells personal information of children and who it is sold to.

The bill does not apply to certain websites whose predominant function is:

- E-mail, Messaging, or Texts;
- Streaming services, News, Sports or Entertainment sites; and
- Online Shopping or Gaming.

The bill provides that, if a social media platform violates the requirements for minor users, it is an unfair and deceptive trade practice actionable under Florida Deceptive and Unfair Trade Practice Act, solely by Department of Legal Affairs. The bill also allows a private cause of action against a commercial entity that fails to prohibit or block a minor from future access after a report of unauthorized or unlawful access.

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

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Social Media Platforms

The term "social media" includes "forms of electronic communication (such as websites for social networking and microblogging) through which users create online communities to share information, ideas, videos, personal messages, and other content."[1]

In 2005, the year Facebook started, just 5% of American adults used social media platforms. By 2011, that share had risen to half of all Americans, and by 2021, 72% of the public used some type of social media.[2]

Virtually all teens ages 13 to 17 use social media, with more than 1 in 3 reporting that they use it "almost constantly." While most U.S. social media platforms require users to be at least 13 years old, nearly 40 percent of kids ages 8 to 12 use social media.[3]

In less than a generation, social media has evolved from direct electronic information exchange, to a virtual gathering place, retail platform, and marketing tool. What began as a desktop or laptop experience shifted to mobile phones and tablets. With the advent of social media apps that could run on smartphones, end users could take their communities with them wherever they went and use social media at any time.[4]

Some social media companies already prohibit kids under 13 from signing up to their platforms to comply with federal requirements, but children may easily get around the bans, regardless of their parents' consent.[5] In fact, approximately 38% of children between the ages 8 to 12 and 84% of teenagers between the ages of 13 and 18 are using social media.[6]

Lawsuits Against Social Media Platforms

Evidence exists that social media platforms have intentionally created algorithms and other functions deliberately designed to hold users' attention as long as possible, and tapping into psychological biases and vulnerabilities relating to our desire for validation and fear of rejection. The platforms continue to do so even though they are aware that too much passive use of social media, can be unhealthy.[7]

---

[1] Meriam-Webster, *Dictionary*, *Definition, Social Media*, https://www.merriam-webster.com/dictionary/social%20media (last visited Jan. 8, 2024).
[2] Pew Research Center, *Social Media Fact Sheet*, (Apr. 7, 2021), https://www.pewresearch.org/internet/fact-sheet/social-media/ (last visited Jan. 8, 2024).
[3] The Annie E. Casey Foundation, *Social Media's Concerning Effect on Teen Mental Health*, (Aug. 10, 2023), https://www.aecf.org/blog/social-medias-concerning-effect-on-teen-mental-health#:~:text=Numerous%20studies%20show%20that%20higher,poor%20body%20image%2C%20eating%20disorder (last visited January 8, 2024).
[4] Maryville University, *The Evolution of Social Media: How Did It Begin, and Where Could It Go Next?,* (May 28, 2020), https://online.maryville.edu/blog/evolution-social-media/ (last visited Jan. 8, 2024).
[5] Barbara Ortutay, *Car seats and baby formula are regulated. Is social media next?*, The Associated Press, May, 23, 2023, https://apnews.com/article/surgeon-general-kids-social-media-teens-tiktok-instagram-443530d9baa3f91386bf9fbfb313bbaf (last visited Jan. 9, 2024).
[6] Shiv Sudhakar, *Age 13 and younger is 'too early' for kids to be on social media, surgeon general admits*, Fox News, Feb. 10, 2023, https://www.foxnews.com/lifestyle/age-13-too-early-kids-social-media-surgeon-general (last visited Jan. 9, 2024).
[7] Kraut R, Patterson M, Lundmark V, Kiesler S, Mukophadhyay T, Scherlis W., *Internet paradox: a social technology that reduces social involvement and psychological well-being?,* Am Psychol., Sept. 1998, https://pubmed.ncbi.nlm.nih.gov/9841579/ (last visited Jan. 8, 2024)

On October 24, 2023, a group of 41 states and the District of Columbia, including Florida, filed suit against Meta,[8] the parent company of Facebook, Instagram, WhatsApp, and Messenger, contending that the company knowingly used features on its platforms to cause children to use them compulsively, even as the company said that its social media sites were safe for young people.[9] The complaint alleges that Meta took actions which qualify as a deceptive or unfair trade practice and which violate the federal Children's Online Privacy Protection Act.[10]

The compliant states that "Meta has harnessed powerful and unprecedented technologies to entice, engage and ultimately ensnare youth and teens. It's motive is profit, and in seeking to maximize its financial gains, Meta has repeatedly mislead the public about the substantial dangers of its social media platforms" and Meta "has concealed the ways in which these platforms exploit and manipulate its most vulnerable consumers: teenagers and children."[11]

Regarding the motivation for the suit, Florida Attorney General Ashley Moody stated that "Meta has gone unchecked for too long, and our children are suffering the consequences of these unlawful practices…I took action to stop Meta from targeting minors with addictive features to keep them online for hours, collecting their data and other unlawful actions that harm teens' mental health,"[12] and "It's no surprise to parents that children cannot stay off their phones. This has been shown to be very addictive to children across the United States. It's caused mental health problems and sleep problems."[13]

Additionally, New York Attorney General Letitia James stated "Meta has profited from children's pain by intentionally designing its platforms with manipulative features that make children addicted to their platforms while lowering their self-esteem….Social media companies, including Meta, have contributed to a national youth mental health crisis and they must be held accountable."[14]

Effects of Social Media on Children

Social media has become an important aspect of a minor's digital interactions, as they use it for entertainment and communication purposes.[15] Adolescents are constantly in touch with their peers via social media accounts. However, social media has the potential to have both positive and negative effects on their health.[16]

Children can see many benefits from using social media, including:[17]

- Enhanced communication skills,
- Enhanced social connections,
- Making new friends and meaningful connections,
- Exchanging ideas and digital photos,

---

[8] *State of Florida v. Meta Platforms, Inc., Instagram, LLC*, Case No. 8:23-cv-02412 (M.D. Fla.); *State of Arizona, et al. v Meta Platforms, Inc., Instagram LLC, Meta Payments, Inc., et al*, Case No. 4:23-cv-05448 (N.D. Cal.). The cases have merged, and are still pending.

[9] *State of Arizona, et al. v Meta, Id*; Matt Richtel, *Is Social Media Addictive? Here's What the Science Say,.* New York Times, Oct. 25, 2023, https://www.nytimes.com/2023/10/25/health/social-media-addiction.html (last visited Jan. 8, 2024).

[10] *Id.*

[11] *Id*.

[12] Office of Attorney General Ashley, ATTORNEY GENERAL MOODY TAKES LEGAL ACTION AGAINST META TO PROTECT CHILDREN, Oct. 24, 2023, https://www.myfloridalegal.com/newsrelease/attorney-general-moody-takes-legal-action-against-meta-protect-children (last visited Jan. 9, 2024).

[13] Craig Patrick, *Florida among states suing Meta, claiming Facebook and Instagram are addicting to children*, AOL, https://www.aol.com/news/florida-among-states-suing-meta-224317028.html (last visited Jan. 9, 2024).

[14] Amanda Bronstad, *State AGs Sue Meta: Social Media 'Unsafe and Addictive' to Youth*, ALM|Law.com, https://www.law.com/therecorder/2023/10/24/state-ags-sue-meta-social-media-unsafe-and-addictive-to-youth/?slreturn=20240009113225 (last visited Jan. 9, 2024).

[15] Andrea Irmer & Florian Schmiedek, *Associations between youth's daily social media use and well-being are mediated by upward comparisons*, Communications Psychology, (Aug. 22, 2023), https://www.nature.com/articles/s44271-023-00013-0#citeas (last visited Jan. 8, 2024).

[16] Maya Dollarhide, *Social Media: Definition, Effects, and List of Top Apps*, Investopedia.com, https://www.investopedia.com/terms/s/social-media.asp (last visited Jan. 6, 2024).

[17] *Id.*

- Developing a new interest, and experimenting with new forms of self-expression,
- Learning basic social and technical skills,
- Feelings of Inclusion,
- Interacting across geographic barriers, and
- Humor.

Common risks from using social media include:[18]

- Depression,
- Increased stress,
- Social withdrawal,
- Anxiety,
- Poor body image,
- Loneliness,
- Low self-esteem,
- Exposure to harmful or inappropriate content,
- Exposure to dangerous people,
- Cyberbullying,[19]
- Sexting,
- Oversharing personal or private information,
- Exposure to excessive advertisements,
- Identity theft or being hacked,
- Interference with sleep, exercise, homework, or family activities,
- Drama,
- Social pressure,
- Suicidal thoughts or suicide,
- Negative influence on cognitive ability, and
- Negative school performance.

Children use social media to find community,[20] but their mental health may be negatively affected. Deterioration in mental health is one of the side effects stemming from social media overuse. The link between social-media use, depression, and loneliness has been causally linked or proven by psychologists showing that an increase in use causes a decrease in well-being.

In May 2023, U.S. Surgeon General Dr. Vivek Murthy released an advisory to call attention to the effects of social media on youth mental health. The Advisory noted that at crucial periods of adolescent brain development, social media use is predictive of decreases in life satisfaction, as well as additional concerns around body image, sleep issues, and much more.[21] He has also concluded 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."[22]

Other experts agree. David Greenfield, a psychologist, said the platforms lure users with powerful tactics. One is "intermittent reinforcement," which creates the idea that a user could get a reward at any

---

[18] Loyola Medicine, *Social Media Safety for Kids and Teens*, https://www.loyolamedicine.org/about-us/blog/social-media-safety-kids-teens, (last visited Jan. 6, 2024); *Is social media bad for mental health and wellbeing? Exploring the perspectives of adolescents*. O'Reilly M, Dogra N, Whiteman N, Hughes J, Eruyar S, Reilly P. Clin Child Psychol Psychiatry. 2018;23:601–613.

[19] Research shows that victims of cyberbullying are more likely to use alcohol and drugs and skip school than other students. They also are more likely to receive poor grades and experience low self esteem and health problems. In extreme situations, cyberbullying has led to suicide. Fisher BW, Gardella JH, Teurbe-Tolon AR, *Peer cybervictimization among adolescents and the associated internalizing and externalizing problems: a meta-analysis*.. J Youth Adolesc., Jul. 22, 2016, https://pubmed.ncbi.nlm.nih.gov/27447707/ (last visited Jan. 8, 2024).

[20] 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 Jan. 6, 2024).

[21] "Social Media and Youth Mental Health," The US Surgeon General's Advisory, May 2023.

[22] 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 Jan. 6, 2024).

time, but when the reward comes is unpredictable. Adults are susceptible, but young people are particularly at risk, because the brain regions that are involved in resisting temptation and reward are not nearly as developed in children and teenagers as in adults.[23]

Examples of studies and reports that have shown the dangers of social media use by children include:

- One study conducted by social media and psychology scholars found a link between social media use and poor mental health, especially among girls. The study demonstrated that girls experience a consistent and substantial association between mental health and social media, and such associations were stronger than links between mental health and binge drinking, sexual assault, obesity, and hard drug use. [24]
    - Dr. Jean Twenge, a generational trends scholar, saw the beginning of a mental health crisis starting in 2012 when reviewing mental health metrics that showed rates of depression, anxiety and loneliness were rising, which she points out coincides with the fast rise in use of smartphones in 2012 and all the social media that comes along with them.[25]
- Another study found that social media use causes children to be more sensitive to anticipating social risks: 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.[26]
    - 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.[27]
- A recent report by the Wall Street Journal outlined internal Meta research showing that Instagram conducted online surveys, diary studies, focus groups, and large-scale questionnaires, which showed that 32 percent of teenage girls reported that Instagram made them have a worse body image. Of research participants who experienced suicidal thoughts, 13 percent of British teens and 6 percent of American teens directly linked their interest in suicide to Instagram.[28]
- Several studies have also tied the advent of the smartphone, where the majority of children are accessing social media, to increased rates of depression especially among girls.[29] Since 2019, rates of depression especially among young girls has skyrocketed. In 2021, more than 40 percent of high school students reported depressive symptoms, with girls reporting even higher rates of poor mental health and suicidal thoughts, according to data from the U.S. Centers for Disease Control and Prevention (CDC).[30]
    - According to the CDC, nearly one in three high school girls considered suicide in 2021, a 60 percent increase since 2011, teen depression doubled between 2010 and 2019, and

---

[23] Matt Richtel, New York Times, *Is Social Media Addictive? Here's What the Science Says.* (Oct. 25, 2023), https://www.nytimes.com/2023/10/25/health/social-media-addiction.html (last visited Jan. 8, 2024).
[24] Haidt, J., Rausch, Z., & Twenge, J., *Social Media and Mental Health: A Collaborative Review*, New York University, https://jonathanhaidt.com/reviews/ (last visited Jan. 8, 2024).
[25] Michaeleen Doucleff, *The truth about teens, social media and the mental health crisis*, NPR Health Shots, Apr. 25, 2023, https://www.npr.org/sections/health-shots/2023/04/25/1171773181/social-media-teens-mental-health (last visited Jan. 8, 2024).
[26] 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 Jan. 6, 2024); 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 Jan. 6, 2024).
[27] Maria T. Maza, *supra* note 26.
[28] 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 Jan. 6, 2024).
[29] Nesi J, Prinstein MJ., *Using social media for social comparison and feedback-seeking: gender and popularity moderate associations with depressive symptoms*. J Abnorm Child Psychol., Nov. 2015, https://pubmed.ncbi.nlm.nih.gov/25899879/ (last visited Jan. 8, 2024).
[30] Fardouly J, Vartanian LR, *Social media and body image concerns: current research and future directions*, Curr. Opin. Psychol., 2016, https://www.sciencedirect.com/science/article/abs/pii/S2352250X15002249 (last visited Jan. 8, 2024).

emergency room admissions for self-harm among 10- to 14-year-old girls tripled between 2009 and 2015.[31]

- A study on the effects of social media use on mental health during adolescent development indicates that there are two windows of time when children are most sensitive to detrimental effects of social media, and when higher estimated social media use predicts a decrease in life satisfaction ratings a year later. For girls, the windows occur at ages 11 through 13, and 19; and for boys, the windows occur at ages 14 through 15, and 19.[32]

Based on these studies and scientific research, many experts have called for the regulation of social media and specifically regulation of the use of social media by children. Dr. Mary Alvord, a member of the American Psychological Association social media advisory panel, states that just because social media is here to stay, doesn't "mean we have to accept its dangers. Just as we decide when kids are old enough to drive, and we teach them to be good drivers, we can establish guidelines and teach children to use social media safely."[33]

Safety Measures and Parental Controls

Providing children with information on ways to more safely use social media may decrease the harm they experience. Having conversations about social media, its benefits, and its risks, may help promote positive social media usage.[34] Parental controls may also help protect children from inappropriate content, cyberbullying and other online safety issues.[35] Examples of parental controls include blocking websites, filtering content, imposing limits on screen time, allowing parents to monitor online activity, location tracking, and disabling Wi-Fi.[36]

However, two studies at the University of Central Florida found that parental control apps may actually be counterproductive, harming the trust between a parent and child and reducing the child's ability to respond to online threats. In one of the studies, children found the apps overly restrictive and prevented them from doing everyday tasks, such as homework assignments. Additionally, a researcher stated that "parental involvement and direct supervision were both associated with fewer peer problems and less online victimization for teens, but neither of these factors correlated with the use of parental control apps." [37]

Social Media and Addictive Designs and Deceptive Patterns

In general, addictive designs or deceptive patterns, also called dark patterns, are deceptive user experiences that take advantage of how people habitually use websites to get people to do something they may not normally do, such as impulse purchasing, giving away personal information, or spending excessive time on a website.[38] Examples include autoplay, when a video website automatically plays

[31] Centers for Disease Control and Prevention, *U.S. Teen Girls Experiencing Increased Sadness and Violence* (Feb. 13, 2023), https://www.cdc.gov/media/releases/2023/p0213-yrbs.html (last visited Jan. 8, 2024)
[32] Kirsten Weir, *Social media brings benefits and risks to teens. Here's how psychology can help identify a path forward*, American Psychological Association (Sep. 1, 2023), https://www.apa.org/monitor/2023/09/protecting-teens-on-social-media#:~:text=During%20those%20windows%E2%80%94around%2011,1649%2C%202022). (last visited Jan. 8, 2023).
[33] Kirsten Weir, *supra* note 32.
[34] WebMD Editorial Contributors, *How to Talk to Your Kids About Social Media*, WebMD.com, https://www.webmd.com/parenting/how-to-talk-to-kids-about-social-media (last visited Jan. 6, 2024).
[35] Internetmatters.org, *Parental Controls*, https://www.internetmatters.org/parental-controls/ (last visited Jan. 6, 2024).
[36] Caroline Knorr, Commonsensemedia.org, *Parents' Ultimate Guide to Parental Controls*, https://www.commonsensemedia.org/articles/parents-ultimate-guide-to-parental-controls (last visited Jan. 6, 2024).
[37] Barbara Abney and Zenaida Kotala, *Apps to Keep Children Safe Online May be Counterproductive*, UCF Today, Apr. 2, 2018, https://www.ucf.edu/news/apps-keep-children-safe-online-may-counterproductive/ (last visited Jan. 9, 2024).
[38] Brad Bartlett, *Dark Design Patterns: Teach Kids to Recognise Them*, Kidslox, Feb. 7, 2023, https://kidslox.com/guide-to/dark-design-patterns (last visited Jan. 6, 2024).

new videos in succession as a default setting;[39] and infinite scroll, when a website allows users to scroll endlessly through content, rather than clicking through pages.[40]

In 2022, the Federal Trade Commission (FTC) issued a report outlining the ways that companies are increasingly using dark patterns to manipulate consumers into buying products or giving up their privacy.[41] Common dark pattern tactics include:

- Disguising Ads, which includes advertisements designed to look like independent, editorial content; comparison shopping sites that claim to be neutral but really rank companies based on compensation; and countdown timers designed to make consumers believe they only have a limited time to purchase a product or service when the offer is not actually time-limited.
- Making it difficult to cancel subscriptions or charges, which involves tricking someone into paying for goods or services without consent.
- Burying key terms and junk fees, which involves hiding or obscuring material information from consumers that consumers don't see before making a purchase.
- Tricking consumers into sharing data, which involves falsely giving consumers choices about privacy settings or sharing data, and instead steer consumers toward the option that gives away the most personal information.[42]

Recently, FTC has filed complaints against several companies for using dark patterns as a deceptive trade practice.[43] For example, the FTC has taken action against Twitter (now X), alleging it deceptively used account security information to sell targeted advertisements.[44] Additionally, the FTC filed a complaint against Amazon, alleging use of dark patterns to deceive users into subscribing to a premium service.[45] Both cases are still pending.

Age Verification Mechanisms

There are several ways that Internet companies verify, or attempt to verify, age. Options include using:[46]

- Government identity documents, which generally requires the user to submit a government document or a third party to the company for review.
- Phone records, which generally checks the user's phone for parental controls.
- Credit score databases, which generally requires the user to enter identifying information, which is then confirmed through a credit check agency.
- Biometric age estimation, which generally requires a facial analysis to estimate age.
- Credit cards, which generally requires to supply credit card information for validation.

---

[39] Rene Otto, *Autoplay and infinite scroll*, Medium, https://rene-otto.medium.com/autoplay-and-infinite-scroll-8607abe52bb7#:~:text=nobody%20asked%20for%20autoplay%20video,%3A%20stealing%20your%20attention%20back.%E2%80%9D (last visited Jan. 6, 2024).

[40] Erin Rupp, *The Infinite Scroll: Why It's So Addictive and How to Break Free*, Freedom.to, Feb. 28, 2022, The Infinite Scroll: Why It's So Addictive and How to Break Free - Freedom Matters (last visited Jan. 6, 2024).

[41] Federal Trade Commission, *FTC Report Shows Rise in Sophisticated Dark Patterns Designed to Trick and Trap Consumers*, Sep. 15, 2022, https://www.ftc.gov/news-events/news/press-releases/2022/09/ftc-report-shows-rise-sophisticated-dark-patterns-designed-trick-trap-consumers (last visited Jan. 9, 2024).

[42] *Id*.

[43] Frank Gorman, Benjamin Chapin, Reade Jacob, and Julia May, *FTC Targets "Dark Patterns" in Actions Against Amazon and Publishers Clearing House*, WilmerHale, https://www.wilmerhale.com/insights/client-alerts/20230814-ftc-targets-dark-patterns-in-actions-against-amazon-and-publishers-clearing-house (last visited Jan. 6, 2024).

[44] Federal Trade Commission, *FTC Charges Twitter with Deceptively Using Account Security Data to Sell Targeted Ads*, May 25, 2022, https://www.ftc.gov/news-events/news/press-releases/2022/05/ftc-charges-twitter-deceptively-using-account-security-data-sell-targeted-ads (last visited Jan. 9, 2024).

[45] Federal Trade Commission, *FTC Takes Action Against Amazon for Enrolling Consumers in Amazon Prime Without Consent and Sabotaging Their Attempts to Cancel*, Jun. 21, 2023, https://www.ftc.gov/news-events/news/press-releases/2023/06/ftc-takes-action-against-amazon-enrolling-consumers-amazon-prime-without-consent-sabotaging-their (last visited Jan. 6, 2024).

[46] The Age Verification Providers Association, *How do you check age online?*, https://avpassociation.com/avmethods/ (last visited Jan. 7, 2024).

- Open banking, which generally requires the user to log into their own online banking system, and give approval for date of birth data to be supplied to a bank-approved third party age verification provider.
- Algorithmic profiling, which generally assesses the likely age of a user based on their online behavior.
- Self-declaration, which generally requires the user to tick a box or self-enter a birthdate.
- Zero knowledge proofs, which generally enables users to upload identity documents to privacy servers and securely share encrypted, anonymous "proofs" of age to a company, through a process called hashing, without actually transmitting the identity documents to the company.[47]

Many industries are required to use age verification methods, including for:
- Using tobacco,[48]
- Engaging in gambling,[49]
- Consuming alcohol,[50] and
- Purchasing firearms.[51]

When verifying age online, people usually share personal information, including:
- Full name and location.
- Email or phone number (when using two-factor authorization).
- Home address.

Some social media platforms ask for age identifying information to create an account, but such information is not always verified. For example, Facebook requires new users to self-report a birthdate to confirm age of at least 13 years old. However, Meta is currently testing new ways to age verify, including through the use of biometrics and online interviews.[52]

Additionally, adult websites in the United States generally use a checkbox for a user to confirm they are at least 18 years of age. Recently, however, several states and the United Kingdom passed laws to require adult websites to use age verification measures to block adult content from being accessed by minors.[53]

Identity theft is a potential risk when users reveal this information, and websites can collect the information revealed through age verification processes and combine it with other data for targeted advertisements or sharing that data with third parties.[54]

However, there are numerous minimally invasive verification techniques that do not require sharing any age verification information at all with social media platforms. For instance, a trusted third party could verify age and provide a QR code or similar device to the social media platform, establishing age

---

[47] Bessie Liu, *Aleo blockchain adds zPass, a ZK protocol for verifying identities*, Blockworks, https://blockworks.co/news/zk-decentralized-identity-verification (last visited Jan. 6, 2024).
[48] S. 569.14, F.S. Additionally, the U.S. Food and Drug Administration (FDA) recommends using independent, third-party age- and identity-verification services that compare customer information against third-party data sources for online sellers of tobacco. FDA, *Enforcement Priorities for Electronic Nicotine Delivery Systems (ENDS) and Other Deemed Products on the Market Without Premarket Authorization (Revised)*, p. 7, April 2020, https://www.fda.gov/media/133880/download (last visited Jan. 9, 2024).
[49] S. 551.113(1), F.S.; S. 849.0931(10), F.S.
[50] S. 84
[51] S. 790.065, F.S.
[52] Meta, *Introducing New Ways to Verify Age on Instagram*, Jun. 23, 2022, https://about.fb.com/news/2022/06/new-ways-to-verify-age-on-instagram/ (last visited Jan. 9, 2024).
[53] Masha Borak, UK introduces Online Safety Bill mandating age verification, Oct. 27, 2023, https://www.biometricupdate.com/202310/uk-introduces-online-safety-bill-mandating-age-verification#:~:text=The%20United%20Kingdom%20has%20finally,checking%20measures%2C%20including%20biometric%20technology. (last visited Jan. 9, 2024); Dmytro Sashchuk, *Age verification regulations in the United States of America*, Veriff, (Nov. 15, 2023), https://www.veriff.com/fraud/learn/age-verification-legalization-in-the-united-states-of-america (last visted Jan. 7, 2024).
[54] John Reynolds, *Don't risk identity fraud just to play that video game — do this instead*, Aleo, https://aleo.org/post/dont-risk-identity-fraud-to-play-that-video-game/#:~:text=The%20risks%20of%20today's%20age,public%20records%2C%20or%20ID%20scans) (last visited Jan. 7, 2024).

without the platform even seeing the age verification documents or even the user's identity.[55] Experts argue that age verification systems have progressed considerably from a generation ago.[56]

Age fabrication is a widespread issue. For example, underage customers in the United States consumed 11.73% of all alcoholic drinks sold in the U.S. market in 2016, and 49.8% of tobacco and vape shops in California failed to check the ID of underage decoys in 2018.[57]

Florida's Social Media Laws for Children

Requirements for Social Media and Phones in Schools

In 2023, the Legislature passed a law[58] that requires students in grades 6 through 12 to receive instruction on the social, emotional, and physical effects of social media. The instructional materials must be available online, and district school boards must notify parents of the material's availability.[59]

The law also prohibits students from using wireless communications devices at school during instructional time, except when expressly directed by a teacher solely for educational purposes and requires a teacher to designate an area for wireless communications devices during instructional time.[60]

Protection of Children in Online Spaces Act (PCOSA)

In 2023, the Legislature passed PCOSA,[61] which provides that any online service, product, game, or feature likely to be **predominantly accessed by children** under 18 years of age may not, except under certain situations:[62]

- 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.

Social Media Use by Children - Laws in Other States

In March 2023, Utah became the first state to adopt laws regulating kids' access to social media.[63] This legislative action was rapidly followed by several states, including Arkansas, Louisiana, Ohio, and Texas, with numerous others contemplating similar measures.[64]

According to the Utah law, effective March 1, 2024, a social media company must:[65]

- Verify the age of a Utah resident seeking to maintain or open an account,
- Get parental consent before minors under 18 can open or maintain their current account, and

[55] The Federalist Society, *Age Verification for Social Media: A Constitutional and Reasonable Regulation* (Aug. 7, 2023), https://fedsoc.org/commentary/fedsoc-blog/age-verification-for-social-media-a-constitutional-and-reasonable-regulation (last visited Jan. 8, 2024).
[56] Broadband Breakfast, *Improved Age Verification Allows States to Consider Restricting Social Media*, Nov. 20, 2023, Improved Age Verification Allows States to Consider Restricting Social Media – Broadband Breakfast (last visited Jan. 9, 2023).
[57] Persona, *Age verification system: How to add it into your business,* https://withpersona.com/blog/incorporate-age-verification-into-business (last visited Jan. 9, 2024).
[58] Ch. 2023-36, L.O.F.
[59] S. 1003.42(2)(o)5.a., F.S.
[60] S. 1006.07(2)(f), F.S.
[61] Ch. 2023-201, L.O.F.
[62] S. 501.1735, F.S.
[63] Ch. 498, Laws of Utah 2023.
[64] Act No. 441, 2023 La. Acts; Tex. H.B. 18 (2023); 2023 Ark. Acts 689; Ohio House Bill 33 - 135th General Assembly.
[65] Lisa M. Thomas, Snehal Desai, and Kathryn Smith, *The Beehive State Joins the Buzz Around Minors and Social Media,* The National Law Review, Dec. 26, 2023, https://www.natlawreview.com/article/beehive-state-joins-buzz-around-minors-and-social-media (last visited Jan. 7, 2024).

- Deny access to existing users who do not verify their age within 14 days of trying to access their account.

Related to account limitations and parental controls, a social media company:[66]

- Must give a minor's parents or guardians access to all posts, messages, and responses.
- Cannot display advertising to minors.
- May not allow minors to engage in direct messaging to individuals outside their platform friend group.
- Must prohibit minors from accessing their accounts between 10:30pm and 6:30am.

The law has recently been challenged on First Amendment grounds.[67] NetChoice, a tech industry group, claims the provisions amount to a "unconditional attempt to regulate both minors' and adults' access to, and ability to engage in, protected expression." The case is still pending.[68]

However, similar cases challenging a similar law in Arkansas resulted in the law being preliminarily enjoined, meaning it is not in effect, pending an appeal.[69] The court found that the law placed too high a burden on adults and children attempting to access protected content, and was impermissibly vague as to whom the bill applies.[70]

Child-Focused Online Privacy Laws

Children's Online Privacy Protection Act (COPPA)

COPPA[71] and its related rules, is a federal law that regulates websites' collection and use of children's information. The operator of a website or online service that is directed to children, or that has actual knowledge that it collects children's personal information (covered entities), must comply with requirements regarding data collection and use, privacy policy notifications, and data security.

A covered entity may not collect personal information from **a child under the age of 13** without the prior, verifiable consent of his or her parent.[72]

COPPA requires covered entities to:[73]

- 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 federally prosecuted by the FTC. COPPA also authorizes state attorneys general to enforce violations that affect

---

[66] *Id*.
[67] *NetChoice, LLC v. Reyes*, D. Utah, Case No. 2:23-cv-00911.
[68] Mack Degeurin, *Tech trade group sues over 'unconstitutional' Utah teen social media curfew law*, Popular Science, https://www.popsci.com/technology/lawsuit-utah-teen-social-media-curfew/#:~:text=NetChoice%2C%20in%20a%20suit%20filed,age%20verification%20requirement%2C%20which%20NetChoice (last visited Jan. 8, 2024).
[69] *NetChoice v. Griffin*, 2023 WL 5660155 (W.D. Ark. 2023).
[70] Id.
[71] 16 C.F.R. pt. 312.
[72] 15 U.S.C. ss. 6502(a)-(b).
[73] *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 Jan. 6, 2024).

residents of their states. There is no criminal prosecution or private right of action provided for under COPPA.[74]

In 2019, Google and its subsidiary YouTube, agreed to pay a $170 million settlement for lawsuits from the FTC and New York for violations of COPPA for collected personal information from children without consent. Specifically, it was alleged that YouTube tracked persistent identifiers, commonly known as cookies, from viewers of child-directed channels, without first notifying parents and getting their consent. YouTube earned millions of dollars by using the identifiers, to deliver targeted ads to viewers of these channels.[75]

California Age-Appropriate Design Code Act

In 2022, California passed a combination social media and data privacy law that prohibits social media platforms from showing children advertising. California adopted the California Age-Appropriate Design Code Act (CAADCA)[76] legislation modelled on the United Kingdom's Age Appropriate Design Code,[77] which requires online platforms to adhere to strict default privacy and safety settings that protect the best interest of children.[78] CAADCA covers children under 18 years of age and will be effective July 1, 2024.[79]

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:[80]

- 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, or using dark patterns.

The law has recently been challenged on several grounds, including on the First Amendment and Supremacy Clause, and has been preliminarily enjoined.[81] A similar law has since been adopted in Utah.[82]

European Union - Social Media and Data Privacy Laws for Children

In 2015, the European Union (E.U.) passed a law to require member states to require parental consent for a child to access social media. The E.U. mandates that at a minimum, such parental consent requirements must apply to children 13 years old and younger, and may apply to children up to 16 and younger.[83]

In 2023, the E.U. passed the Digital Services Act, which currently applies to 19 of the largest Internet companies, including Meta, Apple, TikTok, and Google. The law, in part, requires such companies to

---

[74] *Id*.
[75] Federal Trade Commission, *Google and YouTube Will Pay Record $170 Million for Alleged Violations of Children's Privacy Law*, Sep. 4, 2019, https://www.ftc.gov/news-events/news/press-releases/2019/09/google-youtube-will-pay-record-170-million-alleged-violations-childrens-privacy-law (last visited Jan. 9, 2024).
[76] Cal. Civil Code § 1798.99.28-.35.
[77] 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 Jan. 7, 2024).
[78] 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 Jan. 7, 2024).
[79] Cal. Civil Code § 1798.99.28-.35
[80] Briana Kelly, Nelson Mullins Riley & Scarborough LLP, *State of California Passes Bill to Protect Children Online*, Jan. 26, 2023, https://www.lexology.com/library/detail.aspx?g=e4c49600-b850-4d8f-a68a-117acf89972f (last visited Jan. 7, 2024).
[81] *NetChoice, LLC v. Bonta,* 2023 WL 6135551(N.D. Cal 2023).
[82] Ch. 477, Laws of Utah 2023.
[83] Diana Graber, *Europeans Teach Us a Lesson About Banning Teens From Social Media*, HuffPost, Dec. 21, 2015, https://www.huffpost.com/entry/europeans-teach-us-a-less_b_8854802 (last visited Jan. 6, 2024).

prevent harmful content from spreading on their platforms and share certain internal data with regulators and associated researchers.[84]

The law, which became effective January 1, 2024, compels such tech companies to set up new policies and procedures to remove flagged hate speech, terrorist propaganda, and other material defined as illegal by countries within the E.U.[85]

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.[86] FDUTPA was modeled after the Federal Trade Commission (FTC) Act.[87]

The Department of Legal Affairs (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.[88] 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.[89] In certain circumstances, consumers may also file suit through private actions.[90]

The DLA and the SAO have powers to investigate FDUTPA claims, which include:[91]

- 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.[92]

FDUTPA may not be applied to certain entities in certain circumstances, including:[93]

- 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.

---

[84] Martin Coulter, *Big Tech braces for EU Digital Services Act regulations*, Reuters (Aug. 24, 2023), https://www.reuters.com/technology/big-tech-braces-roll-out-eus-digital-services-act-2023-08-24/ (last visited Jan. 6, 2024).
[85] Adam Satariano, *E.U. Takes Aim at Social Media's Harms With Landmark New Law*, The New York Times, Apr. 22, 2022, https://www.nytimes.com/2022/04/22/technology/european-union-social-media-law.html (last visited Jan. 6, 2024).
[86] Ch. 73-124, L.O.F.; s. 501.202, F.S.
[87] 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).
[88] 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 Jan. 6, 2024).
[89] S. 501.203(2), F.S.
[90] S. 501.211, F.S.
[91] S. 501.206(1), F.S.
[92] 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.
[93] S. 501.212(4), F.S.

Effect of Proposed Changes

The bill provides the following definitions:

- "Account holder" means a resident of this state who has or opens an account or creates a profile or other form of identification to use or access a social media platform.
- "Reasonable age verification method" means any commercially reasonable method regularly used by government agencies or businesses for the purpose of age and identity verification.
- "Social media platform:"
  - Means an online forum offered by an entity that has the ability to track the activity of an account holder or user, if the online forum allows the account holder or user to do all of the following:
    - Create or use a profile, account, or other form of identification.
    - Upload content or view the content or activity of other account holders.
    - Interact with or track other account holders or users.

The bill requires a social media platform to prohibit a minor who is younger than 16 years of age from creating a new account on the social media platform.

The bill requires a social media platform to use a reasonable age verification method to verify the age of each account holder on the social media platform at the time a new account is created. If the age is not verified, the account must be denied. Such reasonable age verification method must be conducted by an independent, third-party not affiliated with the social media platform.

Any personal identifying information used to verify age may not be:

- Retained by the third party or social media platform once the age has been verified.
- Used for any other purpose.

The bill requires a social media platform to do the following related to existing accounts belonging to a minor younger than 16 years of age:

- Terminate any such account that is reasonably known by the social media platform to be held by a minor younger than 16 years of age.
  - The social media platform must provide a minimum of 90 days for an account holder to dispute such termination by verifying age.
- Allow such an account holder to request to terminate the account.
  - Such termination must be effective within 5 business days after such request.
- Allow the confirmed parent or guardian of such an account holder to request the minor's account be terminated.
  - Such termination must be effective within 10 business days after such request.
- Permanently delete all personal information held by the social media platform relating to the terminated account, unless there are legal requirements to maintain such information.

If the social media platform allows minors younger than 18 years of age to create an account on the platform, the bill requires the platform to include a clearly labeled, conspicuous, and readily accessible link on its Internet homepage or platform login page that:

- Discloses the following social media platform policies in a manner that is clearly, concisely, prominently, and understandably written using language suited to the age of users who are younger than 18 years of age likely to routinely access the platform without unrelated, confusing, or contradictory materials:
  - The content moderation policies of the social media platform.
  - Whether the social media platform uses or allows the use of addictive design or deceptive pattern features, including autoplay or infinite scroll.
  - Whether the social media platform allows manipulated photographs or digital images to be shared on the platform.

    - Whether the social media platform considers the best interests of platform users who are younger than 18 years of age when designing, developing, and providing services.
    - The methodology the social media platform uses to consider the best interests of platform users who are younger than 18 years of age.
    - The policies and protections the social media platform uses to protect platform users who are younger than 18 years of age against harmful behaviors, such as bullying, harassment, and threats of violence or self-harm.
    - Whether the social media platform collects or sells personal information of platform users who are younger than 18 years of age. If such personal information is collected, the platform must disclose the type of personal information collected and the purpose of such collection. If such personal information is sold, the platform must disclose to whom the information is sold.
- Provides clear access to the following:
    - Zip code-based references to local resources for law enforcement, suicide prevention, and domestic violence prevention services.
    - Reporting mechanisms related to harmful behaviors, such as bullying, harassment, and threats of violence or self-harm.
- At the time of log in, and before obtaining access to the platform, requires platform users who are younger than 18 years of age to read and accept a disclaimer which must be in substantially the following form:

  This application may be harmful to your mental health and may use design features that have addictive qualities or present unverified information or that may be manipulated by [insert platform name] or others for your viewing. This application may also collect your personal data to further manipulate your viewable content and may share your personal data with others.

The bill does not apply to online services, websites, or applications where the predominant or exclusive function is:

- Electronic mail.
- Direct messaging consisting of text, photos, or videos that are sent between devices by electronic means where messages are shared between the sender and the recipient only, visible to the sender and the recipient, and are not posted publicly.
- A streaming service that provides only licensed media in a continuous flow from the service, website, or application to the end user and does not obtain a license to the media from a user or account holder by agreement to its terms of service.
- News, sports, entertainment, or other content that is preselected by the provider and not user generated, and any chat, comment, or interactive functionality that is provided incidental to, directly related to, or dependent upon provision of the content.
- Online shopping or e-commerce, if the interaction with other users or account holders is generally limited to the ability to upload a post and comment on reviews or display lists or collections of goods for sale or wish lists, or other functions that are focused on online shopping or e-commerce rather than interaction between users or account holders.
- Interactive gaming, virtual gaming, or an online service, that allows the creation and uploading of content for the purpose of interactive gaming, edutainment, or associated entertainment, and the communication related to that content.
- Photo editing that has an associated photo hosting service, if the interaction with other users or account holders is generally limited to liking or commenting.
- A professional creative network for showcasing and discovering artistic content, if the content is required to be non-pornographic.
- Single-purpose community groups for public safety if the interaction with other users or account holders is generally limited to that single purpose and the community group has guidelines or policies against illegal content.
- To provide career development opportunities, including professional networking, job skills, learning certifications, and job posting and application services.
- Business to business software.

- A teleconferencing or videoconferencing service that allows reception and transmission of audio and video signals for real time communication.
- Shared document collaboration.
- Cloud computing services, which may include cloud storage and shared document collaboration.
- To provide access to or interacting with data visualization platforms, libraries, or hubs.
- To permit comments on a digital news website, if the news content is posted only by the provider of the digital news website.
- To provide or obtain technical support for a platform, product, or service.
- Academic, scholarly, or genealogical research where the majority of the content that is posted or created is posted or created by the provider of the online service, website, or application and the ability to chat, comment, or interact with other users is directly related to the provider's content.
- A classified ad service that only permits the sale of goods and prohibits the solicitation of personal services or that is used by and under the direction of an educational entity, including:
    - A learning management system;
    - A student engagement program; and
    - A subject or skill-specific program.

The bill provides that, if a social media platform violates the requirements for minor users, it is an unfair and deceptive trade practice actionable under FDUTPA solely by DLA.[94] In addition to other FDUTPA remedies, DLA may collect a civil penalty of up to $50,000 per violation.

The bill allows a private cause of action against a social media platform that fails to terminate an existing account within the required time after being notified to do so by the minor account holder or a confirmed parent or guardian. The social media platform is liable to such Florida minor for such access, including up to $10,000 in damages, court costs and reasonable attorney fees. Such an action must be brought within 1 year after the violation.

The bill requires that any action brought pursuant to the bill may only be brought on behalf of a Florida minor, and does not preclude any other available remedy at law or equity against social media platforms.

The bill allows DLA to adopt rules to implement the bill.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1:	Creates s. 501.1736, F.S.; provides requirements for social media platforms that allow access and creation of accounts by minors; provides causes of action and penalties.
Section 2:	Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   There may be an increase in civil penalties collected by DLA.

[94] Unlike under general FDUTPA actions, DLA is not prohibited from bringing an action against a social media platform that is also a:
- Person or activity regulated under laws administered by OIR or DFS; and
- Bank, credit union, and savings and loan association regulated by OFR or federal agencies.

2. Expenditures:

   There may be an increase of regulatory costs to DLA from enforcing the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Social media platforms will need to implement new procedures for age verification, including using third party verification services; create certain disclosures of their practices; and gather reference information.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   Age verification for social media platforms is a complex issue that raises several constitutional concerns. The language in the bill may implicate consideration of a number of constitutional protections.

   First Amendment Right to Freedom of Speech

   Constitutional challenges to age verification laws may raise several issues. Many of the questions regarding the constitutionality of age verification laws may concern whether such laws are sufficiently narrow to avoid inhibiting more speech than necessary. The degree of tailoring required may vary depending on whether a given law is content based or content neutral. In both circumstances a law's constitutionality would depend on several factors, including the:

   - Strength of the government's interest,
   - Amount of protected speech that the law directly or indirectly restricts, and
   - Availability of less speech-restrictive alternatives.[95]

   Content-neutral regulations on free speech are legitimate if they advance important governmental interests that are not related to suppression of free speech, and do not substantially burden more speech than necessary to further those interests.[96]

[95] Holmes, Eric N. (2023, August 17), *Online Age Verification (Part III): Select Constitutional Issues* (CRS Report No. LSB11022), https://crsreports.congress.gov/product/pdf/LSB/LSB11022 (last visited Jan. 9, 2024).
[96] *Turner Broadcasting System, Inc. v. F.C.C.*, 520 U.S. 180,189 (U.S. 1997).

However, the U.S. Supreme Court typically regards content-based laws[97] as presumptively unconstitutional.[98] To determine whether a content based law passes constitutional muster, courts generally apply a legal standard called strict scrutiny, under which the government must show that the law is the "least restrictive means" of advancing a "compelling" governmental interest.[99]

In general, the U.S. Supreme Court has held that requiring adults to prove their age to access certain content is an unconstitutional, content-based limit on free speech, when there are less restrictive means to curb access to minors, such as filters and parental controls.[100]

However, according to Justice O'Connor's *Reno* dissent, because technology was insufficient for ensuring that minors could be excluded while still providing adults full access to protected content, the age verification provision was viewed as ultimately unconstitutional; but, also in her dissent, she allowed for potentially permitting a law in the future when such technology was feasible.[101]

Currently, there are numerous minimally invasive verification techniques that do not require sharing any age verification information at all with social media platforms.[102] Experts argue that age verification systems have progressed considerably from a generation ago when the U.S. Supreme Court held that age verification methods often failed at that task and were too burdensome for law abiding adults.[103]

State Authority to Regulate to Protect Minors

The U.S. Supreme Court has determined that the state has a "compelling interest in protecting the physical and psychological well-being of minors," which "extends to shielding minors from the influence of literature that is not obscene by adult standards."[104] In doing so, however, the means must be narrowly tailored to achieve that end so as not to unnecessarily deny adults access to material which is constitutionally protected indecent material.[105]

Contracts

Article I, Section 10 of the United States Constitution prohibits a state from passing any law impairing the obligation of contracts. Article I, Section 10 of the Florida Constitution also prohibits the passage of laws impairing the obligation of contracts.

Supremacy Clause

Article VI, Paragraph 2 of the United States Constitution, commonly referred to as the Supremacy Clause, establishes that the federal constitution, and federal law generally, take precedence over state laws and constitutions. The Supremacy Clause also prohibits states from interfering with the federal government's exercise of its constitutional powers and from assuming any functions that are

---

[97] Those that regulate speech by discriminating against certain content through its text (i.e., "on its face") or through a discriminatory purpose.
[98] *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015).
[99] *Sable Comm's v. F.C.C*, 492 U.S. 115 (1989).
[100] *Reno v. Am. C. L. Union,* 521 U.S. 844, 886 (1997)*; Ashcroft v. American Civil Liberties Union*, 542 U.S. 656 (2004); Ronald Kahn, *Reno v. American Civil Liberties Union (1997)*, Free Speech Center at Middle Tennessee State University, Dec. 15, 2023, Reno v. Am. C. L. Union (1997) - The Free Speech Center (mtsu.edu) (last visited Jan. 7, 2024).
[101] *Reno,* 521 U.S. 844, at 886 *(O'Connor concurring in part and dissenting in part); (The court also considered overbreadth and vagueness arguments, and determined that the CDA was too broad and vague).*
[102] The Federalist Society, *Age Verification for Social Media: A Constitutional and Reasonable Regulation* (Aug. 7, 2023), https://fedsoc.org/commentary/fedsoc-blog/age-verification-for-social-media-a-constitutional-and-reasonable-regulation (last visited Jan. 8, 2024).
[103] Broadband Breakfast, *Improved Age Verification Allows States to Consider Restricting Social Media*, Nov. 20, 2023, Improved Age Verification Allows States to Consider Restricting Social Media – Broadband Breakfast (last visited Jan. 9, 2023); *Reno v. Am. C. L. Union,* 521 U.S. 844, 886 (1997)*; Ashcroft*, 542 U.S. 656.
[104] *Sable Commc's of California, Inc. vs. F.C.C. , 492 U.S. 115, 126 (1989).*
[105] *Ashcroft*, 542 U.S. 656; *Cashatt v. State*, 873 So. 2d 430, 434 (Fla. 1st DCA 2004). But see, *Erznoznik v. City of Jacksonville*, 422 U.S. 205 (1975) (Determining regulation overly broad.)

exclusively entrusted to the federal government. It does not, however, allow the federal government to review or veto state laws before they take effect.[106]

Section 230 of the federal Communications Decency Act (CDA),[107] in part, specifies that "[n]o provider ... of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider"[108] and specifically prohibits all inconsistent causes of action and liability imposed under any State or local law.[109]

B. RULE-MAKING AUTHORITY:

The bill provides DLA with rulemaking authority to promulgate rules to enforce the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

[106] Cornell Law School, Legal Information Institute, *Supremacy Clause*, https://www.law.cornell.edu/wex/supremacy_clause (last visited Feb. 23, 2021).
[107] *Force*, 934 F.3d at 63 (quoting *Ricci v. Teamsters Union Local 456*, 781 F.3d 25, 28 (2d Cir. 2015) (quoting *Zeran v. Am. Online, Inc.*, 129 F.3d 327, 330 (4th Cir. 1997)).
[108] 47 U.S.C. § 230(c)(1).
[109] 47 U.S.C. § 230(e).

A bill to be entitled

An act relating to social media use for minors; creating s. 501.1736, F.S.; providing definitions; requiring social media platforms to prohibit certain minors from creating new accounts, to terminate certain accounts and provide additional options for termination of such accounts, to use reasonable age verification methods to verify the ages of account holders, and to disclose specified policies and provide specified resources, measures, and disclaimers; authorizing the Department of Legal Affairs to bring actions for violations under the Florida Deceptive and Unfair Trade Practices Act; providing penalties; providing for private causes of actions; providing that certain social media platforms are subject to the jurisdiction of state courts; providing construction; authorizing the department to adopt rules; providing an effective date.

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

Section 1. Section 501.1736, Florida Statutes, is created to read:

501.1736 Social media use for minors.—

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

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

(a) "Account holder" means a resident of this state who has or opens an account or creates a profile or other form of identification to use or access a social media platform.

(b) "Department" means the Department of Legal Affairs.

(c) "Reasonable age verification method" means any commercially reasonable method regularly used by government agencies or businesses for the purpose of age and identity verification.

(d) "Social media platform:"

1. Means an online forum offered by an entity that has the ability to track the activity of an account holder or user, if the online forum allows the account holder or user to do all of the following:

a. Create or use a profile, account, or other form of identification.

b. Upload content or view the content or activity of other account holders.

c. Interact with or track other account holders or users.

2. Does not include an online service, website, or application where the predominant or exclusive function is:

a. Electronic mail.

b. Direct messaging consisting of text, photos, or videos that are sent between devices by electronic means where messages are shared between the sender and the recipient only, visible to the sender and the recipient, and are not posted publicly.

c. A streaming service that provides only licensed media in a continuous flow from the service, website, or application to the end user and does not obtain a license to the media from a user or account holder by agreement to its terms of service.

d. News, sports, entertainment, or other content that is preselected by the provider and not user generated, and any chat, comment, or interactive functionality that is provided incidental to, directly related to, or dependent upon provision of the content.

e. Online shopping or e-commerce, if the interaction with other users or account holders is generally limited to the ability to upload a post and comment on reviews or display lists or collections of goods for sale or wish lists, or other functions that are focused on online shopping or e-commerce rather than interaction between users or account holders.

f. Interactive gaming, virtual gaming, or an online service, that allows the creation and uploading of content for the purpose of interactive gaming, edutainment, or associated entertainment, and the communication related to that content.

g. Photo editing that has an associated photo hosting service, if the interaction with other users or account holders is generally limited to liking or commenting.

h. A professional creative network for showcasing and discovering artistic content, if the content is required to be non-pornographic.

i. Single-purpose community groups for public safety if the interaction with other users or account holders is generally limited to that single purpose and the community group has guidelines or policies against illegal content.

j. To provide career development opportunities, including professional networking, job skills, learning certifications, and job posting and application services.

k. Business to business software.

l. A teleconferencing or videoconferencing service that allows reception and transmission of audio and video signals for real time communication.

m. Shared document collaboration.

n. Cloud computing services, which may include cloud storage and shared document collaboration.

o. To provide access to or interacting with data visualization platforms, libraries, or hubs.

p. To permit comments on a digital news website, if the news content is posted only by the provider of the digital news website.

q. To provide or obtain technical support for a platform, product, or service.

r. Academic, scholarly, or genealogical research where the majority of the content that is posted or created is posted or created by the provider of the online service, website, or application and the ability to chat, comment, or interact with

other users is directly related to the provider's content.

s. A classified ad service that only permits the sale of goods and prohibits the solicitation of personal services or that is used by and under the direction of an educational entity, including:

(I) A learning management system;

(II) A student engagement program; and

(III) A subject or skill-specific program.

(2) A social media platform shall do all of the following:

(a) Prohibit a minor who is younger than 16 years of age from creating a new account on the social media platform.

(b)1. Use reasonable age verification methods to verify the age of each account holder on the social media platform at the time a new account is created. If an account holder fails to verify his or her age, the social media platform must deny the account. The reasonable age verification method must be conducted by an independent, third-party not affiliated with the social media platform.

2. Personal identifying information used to verify age may not be retained once the age of an account holder or a person seeking an account has been verified. Any personal identifying information collected to verify age may not be used for any other purpose.

(c) For existing accounts:

1. Terminate any account that is reasonably known by the

social media platform to be held by a minor younger than 16 years of age and provide a minimum of 90 days for an account holder to dispute such termination by verifying his or her age.

2. Allow an account holder younger than 16 years of age to request to terminate the account. Termination must be effective within 5 business days after such request.

3. Allow the confirmed parent or guardian of an account holder younger than 16 years of age to request the minor's account be terminated. Termination must be effective within 10 business days after such request.

4. Permanently delete all personal information held by the social media platform relating to the terminated account, unless there are legal requirements to maintain such information.

(d) If the social media platform allows minors younger than 18 years of age to create an account on the platform, the platform must include a clearly labeled, conspicuous, and readily accessible link on its Internet homepage or platform login page that:

1. Discloses the following social media platform policies in a manner that is clearly, concisely, prominently, and understandably written using language suited to the age of users who are younger than 18 years of age likely to routinely access the platform without unrelated, confusing, or contradictory materials:

a. The content moderation policies the social media

platform uses for content on the platform.

b. Whether the social media platform uses or allows the use of addictive design or deceptive pattern features, including autoplay or infinite scroll.

c. Whether the social media platform allows manipulated photographs or digital images to be shared on the platform.

d. Whether the social media platform considers the best interests of platform users who are younger than 18 years of age when designing, developing, and providing services.

e. The methodology the social media platform uses to consider the best interests of platform users who are younger than 18 years of age when designing, developing, and providing services.

f. The policies and protections the social media platform uses to protect platform users who are younger than 18 years of age against harmful behaviors, such as bullying, harassment, and threats of violence or self-harm.

g. Whether the social media platform collects or sells personal information of platform users who are younger than 18 years of age, including personal identifiers, biometrics, and geolocation data. If such personal information is collected, the platform must disclose the type of personal information collected and the purpose of such collection. If such personal information is sold, the platform must disclose to whom the information is sold.

2. Provides clear access to the following:

a. Zip code-based references to local resources for law enforcement, suicide prevention, and domestic violence prevention services.

b. Reporting mechanisms related to harmful behaviors, such as bullying, harassment, and threats of violence or self-harm.

3. At the time of log in, and before obtaining access to the platform, requires platform users who are younger than 18 years of age to read and accept a disclaimer which must be in substantially the following form:

This application may be harmful to your mental health and may use design features that have addictive qualities or present unverified information or that may be manipulated by [insert platform name] or others for your viewing. This application may also collect your personal data to further manipulate your viewable content and may share your personal data with others.

(3) Any violation of subsection (2) is an unfair and deceptive trade practice actionable under part II of this chapter solely by the department against a social media platform. If the department has reason to believe that a social media platform is in violation of subsection (2), the department, as the enforcing authority, may bring an action

against such platform 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 this chapter, the department may collect a civil penalty of up to $50,000 per violation.

(4)(a) A social media platform that violates subparagraph (2)(c)2. or subparagraph (2)(c)3. for failing to terminate an account within the required time after being notified to do so by the minor account holder or a confirmed parent or guardian is liable to such Florida minor for such access, including court costs and reasonable attorney fees as ordered by the court. Claimants may be awarded up to $10,000 in damages.

(b) A civil action for a claim under this subsection must be brought within 1 year after the violation.

(5) Any action brought under subsection (3) or subsection (4) may only be brought on behalf of a Florida minor.

(6) For purposes of bringing an action in accordance with subsections (3) and (4), a social media platform that allows a Florida minor younger than 16 years of age to create an account on such platform 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.

(7) This section does not preclude any other available

remedy at law or equity.

(8) The department may adopt rules to implement this section.

Section 2. This act shall take effect July 1, 2024.

HB 3

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 3 Online Access to Materials Harmful to Minors
SPONSOR(S): Tramont and others
TIED BILLS: HB 1491 **IDEN./SIM. BILLS:** SB 1792

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

SUMMARY ANALYSIS

Internet usage and mobile technology have become mainstream, especially among teens and young adults, which has expanded the creation and dissemination of pornography. The majority of Americans, including minors, are exposed to pornography online regularly, and 56 percent of American high school students have viewed pornography in the last year.

Adolescents who view pornography:

- Tend to have sexually permissive views, have more sexual partners in their lifetime, and are more likely to have engaged in certain sexual acts;
- Tend to display more aggression, have more traditional gender role attitudes, and view women as sex objects;
- Report feeling insecure about their ability to perform sexually or the way they look; and
- Tend to reduce their pornography use as their self-confidence increases or their relationships with family and friends improve.

Several states, including Louisiana, Utah, Arkansas, Mississippi, Montana, North Carolina, Texas, and Virginia, have recently passed legislation to require websites that host obscenity or material harmful to minors to verify the age of a visitor and block access to minors.

The bill requires a commercial entity that knowingly and intentionally publishes or distributes a substantial portion of material harmful to minors on a website or application to prohibit access to such material by any person younger than 18 years of age.

The bill requires such a commercial entity to perform reasonable age verification methods to verify that the age of a person attempting to access the material is 18 years of age or older. The reasonable age verification method must be conducted by an independent third-party not affiliated with the commercial entity, and any information used to verify age must be deleted when the age is verified.

Such a commercial entity must provide an easily accessible link or function on its homepage, landing page, or age verification page to allow a minor user or the confirmed parent or guardian of the minor user to report unauthorized or unlawful access. Within 5 days after such report, the commercial entity must prohibit or block future access by the minor.

The bill provides that, if a commercial entity violates the requirements for minor users, it is an unfair and deceptive trade practice actionable under Florida Deceptive and Unfair Trade Practice Act, solely by Department of Legal Affairs. The bill also allows a private cause of action against a commercial entity that fails to prohibit or block a minor from future access to material harmful to minors after a report of unauthorized or unlawful access.

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

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Effects of Harmful Content on Children

Internet usage and mobile technology has become mainstream, especially among teens and young adults.[1]

"Because the Internet is not subject to regulations, it has emerged as a vehicle for circulation of pornography. Pornographic images are available for consumption in the privacy of one's home via the Internet rather than in public adult bookstores or movie theaters. Therefore, the accessibility, affordability, and anonymity have attracted a wider audience. Research in the United States has shown that 66% of men and 41% of women consume pornography on a monthly basis. An estimated 50% of all Internet traffic is related to sex. These percentages illustrate that pornography is no longer an issue of minority populations but a mass phenomenon that influences our society."[2]

Many come across pornography on the internet who are not seeking it, and others seek it out.[3] Adult websites Xvideos and Pornhub are among the most visited in the United States, receiving an average of 693.5 million and 639.6 million monthly visitors, respectively. Of the top 20 most visited websites, four are classified as pornographic.[4]

Twenty-seven percent of young adults first view pornography before the onset of puberty, 70 percent of teens accidentally stumble upon pornography online,[5] and teens may have experienced an increase in unwanted exposure to pornographic content online.[6] A sample of American high school students in 2021 found that 56 percent viewed pornography in 2020.[7]

Research suggests that adolescents who view pornography tend to have more sexually permissive attitudes, have more sexual partners in their lifetime, and are more likely to have engaged in certain sexual acts.[8] Similarly, adolescents who viewed pornography tended to display more aggression, have

---

[1] Eric W. Owens et al., *The Impact of Internet Pornography on Adolescents: A Review of the Research*, 19(1-2) SEXUAL ADDICTION & COMPULSIVITY 99, 99-100 (2012); *See also* PEW RESEARCH CENTER, *Teens, Social Media & Technology Overview 2015: Smartphones Facilitate Shifts in Communication Landscape for Teens,* http://www.pewinternet.org/2015/04/09/teens-social-media-technology-2015/ (last visited Jan. 7, 2024).

[2] Simone Kuhn, PhD, and Jurgen Gallinat, PhD, *Brain Structure and Functional Connectivity Associated With Pornography Consumption, The Brain on Porn,* JAMA Psychiatry, JAMA Network, (July 2014), https://jamanetwork.com/journals/jamapsychiatry/fullarticle/1874574

[3] Josh McDowell Ministry, THE PORN PHENOMENON: THE IMPACT OF PORNOGRAPHY IN THE DIGITAL AGE (2016), research summary available at https://www.barna.com/research/porn-in-the-digital-age-new-research-reveals-10-trends/ (last visited Jan. 7, 2024).

[4] Joel Khalil, *These are the most popular websites right now - and they might just surprise you* (October 2023 edition), TechRadar, https://www.techradar.com/news/porn-sites-attract-more-visitors-than-netflix-and-amazon-youll-never-guess-how-many (last visited Jan. 8, 2024).

[5] KAISER FAMILY FOUNDATION, *Generation Rx.com: How Young People Use the Internet for Health Information*, December 2001, at 12, available at https://kaiserfamilyfoundation.files.wordpress.com/2001/11/3202-genrx-report.pdf.

[6] Kimberly J. Mitchell et al., *Trends in Youth Reports of Sexual Solicitations, Harassment and Unwanted Exposure to Pornography on the Internet*, 40 JOURNAL OF ADOLESCENT HEALTH 116, 124 (2007), available at: http://unh.edu/ccrc/pdf/CV135.pdf (last visited Jan. 7, 2023).

[7] Amanda Giordano, *What to Know About Adolescent Pornography Exposure*, Psychology Today (Feb. 27, 2022), https://www.psychologytoday.com/us/blog/understanding-addiction/202202/what-know-about-adolescent-pornography-exposure (last visited Jan. 7, 2024).

[8] Debra K. Braun-Corville & Mary Rojas, *Exposure to Sexually Explicit Web Sites and Adolescent Sexual Attitudes and Behaviors,* 45(2) J ADOLESCENT HEALTH 153, 156-162 (2009). *See also* Jane D. Brown & Kelly L. L'Engles, *X-Rated: Sexual Attitudes and Behaviors Associated with U.S. Early Adolescents' Exposure to Sexually Explicit Media,* 36 COMM. RSCH. 129-151 (2009). *Contra*. Marie-Therese Luder et al., *Associations between Online Pornography and Sexual Behavior among Adolescents: Myth or Reality?,*

more traditional gender role attitudes, and view women as sex objects.[9] Due to the correlational nature of these findings, researchers were unable to determine if these characteristics were precursors to pornography use or a consequence of it;[10] however, they were able to identify pornography use as a strong exacerbating factor in individuals who have preexisting markers for sexual aggression.[11]

Adolescents who view pornography report feeling insecure about their ability to perform sexually or how they look, and tend to decrease their pornography use as their self-confidence increases or they develop positive relationships with friends and family.[12]

Studies have shown that problematic or excessive pornography use actually changes the reward circuitry in people's brains leading to a loss of self-control, which can lead to addiction.[13]

Eight states have recently passed laws to require websites with pornography to verify the age of a visitor and block access to minors.[14] Those states include Louisiana, Utah, Arkansas, Mississippi, Montana, North Carolina, Texas, and Virginia. The personal story of pop-singer Billie Eilish inspired the law in Louisiana which blocks access to pornography for minors. Eilish reported that she watched a lot of porn when about 11 years old. Ellish believes that the pornography had a drastic effect on her brain and feels "incredibly devastated that I was exposed to so much porn."[15] The author of the bill, a sex addiction therapist, said "I just thought how courageous it was. … It just sort of re-emphasized to me what a problem this is, especially for our children."[16]

Obscenity

While most pornography is not legally obscene and is protected by the First Amendment, it is well established that obscenity[17] is not protected by the First and Fourteenth Amendments and is subject to limited regulation under the police power of states.[18] The U.S. Supreme Court developed the test for

---

40(5) ARCHIVES OF SEXUAL BEHAVIOR 1027-1035 (2011) (finding that pornography use had no association with early sexual imitation or risky sexual behaviors).

[9] Eileen M. Alexy et al., *Pornography as a Risk Marker for an Aggressive Pattern of Behavior among Sexually Reactive Children and Adolescents*, 14(6) J AM. PSYCHIATRIC NURSES ASS'N 442, 450 (2009). *See also* Elisabet Haggstrom-Nordin et al., *Experiences of and Attitudes towards Pornography among a Group of Swedish High School Students*, 14 EURO. J CONTRACEPTION AND REPRODUCTIVE HEALTH CARE 277, 277-284 (2009).

[10] Owens, *Supra* note 1, at 107.

[11] Michelle L. Ybarra & Kimberly J. Mitchell, *X-Rated Material and Perpetration of Sexually Aggressive Behavior Among Children and Adolescents: Is There a Link?,* 8 CyberPsychology and Behavior 473, 473-486 (2011). *See generally,* Paul J. Wright, *A Meta-Analysis of Pornography Consumption and Actual Acts of Sexual Aggression in General Population Studies,* 66(1) J COMM 183-205 (2016).

[12] Lotta Lofgren-Martenson & Sven-Axel Mason, *Lust, Love, and Life: A Qualitative Study of Swedish Adolescents' Perceptions and Experiences with Pornography* 47 J SEX RSCH. 568, 575 (2010).

[13] Simone Kuhn & Jurgen Gallinat, *Brain Structure and Functional Connectivity Associated with Pornography Consumption*, 71(7) JAMA PSYCHIATRY 827, 827-834, *available at* https://jamanetwork.com/journals/jamapsychiatry/fullarticle/1874574?utm_source=Silverchair%20Information%20Systems&utm_medium=email&utm_campaign=JAMAPsychiatry:OnlineFirst05/28/2014#Discussion (last visited Jan. 7, 2024).

[14] Dmytro Sashchuk, *Age verification regulations in the United States of America*, Veriff, (Nov. 15, 2023), https://www.veriff.com/fraud/learn/age-verification-legalization-in-the-united-states-of-america (last visted Jan. 7, 2024); Los Angeles Blade, *Pornhub blocks access as new age verification laws take effect*, Jan. 7, 2024, https://www.losangelesblade.com/2024/01/07/pornhub-blocks-access-as-new-age-verification-laws-take-effect/ (last visited Jan. 7, 2024).

[15] The Guardian, *Billie Eilish says watching porn as a child 'destroyed my brain',* (Dec. 14, 2021) https://www.theguardian.com/music/2021/dec/15/billie-eilish-says-watching-porn-gave-her-nightmares-and-destroyed-my-brain#:~:text=%E2%80%9CI%20think%20it%20really%20destroyed,was%20so%20violent%20and%20abusive.

[16] Marc Novicoff, *A Simple Law Is Doing the Impossible. It's Making the Online Porn Industry Retreat.*, Politico Magazine, Aug. 8, 2024, https://www.politico.com/news/magazine/2023/08/08/age-law-online-porn-00110148 (last visited Jan. 8, 2024).

[17] To be obscene, pornography must, at a minimum, "depict or describe patently offensive 'hard core' sexual conduct." *Miller v. California*, 413 U.S. 15, 27 (1973).

[18] *Johnson v. State,* 351 So. 2d 10, 11 (Fla. 1977); See also*, FCC v. Pacifica Foundation*, 438 U.S. 726 (1978) (Audience, medium, time of day, and method of transmission are relevant factors.).

determining whether material is obscene in *United States v. Miller*.[19] Florida uses the ***Miller* test** to define obscene material, which refers to the status of material that:

- **The average person,** applying contemporary community standards, would find appeals to the prurient interest;
- Depicts or describes, in a patently offensive way, sexual conduct; and
- Taken as a whole, lacks serious literary, artistic, political, or scientific value. [20]

The Florida Supreme Court has determined that the applicable community standard to be used in determining obscenity is **the local county standard**, explaining that such a standard "permits maximum protection of materials acceptable in cosmopolitan areas while not forcing more conservative areas to accept public depiction of conduct they find obscene."[21]

Florida Definition of Material Harmful to Minors

For the purposes of ch. 847, F.S., material which is "harmful to minors" is defined as any reproduction, imitation, characterization, description, exhibition, presentation, or representation, of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement when it:

- Predominantly appeals to a prurient, shameful, or morbid interest;
- Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material or conduct **for minors**; and
- Taken as a whole, is without serious literary, artistic, political, or scientific value **for minors**.

The Florida Supreme Court has found that images in the aid of legitimate scientific or educational purposes, such as a depiction of Michelangelo's David transmitted for an art history class, and an illustration of human genitalia intended for a sex education or biology class, are not materials harmful to minors.[22]

Laws Related to Material Harmful to Minors

There are several federal laws that prohibit access or distribution of harmful or obscene material to a minor:

- Schools and libraries that receive discounts for Internet access or internal connections through an E-rate program must:
  - "Certify that they block or filter Internet access" to (a) obscene pictures, (b) child pornography, and (c) harmful to minors on computers accessed by minors, and
  - Implement an Internet safety policy.[23]
- It is a crime to knowingly use a misleading domain name on the Internet with the intent to deceive a minor into viewing material that is harmful to minors.[24]
- It a crime to knowingly embed words or digital images into the source code of a website with the intent to deceive a minor into viewing material that is harmful to minors.[25]
- It is a crime to knowingly make any commercial purpose Internet communication that includes any material harmful to minors available to any minor.[26]

Additionally, in Florida, it is a crime for any person to knowingly transmit or believe that he or she was transmitting an image, information, or data that is harmful to minors via an electronic device, to a specific individual known by the defendant to be a minor.[27]

---

[19] *Miller*, *413 U.S. 15*.
[20] S. 847.001(12), F.S.
[21] *Johnson*, 351 So. 2d at 11.
[22] *Simmons v. State*, 944 So. 2d 317, 329 (Fla. 2006).
[23] Federal Communications Commission, *Children's Internet Protection Act (CIPA)*, https://www.fcc.gov/consumers/guides/childrens-Internet-protection-act (last visited Jan. 7, 2024).
[24] The definition of "harmful to minors parallel the *Miller* test for obscenity, as applied to minors. 18 U.S.C. § 2252B
[25] 18 U.S.C. § 2252C
[26] 47 U.S.C. § 231
[27] S. 847.0138, F.S.

Age Verification

Constitutionality of Age Verification

The 1996 Communications Decency Act (CDA) was designed "to protect minors from 'indecent' and 'patently offensive' communications on the Internet" by prohibiting "the knowing transmission of obscene or indecent messages," and allowed websites to defend themselves by either making good faith efforts to restrict such communications to adults, or implementing age verification measures.[28]

In *Reno v. American Civil Liberties Union*,[29] the U.S. Supreme Court held that the provision of the CDA prohibiting the transmission of indecent messages[30] is an unconstitutional, content-based restriction of First Amendment free speech rights. The U.S. Supreme Court also held that requiring adults to prove their age to access certain content is an unconstitutional limit on free speech, when there are less restrictive means to curb access to minors, such as filters and parental controls.[31]

However, in Justice O'Connor's partial dissent, she found that since technology was insufficient for ensuring that minors could be excluded while still providing adults full access to protected content, the CDA was unconstitutional. Justice O'Connor allowed for potentially permitting such a law in the future as technology advances.[32]

Age Verification Laws

Several states, including Louisiana, Utah, Arkansas, Mississippi, Montana, North Carolina, Texas, and Virginia, have recently passed legislation to require websites that host obscenity or material harmful to minors to verify the age of a visitor and block access to minors.[33]

For example, Utah requires a commercial entity that knowingly and intentionally publishes or distributes material harmful to minors on the Internet from a website that contains a substantial portion of such material to perform reasonable age verification methods to verify the age of an individual attempting to access the material. Other aspects of the law include:

- A commercial entity who violates this provision is liable for damages resulting from a minor's accessing the material, including court costs and reasonable attorney fees.[34]
- There is no state enforcement mechanism.

Some of these state laws have recently been challenged on First Amendment grounds.[35] The law in Texas has been enjoined, but the suits challenging the laws in Utah and Louisiana have been dismissed for lack of jurisdiction, as the laws rely on private enforcement, not state enforcement. There may be additional challenges after a private suit is filed.

Unlike past legislative efforts to curb online pornography by declaring the websites a danger to public health, the recent laws have had a demonstrated effect against such websites. Pornhub, a large pornography website, gets more global users than Amazon or Netflix. In 2019, the last year Pornhub

---

[28] Ronald Kahn, *Reno v. American Civil Liberties Union (1997)*, Free Speech Center at Middle Tennessee State University (Dec. 15, 2023), Reno v. American Civil Liberties Union (1997) - The Free Speech Center (mtsu.edu) (last visited Jan. 7, 2024).
[29] *Reno v. American Civil Liberties Union, 521 U.S. 844 (1997).*
[30] It is still illegal to transmit obscene messages to minors. United States Department of Justice, *Obscenity,* https://www.justice.gov/criminal/criminal-ceos/obscenity#:~:text=Federal%20law%20strictly%20prohibits%20the,is%20punishable%20under%20federal%20law (last visited Jan. 9, 2024).
[31] *Reno*, 521 U.S. 844; Ronald Kahn, *supra* note 28.
[32] *Id*.
[33] Sashchuk, *supra* note 15; Los Angeles Blade, *supra* note 15.
[34] Utah Code Annotated § 78B-3-1002.
[35] *See Free Speech Coalition Inc. v. LeBlanc*, No. 2:23-cv-2123 (E.D. La.); [35] *Free Speech Coalition, Inc. v. Anderson*, 2023 WL 4899509 (D. Utah 2023); *Free Speech Coalition, Inc. v. Colmenero*, 2023 WL 5655712 (W.D. Texas 2023); Christopher Brown, *Porn Industry Group Loses Challenge to Louisiana Age-Check Law*, Bloomberg Law, https://news.bloomberglaw.com/privacy-and-data-security/porn-industry-group-loses-challenge-to-louisiana-age-check-law (last visited Jan. 7, 2024).

released its data, the site was visited 42 billion times, or 115 million times each day.[36] In response to these bills, Pornhub has ceased access to users in Montana, North Carolina, Utah, Arkansas, Mississippi, and Virginia, via geoblocking.[37]

Age Verification Mechanisms

There are several ways that Internet companies verify, or attempt to verify, age. Options include using:[38]

- Government identity documents, which generally requires the user to submit a government document or a third party to the company for review.
- Phone records, which generally checks the user's phone for parental controls.
- Credit score databases, which generally requires the user to enter identifying information, which is then confirmed through a credit check agency.
- Biometric age estimation, which generally requires a facial analysis to estimate age.
- Credit cards, which generally requires to supply credit card information for validation.
- Open banking, which generally requires the user to log into their own online banking system, and give approval for date of birth data to be supplied to a bank-approved third party age verification provider.
- Algorithmic profiling, which generally assesses the likely age of a user based on their online behavior.
- Self-declaration, which generally requires the user to tick a box or self-enter a birthdate.
- Zero knowledge proofs, which generally enables users to upload identity documents to private servers and securely share encrypted, anonymous "proofs" of age to a company, through a process called hashing, without actually transmitting the identity documents to the company.[39]

Many industries are required to use age verification methods, including for:

- Using tobacco,[40]
- Engaging in gambling,[41]
- Consuming alcohol,[42] and
- Purchasing firearms.[43]

When verifying age online, people usually share personal information, including:

- Full name and location.
- Email or phone number (when using two-factor authorization).
- Home address.

Some social media platforms ask for age identifying information to create an account, but such information is not always verified. For example, Facebook requires new users to self-report a birthdate

---

[36] Marc Novicoff, *A Simple Law Is Doing the Impossible. It's Making the Online Porn Industry Retreat.*, Politico Magazine, Aug. 8, 2024, https://www.politico.com/news/magazine/2023/08/08/age-law-online-porn-00110148 (last visited Jan. 8, 2024).
[37] Wes Davis, *Pornhub blocks North Carolina and Montana as porn regulation spreads*, The Verge, https://www.theverge.com/2024/1/2/24022539/pornhub-blocked-montana-north-carolina-age-verification-law-protest (last visited Jan. 8, 2024).
[38] The Age Verification Providers Association, *How do you check age online?*, https://avpassociation.com/avmethods/ (last visited Jan. 7, 2024).
[39] Bessie Liu, *Aleo blockchain adds zPass, a ZK protocol for verifying identities*, Blockworks, https://blockworks.co/news/zk-decentralized-identity-verification (last visited Jan. 6, 2024).
[40] S. 569.14, F.S. Additionally, the U.S. Food and Drug Administration (FDA) recommends using independent, third-party age- and identity-verification services that compare customer information against third-party data sources for online sellers of tobacco. FDA, *Enforcement Priorities for Electronic Nicotine Delivery Systems (ENDS) and Other Deemed Products on the Market Without Premarket Authorization (Revised)*, p. 7, April 2020, https://www.fda.gov/media/133880/download (last visited Jan. 9, 2024).
[41] S. 551.113(1), F.S.; S. 849.0931(10), F.S.
[42] S. 84
[43] S. 790.065, F.S.

to confirm age of at least 13 years old. However, Meta is currently testing new ways to age verify, including through the use of biometrics and online interviews.[44]

Additionally, adult websites in the United States generally use a checkbox for a user to confirm they are at least 18 years of age. Recently, however, several states and the United Kingdom passed laws to require adult websites to use age verification measures to block adult content from being accessed by minors.[45]

Identity theft is a potential risk when users reveal this information, and websites can collect the information revealed through age verification processes and combine it with other data for targeted advertisements or sharing that data with third parties.[46]

However, there are numerous minimally invasive verification techniques that do not require sharing any age verification information at all with social media platforms.[47] Age verification systems have progressed considerably from a generation ago, when the Supreme Court held that age-verification methods often failed at that task and were too burdensome for law abiding adults.[48]

Age fabrication is a widespread issue. For example, underage customers in the United States consumed 11.73% of all alcoholic drinks sold in the U.S. market in 2016, and 49.8% of tobacco and vape shops in California failed to check the ID of underage decoys in 2018.[49]

Florida Deceptive and Unfair Trade Practices Act

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.[50] FDUTPA was modeled after the Federal Trade Commission (FTC) Act.[51]

The Department of Legal Affairs (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.[52] 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

---

[44] Meta, *Introducing New Ways to Verify Age on Instagram*, Jun. 23, 2022, https://about.fb.com/news/2022/06/new-ways-to-verify-age-on-instagram/ (last visited Jan. 9, 2024).
[45] Masha Borak, UK introduces Online Safety Bill mandating age verification, Oct. 27, 2023, https://www.biometricupdate.com/202310/uk-introduces-online-safety-bill-mandating-age-verification#:~:text=The%20United%20Kingdom%20has%20finally,checking%20measures%2C%20including%20biometric%20technology. (last visited Jan. 9, 2024); Dmytro Sashchuk, *Age verification regulations in the United States of America*, Veriff, (Nov. 15, 2023), https://www.veriff.com/fraud/learn/age-verification-legalization-in-the-united-states-of-america (last visted Jan. 7, 2024).
[46] John Reynolds, *Don't risk identity fraud just to play that video game — do this instead*, Aleo, https://aleo.org/post/dont-risk-identity-fraud-to-play-that-video-game/#:~:text=The%20risks%20of%20today's%20age,public%20records%2C%20or%20ID%20scans) (last visited Jan. 7, 2024).
[47] The Federalist Society, *Age Verification for Social Media: A Constitutional and Reasonable Regulation* (Aug. 7, 2023), https://fedsoc.org/commentary/fedsoc-blog/age-verification-for-social-media-a-constitutional-and-reasonable-regulation (last visited Jan. 8, 2024).
[48] *Ashcroft v. American Civil Liberties Union*, 542 U.S. 656 (2004).
[49] Persona, *Age verification system: How to add it into your business,* https://withpersona.com/blog/incorporate-age-verification-into-business (last visited Jan. 9, 2024).
[50] Ch. 73-124, L.O.F.; s. 501.202, F.S.
[51] 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).
[52] 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 Jan. 6, 2024).

writing, or the state attorney fails to act within 90 days after a written complaint is filed.[53] In certain circumstances, consumers may also file suit through private actions.[54]

The DLA and the SAO have powers to investigate FDUTPA claims, which include:
- Administering oaths and affirmations;
- Subpoenaing witnesses or matter; and
- Collecting evidence.[55]

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.[56]

FDUTPA may not be applied to certain entities in certain circumstances, including:
- 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.[57]

Effect of the Bill

The bill provides the following definitions:
- "Commercial entity" includes a corporation, limited liability company, partnership, limited partnership, sole proprietorship, and any other legally recognized entity.
- "Distribute" means to issue, sell, give, provide, deliver, transfer, transmute, circulate, or disseminate by any means.
- "Material harmful to minors" means any material that:
  - The average person applying contemporary community standards would find, taken as a whole, appeals to the prurient interest;
  - Depicts or describes, in a patently offensive way, sexual conduct;[58] and
  - When taken as a whole, lacks serious literary, artistic, political, or scientific value for minors.
- "News-gathering organization" means any of the following:
  - A newspaper, news publication, or news source, printed or published online or on a mobile platform, engaged in reporting current news and matters of public interest, and includes an employee who can provide documentation of such employment.
  - A radio broadcast station, television broadcast station, cable television operator, or wire service, and includes an employee who can provide documentation of such employment.
- "Publish" means to communicate or make information available to another person or entity on a publicly available website or application.
- "Reasonable age verification methods" means any commercially reasonable method regularly used by government agencies or businesses for the purpose of age and identity verification.
- "Substantial portion" means more than 33.3 percent of total material on a website or application.

[53] S. 501.203(2), F.S.
[54] S. 501.211, F.S.
[55] S. 501.206(1), F.S.
[56] 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.
[57] S. 501.212(4), F.S.
[58] As defined in s. 847.001(19), F.S.

The bill requires a commercial entity that knowingly and intentionally publishes or distributes a substantial portion of material harmful to minors on a website or application to prohibit access to such material by any person younger than 18 years of age.

The bill requires such a commercial entity to perform reasonable age verification methods to verify that the age of a person attempting to access the material is 18 years of age or older. The reasonable age verification method must be conducted by an independent third-party not affiliated with the commercial entity.

Any personal identifying information used to verify age may not be:

- Retained by the third party or social media platform once the age has been verified.
- Used for any other purpose.

Such a commercial entity must provide an easily accessible link or function on its homepage, landing page, or age verification page to allow a minor user or the confirmed parent or guardian of the minor user to report unauthorized or unlawful access. Within 5 days after such report, the commercial entity must prohibit or block future access by the minor.

The bill does not apply to:

- A bona fide news or public interest broadcast, website video, report, or event and does not affect the rights of a news-gathering organization.
- An Internet service provider or its affiliates or subsidiaries, a search engine, or a cloud service provider, to the extent the it is not responsible for the creation of the material harmful to minors.

The bill provides that, if a commercial entity violates the requirements for minor users, it is an unfair and deceptive trade practice actionable under FDUTPA solely by DLA.[59] In addition to other FDUTPA remedies, DLA may collect a civil penalty of up to $50,000 per violation.

The bill allows a private cause of action against a commercial entity that fails to prohibit or block a minor from future access to material harmful to minors after a report of unauthorized or unlawful access. The social media platform is liable to such Florida minor for such access, including up to $10,000 in damages, court costs and reasonable attorney fees. Such an action must be brought within 1 year after the violation.

The bill requires that any action brought pursuant to the bill may only be brought on behalf of a Florida minor, and does not preclude any other available remedy at law or equity against such commercial entity.

The bill allows DLA to adopt rules to implement the bill.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Creates s. 501.1737, F.S.; requiring certain commercial entities who have materials harmful to minors on their website to verify the age of users and block access by minors under 18; providing remedies.

Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

[59] DLA is not prohibited from bringing an action against:

- Any person or activity regulated under laws administered by OIR or DFS; and
- Banks, credit unions, and savings and loan associations regulated by OFR or federal agencies.

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 enforcing the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Certain commercial entities will need to implement new procedures for age verification, including using third party verification services, which depending on whether they currently use such services, they may incur additional expenses.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   Age verification to view certain harmful content is a complex issue that raises several constitutional concerns. The language in the bill may implicate consideration of a number of constitutional protections.

   First Amendment Right to Freedom of Speech

   Constitutional challenges to age verification laws may raise several issues. Many of the questions regarding the constitutionality of age verification laws may concern whether such laws are sufficiently narrow to avoid inhibiting more speech than necessary. The degree of tailoring required may vary depending on whether a given law is content based or content neutral. In both circumstances a law's constitutionality would depend on several factors, including the:

   - Strength of the government's interest,
   - Amount of protected speech that the law directly or indirectly restricts, and
   - Availability of less speech-restrictive alternatives.[60]

   Content-neutral regulations on free speech are legitimate if they advance important governmental interests that are not related to suppression of free speech, and do not substantially burden more speech than necessary to further those interests.[61]

[60] Holmes, Eric N. (2023, August 17), *Online Age Verification (Part III): Select Constitutional Issues* (CRS Report No. LSB11022), https://crsreports.congress.gov/product/pdf/LSB/LSB11022 (last visited Jan. 9, 2024).
[61] *Turner Broadcasting System, Inc. v. F.C.C.*, 520 U.S. 180,189 (U.S. 1997).

However, the U.S. Supreme Court typically regards content-based laws[62] as presumptively unconstitutional.[63] To determine whether a content based law passes constitutional muster, courts generally apply a legal standard called strict scrutiny, under which the government must show that the law is the "least restrictive means" of advancing a "compelling" governmental interest.[64]

In general, the U.S. Supreme Court has held that requiring adults to prove their age to access certain content is an unconstitutional, content-based limit on free speech, when there are less restrictive means to curb access to minors, such as filters and parental controls.[65]

However, in Justice O'Connor's *Reno* dissent, the age verification requirements were labeled as a zoning law, creating separate "adult zones" on the Internet. Because technology was insufficient for ensuring that minors could be excluded while still providing adults full access to protected content, it was viewed as ultimately unconstitutional, but the dissent allowed for potentially permitting a law in the future when Internet zoning was technologically feasible.[66]

State Authority to Regulate to Protect Minors

The U.S. Supreme Court has determined that the state has a "compelling interest in protecting the physical and psychological well-being of minors," which "extends to shielding minors from the influence of literature that is not obscene by adult standards."[67] In doing so, however, the means must be narrowly tailored to achieve that end so as not to unnecessarily deny adults access to material which is constitutionally protected indecent material.[68]

Contracts

Article I, Section 10 of the United States Constitution prohibits a state from passing any law impairing the obligation of contracts. Article I, Section 10 of the Florida Constitution also prohibits the passage of laws impairing the obligation of contracts.

Supremacy Clause

Article VI, Paragraph 2 of the United States Constitution, commonly referred to as the Supremacy Clause, establishes that the federal constitution, and federal law generally, take precedence over state laws and constitutions. The Supremacy Clause also prohibits states from interfering with the federal government's exercise of its constitutional powers and from assuming any functions that are exclusively entrusted to the federal government. It does not, however, allow the federal government to review or veto state laws before they take effect.[69]

Section 230 of the federal Communications Decency Act (CDA),[70] in part, specifies that "[n]o provider ... of an interactive computer service shall be treated as the publisher or speaker of any

---

[62] Those that regulate speech by discriminating against certain content through its text (i.e., "on its face") or through a discriminatory purpose.
[63] *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015).
[64] *Sable Comm's v. F.C.C*, 492 U.S. 115 (1989).
[65] *Ashcroft v. American Civil Liberties Union*, 542 U.S. 656 (2004); Ronald Kahn, *Reno v. American Civil Liberties Union (1997)*, Free Speech Center at Middle Tennessee State University, Dec. 15, 2023, Reno v. Am. C. L. Union (1997) - The Free Speech Center (mtsu.edu) (last visited Jan. 7, 2024).
[66] *Reno v. Am. C. L. Union, 521 U.S. 844, 886 (1997) (O'Connor concurring in part and dissenting in part); (The court also considered overbreadth and vagueness arguments, and determined that the CDA was too broad and vague).*
[67] *Sable Commc's of California, Inc. vs. F.C.C. , 492 U.S. 115, 126 (1989)*.
[68] *Ashcroft v. American Civil Liberties Union*, 542 U.S. 656 (2004); *Cashatt v. State*, 873 So. 2d 430, 434 (Fla. 1st DCA 2004). But see, *Erznoznik v. City of Jacksonville*, 422 U.S. 205 (1975) (Determining regulation overly broad.)
[69] Cornell Law School, Legal Information Institute, *Supremacy Clause*, https://www.law.cornell.edu/wex/supremacy_clause (last visited Feb. 23, 2021).
[70] *Force*, 934 F.3d at 63 (quoting *Ricci v. Teamsters Union Local 456*, 781 F.3d 25, 28 (2d Cir. 2015) (quoting *Zeran v. Am. Online, Inc.*, 129 F.3d 327, 330 (4th Cir. 1997)).

information provided by another information content provider"[71] and specifically prohibits all inconsistent causes of action and liability imposed under any State or local law.[72]

B. RULE-MAKING AUTHORITY:

The bill provides DLA with rulemaking authority to promulgate rules to enforce the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

[71] 47 U.S.C. § 230(c)(1).
[72] 47 U.S.C. § 230(e).

A bill to be entitled

An act relating to online access to materials harmful to minors; creating s. 501.1737, F.S.; providing definitions; requiring a commercial entity that publishes or distributes material harmful to minors on a website or application that contains a substantial portion of such material to perform reasonable age verification methods, prevent access to such material by minors, and provide methods for reporting unauthorized or unlawful access; prohibiting the retention of certain personal identifying information; providing applicability and construction; authorizing the Department of Legal Affairs to bring an action for violations under the Florida Deceptive and Unfair Trade Practices Act; providing civil penalties; providing for private causes of action; providing that certain commercial entities are subject to the jurisdiction of state courts; providing construction; authorizing the department to adopt rules; providing an effective date.

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

Section 1. Section 501.1737, Florida Statutes, is created to read:

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

501.1737 Age verification for online access to materials harmful to minors.—

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

(a) "Commercial entity" includes a corporation, limited liability company, partnership, limited partnership, sole proprietorship, and any other legally recognized entity.

(b) "Department" means the Department of Legal Affairs.

(c) "Distribute" means to issue, sell, give, provide, deliver, transfer, transmute, circulate, or disseminate by any means.

(d) "Material harmful to minors" means any material that:

1. The average person applying contemporary community standards would find, taken as a whole, appeals to the prurient interest;

2. Depicts or describes, in a patently offensive way, sexual conduct as specifically defined in s. 847.001(19); and

3. When taken as a whole, lacks serious literary, artistic, political, or scientific value for minors.

(e) "News-gathering organization" means any of the following:

1. A newspaper, news publication, or news source, printed or published online or on a mobile platform, engaged in reporting current news and matters of public interest, and includes an employee who can provide documentation of such employment.

2. A radio broadcast station, television broadcast station, cable television operator, or wire service, and includes an employee who can provide documentation of such employment.

(f) "Publish" means to communicate or make information available to another person or entity on a publicly available website or application.

(g) "Reasonable age verification methods" means any commercially reasonable method regularly used by government agencies or businesses for the purpose of age and identity verification.

(h) "Substantial portion" means more than 33.3 percent of total material on a website or application.

(2) A commercial entity that knowingly and intentionally publishes or distributes material harmful to minors on a website or application, if the website or application contains a substantial portion of material harmful to minors, must:

(a) Perform reasonable age verification methods to verify the age of a person attempting to access the material is 18 years of age or older and prevent access to the material by a person younger than 18 years of age. The reasonable age verification method must be conducted by an independent third-party not affiliated with the commercial entity.

(b) Provide an easily accessible link or function on its homepage, landing page, or age verification page to allow a

minor user or the confirmed parent or guardian of a minor user to report unauthorized or unlawful access. Within 5 days after such report, the commercial entity must prohibit or block future access by such minor.

(3) A commercial entity or third party that performs reasonable age verification methods may not retain any personal identifying information of the person seeking online access to material harmful to minors any longer than is reasonably necessary to verify the age of the person. Any personal identifying information collected for age verification may not be used for any other purpose.

(4)(a) This section does not apply to any bona fide news or public interest broadcast, website video, report, or event and does not affect the rights of a news-gathering organization.

(b) An Internet service provider or its affiliates or subsidiaries, a search engine, or a cloud service provider does not violate this section solely for providing access or connection to or from a website or other information or content on the Internet or a facility, system, or network not under the provider's control, including transmission, downloading, intermediate storage, or access software, to the extent the provider is not responsible for the creation of the content of the communication which constitutes material harmful to minors.

(5)(a) Any violation of subsection (2) or subsection (3) is an unfair and deceptive trade practice actionable under part

II of this chapter solely by the department on behalf of a Florida minor against a commercial entity. If the department has reason to believe that a commercial entity is in violation of subsection (2) or subsection (3), the department, as the enforcing authority, may bring an action against the commercial entity 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 any other remedy under part II of this chapter, the department may collect a civil penalty of up to $50,000 per violation of this section.

(b) A commercial entity that violates subsection (2) for failing to prohibit or block a minor from future access to material harmful to minors after a report of unauthorized or unlawful access is liable to the minor for such access, including court costs and reasonable attorney fees as ordered by the court. Claimants may be awarded up to $10,000 in damages. A civil action for a claim under this paragraph must be brought within 1 year after the violation.

(c) Any action under this subsection may only be brought on behalf of or by a Florida minor.

(6) For purposes of bringing an action under subsection (5), a commercial entity that publishes or distributes material harmful to minors on a website or application, if the website or application contains a substantial portion of material harmful to minors and such website or application is available to be

accessed in Florida, 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.

(7) This section does not preclude any other available remedy at law or equity.

(8) The department may adopt rules to implement this section.

Section 2. This act shall take effect July 1, 2024.

REGULATORY REFORM AND ECONOMIC DEVELOPMENT SUBCOMMITTEE

HB 3 by Rep. Tramont
Online Access to Materials Harmful to Minors

AMENDMENT SUMMARY
January 11, 2024

Amendment 1 by Rep. Tramont (line 34):

- Corrects two technical errors – a misspelled word and a grammatical error.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Regulatory Reform & Economic Development Subcommittee
Representative Tramont offered the following:

Amendment

Remove lines 34-54 and insert:

deliver, transfer, transmit, circulate, or disseminate by any means.

(d) "Material harmful to minors" means any material that:

1. The average person applying contemporary community standards would find, taken as a whole, appeals to the prurient interest;

2. Depicts or describes, in a patently offensive way, sexual conduct as specifically defined in s. 847.001(19); and

3. When taken as a whole, lacks serious literary, artistic, political, or scientific value for minors.

(e) "News-gathering organization" means any of the following:

1. A newspaper, news publication, or news source, printed or published online or on a mobile platform, engaged in reporting current news and matters of public interest, and an employee thereof who can provide documentation of such employment.

2. A radio broadcast station, television broadcast station, cable television operator, or wire service, and an employee thereof who can provide documentation of such employment.

HB 849

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 849 Veterinary Practices
SPONSOR(S): Killebrew and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1040, SB 1162

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

SUMMARY ANALYSIS

In Florida, the practice of "veterinary medicine" means the diagnosis of medical conditions of animals, and the prescribing or administering of medicine and treatment to animals for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease. Veterinarians are regulated by the Board of Veterinary Medicine (Board) in the Department of Business and Professional Regulation (DBPR) pursuant to ch. 474, F.S., relating to veterinary medical practice (practice act). The purpose of the practice act is to ensure that every veterinarian practicing in this state meets minimum requirements for safe practice to protect public health and safety.

Current law defines a "veterinarian/client/patient relationship" (VCPR) as one in which a veterinarian has assumed responsibility for making medical judgments about the health of an animal and its need for medical treatment. Veterinarians are permitted to prescribe drugs in the course of veterinary practice; however, the veterinarian must be either personally acquainted with the keeping and caring of the animal and have recently seen the animal, or have made medically appropriate and timely visits to the premises where the animal is kept before prescribing drugs in the course of practice.

The use of electronic communications to facilitate patient health care (telehealth) is not addressed in the practice act and is not specifically prohibited or authorized in Florida. However, medical doctors may practice telehealth in Florida and may establish a patient relationship with a patient evaluation via telehealth under certain circumstances.

The bill creates an act cited as the Providing Equity in Telehealth Services (PETS) Act, which establishes a framework for the practice of veterinary telehealth as follows:

- Authorizes a veterinarian practicing veterinary telehealth to order, prescribe, or make available medicinal drugs or drugs as defined in s. 465.003, F.S., the Florida Pharmacy Act.
- Limits a veterinarian's authority to use telehealth to prescribe a controlled substance listed in Schedule II of s. 893.03, F.S.
- Allows veterinarians who are personally acquainted with the caring or keeping of an animal or group of animals for food-producing animal operations, who have recently seen the animals or made medically appropriate and timely visits to practice veterinary telehealth for these animals.
- Specifies that only Florida licensed veterinarians may practice veterinary telehealth, and grants the Board jurisdiction over the practice of veterinary telehealth.
- Allows an animal control authority under the "indirect supervision" of a veterinarian to administer rabies vaccinations.

The bill is not expected to have a fiscal impact on state or local government, and may have a positive fiscal impact on the private sector.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Practice of Veterinary Medicine

The Board of Veterinary Medicine (Board) in the Department of Business and Professional Regulation (DBPR) implements the provisions of ch. 474, F.S., relating to veterinary medical practice (practice act). The purpose of the practice act is to ensure that every veterinarian practicing in this state meets minimum requirements for safe practices to protect public health and safety.[1]

A "veterinarian" is a health care practitioner licensed by the Board to engage in the practice of veterinary medicine in Florida[2] and they are subject to disciplinary action from the Board for various violations of the practice act.[3]

The practice of "veterinary medicine" is the diagnosis of medical conditions of animals, and the prescribing or administering of medicine and treatment to animals for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease, or holding oneself out as performing any of these functions.[4]

Veterinary medicine includes, with respect to animals:[5]

- Surgery;
- Acupuncture;
- Obstetrics;
- Dentistry;
- Physical therapy;
- Radiology;
- Theriogenology (reproductive medicine);[6] and
- Other branches or specialties of veterinary medicine.

The practice act does not apply to the following categories of persons:

- Veterinary aides, nurses, laboratory technicians, preceptors,[7] or other employees of a licensed veterinarian, who administer medication or provide help or support under the responsible supervision[8] of a licensed veterinarian;
- Certain non-Florida licensed veterinarians who are consulting upon request of a Florida-licensed veterinarian on the treatment of a specific animal or on the treatment on a specific case of the animals of a single owner.
- Faculty veterinarians when they have assigned teaching duties at accredited[9] institutions;

---

[1] S. 474.201, F.S.
[2] S. 474.202(11), F.S.
[3] Ss. 474.213 & 474.214, F.S.
[4] *See* s. 474.202(9), F.S. Also included is the determination of the health, fitness, or soundness of an animal, and the performance of any manual procedure for the diagnosis or treatment of pregnancy or fertility or infertility of animals.
[5] *See* s. 474.202(13), F.S. S. 474.202(1), F.S., defines "animal" as "any mammal other than a human being or any bird, amphibian, fish, or reptile, wild or domestic, living or dead."
[6] Theriogenology is a branch of veterinary medicine concerned with veterinary obstetrics and with the diseases and physiology of animal reproductive systems. *See* https://www.merriam-webster.com/medical/theriogenology (last visited Jan. 5, 2024).
[7] A preceptor is a skilled practitioner or faculty member who directs, teaches, supervises, and evaluates students in a clinical setting to allow practical experience with patients. *See also* https://www.merriam-webster.com/dictionary/preceptor#medicalDictionary (last visited Jan. 56, 2024).
[8] The term "responsible supervision" is defined in s. 474.202(10), F.S., as the "control, direction, and regulation by a licensed doctor of veterinary medicine of the duties involving veterinary services" delegated to unlicensed personnel.
[9] Ss. 474.203(1) and (2), F.S., provide that accreditation of a school or college must be granted by the American Veterinary Medical Association (AVMA) Council on Education, or the AVMA Commission for Foreign Veterinary Graduates.

- Certain graduated intern/resident veterinarians of accredited institutions;
- Certain students in a school or college of veterinary medicine who perform assigned duties by an instructor or work as preceptors;
- Certain doctors of veterinary medicine employed by a state agency or the United States Government;
- Persons or their employees caring for the persons' own animals, as well as certain part-time or temporary employees, or independent contractors, who are hired by an owner to help with herd management and animal husbandry tasks; and
- Certain entities or persons[10] that conduct experiments and scientific research on animals as part of the development of pharmaceuticals, biologicals, serums, or treatment methods of treatment or techniques to diagnose or treatment of human ailments, or in the study and development of methods and techniques applicable to the practice of veterinary medicine.[11]

Any permanent or mobile establishment where a licensed veterinarian practices must have a premises permit issued by DBPR.[12] Each person to whom a veterinary license or premises permit is issued must conspicuously display such document in her or his office, place of business, or place of employment in a permanent or mobile veterinary establishment or clinic.[13]

By virtue of accepting a license to practice veterinary medicine in Florida, a veterinarian consents to:
- Render a handwriting sample to an agent of the department and, further, to have waived any objections to its use as evidence against her or him.
- Waive the confidentiality and authorize the preparation and release of medical reports pertaining to the mental or physical condition of the licensee when the department has reason to believe that a violation of this chapter has occurred and when the department issues an order, based on the need for additional information, to produce such medical reports for the time period relevant to the complaint.[14]

For Fiscal Year 2021-2022, there were 12,360 actively licensed veterinarians in Florida. DBPR received 568 complaints, which resulted in 26 disciplinary actions.[15]

Veterinarian/Client/Patient Relationship

The practice act defines a "patient" as any animal for which the veterinarian practices veterinary medicine.[16]

The practice act defines a "veterinarian/client/patient relationship" (VCPR) as one in which a veterinarian has assumed responsibility for making medical judgments about the health of an animal and its need for medical treatment.[17]

Veterinarians are permitted to prescribe drugs in the course of veterinary practice, but may be disciplined by the Board for certain related violations, including ordering, prescribing, or making available medicinal drugs or drugs[18] or controlled substances[19] for use other than for the specific treatment of animal patients for which there is a documented VCPR and without:

---

[10] *See* s. 474.203(6), F.S., which states that the exemption applies to "[s]tate agencies, accredited schools, institutions, foundations, business corporations or associations, physicians licensed to practice medicine and surgery in all its branches, graduate doctors of veterinary medicine, or persons under the direct supervision thereof ...."
[11] *See* s. 474.203, F.S.
[12] S. 474.215(1), F.S.
[13] S. 474.216, F.S.
[14] S. 474.2185, F.S.
[15] Department of Business and Professional Regulation, *Division of Professions Annual Report Fiscal Year 2021-2022*, http://www.myfloridalicense.com/DBPR/os/documents/Division%20Annual%20Report%20FY%2021-22.pdf (last visited Jan. 5, 2024).
[16] S. 474.202(8), F.S.
[17] S. 474.202(12), F.S.
[18] S. 465.003(8), F.S.

- Having sufficient knowledge of the animal to initiate at least a general or preliminary diagnosis of the medical condition of the animal, which means that the veterinarian is personally acquainted with the keeping and caring of the animal and has recently seen the animal or has made medically appropriate and timely visits to the premises where the animal is kept;
- Being available to provide for follow-up care and treatment in case of adverse reactions or failure of the regimen of therapy; and
- Maintaining records which document patient visits, diagnosis, treatment, and other relevant information required under the practice act.[20]

Veterinary Telemedicine

The use of electronic communications to facilitate patient health care (veterinary telemedicine) is not addressed in the practice act and is not specifically prohibited or authorized for practitioners of veterinary medicine in Florida.[21]

According to research conducted by the American Veterinary Medical Association (AVMA), almost one-third of all pets in the U.S. do not regularly see a veterinarian.[22] The reasons for this include cost of veterinary care, logistical obstacles, and a shortage of licensed veterinarians.[23]

Veterinary telemedicine has been found to "help pet owners avoid additional expenses related to unnecessary time off work or transportation and may provide cost-effective options. Telemedicine can also address problems with bringing pets to clinics that may be faced by many pet owners, such as seniors, disabled individuals, those without transportation, and owners of fearful, large, or potentially aggressive pets."[24]

"Interest in veterinary telemedicine has grown significantly in recent years, driven in part by a critical shortage of veterinary professionals in the workforce and boosted by COVID-19 pandemic emergency orders that temporarily suspended legal barriers to veterinary telemedicine."[25]

Expanding access to veterinary telemedicine may alleviate some of these problems, including, "industry problems with workforce shortages of veterinary professionals, increased caseloads, and limited work-life balance."[26]

In the human health setting, a 50 state survey conducted by the AVMA found that "all states allow a physician to establish a relationship with a new patient over telemedicine."[27] However, the same approach does not appear to exist with veterinary medicine.

Opponents of veterinary telemedicine argue that animals cannot articulate symptoms like humans, making physical examinations necessary to diagnose animal ailments. However, it has been found that "while animals cannot verbally communicate, they provide behavioral signals, which can potentially be more informative than seeing an animal in an unfamiliar place where the animal is not behaving as it

---

[19] S. 893.02(4), F.S.
[20] S. 474.214(1)(y)., F.S.
[21] R. 64B8-9.0141, F.A.C. Currently, medical doctors may practice telemedicine in Florida in a patient relationship with a patient evaluation, under certain circumstances.
[22] Malinda Larkin, *New, Old Challenges Beg for Radical Change in Veterinary Profession*, JAVMA News (Dec. 3, 2020), https://www.avma.org/javma-news/2020-12-15/new-old-challenges-beg-radical-change-veterinary-profession (last visited Jan. 9, 2024).
[23] The Veterinary Care Accessibility Project, *Veterinary Care Accessibility Score*, https://www.accesstovetcare.org/ (last visited Jan. 9, 2024).
[24] Camille DeClementi, Jennifer Hobgood, and Diana Ferguson, *IN THE CARDS: BETTING ON VETERINARY TELEMEDICINE LEGAL REFORM*, Florida Bar Journal, (Dec. 2022), https://www.floridabar.org/the-florida-bar-journal/in-the-cards-betting-on-veterinary-telemedicine-legal-reform/ (last visited Jan. 9, 2024).
[25] *Id.*
[26] *Id.*
[27] American Medical Association, *50-State Survey: Establishment of a Patient-Physician Relationship Via Telemedicine*, https://www.ama-assn.org/system/files/2018-10/ama-chart-telemedicine-patient-physician-relationship.pdf (last visited Jan. 9, 2024).

customarily would. In a clinic setting, dogs and cats may become extremely fearful and withdrawn, and, in a situation that they perceive as threatening, animals may mask their pain as a survival mechanism."[28]

Historically, physicians resisted expansion of telemedicine in human medicine for similar reasons. By the 1990s, resistance in the medical community had largely subsided.[29]

Veterinary Telemedicine During the Pandemic

On March 24, 2020, the U.S. Food and Drug Administration (FDA) announced that it would temporarily suspend enforcement of certain prescription limitations in order to allow veterinarians to better utilize telemedicine to address animal health needs during the COVID-19 pandemic. Specifically, the FDA provided guidance related to suspending the enforcement of the animal examination and premises visit VCPR requirements relevant to FDA regulations governing **Extra-label Drug Use in Animals**[30] and **Veterinary Feed Directive Drugs**.[31] This allowed veterinarians to prescribe or authorize the use of drugs without direct examination or making visits to patients, in an effort to limit human-to-human interaction and potential spread of COVID-19 in the community.[32]

According to the FDA, veterinarians are licensed by their state veterinary licensing board and must meet the requirements of the licensing board to practice in that state. FDA regulates the devices and drugs that veterinarians use, and the conditions under which veterinarians may **prescribe drugs for extra-label uses**. When an approved drug is used in a manner other than what is stated on the label, it is an extra-label use. This is commonly called an "off-label" use because the drug is used in a way that is "off the label."[33]

On March 27, 2020, DBPR issued emergency order EO 2020-04, which suspended any restriction of ch. 474, F.S., or ch. 61G-18, F.A.C., which would prohibit an active Florida-licensed veterinarian from practicing telemedicine on a patient. The order specified that attending veterinarians must be comfortable assessing the patient remotely and feel able to exercise good clinical judgment to assist the patient.[34]

The FDA withdrew its temporary guidance suspending the enforcement of the animal examination and premises visit VCPR requirements on February 21, 2023.[35]

DBPR's emergency order allowing Florida-licensed veterinarians to practice telemedicine ended with the expiration of Florida's COVID-19 state of emergency (EO 20-52) on Saturday June 26, 2021.[36]

Veterinary Telemedicine in Other States

The use of telemedicine by veterinarians varies by state. Some states allow telemedicine to be used at

---

[28] Mark Epstein, et al., *2015 AAHA/AAFP Pain Management Guidelines for Dogs and Cats*, American Animal Hospital Association (2015), https://www.aaha.org/globalassets/02-guidelines/pain-management/2015_aaha_aafp_pain_management_guidelines_for_dogs_and_cats.pdf (last visited Jan. 9, 2024).
[29] Mary Ann Liebert, *History of Telemedicine 15-16* (NY 2009).
[30] 21 C.F.R. part 530.
[31] 21 C.F.R. s. 558.6.
[32] U.S. Food and Drug Administration, *Coronavirus (COVID-19) Update: FDA Helps Facilitate Veterinary Telemedicine During Pandemic*, https://www.fda.gov/news-events/press-announcements/coronavirus-covid-19-update-fda-helps-facilitate-veterinary-telemedicine-during-pandemic (last visited Jan. 5, 2024).
[33] .S. Food and Drug Administration, *What FDA Does and Does Not Regulate*, https://www.fda.gov/animal-veterinary/animal-health-literacy/what-fda-does-and-does-not-regulate#top (last visited Jan. 5, 2024).
[34] Department of Business and Professional Regulation, *Emergency Order EO 2020-04*, Mar. 27, 2020, http://www.myfloridalicense.com/dbpr/os/documents/EO_2020-04.pdf (last visited Jan. 5, 2024).
[35] 87 C.F.R. 78111.
[36] On March 9, 2020, Governor DeSantis issued Executive Order 20-52 which declared a state of emergency for the entire state due to COVID-19. The Executive Order was extended several times. Executive Order 21-94 extended the state of emergency for sixty days from April 27, 2021. The sixtieth day was Saturday June 26, 2021, and the order was not renewed by the Governor.

the veterinarian's discretion, others allow it after the establishment of a VCPR, some do not allow it at all, and others limit telemedicine for purposes of prescribing medication or controlled substances.

According to the Veterinary Virtual Care Association, state laws relating to veterinary telemedicine generally fall within the following categories: 25 states and the District of Columbia require the provider to have "seen" or become "acquainted with" the animal; 10 states require a physical examination for a VCPR; 5 states allow telemedicine to create a VCPR; 1 state allows telemedicine to create a VCPR except for prescriptions; 1 state does not reference and therefore does not define or use the term VCPR; and 9 states expressly prohibit using telemedicine to establish a VCPR.[37]

Virginia allows veterinarians to practice telemedicine. In addition, it allows a veterinarian who performs or has performed an appropriate examination of a patient to prescribe certain controlled substances to a patient via the practice of telemedicine. The Virginia Board of Veterinary Medicine adopted guidance effective September 17, 2020, for telehealth in the practice of veterinary medicine, which indicates that:

> "Using telehealth technologies in veterinary practice is considered a method of service delivery. The current, applicable regulations apply to all methods of service delivery, including telehealth. The licensee is responsible for using professional judgment to determine if the type of service can be delivered via telehealth at the same standard of care as in-person service."[38]

The Idaho Board of Veterinary Medicine provides the following guidance on telehealth:

> "The veterinarian must employ sound profession judgment to determine whether using Telehealth is appropriate in particular circumstances each and every time animal care is provided and only provide medical advice or treatment via Telehealth to the extent that it is possible without a hands on examination. A veterinarian using Telehealth must take appropriate steps to obtain Informed Consent, establish the VCPR and conduct all appropriate evaluations and history of the patient consistent with traditional standards of care for the particular patient presentation. As such, some situations and patient presentations are appropriate for the utilization of Telehealth as a component of, or in lieu of, hands on medical care, while others are not."[39]

The state of Oklahoma only allows a veterinarian to prescribe drugs via telemedicine under the following conditions:

> "The veterinarian assumes responsibility for making medical judgments regarding the health of the animal based on a current thorough medical knowledge of the animal, such knowledge is gained by recently seeing or being personally acquainted with the keeping and care of the animal to the extent necessary to properly make appropriate medical decisions."[40]

The state of Washington only allows telemedicine after a VCPR has been established:

> "The veterinarian shall not establish a veterinary-client-patient relationship solely by telephonic or other electronic means. However, once established, a veterinary-client-patient relationship may be maintained between medically necessary examinations via telephone or other types of consultations."[41]

---

[37] Veterinary Virtual Care Association, *Veterinary Telemedicine Regulatory Map*, https://vvca.org/telemedicine-map/ (last visited Jan. 5, 2024).
[38] Virginia Board of Veterinary Medicine, *Guidance for Telehealth in the Practice of Veterinary Medicine, Guidance Document: 150-25*, https://www.dhp.virginia.gov/media/dhpweb/docs/vet/guidance/150-25.pdf (last visited Jan. 5, 2024).
[39] Idaho Board of Veterinary Medicine, *Policy Number 2018-02 Telemedicine (Oct. 15, 2021)*, https://dopl.idaho.gov/wp-content/uploads/2023/07/Telemed-Policy-6-8-18-with-Revision-10-15-21.pdf (last visited Jan. 5, 2024).
[40] Oklahoma State Board of Veterinary Medical Examiners, *Veterinarian-Client-Patient-Relationship-VCPR*, https://www.okvetboard.com/veterinarian-faq/95-board-telemedicine-telehealth-position-statement (last visited Mar. 6, 2023).
[41] Wash. Rev. Code § 246-933-200(2).

Michigan recently repealed the need for an **in-person** exam prior to practicing telemedicine. Effective April 15, 2021, a veterinarian providing a "telehealth service" is required to have sufficient knowledge of the animal patient by having recently examined the animal patient in person or obtained current knowledge of the animal patient through the use of instrumentation and diagnostic equipment through which images and medical records may be transmitted electronically, or have conducted medically appropriate and timely visits to the premises where the group of animal patients is kept.[42]

Telehealth for Medical Doctors

Current law broadly defines "telehealth" as the use of synchronous or asynchronous telecommunications technology by a telehealth provider to provide health care services, including, but not limited to:[43]

- Assessment, diagnosis, consultation, treatment, and monitoring of a patient;
- Transfer of medical data;
- Patient and professional health-related education;
- Public health services; and
- Health administration.

Telehealth does not include e-mail messages, or facsimile transmission under Florida law.[44] No express authority is needed to communicate using these methods.

Health care services may be provided via telehealth by a Florida-licensed health care practitioner, a practitioner licensed under a multistate health care licensure compact of which Florida is a member,[45] or a registered out-of-state-health care provider.[46]

Out-of-state telehealth providers must register biennially with the Department of Health (DOH) or the applicable board to provide telehealth services, within the relevant scope of practice established by Florida law and rule, to patients in this state. To register or renew registration as an out-of-state telehealth provider, the health care professional must:

- Hold an active and unencumbered license, which is substantially similar to a license issued to a Florida practitioner in the same profession, in a U.S. state or jurisdiction and
- Not have been subject to licensure disciplinary action during the five years before submission of the registration application;[47]
- Not be subject to a pending licensure disciplinary investigation or action;
- Not have had license revoked in any state or jurisdiction;
- Designate a registered agent in this state for the service of process;
- Maintain professional liability coverage or financial responsibility, which covers services provided to patients not located in the provider's home state, in the same amount as required for Florida-licensed practitioners;[48] and
- Prominently display a link to the DOH website, described below, which provides public information on registered telehealth providers.[49]

[42] Mich. Gen. R. 338.4901a.
[43] S. 456.47(1)(a), F.S.
[44] *Id.*
[45] Florida is a member of the Nurse Licensure Compact. *See* s. 464.0095, F.S.
[46] S. 456.47(4), F.S.
[47] The bill requires DOH to consult the National Practitioner Data Bank to verify whether adverse information is available for the registrant.
[48] Florida law requires physicians, acupuncturists, chiropractic physicians, dentists, anesthesiologist assistants, advanced practice registered nurses, and licensed midwives to demonstrate $100,000 per claim and an annual aggregate of $300,000 of professional responsibility (*see* ss. 458.320 and 459.0085, F.S.; r. 64B1-12.001. F.A.C; r. 64B2-17.009, F.A.C.; 64B5-17.0105, F.A.C.; r. 64B8-31.006 and 64B15-7.006, F.A.C.; r. 64B9-4.002, F.A.C.; and r. 64B24-7.013, F.A.C.; respectively). Podiatric physicians must demonstrate professional responsibility in the amount of $100,000 (*see* r. 64B18-14.0072, F.A.C.).
[49] S. 456.47(4), F.S.

Telehealth Standards of Practice

Current law sets the standard of care for telehealth providers at the same level as the standard of care for health care practitioners or health care providers providing in-person health care services to patients in this state. This ensures that a patient receives the same standard of care irrespective of the modality used by the health care professional to deliver the services. A patient receiving telehealth services may be in any location at the time services are rendered and a telehealth provider may be in any location when providing telehealth services to a patient.[50]

Practitioners may perform a patient evaluation using telehealth. A practitioner using telehealth is not required to research a patient's medical history or conduct a physical examination of the patient before providing telehealth services to the patient if the telehealth provider is capable of conducting a patient evaluation in a manner consistent with the applicable standard of care sufficient to diagnose and treat the patient when using telehealth.

Emergency Orders

On January 31, 2020, the U.S. Secretary of HHS issued a public health emergency.[51] On March 16, 2020, the DEA published a COVID-19 Information page on the Diversion Control Division website, authorizing DEA-registered practitioners to issue prescriptions for all Schedule II-V controlled substances to patients without first conducting an in-person medical evaluation, provided all of the following conditions are met:

- The prescription is issued for a legitimate medical purpose by a practitioner acting in the usual course of his/her professional practice.
- The evaluation is conducted using an audio-visual, real-time, two-way interactive communication system.
- The practitioner is acting in accordance with applicable federal and state law.[52]

Controlled Substances – Florida Law

Chapter 893, F.S., sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act. This chapter classifies controlled substances into five schedules in order to regulate the manufacture, distribution, preparation, and dispensing of the substances. The scheduling of substances in Florida law is generally consistent with the federal scheduling of substances under 21 U.S.C. s. 812:

- A Schedule I substance has a high potential for abuse and no currently accepted medical use in treatment in the United States and its use under medical supervision does not meet accepted safety standards. Examples include heroin and lysergic acid diethylamide (LSD).
- A Schedule II substance has a high potential for abuse, a currently accepted but severely restricted medical use in treatment in the United States, and abuse may lead to severe psychological or physical dependence. Examples include cocaine and morphine.
- A Schedule III substance has a potential for abuse less than the substances contained in Schedules I and II, a currently accepted medical use in treatment in the United States, and abuse may lead to moderate or low physical dependence or high psychological dependence or, in the case of anabolic steroids, may lead to physical damage. Examples include lysergic acid; ketamine; and some anabolic steroids.

---

[50] S. 456.47(2), F.S.

[51] U.S. Department of Health & Human Services, *Determination that a Public Health Emergency Exists*, (Jan. 31, 2020) https://aspr.hhs.gov/legal/PHE/Pages/2019-nCoV.aspx#:~:text=Azar%20II%2C%20Secretary%20of%20Health,January%2027%2C%202020%2C%20nationwide. (last visited Jan. 5, 2024).

[52] U.S. Drug Enforcement Administration, *DEA's response to COVID-19*, https://www.dea.gov/press-releases/2020/03/20/deas-response-covid-19 (last visited Jan. 5, 2024); Letter from Thomas Prevoznik, Deputy Assistant Administrator, Diversion Control Division, U.S. Department of Justice Drug Enforcement Administration, to DEA Qualifying Practitioners and Other Practitioners, (Mar. 31, 2020) https://www.deadiversion.usdoj.gov/GDP/(DEA-DC-022)(DEA068)%20DEA%20SAMHSA%20buprenorphine%20telemedicine%20%20(Final)%20+Esign.pdf (last visited Jan. 5, 2024).

- A Schedule IV substance has a low potential for abuse relative to the substances in Schedule III, a currently accepted medical use in treatment in the United States, and abuse may lead to limited physical or psychological dependence relative to the substances in Schedule III. Examples include alprazolam, diazepam, and phenobarbital.
- A Schedule V substance has a low potential for abuse relative to the substances in Schedule IV, a currently accepted medical use in treatment in the United States, and abuse may lead to limited physical or psychological dependence relative to the substances in Schedule IV. Examples include low dosage levels of codeine, certain stimulants, and certain narcotic compounds.

Controlled Substances – Federal Law

The Federal Controlled Substances Act[53] also classifies controlled substances into schedules based on the potential for abuse and whether there is a currently accepted medical use for the substance. The Drug Enforcement Administration (DEA) is required to consider the following when determining where to schedule a substance:[54]

- The substance's actual or relative potential for abuse;
- Scientific evidence of the substance's pharmacological effect, if known;
- The state of current scientific knowledge regarding the substance;
- The substance's history and current pattern of abuse;
- The scope, duration, and significance of abuse;
- What, if any, risk there is to public health;
- The substance's psychic or physiological dependence liability; and
- Whether the substance is an immediate precursor of a substance already controlled.

Telehealth Prescribing of Controlled Substances

The FDA regulations governing Extralabel Drug Use in Animals and Veterinary Feed Directives, limited in application to circumstances where a veterinarian is using a drug in a manner other than the purpose for which it was approved or in feed directives, require a valid VCPR, which "can exist only when the veterinarian has recently seen and is personally acquainted with the keeping and care of the animal(s) by virtue of examination of the animal(s), and/or by medically appropriate and timely visits to the premises where the animal(s) are kept."[55]

"However, the corresponding regulation in the Florida Administrative Code blocks veterinarians from prescribing unless they have "recent contact" with the animal.[56] Since the Florida statute contains no "recent contact" requirement for a VCPR or for prescribing, the Board may have exceeded its statutory authority[57] to "carry out the provisions of" F.S. Ch. 474, Veterinary Medical Practice."[58]

Federal law specifically prohibits prescribing controlled substances via the Internet without an in-person evaluation, but the Ryan Haight Online Pharmacy Consumer Protection Act (Haight Act),[59] signed into law in October 2008[60] created a pathway for telehealth practitioners to dispense controlled substances via telehealth.

---

[53] 21 U.S.C. s. 812.
[54] 21 U.S.C. s. 811(c).
[55] 21 C.F.R. §530.1 & §530.3(i)(3).
[56] Rule 61G18-30.001 (2)(y), F.S.
[57] S. 474.204(1), F.S.
[58] Camille DeClementi, Jennifer Hobgood, and Diana Ferguson, *IN THE CARDS: BETTING ON VETERINARY TELEMEDICINE LEGAL REFORM*, Florida Bar Journal, (Dec. 2022), https://www.floridabar.org/the-florida-bar-journal/in-the-cards-betting-on-veterinary-telemedicine-legal-reform/ (last visited Jan. 9, 2024).
[59] Ryan Haight Online Consumer Protection Act of 2008, Public Law 110-425 (H.R. 6353).
[60] 21 CFR s. 829, the in-person medical evaluation requires that the patient be in the physical presence of the provider without regard to the presence or conduct of other professionals.

The practitioner is still subject to the requirement that all controlled substance prescriptions be issued for a legitimate purpose by a practitioner acting in the usual course of professional practice. But, **once an in-person evaluation of the patient has occurred**, the practitioner may provide future prescriptions for **controlled substances** for that patient using telehealth services.[61]

Florida law currently prohibits a telehealth provider (human) from using telehealth services to prescribe a controlled substance except when treating a psychiatric disorder, an inpatient at a licensed hospital, a patient receiving hospice services, or a resident of a nursing home facility.[62]

Prescription Drug Law for Veterinarians

In order to purchase, prescribe, administer or dispense controlled substances in Florida, veterinarians must obtain a license from the U.S. Drug Enforcement Administration (DEA). Florida does not require any additional licensure for veterinarians to purchase and prescribe controlled drugs.[63]

The DEA is a division within the U.S. Department of Justice and reports to the U.S. Attorney General. In consultation with the U.S. Secretary of the federal Department of Health and Human Services (HHS) and others, the Attorney General oversees the listing of substances on five schedules (Classes I, II, III, IV or V) of controlled agents as described in Title 21 United States Code (USC) of the Controlled Substances Act. The central mission of the DEA is to enforce controlled substances laws and regulations.[64]

With respect to veterinarians and other health professionals, the major focus of the DEA is to prevent illegal diversion of controlled prescription drugs for the purpose of illicit or non-medical uses. In order to legally purchase, dispense or prescribe controlled prescription drugs, a veterinarian must be licensed by the DEA. Prescription drugs that are regulated or controlled by the DEA include many important drugs that are used routinely by veterinarians. DEA-controlled drugs are tightly controlled at all aspects of manufacturing, distribution, ordering, storage, use and disposition.[65]

While veterinarians are allowed to write prescriptions for controlled drugs, they cannot order controlled drugs from their local pharmacy for “in-house” use nor for secondary re-sale. Like any other prescription, controlled drug prescriptions must be written for a specific patient and cannot be for general use. As a licensed DEA registrant, veterinarians are expected to create and maintain a system that provides strong safeguards against theft or diversion of controlled drugs in their practice.[66]

Two opioids are approved and marketed for use in animals, butorphanol and buprenorphine. Due to the limited number of approved and marketed veterinary opioids, veterinarians who need to use opioids to control pain in their patients generally use products approved for use in people.[67]

Rabies Vaccinations

According to the World Health Organization, “rabies is a vaccine-preventable viral disease which occurs in more than 150 countries and territories. Once clinical symptoms appear, rabies is virtually 100 percent fatal. In up to 99 percent of cases, domestic dogs are responsible for rabies virus transmission to humans. Rabies can be prevented through vaccination of dogs and prevention of dog bites.”[68]

---

[61] *Id*.
[62] S. 456.47(2)(c), F.S.
[63] Thomas Vickory, PhD, DEA REGULATION OF CONTROLLED DRUGS, https://www.vetfolio.com/learn/article/florida-drug-laws-update-2013 (last visited Jan. 5, 2024).
[64] Thomas, *supra* note 63.
[65] Thomas, *supra* note 63.
[66] Thomas, *supra* note 63.
[67] U.S. FDA, *The Opioid Epidemic: What Veterinarians Need to Know*, https://www.fda.gov/animal-veterinary/resources-you/opioid-epidemic-what-veterinarians-need-know (last visited Jan. 5, 2024).
[68] World Health Organization, Rabies, Sep. 20, 2023, https://www.who.int/news-room/fact-sheets/detail/rabies (last visited Jan. 5, 2024).

All dogs, cats, and ferrets four months of age or older must be vaccinated **by a licensed veterinarian** against rabies with a vaccine that is licensed by the U.S. Department of Agriculture (USDA) for use in those species.[69] The owner must have the animal revaccinated 12 months after the initial vaccination, and subsequent vaccinations must conform to the vaccine manufacturer's directions. The cost of vaccination must be borne by the animal's owner. Violations of this requirement are a civil infraction, punishable by a penalty of up to $500.[70]

A dog, cat, or ferret is exempt from vaccination against rabies if a licensed veterinarian has examined the animal and has certified in writing that the vaccination would endanger the animal's health because of its age, infirmity, disability, illness, or other medical considerations. An exempt animal must be vaccinated against rabies as soon as its health permits.[71]

Upon vaccination, the licensed veterinarian is required to provide the animal's owner and the animal control authority with a rabies vaccination certificate.[72] The veterinarian who administers the rabies vaccine to an animal as required under this section may affix his or her signature stamp in lieu of an actual signature.[73]

Currently, Florida law does not appear to allow anyone other than the veterinarian to administer the rabies vaccine. The law allows certain vaccines, anesthesia and tranquilization to be administered by a veterinary aide, nurse, laboratory technician, intern, or other employee of a licensed veterinarian while under the "immediate supervision" of a licensed veterinarian.[74] In addition, the following tasks may be performed without the licensed veterinarian on the premises:

- The administration of medication and treatment, **excluding vaccinations**, as directed by the licensed veterinarian; and
- The obtaining of samples and the performance of those diagnostic tests, including radiographs, directed by the licensed veterinarian.[75]

The Board has recognized that the following diseases are communicable to humans and are of public health significance, and as a result, **only a veterinarian** is authorized to immunize or treat an animal for these diseases. The diseases include:

- Brucellosis.
- Tuberculosis.
- Rabies.
- Equine Encephalomyelitis.[76]

Effect of the Bill

The bill allows licensed veterinarians to practice veterinary telehealth on a limited basis, and indirectly supervise rabies vaccinations of impounded animals.

Regarding veterinary telemedicine, the bill:

- Allows a veterinarian who holds a current license to practice veterinary medicine in this state to practice veterinary telehealth.
- Defines "telehealth" to have the same meaning as the human telehealth definition in s. 456.47(1), F.S.:

[69] S. 828.30(1), F.S.
[70] *See* s. 828.27(2), F.S
[71] S. 828.30(2), F.S.
[72] Each animal control authority and veterinarian shall use the "Rabies Vaccination Certificate" of the National Association of State Public Health Veterinarians (NASPHV) or an equivalent form approved by the local government that contains all the information required by the NASPHV Rabies Vaccination Certificate.
[73] S. 828.30(3), F.S.
[74] S. 474.202(5), F.S., defines "immediate supervision" or words of similar purport to mean a licensed doctor of veterinary medicine is on the premises whenever veterinary services are being provided.
[75] R. 61G18-17.005, F.A.C.
[76] R. 61G18-17.006, F.A.C.

    - “the use of synchronous or asynchronous telecommunications technology by a telehealth provider to provide health care services, including, but not limited to, assessment, diagnosis, consultation, treatment, and monitoring of a patient; transfer of medical data; patient and professional health-related education; public health services; and health administration. The term does not include e-mail messages or facsimile transmissions.”
- Gives the Board of Veterinary Medicine jurisdiction over a veterinarian practicing veterinary telehealth, regardless of where the veterinarian's physical office is located.
- Deems the practice of veterinary to occur at the premises where the patient is located at the time the veterinarian practices veterinary telehealth.
- Prohibits practicing veterinary telehealth unless it is within the context of a veterinarian/client/patient relationship.
- Requires the practice of telehealth to be in a manner consistent with the scope of practice and the prevailing professional standard of practice for a veterinarian who provides in-person veterinary services to patients in this state.
- Authorizes veterinarians practicing telehealth to perform a patient evaluation, and specifies that if a veterinarian practicing telehealth conducts a patient evaluation sufficient to diagnose and treat the patient, the veterinarian is not required to research a patient's medical history or conduct a physical examination of the patient before using veterinary telehealth to provide a veterinary health care service to the patient.
- Requires veterinarians practicing telehealth to prescribe all drugs and medications in accordance with all federal and state laws.
    - Authorizes a veterinarian practicing veterinary telehealth to order, prescribe, or make available medicinal drugs or drugs as defined in s. 465.003, F.S.
    - Prohibits a veterinarian from using telehealth to prescribe a controlled substance listed in Schedule II of s. 893.03, F.S.
- Authorizes veterinarians who are personally acquainted with the caring and keeping of an animal or group of animals on food-producing animal operations on land classified as agricultural pursuant to s. 193.461, F.S., who has recently seen the animal or group of animals or has made medically appropriate and timely visits to the premises where the animal or group of animals is kept to practice veterinary telehealth for animals on such operations.

Regarding rabies vaccinations, the bill:

- Allows an employee, an agent, or a contractor of a county or municipal animal control authority, or sheriff, acting under the indirect supervision of a veterinarian, to administer rabies vaccinations to impounded dogs, cats, and ferrets that will be transferred, rescued, fostered, adopted, or reclaimed by the owner.
- Provides that the supervising veterinarian assumes responsibility for any person vaccinating animals at his or her direction or under his or her direct or indirect supervision.
- Defines "indirect supervision," to mean the supervising veterinarian is required to be available for consultation through telecommunications but is not required to be physically present during such consultation.
- Authorizes veterinarians who supervise the administration of the rabies vaccination to affix his or her signature stamp in lieu of an actual signature to the rabies vaccination certificate.

B. SECTION DIRECTORY:

Section 1: Creates s. 474.2021, F.S., relating to veterinary telehealth.

Section 2: Amends s. 474.2165, F.S., conforming provisions relating to ownership and control of veterinary medical patient records; report or copies of records to be furnished.

Section 3: Amends s. 828.30, F.S., relating to rabies vaccination of dogs, cats, and ferrets.

Section 4: Amends s. 474.203, F.S., conforming provisions relating to exemptions.

Section 5: Amends s. 767.16, F.S., conforming provisions relating to police canine or service dog; exemption.

Section 6: Amends s. 828.29, F.S., conforming provisions relating to dogs and cats transported or offered for sale; health requirements; consumer guarantee.

Section 7: Provides an effective date of July 1, 2024.

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:

   Indeterminate. Animal control authorities will be able to administer rabies vaccinations of impounded animals without a veterinarian having to be physically present. This may create a savings for local animal control authorities to the extent they are incurring extra veterinary costs associated with veterinarians being required to be onsite to administer rabies vaccinations.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Licensed veterinarians will be permitted to practice veterinary telehealth, including limited prescription authority, thus giving them more flexibility in their practice. This will move them further toward equal footing with licensed health care providers in the state who are already allowed to practice telehealth.

Animal owners may have greater access to veterinarians and may feel more comfortable, especially during a state of emergency. Visitors and tourists with pets may be able to obtain veterinarian care while on vacation in Florida without the need for locating and transporting their animal to a veterinarian's office.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

3. Other:
   None.

B. RULE-MAKING AUTHORITY:

Current law appears to grant the Board sufficient authority to adopt rules to implement the provisions of this bill.[77]

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

[77] S. 474.206, F.S.

A bill to be entitled

An act relating to veterinary practices; creating s. 474.2021, F.S.; providing a short title; authorizing licensed veterinarians to practice veterinary telehealth in accordance with specified criteria; specifying the powers of the Board of Veterinary Medicine related to the practice of telehealth; specifying the conditions under which a veterinarian may practice veterinary telehealth; specifying the drugs a veterinarian practicing telehealth may not provide under specified circumstances; providing specific authorizations for cases where a patient is a food-producing species; amending s. 474.2165, F.S.; conforming provisions to changes made by the act; amending s. 828.30, F.S.; authorizing certain persons to administer rabies vaccinations to certain animals under indirect supervision of a veterinarian; providing supervising veterinarian assumes responsibility for specified people who provide vaccinations; defining the term "indirect supervision"; amending ss. 474.203, 767.16, and 828.29, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Section 474.2021, Florida Statutes, is created to read:

474.2021 Veterinary telehealth.—

(1) This section may be cited as the "Providing Equity in Telehealth Services Act."

(2) A veterinarian who holds a current license to practice veterinary medicine in this state may practice veterinary telehealth. For purposes of this section, the term "telehealth" has the same meaning as in s. 456.47(1).

(3) The board has jurisdiction over a veterinarian practicing veterinary telehealth, regardless of where the veterinarian's physical office is located. The practice of veterinary medicine is deemed to occur at the premises where the patient is located at the time the veterinarian practices veterinary telehealth.

(4) A veterinarian practicing veterinary telehealth:

(a) May not engage in the practice of veterinary telehealth unless it is within the context of a veterinarian/client/patient relationship;

(b) Must practice in a manner consistent with his or her scope of practice and the prevailing professional standard of practice for a veterinarian who provides in-person veterinary services to patients in this state;

(c) May use telehealth to perform a patient evaluation. If

a veterinarian practicing telehealth conducts a patient evaluation sufficient to diagnose and treat the patient, the veterinarian is not required to research a patient's medical history or conduct a physical examination of the patient before using veterinary telehealth to provide a veterinary health care service to the patient; and

(d) Must prescribe all drugs and medications in accordance with all federal and state laws. A veterinarian practicing veterinary telehealth may order, prescribe, or make available medicinal drugs or drugs as defined in s. 465.003. A veterinarian may not use telehealth to prescribe a controlled substance listed in Schedule II of s. 893.03.

(5) A veterinarian personally acquainted with the caring and keeping of an animal or group of animals on food-producing animal operations on land classified as agricultural pursuant to s. 193.461 who has recently seen the animal or group of animals or has made medically appropriate and timely visits to the premises where the animal or group of animals is kept may practice veterinary telehealth for animals on such operations.

Section 2. Subsection (1) of section 474.2165, Florida Statutes, is amended to read:

474.2165 Ownership and control of veterinary medical patient records; report or copies of records to be furnished.—

(1) As used in this section, the term "records owner" means any veterinarian who generates a medical record after

making an ~~a physical~~ examination of, or administering treatment or dispensing legend drugs to, any patient; any veterinarian to whom records are transferred by a previous records owner; or any veterinarian's employer, provided the employment contract or agreement between the employer and the veterinarian designates the employer as the records owner.

Section 3. Subsections (1) and (3) of section 828.30, Florida Statutes, are amended to read:

828.30 Rabies vaccination of dogs, cats, and ferrets.—

(1)(a) All dogs, cats, and ferrets 4 months of age or older must be vaccinated by a licensed veterinarian or a person authorized under paragraph (b) against rabies with a vaccine that is licensed by the United States Department of Agriculture for use in those species.

(b) Acting under the indirect supervision of a veterinarian, an employee, an agent, or a contractor of a county or municipal animal control authority or sheriff may vaccinate against rabies dogs, cats, and ferrets in the custody of an animal control authority or a sheriff that will be transferred, rescued, fostered, adopted, or reclaimed by the owner. The supervising veterinarian assumes responsibility for any person vaccinating animals at his or her direction or under his or her direct or indirect supervision. As used in this paragraph, the term "indirect supervision" means that the supervising veterinarian is required to be available for consultation

through telecommunications but is not required to be physically present during such consultation.

(c) The owner of every dog, cat, and ferret shall have the animal revaccinated 12 months after the initial vaccination. Thereafter, the interval between vaccinations shall conform to the vaccine manufacturer's directions. The cost of vaccination must be borne by the animal's owner. Evidence of circulating rabies virus neutralizing antibodies may ~~shall~~ not be used as a substitute for current vaccination in managing rabies exposure or determining the need for booster vaccinations.

(3) Upon vaccination against rabies, the licensed veterinarian shall provide the animal's owner and the animal control authority with a rabies vaccination certificate. Each animal control authority and veterinarian shall use the "Rabies Vaccination Certificate" of the National Association of State Public Health Veterinarians (NASPHV) or an equivalent form approved by the local government that contains all the information required by the NASPHV Rabies Vaccination Certificate. The veterinarian who administers the rabies vaccination or who supervises the administration of the rabies vaccination as provided in paragraph (1)(b) ~~vaccine~~ to an animal as authorized ~~required~~ under this section may affix his or her signature stamp in lieu of an actual signature.

Section 4. Paragraph (a) of subsection (5) of section 474.203, Florida Statutes, is amended to read:

474.203 Exemptions.—This chapter does not apply to:

(5)(a) Any person, or the person's regular employee, administering to the ills or injuries of her or his own animals, including, but not limited to, castration, spaying, and dehorning of herd animals, unless title is transferred or employment provided for the purpose of circumventing this law. This exemption does not apply to any person licensed as a veterinarian in another state or foreign jurisdiction and practicing temporarily in this state. However, except as provided in s. 828.30, only a veterinarian may immunize or treat an animal for diseases that are communicable to humans and that are of public health significance.

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

Section 5. Subsection (2) of section 767.16, Florida Statutes, is amended to read:

767.16 Police canine or service dog; exemption.—

(2) Any dog used as a service dog for blind, hearing impaired, or disabled persons that bites another animal or a human is exempt from any quarantine requirement following such bite if the dog has a current rabies vaccination that was administered as provided in s. 828.30 ~~by a licensed~~

~~veterinarian~~.

Section 6. Paragraph (b) of subsection (1) and paragraph (b) of subsection (2) of section 828.29, Florida Statutes, are amended to read:

828.29 Dogs and cats transported or offered for sale; health requirements; consumer guarantee.—

(1)

(b) For each dog offered for sale within the state, the tests, vaccines, and anthelmintics required by this section must be administered by or under the direction of a veterinarian, licensed by the state and accredited by the United States Department of Agriculture, who issues the official certificate of veterinary inspection. The tests, vaccines, and anthelmintics must be administered before the dog is offered for sale in the state, unless the licensed, accredited veterinarian certifies on the official certificate of veterinary inspection that to inoculate or deworm the dog is not in the best medical interest of the dog, in which case the vaccine or anthelmintic may not be administered to that particular dog. Each dog must receive vaccines and anthelmintics against the following diseases and internal parasites:

1. Canine distemper.

2. Leptospirosis.

3. Bordetella (by intranasal inoculation or by an alternative method of administration if deemed necessary by the

attending veterinarian and noted on the health certificate, which must be administered in this state once before sale).

4. Parainfluenza.

5. Hepatitis.

6. Canine parvo.

7. Rabies, provided the dog is over 3 months of age and the inoculation is administered as provided in s. 828.30 ~~by a licensed veterinarian~~.

8. Roundworms.

9. Hookworms.

If the dog is under 4 months of age, the tests, vaccines, and anthelmintics required by this section must be administered no more than 21 days before sale within the state. If the dog is 4 months of age or older, the tests, vaccines, and anthelmintics required by this section must be administered at or after 3 months of age, but no more than 1 year before sale within the state.

(2)

(b) For each cat offered for sale within the state, the tests, vaccines, and anthelmintics required by this section must be administered by or under the direction of a veterinarian, licensed by the state and accredited by the United States Department of Agriculture, who issues the official certificate of veterinary inspection. The tests, vaccines, and anthelmintics

must be administered before the cat is offered for sale in the state, unless the licensed, accredited veterinarian certifies on the official certificate of veterinary inspection that to inoculate or deworm the cat is not in the best medical interest of the cat, in which case the vaccine or anthelmintic may not be administered to that particular cat. Each cat must receive vaccines and anthelmintics against the following diseases and internal parasites:

1. Panleukopenia.

2. Feline viral rhinotracheitis.

3. Calici virus.

4. Rabies, if the cat is over 3 months of age and the inoculation is administered as provided in s. 828.30 ~~by a licensed veterinarian~~.

5. Hookworms.

6. Roundworms.

If the cat is under 4 months of age, the tests, vaccines, and anthelmintics required by this section must be administered no more than 21 days before sale within the state. If the cat is 4 months of age or older, the tests, vaccines, and anthelmintics required by this section must be administered at or after 3 months of age, but no more than 1 year before sale within the state.

Section 7. This act shall take effect July 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1377 Pub. Rec./Investigations by the Department of Legal Affairs
SPONSOR(S): Sirois
TIED BILLS: HB 1 **IDEN./SIM. BILLS:** SB 1790

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

SUMMARY ANALYSIS

Generally, a social media platform is a computer-based technology that facilitates the sharing of ideas, thoughts, and information through virtual networks and communities. Social media use by children can have negative effects on their wellbeing, and studies have found a link between child social media use and poor mental health.

To attempt to reduce such effects on kids, Utah, Arkansas, Louisiana, and Ohio recently enacted laws to require social media platforms to verify user age and require parental consent for minors to have an account.

HB 1, to which this bill is linked, requires social media platforms to:
- Verify the age of a person wishing to open a new account,
- Prohibit minors under 16 years of age from creating a new account, and
- Implement certain Internet safety measures for minors under 18 years of age.

The Department of Legal Affairs (DLA), upon belief that any social media platform is in violation of HB 1's provisions, may bring an action under the Florida Unfair or Deceptive Trade Practices Act. A private cause of action is permitted in certain limited circumstances.

This bill 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 only:
- 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 records exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2029, 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]

Social Media and Kids

Generally, a social media platform is a computer-based technology that facilitates the sharing of ideas, thoughts, and information through virtual networks and communities. Social media is Internet-based and gives users quick electronic communication of content, such as personal information, videos, and photos. Users engage with social media via a computer, tablet, or smartphone via web-based software or applications.[8]

---

[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 Art. I, s. 24 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] Maya Dollarhide, *Social Media: Definition, Effects, and List of Top Apps*, Investopedia.com, https://www.investopedia.com/terms/s/social-media.asp (last visited Jan. 6, 2024).

Social media use by children can have negative effects on their health.[9] Some potential safety risks of social media use include:

- 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; and
- Interference with sleep, exercise, homework, or family activities.[10]

Additionally, a 2022 study conducted by social media and psychology scholars found a link between social media use and poor mental health, especially among girls.[11] Such study demonstrated that girls experience a consistent and substantial association between mental health and social media, and such associations were stronger than links between mental health and binge drinking, sexual assault, obesity, and hard drug use.[12]

To attempt to reduce such effects on kids, Utah, Arkansas, Louisiana, and Ohio recently enacted laws to require social media platforms to verify user age and require parental consent for minors to have an account.[13]

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.[14]

HB 1

HB 1, to which this bill is linked, requires social media platforms to:

- Verify the age of a person wishing to open a new account,
- Prohibit minors under 16 years of age from creating a new account, and
- Implement certain Internet safety measures for minors under 18 years of age.

DLA, upon belief that a social media platform is in violation of the bill, may bring an action under the Florida Unfair or Deceptive Trade Practices Act. A private cause of action is permitted in certain limited circumstances.

[9] 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 Jan. 6, 2024).
[10] Loyola Medicine, *Social Media Safety for Kids and Teens*, https://www.loyolamedicine.org/about-us/blog/social-media-safety-kids-teens, (last visited Jan. 6, 2024)
[11] Jean Twenge, Jonathan Haidt, Jimmy Lozano, and Kevin Cummins, *Specification curve analysis shows that social media use is linked to poor mental health, especially among girls*, 224 Acta Psychologica, (April 2022), https://www.sciencedirect.com/science/article/pii/S0001691822000270 (last visited Jan. 6, 2024); Jean Twenge, et al, *infra* note 12.
[12] Jean Twenge, et al, *Social media is riskier for kids than 'screen time'*, The Washington Post, Feb. 16, 2022, https://www.washingtonpost.com/opinions/2022/02/16/social-media-is-riskier-kids-than-screen-time/ (last visited Jan. 8, 2024).
[13] Ch. 498, Laws of Utah 2023; Act No. 441, 2023 La. Acts; 2023 Ark. Acts 689; Ohio House Bill 33 - 135th General Assembly.
[14] 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[15] 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 social media platform's data security; and
- Information that would otherwise disclose a social media platform's proprietary information.

The bill defines the term "proprietary information" to mean information that:

- Is owned or controlled by the social media platform;
- Is intended to be private and is treated by the social media platform as private because disclosure would harm the social media platform or its business operations;
- Has not been disclosed except as required by law or through 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, 2029, unless the Legislature reviews and reenacts the exemption by that date.

The bill will become effective on the same date that HB 1 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

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

B. SECTION DIRECTORY:

Section 1: Creates a public record exemption for investigations related to s. 501.1736, 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 HB 1 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

A bill to be entitled

An act relating to public records; amending s. 501.1736, 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 a definition; 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 (8) of section 501.1736, Florida Statutes, as created by HB 1 or similar legislation, 2024 Regular Session, is renumbered as subsection (9) and a new subsection (8) is added to that section to read:

501.1736 Social media use for minors.—

(8)(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, 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

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

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 an 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 social media platform.

5. Information that would disclose the proprietary information of a social media platform.

(d) For purposes of this section, the term "proprietary information" means information that:

1. Is owned or controlled by the social media platform.

2. Is intended to be private and is treated by the social media platform as private because disclosure would harm the social media platform 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 social media platform who is the subject of the information.

(e) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2029, 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. 501.1736, Florida Statutes, or received by the department pursuant to an investigation by the department or a law enforcement agency of a violation of that section, 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. 501.1736, 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. 501.1736, 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 records 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. 501.1736, 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. 501.1736, 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 social media platform. Release of such information could give business competitors an unfair advantage.

(5) Information received by the department may contain a computer forensic report or information that could reveal weaknesses in the data security of a social media platform. The release of this information could result in the identification of vulnerabilities in the cybersecurity system of the social media platform and be used to harm the social media platform 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. 501.1736, 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 1 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1491 Pub. Rec./Investigations by the Department of Legal Affairs
SPONSOR(S): Tramont
TIED BILLS: HB 3 **IDEN./SIM. BILLS:** SB 1794

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

SUMMARY ANALYSIS

Internet usage and mobile technology have become mainstream, especially among teens and young adults, which has expanded the creation and dissemination of pornography. The majority of Americans, including minors, are exposed to pornography online regularly, and 56 percent of American high school students have viewed pornography in the last year.

Adolescents who view pornography tend to report feeling insecure about their ability to perform sexually or the way they look, display more aggression, and view women as sex objects.

HB 3, to which this bill is linked, requires a commercial entity that knowingly and intentionally publishes or distributes a substantial portion of material harmful to minors on a website or application to:

- Prohibit access to such material by any person younger than 18 years of age, and
- Use reasonable age verification methods to verify that the age of a person attempting to access the material is 18 years of age or older.

The Department of Legal Affairs (DLA), upon belief that any commercial entity is in violation of HB 3's provisions, may bring an action under the Florida Unfair or Deceptive Trade Practices Act. A private cause of action is permitted in certain limited circumstances.

This bill 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 only:

- 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 records exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2029, 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]

Effects of Harmful Content on Children

Internet usage and mobile technology has become mainstream, especially among teens and young adults.[8] The majority of Americans come across pornography online and roughly half will seek it out.[9] Twenty-seven percent of young adults first view pornography before the onset of puberty,[10] 70 percent

[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 Art. I, s. 24 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] Eric W. Owens et al., *The Impact of Internet Pornography on Adolescents: A Review of the Research*, 19(1-2) SEXUAL ADDICTION & COMPULSIVITY 99, 99-100 (2012); *See also* PEW RESEARCH CENTER, *Teens, Social Media & Technology Overview 2015: Smartphones Facilitate Shifts in Communication Landscape for Teens,* http://www.pewinternet.org/2015/04/09/teens-social-media-technology-2015/ (last visited Jan. 7, 2024).
[9] Josh McDowell Ministry, THE PORN PHENOMENON: THE IMPACT OF PORNOGRAPHY IN THE DIGITAL AGE (2016), research summary available at https://www.barna.com/research/porn-in-the-digital-age-new-research-reveals-10-trends/ (last visited Jan. 7, 2024).
[10] *Id.*

of teens accidentally stumble upon pornography online,[11] and teens may have experienced an increase in unwanted exposure to pornographic content online.[12] A sample of American high school students in 2021 found that 56 percent viewed pornography in the prior year.[13]

Research suggests that adolescents who view pornography tend to have more sexually permissive attitudes, have more sexual partners in their lifetime, and are more likely to engage in certain sexual acts.[14] Similarly, adolescents who viewed pornography tended to display more aggression, have more traditional gender role attitudes, and view women as sex objects.[15]

Adolescents who view pornography report feeling insecure about their ability to perform sexually or how they look, and tend to decrease their pornography use as their self-confidence increases or they develop positive relationships with friends and family.[16]

To attempt to reduce such effects on kids, Utah, Arkansas, Louisiana, and Ohio recently enacted laws to require commercial entities that have a substantial amount of material harmful to minors on their website to verify user age and prohibit access to minors under 18.[17]

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.[18]

HB 3

HB 3, to which this bill is linked, requires commercial entities that knowingly and intentionally publishes or distributes a substantial portion of material harmful to minors on a website or application to:

- Prohibit access to such material by any person younger than 18 years of age, and
- Use reasonable age verification methods to verify that the age of a person attempting to access the material is 18 years of age or older.

---

[11] KAISER FAMILY FOUNDATION, *Generation Rx.com: How Young People Use the Internet for Health Information*, December 2001, at 12, available at https://kaiserfamilyfoundation.files.wordpress.com/2001/11/3202-genrx-report.pdf.

[12] Kimberly J. Mitchell et al., *Trends in Youth Reports of Sexual Solicitations, Harassment and Unwanted Exposure to Pornography on the Internet*, 40 JOURNAL OF ADOLESCENT HEALTH 116, 124 (2007), available at: http://unh.edu/ccrc/pdf/CV135.pdf (last visited Jan. 7, 2023).

[13] Amanda Giordano, *What to Know About Adolescent Pornography Exposure*, Psychology Today, Feb. 27, 2022, https://www.psychologytoday.com/us/blog/understanding-addiction/202202/what-know-about-adolescent-pornography-exposure (last visited Jan. 7, 2024).

[14] Debra K. Braun-Corville & Mary Rojas, *Exposure to Sexually Explicit Web Sites and Adolescent Sexual Attitudes and Behaviors,* 45(2) J ADOLESCENT HEALTH 153, 156-162 (2009). *See also* Jane D. Brown & Kelly L. L'Engles, *X-Rated: Sexual Attitudes and Behaviors Associated with U.S. Early Adolescents' Exposure to Sexually Explicit Media,* 36 COMM. RSCH. 129-151 (2009). *Contra* Marie-Therese Luder et al., *Associations between Online Pornography and Sexual Behavior among Adolescents: Myth or Reality?,* 40(5) ARCHIVES OF SEXUAL BEHAVIOR 1027-1035 (2011) (finding that pornography use had no association with early sexual imitation or risky sexual behaviors).

[15] Eileen M. Alexy et al., *Pornography as a Risk Marker for an Aggressive Pattern of Behavior among Sexually Reactive Children and Adolescents*, 14(6) J AM. PSYCHIATRIC NURSES ASS'N 442, 450 (2009). *See also* Elisabet Haggstrom-Nordin et al., *Experiences of and Attitudes towards Pornography among a Group of Swedish High School Students*, 14 EURO. J CONTRACEPTION AND REPRODUCTIVE HEALTH CARE 277, 277-284 (2009).

[16] Lotta Lofgren-Martenson & Sven-Axel Mason, *Lust, Love, and Life: A Qualitative Study of Swedish Adolescents' Perceptions and Experiences with Pornography* 47 J SEX RSCH. 568, 575 (2010).

[17] Ch. 498, Laws of Utah 2023; Act No. 441, 2023 La. Acts; 2023 Ark. Acts 689; Ohio House Bill 33 - 135th General Assembly.

[18] OPPAGA, Office of the Attorney General (Department of Legal Affairs), https://oppaga.fl.gov/ProgramSummary/ProgramDetail?programNumber=1026 (last visited Mar. 31, 2023).

The Department of Legal Affairs (DLA), upon belief that any online platform is in violation of HB 3's provisions, may bring an action under the Florida Unfair or Deceptive Trade Practices Act. A private cause of action is permitted in certain limited circumstances.

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[19] 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 an online platform's data security; and
- Information that would otherwise disclose an online platform's proprietary information.

The bill defines the term "proprietary information" to mean information that:

- Is owned or controlled by the online platform;
- Is intended to be private and is treated by the online platform as private because disclosure would harm the online platform or its business operations;
- Has not been disclosed except as required by law or through 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, 2029, unless the Legislature reviews and reenacts the exemption by that date.

[19] 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 HB 3 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 s. 501.1737, 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 HB 3 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

A bill to be entitled

An act relating to public records; amending s. 501.1737, 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 a definition; 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 (8) of section 501.1737, Florida Statutes, as created by HB 3 or similar legislation, 2024 Regular Session, is renumbered as subsection (9), and a new subsection (8) is added to that section, to read:

501.1737 Age verification for online access to materials harmful to minors.—

(8)(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, 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

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

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 who the department believes to be a victim of a data breach or an 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 an online platform.

5. Information that would disclose the proprietary information of an online platform.

(d) For purposes of this subsection, the term "proprietary information" means information that:

1. Is owned or controlled by the online platform.

2. Is intended to be private and is treated by the online platform as private because disclosure would harm the online platform 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 online platform 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, 2029, 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. 501.1737, Florida Statutes, or received by the department pursuant to an investigation by the department or a law enforcement agency of a violation of that section, 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. 501.1737, 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. 501.1737, 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 records 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. 501.1737, 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. 501.1737, 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 online platform. Release of such information could give business competitors an unfair advantage.

(5) Information received by the department may contain a computer forensic report or information that could reveal weaknesses in the data security of an online platform. The release of this information could result in the identification of vulnerabilities in the cybersecurity system of the online platform and be used to harm the online platform 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. 501.1737, 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 3 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

REGULATORY REFORM AND ECONOMIC DEVELOPMENT SUBCOMMITTEE

HB 1491 by Rep. Tramont
Pub. Rec./Investigations by the Department of Legal Affairs

AMENDMENT SUMMARY
January 11, 2024

Amendment 1 by Rep. Tramont (line 52):

- Replaces “online platform” with “commercial entity” throughout the bill, to conform with the linked bill, HB 3.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Regulatory Reform & Economic Development Subcommittee
Representative Tramont offered the following:

Amendment

Remove line 52 and insert:
the data security of the commercial entity.

Remove line 54 and insert:
information of the commercial entity.

Remove line 57 and insert:
1. Is owned or controlled by the commercial entity.

Remove lines 58-60 and insert:
2. Is intended to be private and is treated by the commercial entity as private because disclosure would harm the commercial entity or its business operations.

Remove line 70 and insert:

impair the competitive advantage of the commercial entity who is

Remove line 115 and insert:

commercial entity. Release of such information could give business

Remove line 119 and insert:

weaknesses in the data security of the commercial entity. The

Remove lines 121-122 and insert:

of vulnerabilities in the cybersecurity system of the commercial entity and be used to harm the commercial entity and clients.

PCS for HB 433

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 433 Employment Regulations
SPONSOR(S): Regulatory Reform & Economic Development Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Regulatory Reform & Economic Development Subcommittee		Thompson	Anstead

SUMMARY ANALYSIS

The federal Fair Labor Standards Act (FLSA) provides workers with minimum wage, overtime pay, record keeping, and child labor protections for full and part-time workers in both the private sector and federal, state and local employment. The FLSA allows states to expand the rights of employers and employees. In some instances, Florida law provides stronger protections for employees than federal law, including protections regarding discrimination based on marital status, minimum wage, and health coverage obligations for small employers. Florida generally follows federal law on overtime pay and occupational health and safety.

The Florida Minimum Wage Act (Act), enacted in 2005, implements the minimum wage provisions in the State Constitution.

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 private employers in their jurisdiction. Local governments are also prohibited from requiring private employers 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 Occupational Safety and Health Act of 1970 (Act) is the federal labor law governing occupational health and safety in the private sector and federal government. Currently, there are no specific federal or state laws that provide heat exposure protections for outdoor workers.

The bill:

- Prohibits local governments from preferring one contractor over another based on the wages or employment benefits provided by the contractor.
- Removes the ability of local governments to require a minimum wage for certain contracted employees under the terms of a contract.
- Expressly preempts the regulation of the terms and conditions of employment to the state.
- Preempts the regulation of workplace heat exposure requirements to the state.
- Clarifies that the preemption of workplace heat requirements does not limit the authority of a local government to provide workplace heat exposure requirements for the employees of the local government, and does not apply if compliance will prevent the local government from receiving federal funds.

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

The effective date of the bill is July 1, 2024.

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. 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.[2]

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.[3] 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:[4]

- **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:[5]

- Executive, administrative and professional employees;
- 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;
- Casual babysitters and persons employed as companions for the elderly or infirm;
- Border patrol agents[6]; and
- 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

[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, (last visited Dec. 5, 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] 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.

[4] U.S. Department of Labor, Fair Labor Standards Act Advisor, https://webapps.dol.gov/elaws/whd/flsa/scope/screen10.asp, (last visited Dec. 5, 2023).

[5] 29 U.S.C. § 213. (It also includes separate exemptions from overtime pay.)

[6] *See* Border Patrol Agent Pay Reform Act of 2014, S.1691, 113th Cong, (2014).

from the federal minimum wage rate and overtime pay.[7] 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.[8]

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.[9] 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.[10]

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.[11] 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.[12] 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.[13]

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.[14] 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 by $1 until the minimum wage reaches $15 per hour on September 30, 2026.[15] 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."[16]

---

[7] *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 Dec. 5, 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."

[8] 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.)

[9] 29 U.S.C. §218.

[10] 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, (last visited Dec. 5, 2023).

[11] U.S. Department of Labor, Consolidated Minimum Wage Table, https://www.dol.gov/agencies/whd/mw-consolidated (last visited Dec. 5, 2023).

[12] Art. X, s. 24., Fla. Const.

[13] Art. X, s. 24 (c), Fla. Const.

[14] 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 Dec. 5, 2023).

[15] 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 Dec. 5, 2023).

[16] Art. X, s. 24 (a), Fla. Const.

The Florida Constitution references the FLSA and specifically ties the meaning[17] of certain terms, "Employer," "Employee" and "Wage," to have the meanings established under the FLSA and its implementing regulations.[18] 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.[19]

Florida Minimum Wage Act

The Florida Minimum Wage Act (Act) was enacted in 2005 to implement the minimum wage provisions in the State Constitution.[20] The Act designates the Department of Commerce (DC) 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.[21]

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.[22]

As it relates to the federal minimum wage and the FLSA, the Act specifies that:[23]

- Only those individuals entitled to receive the federal minimum wage under the FSLA, as amended, 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.

Local Wage Ordinances

In Florida, the State Constitution authorizes counties to enact ordinances that are not inconsistent with state law.[24] The State Constitution also grants municipalities the power to enact ordinances on any subject that state law may address, except:[25]

- 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.[26] However, a political subdivision (local government)[27] retains the authority to establish a minimum wage other than a

---

[17] *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.")

[18] Art. X, s. 24(b), Fla. Const.

[19] Art. X, s. 24(f), Fla. Const.

[20] Ch. 2005-353, Laws of Fla., codified in s. 448.110, F.S.

[21] S. 448.110(10), F.S. HB 5 (2023) renames the Department of Economic Opportunity as the Department of Commerce; SB 82 (2024), section 220, makes this conforming change in the Florida Minimum Wage Act.

[22] S. 448.110(3), F.S.

[23] S. 448.110(3), F.S.

[24] S. 1(f) and (g), Art. VIII, Fla. Const.; *see also* s. 125.01, F.S.

[25] S. 2(b), Art. VIII, Fla. Const.

[26] S. 218.077(2), F.S. *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].

[27] "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.

state or federal minimum wage or to provide employment benefits not otherwise required under state or federal law for:[28]

- 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 preemption also does not apply to, "a domestic violence or sexual abuse ordinance, order, rule, or policy adopted by a political subdivision."[29]

The law contains an exception for situations where compliance would prevent a local government from receiving federal funds. This allows compliance with the Davis-Bacon and related acts,[30] 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.[31]

Additionally, local governments are prohibited from requiring an employer to provide employment benefits[32] not required by state or federal law. "A political subdivision may not establish, mandate, 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."[33]

Despite these provisions, 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.[34] 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.[35]

Workplace Heat Exposure

---

[28] S. 218.077(3)(a), F.S.
[29] S. 218.077(3)(b), F.S.
[30] *See, e.g.*, 40 U.S.C. 3141 *et seq*. The Davis-Bacon Act is a federal law that regulates prevailing wage rates on public works projects. The Act provides that all laborers and mechanics working on construction projects which are funded by the federal government shall not be paid a wage less than prevailing wage, as specified by the U.S. Department of Labor, in the locality in which work is performed.
[31] S. 218.077(4), F.S.
[32] "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.
[33] 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.
[34] *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).
[35] 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 Dec. 5, 2023).

The Occupational Safety and Health Act of 1970 (Act) is the federal labor law governing occupational health and safety in the private sector and federal government.[36] Under the Act, two federal agencies are responsible for promoting occupational safety and health in the United States. The National Institute for Occupational Safety and Health (NIOSH) conducts research and recommends occupational safety and health standards.[37] The Occupational Safety and Health Administration (OSHA)[38] is responsible for the promulgation and enforcement of standards.[39]

Currently, there are no specific laws in Florida that provide heat exposure protections for outdoor workers. NIOSH and OSHA provide certain recommendations that employers provide heat exposure protections.

In 2013, NIOSH published "Preventing Heat-related Illness or Death of Outdoor Workers." This recommended standard recommends that employers have a plan in place to prevent heat-related illness. The plan should include hydration (drinking plenty of water), acclimatization (getting used to weather conditions), and schedules that alternate work with rest. It recommends that employers should also train workers about the hazards of working in hot environments.[40]

OSHA does not currently have any specific heat exposure standards. In the absence of a specific standard, OSHA is authorized to enforce the "general duty clause" of the Act, which requires each employer to provide a workplace that is free of "recognized hazards" causing or likely to cause "death or serious physical harm" to its employees.[41]

In 2011, OSHA launched a heat illness prevention campaign that includes guidance to employers and employees, a smartphone app that provides location-specific information on heat conditions and heat exposure prevention and first aid, and educational materials such as posters and pamphlets in English, Spanish, and other languages.[42]

On October 27, 2021, OSHA published an Advanced Notice of Proposed Rulemaking (ANPRM) for a potential standard on Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings.[43] OSHA solicited public comments on the ANPRM through January 26, 2022, and received over 1,000 comments on the ANPRM.

In March 2021, OSHA cited Valley Produce Harvesting and Hauling Company for a willful violation of the general duty clause by exposing sugar cane harvesting employees in Florida to "excessive heat, elevated temperature working conditions, direct sun radiation and thermal stress" while working outdoors in September 2020. OSHA assessed the maximum allowable civil monetary penalty of $136,532 for this violation, which was later reduced through an informal settlement with the employer to $81,919.20. The citation provides, "the employer did not furnish employment and a place of employment which were free from recognized hazards that were causing or likely to cause death or serious physical harm to employees in that employees were exposed to excessive heat, elevated temperature working conditions, direct sun radiation and thermal stress."[44]

In April 2022, OSHA began a National Emphasis Program (NEP) of enforcement of the general duty clause and compliance assistance to focus on indoor and outdoor heat exposure. The NEP expands on OSHA's ongoing heat-related illness prevention initiative and campaign by creating a targeted enforcement component and reiterating its compliance assistance and outreach efforts. This approach is intended to encourage early interventions by employers to prevent illnesses and deaths among

[36] Occupational Safety and Health Act of 1970, Pub. L. No. 91-596, 84 STAT. 1590, 91st Cong. (Jan. 1, 2004).
[37] 29 U.S.C. § 671.
[38] *See* Occupational Safety and Health Administration, *About Osha*, https://www.osha.gov/aboutosha (last visited Dec. 5, 2023).
[39] 29 U.S.C. § 655.
[40] NIOSH 1986, 2008, 2010; OSHA-NIOSH 2011.
[41] 29 U.S.C. § 654.
[42] Occupational Safety and Health Administration, Heat Illness Prevention, https://www.osha.gov/heat/ (last visited Dec. 5, 2023).
[43] 86 FR 59309.
[44] Occupational Safety and Health Administration, *Violation Detail*, https://www.osha.gov/ords/imis/establishment.violation_detail?id=1495595.015&citation_id=02001 (last visited Dec. 5, 2023).

workers during high heat conditions, such as working outdoors in a local area experiencing a heat wave, as announced by the National Weather Service. Early interventions include, but are not limited to, implementing water, rest, shade, training, and acclimatization procedures for new or returning employees.[45]

Local Heat Regulation

On November 11, 2023, the Miami-Dade County Board of County Commissioners considered a proposal that would require construction and agriculture companies with five or more employees to guarantee workers access to water and give them 10-minute breaks in the shade every two hours on days when the heat index equals or exceeds 95 degrees Fahrenheit. The proposal would also require employers to train workers to recognize the signs of heat illness, administer first aid and call for help in an emergency. Enforcement includes a warning, fines of up to $2,000 per day per violation, and debarment of contractors from county work for certain repeated violations and unpaid penalties.[46] According to reports:[47]

- The proposal was deferred until March.
- Some South Florida employers have expressed that they already provide such protections.
- Miami-Dade County would have been the only local government in the nation to adopt such requirements.

Preemption

A local government enactment may be inconsistent with state law if the:

- Local enactment conflicts with state statutes; or
- The Legislature has preempted the particular area of law that is the subject of the enactment.

Such state preemption precludes a local government from exercising authority in the preempted area.[48]

Florida law recognizes two types of state preemption: express and implied. Express preemption requires an express legislative statement of intent to preempt a specific area of law; it cannot be implied or inferred.[49] Implied preemption, on the other hand, exists where the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and where strong public policy reasons exist for finding such an area to be preempted by the legislature.[50] Courts determining the validity of local government ordinances enacted in the face of state preemption, whether express or implied, have found such ordinances to be null and void.[51]

Effect of Proposed Changes

Wage and Employment Benefits

The bill amends Florida's wage and employment benefits law by providing that a political subdivision may not:

- "maintain a minimum wage, other than a state or federal minimum wage."
- "through 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."

---

[45] Occupational Safety and Health Administration, *OSHA Instruction*, https://www.osha.gov/sites/default/files/enforcement/directives/CPL_03-00-024.pdf (last visited Dec. 5, 2023).
[46] Miami-Dade Legislative Item, File Number: 231773.
[47] Miami Herald, After industry pressure, Miami-Dade puts heat protections for outdoor workers on ice, https://www.miamiherald.com/news/local/environment/article281487003.html (last visited Dec. 6, 2023).
[48] Wolf, *The Effectiveness of Home Rule: A Preemptions and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009), https://www.floridabar.org/the-florida-bar-journal/the-effectiveness-of-home-rule-a-preemption-and-conflict-analysis/ (last visited March 20, 2023).
[49] *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).
[50] *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880 (Fla. 2010).
[51] *See, e.g., Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami,* 812 So. 2d 504 (Fla. 3d DCA 2002).

- "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."

The bill removes the ability of local governments to require a minimum wage for certain contracted employees under the terms of a contract.

The bill also removes the exception that allows 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."

Regulation of Labor

The bill expressly preempts the regulation of the "terms and conditions" of employment to the state. The bill provides that unless expressly authorized by special or general law, a county, municipality, special district, or political subdivision of the state may not adopt or enforce an ordinance, order, rule, or policy providing any "term or condition of employment" that exceeds or conflicts with the requirements of federal or state law relating to any term or condition of employment. The bill provides that an ordinance, order, rule, or policy that violates this provision is void and unenforceable.

This appears to limit local government from regulating employment in any way, including having certain requirements for its own employees that are different from the state or federal law.

Workplace Heat Exposure Requirements

In addition to the blanket preemption in the bill for all conditions of employment, the bill preempts the regulation of workplace heat exposure requirements to the state, and specifically indicates that the provision applies retroactively. Specifically, the bill provides that any local law, ordinance, resolution, regulation, rule, code, policy, or charter amendment adopted before, on, or after the effective date of this act which conflicts with this provision is void and prohibited.

The bill requires the DC to adopt rules relating to workplace heat exposure requirements if OSHA has not done so by July 1, 2028. The rules must be consistent with the standards of OSHA in effect at the time the DC adopts its rules, and modified as necessary to reflect workplace heat exposure considerations specific to this state. The Legislature must ratify such rules before they take effect.

The bill prohibits local governments from:

- Mandating or otherwise imposing heat exposure requirements on an employer, an employee, a contractor, or a subcontractor.
- Considering or seeking information relating to a contractor's or subcontractor's heat exposure requirements in any procurement for goods or services.

The bill provides that it does not:

- Limit the authority of a local government to mandate or impose workplace heat exposure requirements for the employees of the local government.
- Apply if it is determined that compliance would prevent the distribution of federal funds to a local government or would otherwise be inconsistent with federal requirements pertaining to receiving federal funds, but only to the extent necessary to allow a local government to receive federal funds or to eliminate the inconsistency with federal requirements.

The bill provides the following definitions:

- "Contractor" means an employer contracting with, or seeking to contract with, a local government to provide goods or services to, for the benefit of, or on behalf of the local government.

- "Employee" means a natural person, including a self-employed person, who receives any type of compensation or remuneration for providing services to an employer.
- "Employer" means a person who hires or contracts for the services of employees.
- "Heat exposure requirement" means a standard mandated or otherwise imposed on employers, employees, contractors, or subcontractors to control an employee's exposure to heat or sun, or to otherwise address or moderate the effects of such exposure. The term includes, but is not limited to, standards relating to all of the following:
    - Employee monitoring and protection.
    - Water consumption.
    - Cooling measures.
    - Acclimatization and recovery periods or practices.
    - Posting or distributing notices or materials relating to heat exposure which inform employees how to protect themselves from such exposure.
    - Implementation and maintenance of heat exposure programs or training.
    - Appropriate first-aid measures or emergency responses related to heat exposure.
    - Protections for employees who report that they have experienced excessive heat exposure.
    - Reporting and recordkeeping requirements.
- "Local government" means a county, municipality, department, commission, district, board, or other public body, whether corporate or otherwise, created by or under state law.
- "Subcontractor" has the same meaning as in s. 448.095(1), F.S., which includes 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.

B. SECTION DIRECTORY:

Section 1: Amends s. 218.077, F.S., relating to wage and employment benefits requirements by political subdivisions; restrictions.

Section 2: Creates s. 448.077, F.S., relating to regulation of labor preempted to state.

Section 3: Amends s. 448.106, F.S., relating to workplace heat exposure requirements; preemption; rulemaking.

Section 4: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate fiscal impact on the private sector to the extent that the preemptions supersede local ordinances.

The bill may:

- Prevent businesses from losing local government contracts based on wages or employment benefits that they do not currently offer.
- Allow businesses that contract with local governments to pay their employees as they see fit.
- Prevent businesses from being required to provide costly terms and conditions of employment.
- Prevent businesses from being required to provide costly workplace heat exposure protections.
- Prevent workers from earning a wage that allows them to live in the area that they work.
- Create a negative fiscal impact for employers who provide workers' compensation insurance for their employees.

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 the DC to adopt rules relating to workplace heat exposure requirements if OSHA has not done so by July 1, 2028.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to employment regulations; amending s. 218.077, F.S.; prohibiting political subdivisions from maintaining a certain minimum wage; prohibiting political subdivisions from controlling, affecting, or awarding preferences relating to wages or employment benefits of entities contracting with the political subdivision; providing applicability; creating s. 448.077, F.S.; preempting regulation of the terms and conditions of employment to the state; declaring void any ordinance, order, rule, or policy that violates this prohibition; creating s. 448.106, F.S.; providing definitions; preempting the regulation of heat exposure requirements in the workplace to the state; providing that certain local laws, ordinances, resolutions, regulations, rules, codes, policies, and amendments are void and prohibited; requiring the Department of Commerce to adopt rules relating to workplace heat exposure requirements if the Occupational Safety and Health Administration has not done so by a date certain; providing requirements for such rules; prohibiting local governments from mandating or imposing certain requirements or seeking information from certain persons relating to certain requirements; providing construction and

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)(a) 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.

(b) A political subdivision may not through 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 may 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~~

2.~~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. Section 448.077, Florida Statutes, is created to read:

448.077 Regulation of labor preempted to state.—

The regulation of the terms and conditions of employment is expressly preempted to the state. Unless expressly authorized by special or general law, a county, municipality, special district, or political subdivision of the state may not adopt or enforce an ordinance, order, rule, or policy providing any term or condition of employment that exceeds or conflicts with the requirements of federal or state law relating to any term or condition of employment. An ordinance, order, rule, or policy that violates this section is void and unenforceable.

Section 3. Section 448.106, Florida Statutes, is created to read:

448.106 Workplace heat exposure requirements; preemption; rulemaking.—

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

(a) "Contractor" means an employer contracting with, or seeking to contract with, a local government to provide goods or services to, for the benefit of, or on behalf of the local government.

(b) "Employee" means a natural person, including a self-employed person, who receives any type of compensation or remuneration for providing services to an employer.

(c) "Employer" means a person who hires or contracts for the services of employees.

(d) "Heat exposure requirement" means a standard mandated or otherwise imposed on employers, employees, contractors, or subcontractors to control an employee's exposure to heat or sun, or to otherwise address or moderate the effects of such exposure. The term includes, but is not limited to, standards relating to all of the following:

1. Employee monitoring and protection.

2. Water consumption.

3. Cooling measures.

4. Acclimatization and recovery periods or practices.

5. Posting or distributing notices or materials relating

to heat exposure which inform employees how to protect themselves from such exposure.

6. Implementation and maintenance of heat exposure programs or training.

7. Appropriate first-aid measures or emergency responses related to heat exposure.

8. Protections for employees who report that they have experienced excessive heat exposure.

9. Reporting and recordkeeping requirements.

(e) "Local government" means a county, municipality, department, commission, district, board, or other public body, whether corporate or otherwise, created by or under state law.

(f) "Subcontractor" has the same meaning as in s. 448.095(1).

(2)(a) The regulation of workplace heat exposure requirements is preempted to the state. Any local law, ordinance, resolution, regulation, rule, code, policy, or charter amendment adopted before, on, or after the effective date of this act which conflicts with this section is void and prohibited.

(b) If the Occupational Safety and Health Administration has not adopted by rule requirements regulating workplace heat exposure by July 1, 2028, the Department of Commerce must adopt by rule statewide workplace heat exposure requirements. Such rules must be consistent with the standards of the Occupational

Safety and Health Administration in effect at the time the Department of Commerce adopts its rules, and modified as necessary to reflect workplace heat exposure considerations specific to this state. The Legislature must ratify such rules before they take effect.

(3) Except as otherwise provided in this section, a local government may not:

(a) Mandate or otherwise impose heat exposure requirements on an employer, an employee, a contractor, or a subcontractor.

(b) Consider or seek information relating to a contractor's or subcontractor's heat exposure requirements in any procurement for goods or services.

(4) This section does not limit the authority of a local government to mandate or impose workplace heat exposure requirements for the employees of the local government.

(5) This section does not apply if it is determined that compliance with this section will prevent the distribution of federal funds to a local government or would otherwise be inconsistent with federal requirements pertaining to receiving federal funds, but only to the extent necessary to allow a local government to receive federal funds or to eliminate the inconsistency with federal requirements.

Section 4. This act shall take effect July 1, 2024.