Commerce Committee

Tuesday, January 23, 2024
12:30 PM - 2:30 PM
Webster Hall (212 Knott)

Meeting Packet

Paul Renner
Speaker

Bob Rommel
Chair

The Florida House of Representatives

Commerce Committee

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Meeting Agenda

Tuesday, January 23, 2024
12:30 pm – 2:30 pm
Webster Hall (212 Knott)

I. Call to Order

II. Roll Call

III. Welcome and Opening Remarks

IV. Consideration of the following bill(s):

CS/CS/HB 49 Employment and Curfew of Minors by Local Administration, Federal Affairs & Special Districts Subcommittee, Regulatory Reform & Economic Development Subcommittee, Chaney

HB 81 Civil Penalties Under The Gas Safety Law of 1967 by Brackett

CS/HB 215 Risk Retention Groups by Insurance & Banking Subcommittee, Truenow

CS/HB 283 Self-service Storage Facility Liens by Civil Justice Subcommittee, Borrero

CS/HB 303 Rabies Vaccinations by Regulatory Reform & Economic Development Subcommittee, Killebrew

HB 473 Cybersecurity Incident Liability by Giallombardo

CS/HB 481 Building Construction Regulations and System Warranties by Civil Justice Subcommittee, Maggard

CS/HB 551 Designation of Eligible Telecommunications Carriers by Energy, Communications & Cybersecurity Subcommittee, Barnaby

CS/HB 623 Home Warranty Transfers by Insurance & Banking Subcommittee, Steele

HB 825 Underground Facilities by Koster

HB 849 Veterinary Practices by Killebrew, Buchanan

HB 1461 Pub. Rec./Investigations by the Department of Legal Affairs by McFarland

Consideration of the following proposed committee substitute(s):

PCS for HB 133 -- Criminal History of Licensees and Employees

PCS for HB 1459 -- Advanced Technology

V. Closing Remarks

VI. Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 49 Employment and Curfew of Minors
SPONSOR(S): Local Administration, Federal Affairs & Special Districts Subcommittee, Regulatory Reform & Economic Development Subcommittee, Chaney
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	10 Y, 5 N, As CS	Thompson	Anstead
2) Local Administration, Federal Affairs & Special Districts Subcommittee	12 Y, 5 N, As CS	Burgess	Darden
3) Commerce Committee		Thompson	Hamon

SUMMARY ANALYSIS

Subject to some exceptions, federal and state child labor laws prevent work hours and timeframes from interfering with the child's health, safety, and education. At the federal level, the Fair Labor Standards Act (FLSA) determines the minimum age for work during school hours, performing certain jobs after school, and places restraints on work considered hazardous. Florida's Child Labor Law also restricts the employment of minors, sometimes more than federal law. Florida's Child Labor Law contains protections specifically directed to 16 and 17-year-olds, including restrictions on what times during a day they may work, how many hours in a week they may work, and what jobs or occupations they may perform.

Florida authorizes cities and counties to enact their own curfew ordinances for minors under the age of 16. The law provides that any minor under the age of 16 cannot be present at a public establishment during the following hours, not including legal holidays:

- Sunday to Thursday from 11:00 p.m. to 5:00 a.m.
- Saturday or Sunday from 12:01 a.m. to 6:00 a.m.
- 9:00 a.m. to 2:00 p.m. if suspended from school.

The statutory curfew does not apply unless the curfew is adopted by a governing body of the county or municipality. A governing body of a county or municipality is allowed to adopt restrictions that are more or less stringent than the statutory curfew.

The bill:

- Removes restrictions concerning the number of work hours per day and per week for minors 16 and 17 years-of-age, and specifies that minors 16 and 17 years-of-age may work the same number of hours as a person who is 18 years-of-age or older.
- Revises the times of day in which minors 16 and 17 years-of-age may work.
- Limits the restriction that currently prohibits 16- and 17-year-olds from working more than 6 consecutive days in any one week, or working 4 hours continuously without a break of at least 30 minutes for a meal period to only apply to minors age 15 or younger.
- Requires 16- and 17-year-olds to be granted breaks and meal periods in the same manner as employees who are 18 years of age or older.
- Requires juvenile curfews adopted by county or municipal ordinance to include certain exceptions.

The bill may have an indeterminate fiscal impact on state and local governments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Federal 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] Congress adopted the FLSA to prevent substandard labor conditions from being used as an "unfair method of competition."[2] The FLSA covers employees and enterprises engaged in interstate commerce. An enterprise is covered if it has annual sales or business done of at least $500,000.[3] Regardless of the dollar volume of business, the FLSA applies to hospitals; institutions primarily engaged in the care of the sick, aged, mentally ill, or disabled who reside on the premises; schools for children who are mentally or physically disabled or gifted; federal, state, and local governments; and preschools, elementary and secondary schools, and institutions of higher education.[4]

The FLSA was adopted as a minimum set of standards, which allowed states to provide more protections for employees. Under the FLSA, if states enact minimum wage, overtime, or child labor laws that are more protective than what is provided by the FLSA, the state law applies.[5] Because states may enact laws that are more protective than what is provided by the FLSA, minimum wage, overtime, and child labor standards vary state by state.

Child Labor

The FLSA prohibits the employment of "oppressive child labor" in the United States and the shipment of goods made in proximity to oppressive child labor.[6] The FLSA establishes a general minimum age of 16 years for employment in nonhazardous occupations, and a minimum age of 18 years for employment in any occupation determined by the Secretary of Labor to be hazardous to the health or well-being of minors. However, children younger than 16 may work if certain conditions are met, and rules for agricultural and nonagricultural employment vary significantly.[7]

According to the US Department of Labor (DOL), two things are certain:[8]

- Once an employee is 18 years-of-age, there are no Federal child labor rules.
- Federal child labor rules do not require work permits. However, many states issue age certificates if you are asked to provide them by your employer.

Nonagricultural Employment – Minimum Standards

For nonexempt children, the minimum age for employment in nonagricultural occupations is:[9]

- 18 years-of-age for occupations determined by the Secretary of Labor to be hazardous to the health and well-being of children (i.e., "hazardous occupations");
- 16 years-of-age for employment in nonhazardous occupations; or

[1] 29 U.S.C. § 201-219 and 29 C.F.R. ch. V.
[2] *Brooklyn Savings Bank V. O'Neil*. 324 U.S. 697 (1945).
[3] 29 C.F.R. §§779.258-779.259.
[4] 29 U.S.C. §203(s)(1).
[5] 29 U.S.C. § 218.
[6] 29 U.S.C. §212.
[7] Congressional Research Service, The Fair Labor Standards Act (FLSA): An Overview, (Mar. 8, 2023), https://crsreports.congress.gov/product/pdf/R/R42713 (last visited Nov. 30, 2023).
[8] US Department of Labor, Fair Labor Standards Act (FLSA) Child Labor Rules Advisor, https://webapps.dol.gov/elaws/whd/flsa/cl/default.htm (last visited Dec. 3, 2023).
[9] 29 C.F.R. § 570.2.

- 14 years-of-age for a limited set of occupations, with restrictions on hours and work conditions, as determined by the Secretary of Labor.

A child under the age of 14 may not be employed unless his or her employment is explicitly excluded from the definition of oppressive child labor (e.g., a parent is the child's sole employer in a nonhazardous occupation) or exempt from the FLSA child labor provisions (e.g., newspaper delivery).[10]

The hours and times of day that 14- and 15-year-olds are allowed to work and specific occupations that are permitted or prohibited for such minors in nonagricultural occupations are set by federal and state law.

The FLSA allows the employment of minors 14 and 15 years-of-age during the following hours and times-of-day:[11]

- Outside of school hours;[12]
- Not more than 40 hours in any 1 week when school is not in session;
- Not more than 18 hours in any 1 week when school is in session;
- Not more than 8 hours in any 1 day when school is not in session;
- Not more than 3 hours in any 1 day when school is in session, including Fridays; and
- Between 7 a.m. and 7 p.m. in any 1 day, except during the summer (June 1 through Labor Day) when the evening hour will be 9 p.m.

Oppressive Child Labor

The following occupations constitute oppressive child labor within the meaning of the FLSA when performed by minors who are 14 and 15 years-of-age:[13]

- Manufacturing, mining, or processing occupations.
- Occupations that the Secretary of Labor may, pursuant to section 3(l) of the FLSA, find and declare to be hazardous for the employment of minors between 16 and 18 years of age or detrimental to their health or well-being.
- Occupations that involve operating, tending, setting up, adjusting, cleaning, oiling, or repairing hoisting apparatus.
- Work performed in or about boiler or engine rooms or in connection with the maintenance or repair of the establishment, machines, or equipment.
- Occupations that involve operating, tending, setting up, adjusting, cleaning, oiling, or repairing any power-driven machinery, including but not limited to lawn mowers, golf carts, all-terrain vehicles, trimmers, cutters, weed-eaters, edgers, food slicers, food grinders, food choppers, food processors, food cutters, and food mixers. Youth 14 and 15 years of age may, however, operate office equipment pursuant to § 570.34(a) and vacuum cleaners and floor waxers pursuant to § 570.34(h).
- The operation of motor vehicles.
- Outside window washing that involves working from window sills, and all work requiring the use of ladders, scaffolds, or their substitutes.
- All baking and cooking activities except that cooking which is permitted by § 570.34(c).
- Work in freezers and meat coolers and all work in the preparation of meats for sale except as permitted by § 570.34(j). This section, however, does not prohibit the employment of 14- and 15-year-olds whose duties require them to occasionally enter freezers only momentarily to retrieve items as permitted by § 570.34(i).
- Youth peddling, which entails the selling of goods or services to customers at locations other than the youth-employer's establishment, such as the customers' residences or places of business, or public places such as street corners and public transportation stations.

[10] 29 C.F.R. § 570.119.
[11] 75 C.F.R. § 28448 (2010).
[12] 29 C.F.R. § 570.35(b) defines "school hours" as the hours that the local public school district where the minor resides while employed is in session during the regularly scheduled school year.
[13] 29 C.F.R. § 570.33.

- Loading and unloading of goods or property onto or from motor vehicles, railroad cars, or conveyors, except the loading and unloading of personal non-power-driven hand tools, personal protective equipment, and personal items to and from motor vehicles as permitted by § 570.34(k).
- Catching and cooping of poultry in preparation for transport or for market.
- Public messenger service.
- Occupations in connection with transportation of persons or property, warehousing and storage, communications and public utilities, and construction (including demolition and repair).

Authorized Occupations

The FLSA allows the following occupations to be performed by minors 14 and 15 years-of-age when performed within the required timeframes:[14]

- Office and clerical work, including the operation of office machines.
- Work of an intellectual or artistically creative nature.
- Cooking with electric or gas grills which does not involve cooking over an open flame.
- Cashiering, selling, modeling, art work, work in advertising departments, window trimming, and comparative shopping.
- Price marking and tagging by hand or machine, assembling orders, packing, and shelving.
- Bagging and carrying out customers' orders.
- Errand and delivery work by foot, bicycle, and public transportation.
- Clean up work, including the use of vacuum cleaners and floor waxers, and the maintenance of grounds, but not including the use of power-driven mowers, cutters, trimmers, edgers, or similar equipment.
- Kitchen work and other work involved in preparing and serving food and beverages.
- Cleaning vegetables and fruits, and the wrapping, sealing, labeling, weighing, pricing, and stocking of items.
- The loading onto motor vehicles and the unloading from motor vehicles of the light, non-power-driven, hand tools and personal protective equipment that the minor will use as part of his or her employment at the work site; and the loading onto motor vehicles and the unloading from motor vehicles of personal items such as a back pack, a lunch box, or a coat that the minor is permitted to take to the work site.
- The employment of 15-year-olds (but not 14-year-olds) to perform permitted lifeguard duties at traditional swimming pools and water amusement parks (including such water park facilities as wave pools, lazy rivers, specialized activity areas that may include water falls and sprinkler areas, and baby pools; but not including the elevated areas of power-driven water slides) when such youth have been trained and certified by the American Red Cross, or a similar certifying organization, in aquatics and water safety.
- Employment inside and outside of places of business where machinery is used to process wood products.
- Work in connection with cars and trucks if confined to dispensing gasoline and oil; courtesy service; car cleaning, washing and polishing by hand; and other occupations permitted by this section, but not including work involving the use of pits, racks, or lifting apparatus, or involving the inflation of any tire mounted on a rim equipped with a removable retaining ring.
- Work in connection with riding inside passenger compartments of motor vehicles.

[14] 29 C.F.R. § 570.34.

Agricultural Employment – Minimum Standards

With some exceptions, the minimum age for employment in agricultural occupations is:

- 16 years-of-age for employment in any agricultural job, including those determined to be hazardous by the Secretary of Labor, with no restrictions on hours of work;[15]
- 14 years-of-age for employment in nonhazardous agricultural jobs, outside of school hours;[16]
- 12 years-of-age (up to 13 years) for employment in nonhazardous agricultural jobs, outside of school hours, with the written consent of a parent; written consent is not required if the work takes place on a farm that also employs the child's parent;[17]
- 10 years-of-age (and up to 11 years) for employment to hand-harvest select crops for up to eight weeks in nonhazardous agricultural jobs, outside of school hours, with the written consent of a parent, providing the employer has obtained a waiver permitting this employment from the Secretary of Labor;[18] or
- Any age (up to 12 years), for employment in nonhazardous agricultural jobs, outside of school hours on certain small farms, with a parent's written consent.[19]

A child of any age who is employed by a parent on a farm owned or operated by the parent may work without restriction.[20] DOL regulations also provide limited exemptions to child labor rules concerning hazardous agricultural occupations for student learners and graduates of vocational training programs that meet regulatory criteria.[21]

FLSA Child Labor Exemptions

The FLSA excludes the following occupations and work arrangements from coverage of its child labor provisions:

- *Children with a Parental Employer*: Children who work for a parent or a person standing in place of a parent[22] in an occupation other than manufacturing, mining, or hazardous work may be employed at any age and for any number of hours.[23]
- *Child Performers*: Children of any age may be employed as actors or performers in motion pictures or in theatrical, radio, or television productions.[24]

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[15] 29 C.F.R. § 570.2.

[16] 29 U.S.C. §213(c)(1)(C). DOL regulations identify the set of jobs and activities that—subject to hours-of-work restrictions—do not constitute oppressive child labor for children ages 14 and 15 years old; these are at 29 C.F.R. §570.33.

[17] 29 U.S.C. §213(c)(1)(B).

[18] The conditions under which the Secretary of Labor will grant a waiver permitting the employment of 10 and 11 year old children to harvest certain crops are in 29 U.S.C. 213(c)(4) and 29 C.F.R. § part 575. However, as DOL notes "the Department was enjoined from issuing such waivers in 1980 because of issues involving exposure, or potential exposure, to pesticides (see National Ass'n of Farmworkers Organizations v. Marshall, 628 F.2d 604 (DC Cir. 1980)). Therefore, no waivers have been granted under FLSA section 13(c)(4) for thirty years." DOL-WHD, "Child Labor Regulations, Orders and Statements of Interpretation; Child Labor Violations-Civil Money Penalties - A Proposed Rule," 75 Federal Register 54842, September 2, 2011.

[19] 29 U.S.C. §213(c)(1)(A). Applies to the employment of children on farms that are exempt from FLSA minimum wage provisions because they employed fewer than 500 "man-days of agricultural labor" during any calendar quarter in the previous calendar year. FLSA defines a man-day of agricultural labor as "any day during which an employee performs any agricultural labor for not less than one hour"; 29 U.S.C. §203(u).

[20] 29 U.S.C. §213(c)(2).

[21] 29 C.F.R. §570.72.

[22] Parent or person standing in place of a parent is defined in 29 C.F.R. §570.126 as including "natural parents, or any other person, where the relationship between that person and a child is such that the person may be said to stand in place of a parent. For example, one who takes a child into his home and treats it as a member of his own family, educating and supporting the child as if it were his own, is generally said to stand to the child in place of a parent."

[23] This exemption stems from the FLSA definition of oppressive child labor at 29 U.S.C. §203(1), which excludes children employed by a parent in most nonhazardous occupations. For children employed in nonagricultural work, the parent must be the sole employer for the exemption to hold. The parent need not be the sole employer for children working in agriculture on a farm owned or operated by the parent.

[24] 29 U.S.C. §213(c)(3).

- *Newspaper Delivery Persons*: Children of any age may be employed to deliver newspapers to consumers.[25]
- *Evergreen Wreath Producers (Homebased)*: Children of any age may be employed as homeworkers to make evergreen wreaths and to harvest forest products used in making such wreaths.[26]

Hazardous Occupations

Seventeen groups of nonagricultural occupations have been determined to be hazardous or detrimental to the health or well-being of children between the ages of 16 and 18 years.[27] Employment in these jobs is prohibited, with limited exemptions for registered apprentices and student learners.[28] In some instances, children's employment is banned in entire industries (e.g., coal mining) with some exceptions for office, sales, or maintenance work; others prohibit children's exposure to materials (e.g., radioactive substances) or equipment (e.g., power-driven hoisting apparatus).

Eleven types of agricultural occupations have been determined to be hazardous, in which—with few exceptions—a child below the age of 16 may not be employed.[29] These include, for example, handling or applying certain agricultural chemicals, and working on a farm in a pen occupied by a stud horse maintained for breeding purposes. The prohibition on employment in agricultural hazardous occupations does not apply to children employed by a parent on a farm owned or operated by the parent.[30] When certain requirements are met, student learners and graduates of tractor or machine operation programs that meet regulatory criteria may be employed in select hazardous occupations.

FLSA Violations

Two remedies are available for violations of the FLSA child labor provisions. The Secretary of Labor may assess civil penalties or seek other relief, including injunctive relief. Employers who violate the FLSA child labor provisions may be assessed the following civil penalties:

- Up to $15,138 for each employee who was the subject of a child labor violation; or
- Up to $68,801 for each violation that causes the death or serious injury of a minor employee, a penalty may be doubled if the violation is a repeated or willful violation.[31]

U.S. district courts have jurisdiction to enjoin violations of the FLSA's child labor provisions.[32] For example, a federal court may order an employer to halt employment of a minor in a hazardous occupation or may enjoin a producer from shipping goods out of state from an establishment in or about which a child labor violation has occurred. Criminal penalties are also prescribed for willful violations of the FLSA's child labor provisions.[33]

[25] 29 U.S.C. §213(d).
[26] 29 U.S.C. §213(d).
[27] 29 C.F.R. §§570.50-570.68.
[28] The prohibition on minors' employment in the nonagricultural hazardous occupations applies even if the child is employed by a parent. The conditions under which a registered apprentice or student learner may participate in hazardous occupation tasks are described in 29 C.F.R. §570.50 (b) and (c).
[29] Hazardous agricultural occupations are described in 29 C.F.R. §570.71; exemptions to the ban on children's employment in hazardous agricultural occupations are in 29 C.F.R. §570.72.
[30] 29 U.S.C. §213(c)(2).
[31] These civil money penalties took effect on January 16, 2023, and are as adjusted for inflation as provided by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (P.L. 114-74).
[32] 29 U.S.C. §217.
[33] Congressional Research Service, The Fair Labor Standards Act (FLSA): An Overview, Mar.8, 2023, at 17 https://crsreports.congress.gov/product/pdf/R/R42713 (last visited Dec. 3, 2023).

Florida Child Labor Law

The Florida Department of Business and Professional Regulation, Division of Regulation, administers and enforces the state's Child Labor Law[34] through its Child Labor Program.[35] The "mission of the Child Labor Program is to provide a program of education, enforcement, and administrative initiatives designed to achieve full compliance in the enforcement of Child Labor laws and ensure the health, education and welfare of Florida's working minors."[36]

Florida's Child Labor Law restricts the employment of minors, sometimes more than federal law. Once a worker reaches the age of 18, child labor laws do not restrict their employment.

Florida's Child Labor Law defines "child" or "minor" as any person 17 years of age or younger, unless:[37]

- The person is or has been married;
- The person's disability of nonage has been removed by a court of competent jurisdiction;
- The person is serving or has served in the Armed Forces of the United States;
- It has been found by a court having jurisdiction over the person that it is in the best interest of such minor to work and the court specifically approves any employment of such person, including the terms and conditions of such employment; or
- The person has graduated from an accredited high school or holds a high school equivalency diploma.

Minimum Age

Under Florida's Child Labor law, minors of any age may be employed as follows:[38]

- As pages in the Florida Legislature.
- By the entertainment industry as prescribed in ss. 450.012, F.S., and 450.132, F.S.
- In domestic or farm work in connection with their own homes or the farm or ranch on which they live, or directly for their own parents or guardian, or in the herding, tending, and management of livestock, during the hours they are not required by law to be in school.

The law provides the following prohibitions:

- *Persons 10 years-of-age or younger*: Prohibited from engaging in the sale and distribution of newspapers.
- *Except as provided above, persons 13 years-of-age or younger*: Prohibited from being employed, permitted, or suffered to work in any gainful occupation at any time.
- *Persons 17 years old or younger*: Whether or not such person's disabilities of nonage have been removed by marriage or otherwise, are prohibited from being employed, permitted, or suffered to work in any place where alcoholic beverages are sold at retail, except as provided in s. 562.13, F.S.[39] For example, a 16- or 17-year-old may work at a grocery store that sells alcohol under certain conditions and a restaurant that sells beer and wine under certain conditions.

The law provides the following prohibition to prevent minors being exploited and becoming victims of human trafficking:[40]

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[34] *See* ss. 450.001-450.165, F.S.

[35] S. 450.155, provides that Child Labor Law program appropriations made by the Legislature shall be used to carry out the proper responsibilities of administering the Child Labor Law, to protect the working youth of the state, and to provide education about the Child Labor Law to employers, public school employees, the general public, and working youth.

[36] Florida Department of Business and Professional Regulation, Child Labor, http://www.myfloridalicense.com/DBPR/child-labor/ (last visited Dec. 3, 2023).

[37] S. 450.012(3), F.S.

[38] S. 450.021, F.S.

[39] Section 562.13, F.S., prohibits any vendor licensed under the Beverage Law from employing any person under 18 years of age. However, this section provides specific exceptions, including, but not limited to, professional entertainers under 17 years of-age, certain minors employed in the entertainment industry, persons under the age of 18 employed in drugstores, grocery stores, department stores, florists, specialty gift shops, or automobile service stations for consumption off the premises.

[40] S. 450.021(5), F.S.

- A person under the age of 18, whether or not such person's disabilities of nonage have been removed by marriage or otherwise, may not be employed, permitted, or suffered to work in an adult theater, as defined in s. 847.001(2)(b), F.S.

Hazardous Occupations

Florida law prohibits minors 15 years-of-age or younger, whether or not such person's disabilities of nonage have been removed by marriage or otherwise, from being employed or permitted or suffered to work in any of the following occupations:[41]

- In connection with power-driven machinery, except power mowers with cutting blades 40 inches or less.
- In any manufacturing that makes or processes a product with the use of industrial machines.
- The manufacture, transportation, or use of explosive or highly flammable substances.
- Sawmills or logging operations.
- On any scaffolding.
- In heavy work in the building trades.
- In the operation of a motor vehicle, except a motorscooter which he or she is licensed to operate, except that 14-year-old and 15-year-old workers may drive farm tractors in the course of their farmwork under the close supervision of their parents on a family-operated farm, and except that qualified 14-year-old and 15-year-old workers may drive tractors in the course of their farmwork under the close supervision of the farm operator. "Qualified," as used herein, means having completed a training course in tractor operation sponsored by a recognized agricultural or vocational agency, as evidenced by duly executed certificate, such certificate to be filed with the farm operator for the duration of the employment.
- In oiling, cleaning, or wiping machinery or shafting or applying belts to pulleys.
- In repairing of elevators or other hoisting apparatus.
- Work in freezers or meat coolers and all work in preparation of meats for sale, except wrapping, sealing, labeling, weighing, pricing, and stocking when performed in another area. This shall not prohibit work done in the normal operations of a food service facility licensed by chapter 509, F.S.
- In the operation of power-driven laundry or drycleaning machinery or any similar power-driven machinery.
- At spray painting.
- Alligator wrestling, work in connection with snake pits, or similar hazardous activities.
- Door-to-door selling of magazine subscriptions, candy, cookies, flowers, or other merchandise or commodities, except merchandise of nonprofit organizations, such as the Girl Scouts of America or the Boy Scouts of America.
- In working with meat and vegetable slicing machines.

Florida law prohibits minors under 18 years-of-age, whether such person's disabilities of nonage have been removed, from being employed or permitted or suffered to work in any of the following places of employment or in any of the following occupations:[42]

- In or around explosive or radioactive materials.
- On any scaffolding, roof, superstructure, residential or nonresidential building construction, or ladder above 6 feet.
    - Does not apply to the employment of student learners under the conditions prescribed in s. 450.161, F.S.
- In or around toxic substances or corrosives, including pesticides or herbicides, unless proper field entry time allowances have been followed.
- Any mining occupation.
- In the operation of power-driven woodworking machines.
    - Does not apply to the employment of student learners under the conditions prescribed in s. 450.161, F.S.

[41] S. 450.061(1), F.S.
[42] S. 450.061(2), F.S.

- In the operation of power-driven hoisting apparatus.
- In the operation of power-driven metal forming, punching, or shearing machines.
    - Does not apply to the employment of student learners under the conditions prescribed in s. 450.161, F.S.
- Slaughtering, meat packing, processing, or rendering, except as provided in 29 C.F.R. s. 570.61(c), F.S.
    - Does not apply to the employment of student learners under the conditions prescribed in s. 450.161, F.S.
- In the operation of power-driven bakery machinery.
- In the operation of power-driven paper products and printing machines.
    - Does not apply to the employment of student learners under the conditions prescribed in s. 450.161, F.S.
- Manufacturing brick, tile, and like products.
- Wrecking or demolition.
- Excavation operations.
    - Does not apply to the employment of student learners under the conditions prescribed in s. 450.161, F.S.
- Logging or sawmilling.
- Working on electric apparatus or wiring.
    - Does not apply to the employment of student learners under the conditions prescribed in s. 450.161, F.S.
- Firefighting.
    - Does not apply to the employment of student learners under the conditions prescribed in s. 450.161, F.S.
- Operating or assisting to operate, including starting, stopping, connecting or disconnecting, feeding, or any other activity involving physical contact associated with operating, a tractor over 20 PTO horsepower, any trencher or earthmoving equipment, fork lift, or any harvesting, planting, or plowing machinery, or any moving machinery.

Florida law prohibits the employment of minors under 18 years-of-age, whether such person's disabilities of nonage have been removed by marriage or otherwise, from being employed or permitted or suffered to work in any place of employment or at any occupation hazardous or injurious to the life, health, safety, or welfare of such minor, as such places of employment or occupations may be determined and declared by the department to be hazardous and injurious.

These prohibitions do not apply to minors employed in the entertainment industry.[43]

Hours of Work

Generally, Florida law allows minors who are 16 and 17 years-of-age to work in a broad range of jobs, unless the jobs are hazardous. Minors who are 14 and 15 years-of-age are allowed to work in a broad range of jobs but are limited in the number of hours per day and per week they may work, especially when school is in session.[44] Minors 13 years old or younger are prohibited from working in Florida, except in some limited situations.

Minors Under the Age of 16

For minors younger than 16 years-of-age, Florida Child Labor Law provides the following restrictions on hours of work:

- Before 7 a.m. or after 7 p.m. when school is scheduled the following day or for more than 15 hours in any one week.
- More than 3 hours on any school day, if not enrolled in a career education program, unless there is no session of school the following day.
- During holidays and summer vacations:

[43] S. 450.061(4), F.S.
[44] *See* S. 450.081, F.S.

- Before 7 a.m. or after 9 p.m.;
- For more than 8 hours in any one day; or
- For more than 40 hours in any one week.

Sixteen and Seventeen-Year-Olds

For minors 16 and 17 years-of-age, Florida's Child Labor Law provides the following restrictions on hours of work:

- Before 6:30 a.m. or after 11:00 p.m.
- More than 8 hours in any one day when school is scheduled the following day.
- When school is in session, more than 30 hours in any one week.
- During school hours on any school day, if not enrolled in a career education program.
- More than 6 consecutive days in any one week.
- More than 4 hours continuously without an interval of at least 30 minutes for a meal period.
    - No period of less than 30 minutes is deemed to interrupt a continuous period of work.

Exemptions

The hours of work restrictions do not apply to the following:[45]

- Minors 16 and 17 years-of-age who have graduated from high school or received a high school equivalency diploma.
- Minors who are within the compulsory school attendance age limit who hold a valid certificate of exemption issued by the school superintendent or his or her designee pursuant to the provisions of s. 1003.21(3), F.S.
- Minors enrolled in a public educational institution who qualify on a hardship basis such as economic necessity or family emergency.
    - Such determination must be made by the school superintendent or his or her designee, and a waiver of hours must be issued to the minor and the employer.
- Children in domestic service in private homes, children employed by their parents, or pages in the Florida Legislature.

Florida law provides that the presence of any minor in any place of employment during working hours is prima facie evidence of his or her employment.[46]

Partial Waivers

In extenuating circumstances when it clearly appears to be in the best interest of the child, DBPR is authorized to grant a waiver of the restrictions imposed by the Child Labor Law on the employment of a child. Such waivers are granted upon a case-by-case basis and based upon such factors as the department, by rule, establishes as determinative of whether such waiver is in the best interest of a child.[47]

DBPR, or the school district designee if the minor is enrolled in the public school system, is authorized to grant a waiver of any restriction imposed by the Child Labor Law, or by rule. In determining whether to grant a Partial Waiver, the Department shall consider all relevant information which may establish what is in the best interest of the minor, including:[48]

- *School Status*: DBPR, or the school district designee, is required to grant a partial waiver based on school status when:
    - The minor will receive instruction by a tutor at the place of employment;
    - The minor has been authorized by the District School Superintendent to complete his or her education through alternative methods such as home school;
    - The minor has been permanently expelled from the public school system;

[45] S. 450.081(5), F.S.
[46] S. 450.081(6), F.S.
[47] S. 450.095, F.S.
[48] R. 61L-2.007, F.A.C.

    - The minor is enrolled in school in a foreign country and is visiting Florida during his or her home country's non-school period; or
    - The employment would provide an educational, vocational, or public service experience that would be beneficial to the minor.
        - Documentation shall consist of confirmation from the minor's school principal or the Superintendent of the School District and of copies of school records clearly defining the minor's school status.
- *Financial Hardship*: DBPR, or the school district designee, is required to grant a partial waiver based on financial hardship when compliance with the Child Labor Law or rule will result in undue financial hardship for the minor or the minor's immediate family. Documentation must include:
    - A notarized letter, explaining the particular circumstances creating a hardship, from a parent, guardian, or other adult, who knows and can attest to the minor's financial hardship; written confirmation from a school recently attended;
    - Documentation from a social service agency; or
    - Verification of participation in AFDC, Food Stamp, Project Independence, or other similar programs.
    - DBPR is authorized to require other documentation which proves financial hardship.
- *Medical Hardship*: DBPR, or the school district designee, must grant a partial waiver based on medical hardship when compliance with the Child Labor Law or rule will result in physical or mental hardship for the minor. Documentation may consist of written confirmation from the minor's physician stating the specific medical reasons that require the minor to be excused from mandatory school attendance and affirming that the minor to be excused from mandatory school attendance may be allowed to work the requested hours, or that the minor should be considered an adult for the purpose of work hours.
- *Other Hardship*: DBPR, or school district designee, must grant a partial waiver based on other hardship when compliance with the Child Labor Law or rule will result in unreasonable hardship to the minor in specific situations.
- *Court Order*: DBPR, or the school district designee, must grant a partial waiver based on a court order when compliance with the Child Labor Law or rule will result in the minor violating an order issued by a court mandating that the minor work specified hours or in a specified occupation.

According to DBPR, for the current fiscal year, the department has received 1,416 waiver applications. Of this amount, 639 have been approved and 777 have been found to be deficient.[49]

Enforcement

DBPR and local law enforcement are required to:[50]
- Enforce the provisions of the Child Labor Law;
- Make complaints against persons violating its provisions; and
- Prosecute violations.

DBPR is authorized to enter and inspect at any time any place or establishment covered by this law and to have access to age certificates kept on file by the employer and other records. Designated school representatives are required to report to DBPR all violations of the Child Labor Law.[51]

The Child Labor Law also provides that:
- Trial courts in the state have the duty to issue warrants and try cases within their jurisdiction in connection with violations of the Child Labor Law.
- Grand juries have inquisitorial powers to investigate violations, and trial court judges shall specially charge the grand jury to investigate violations of the Child Labor Law.

[49] Email from Derek Miller, Director of Legislative Affairs, Florida Department of Business and Professional Regulation, RE: Child Labor Partial Waivers, (Dec. 11, 2023).
[50] S. 450.121(1), F.S.
[51] S. 450.121(2), F.S.

The Child Labor Law provides the following penalties for violations:[52]

- Second degree misdemeanor, punishable by up to 60 days in prison[53] and a $500 fine.[54]
  - Each day during which any violation of this law continues, and the employment of any minor in violation of the law, constitutes a separate and distinct offense.
- Second degree felony, punishable by up to 15 years in prison,[55] a $10,000 fine,[56] or up to 30 years in prison for habitual offenders[57] any person who:[58]
  - Takes, receives, hires, employs, uses, exhibits, or, in any manner or under any pretense, causes or permits any child less than 18 years of age to suffer;
  - Inflicts upon any such child unjustifiable physical pain or mental suffering;
  - Willfully causes or permits the life of any such child to be endangered or his or her health to be injured or such child to be placed in such situation that his or her life may be endangered or health injured; or
  - Has in custody any such child for any of these purposes.

The Child Labor Law authorizes DBPR to provide administrative fines not to exceed $2,500 per offense.[59] Upon discovery by DBPR that an employer is in violation, it is required to give written notice to the employer specifying the violation, the facts alleged to constitute the violation, and the requirements and time limitations for remedial action. If the employer refuses or fails to comply, DBPR is authorized to seek assessment of the following schedule of fines:[60]

Violation	1st Offense	2nd Offense	3rd and Subsequent Offenses
Child Labor Poster	Up to $500	Up to $1,000	Up to $1,500
Employment of Minor	Up to $1,000	Up to $1,500	Up to $2,500
Proof of Age or Copy of Partial Waiver	Up to $700	Up to $1,200	Up to $2,000
Employment of Minor in Violation of Beverage law.	Up to $1,000	Up to $1,500	Up to $2,500
Work Hours or Consecutive Days	Up to $1,000	Up to $1,500	Up to $2500
Hazardous Occupation	Up to $1,500	Up to $2,000	Up to $2,500
Employment of minor in violation of any provision of Child Labor.	Up to $2,500	Up to $2,500	Up to $2,500
Law or this rule chapter which results in injury or death to minor.			
Violation of proof of age and identity requirements for Adult Theaters.	Up to $1,000	Up to $2,000	Up to $2,500
Any other violation of the Child Labor Law or this rule chapter.	Up to $1,000	Up to $1,500	Up to $2,500
Failure to provide records or documentation upon request.	Up to $500	Up to $1,200	Up to $2,000

Career Education Exemptions

Florida's Child Labor Law specifies that it does not:

- Prevent minors of any age from receiving career education furnished by the U.S., this state, or any county or other political subdivision of this state and duly approved by the Department of Education or other duly constituted authority, nor any apprentice indentured under a plan approved by the Department of Economic Opportunity; or
- Prevent the employment of any minor 14 years of age or older when such employment is authorized as an integral part of, or supplement to, such a course in career education and is authorized by regulations of the district school board of the district in which such minor is

[52] S. 450.141(1), F.S.
[53] S. 775.082, F.S.
[54] S. 775.083, F.S.
[55] S. 775.082, F.S.
[56] S. 775.083, F.S.
[57] S. 775.084, F.S.
[58] S. 450.151, F.S.
[59] S. 450.141(2), F.S.
[60] R. 61L-2.009, F.A.C.

employed, provided the employment is in compliance with the provisions of ss. 450.021(4), F.S. and 450.061, F.S.

Exemptions for the employment of student learners 16 to 18 years-of-age provided in s. 450.061, F.S., apply when:[61]

- The student learner is enrolled in a youth vocational training program under a recognized state or local educational authority.
- Such student learner is employed under a written agreement that provides:
  - That the work of the student learner in the occupation declared particularly hazardous shall be incidental to the training.
  - That such work shall be intermittent and for short periods of time and under the direct and close supervision of a qualified and experienced person.
  - That safety instructions shall be given by the school and correlated by the employer with on-the-job training.
  - That a schedule of organized and progressive work processes to be performed on the job shall have been prepared.

Proof of Identity

In order to hire a child to work, the law requires an employer to obtain and keep on record during the entire period of employment proof of the child's age.[62] Employers who hire minors are also required to post posters notifying minors of the Child Labor Law.[63]

Local Juvenile Curfew Ordinances

Florida authorizes cities and counties to enact their own curfew ordinances for minors under the age of 16.[64] The law provides the following statutory restrictions that do not apply unless they are adopted by a governing body of the county or municipality:[65]

- A minor may not be or remain in a public place or establishment between the hours of 11:00 p.m. and 5:00 a.m. of the following day, Sunday through Thursday, except in the case of a legal holiday.
- A minor may not be or remain in a public place or establishment between the hours of 12:01 a.m. and 6:00 a.m. on Saturdays, Sundays, and legal holidays.
- A minor who has been suspended or expelled from school may not be or remain in a public place, in an establishment, or within 1,000 feet of a school during the hours of 9:00 a.m. to 2:00 p.m. during any school day.

Local curfew ordinances for minors under the age of 16 are allowed to be more or less stringent than the statutory curfew.[66]

These restrictions do not apply to a minor who is:[67]

- Accompanied by his or her parent or by another adult authorized by the minor's parent to have custody of the minor.
- Involved in an emergency or engaged, with his or her parent's permission, in an emergency errand.
- Attending or traveling directly to or from an activity that involves the exercise of rights protected under the First Amendment of the United States Constitution.

[61] S. 450.161, F.S.
[62] S. 450.045(1), F.S. Such proof must include photocopies of the child's birth certificate and driver license, an age certificate issued by the district school board of the district in which the child is employed, certifying the child's date of birth, or a photo copy of a passport or visa which lists the child's date of birth.
[63] S. 450.045(2), F.S.
[64] *See* ss. 877.20-877.25, F.S.
[65] S. 877.22, F.S.
[66] S. 877.25, F.S.
[67] S. 877.24, F.S.

- Going directly to or returning directly from lawful employment, or who is in a public place or establishment in connection with or as required by a business, trade, profession, or occupation in which the minor is lawfully engaged.
- Returning directly home from a school-sponsored function, a religious function, or a function sponsored by a civic organization.
- On the property of, or on the sidewalk of, the place where the minor resides, or who is on the property or sidewalk of an adult next-door neighbor with that neighbor's permission.
- Engaged in interstate travel or bona fide intrastate travel with the consent of the minor's parent.
- Attending an organized event held at and sponsored by a theme park or entertainment complex as defined in s. 509.013(9), F.S.

A minor in violation must receive a written warning for a first violation. A minor who violates this section after having received a prior written warning is guilty of a civil infraction and must pay a fine of $50 for each violation.[68]

A minor who violates a curfew and is taken into custody must be transported immediately to a police station or facility operated by a religious, charitable, or civic organization that conducts a curfew program in cooperation with a local law enforcement agency.[69]

After recording pertinent information about the minor, law enforcement is required to attempt to contact the parent of the minor, and:[70]

- If successful, request that the parent take custody of the minor and must release the minor to the parent.
- If not able to contact the minor's parent within 2 hours after the minor is taken into custody, or if the parent refuses to take custody of the minor, the law enforcement agency is authorized to transport the minor to her or his residence or take the child into custody as provided under part IV of chapter 39, F.S.

The parent of a minor who knowingly permits the minor to violate the curfew law is required to receive a written warning for a first violation. A parent who knowingly permits the minor to violate the curfew law after receiving a prior written warning is guilty of a civil infraction and subject to a fine of $50 for each violation.[71]

According to a 2016 Florida Attorney General opinion, if a municipality adopts an ordinance that incorporates the state juvenile curfew provisions (ss. 877.20 – 877.24, F.S.) by reference, "it may not alter the statutory terms expressed in the statutes." However, the authority (s. 877.25, F.S.) to provide restrictions more stringent or less stringent than the state curfew provisions, does not "preclude a municipality from adopting an independently crafted juvenile curfew ordinance, but any such locally-crafted language must comport with federal and state constitutional law relating to juvenile curfews."[72]

Effect of the Bill

Child Labor

The bill removes the following restrictions on work hours for minors 16 and 17 years-of-age:

- Working for more than 8 hours in any one day when school is scheduled the following day.
- When school is in session, working more than 30 hours in any one week.

The bill revises the following restrictions on work hours for minors 16 and 17 years-of-age by:

[68] *Id*.
[69] *Id*.
[70] *Id*.
[71] S. 877.23, F.S.
[72] 2016-11 Fla. Op. Att'y Gen. (2016).

- Prohibiting work before 6:00 a.m. when school is scheduled the following day.
- Allowing such minors to be gainfully employed during school hours if they are enrolled in a home education program, enrolled in an approved virtual instruction program, or the student no longer attends school pursuant to s. 1003.21., F.S.

The bill reduces the age from 17 years-of-age to 15 years-of-age, which will continue to prohibit minors 15 years old or younger from working more than:

- 6 consecutive days in any one week.
- 4 hours continuously without an interval of at least 30 minutes for a meal period.

The bill clarifies that minors 16 and 17 years-of-age may work the same number of hours as a person who is 18 years-of-age or older but must be granted breaks and meal periods in the same manner as permitted for employees who are 18 years of age or older.

Local Juvenile Curfew Ordinances

The bill provides that a governing body of a county or municipality may adopt an ordinance that regulates the presence of minors, as defined in s. 450.12, F.S., in public places and establishments that are more stringent or less stringent than the restrictions in ss. 877.20-877.24, F.S., provided that the ordinance contains the exceptions provided in s. 877.24, F.S., which allow these individuals to be:

- Accompanied by a parent or another adult authorized by the parent to have custody of the minor.
- Involved in an emergency or engaged, with the parent's permission, in an emergency errand.
- Attending or traveling directly to or from an activity that involves the exercise of rights protected under the First Amendment of the United States Constitution.
- Going directly to or returning directly from lawful employment, or who is in a public place or establishment in connection with or as required by a business, trade, profession, or occupation in which the minor is lawfully engaged.
- Returning directly home from a school-sponsored function, a religious function, or a function sponsored by a civic organization.
- On the property of, or on the sidewalk of, the place where the minor resides, or who is on the property or sidewalk of an adult next-door neighbor with that neighbor's permission.
- Engaged in interstate travel or bona fide intrastate travel with the consent of the parent.
- Attending an organized event held at and sponsored by a theme park or entertainment complex as defined in s. 509.013(9), F.S.

B. SECTION DIRECTORY:

Section 1: Amends s. 450.081, F.S., removing certain employment restrictions for minors 16 and 17 years of age; revising the age at which certain employment restrictions apply.

Section 2: Amends s. 877.25, F.S., requiring a curfew adopted by county or municipal ordinance to include certain exceptions.

Section 3: 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 increase opportunities for 16 and 17-year-old individuals to work and generate income.

The bill may allow certain employers to employ 16 and 17-year-old individuals without having to comply with the burdensome requirements in current law.

The bill may increase labor force participation among 16 and 17-year-old individuals, which may result in a reduction of obtaining higher skills, education, and healthcare for these individuals.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On December 13, 2023, the Regulatory Reform & Economic Development Subcommittee considered the bill, adopted one amendment, and reported the bill favorably as a committee substitute. The amendment clarifies that ordinances adopted by a governing body of a county or municipality that regulate the presence of minors in public places and establishments that are more stringent or less stringent than the restrictions in the current law:

- Apply to minors under the age of 18, as defined in s. 450.12, F.S.; and
- Must contain the exceptions provided in s. 877.24, F.S., which allow minors during curfew hours to go to and from work and school, and be involved in emergencies.

On January 10, 2024, the Local Administration, Federal Affairs & Special Districts Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The amendment revises provisions concerning the employment of minors ages 16 and 17 years-of-age by:

- Prohibiting the work start time from beginning before 6.00 a.m. when school is scheduled the following day;
- Allowing such minors who are not enrolled in a career education program to work during school hours if they are enrolled in a home education program, virtual instruction program, or the student no longer attends school pursuant to s. 1003.21. F,S.;
- Requiring such minors be granted breaks and meal periods in the same manner as employees who are 18 years of age or older; and
- Making a conforming change.

This analysis is drafted to the committee substitute adopted by the Local Administration, Federal Affairs, & Special Districts Subcommittee.

A bill to be entitled

An act relating to employment and curfew of minors; amending s. 450.081, F.S.; revising certain employment restrictions for minors 16 and 17 years of age; revising the age at which certain employment restrictions apply; amending s. 877.25, F.S.; requiring a curfew adopted by county or municipal ordinance to include certain exceptions; providing an effective date.

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

Section 1. Section 450.081, Florida Statutes, is amended to read:

450.081 Hours of work in certain occupations.—

(1)(a) Minors 15 years of age or younger may ~~shall~~ not be employed, permitted, or suffered to work before 7 a.m. or after 7 p.m. when school is scheduled the following day or for more than 15 hours in any one week. On any school day, minors 15 years of age or younger who are not enrolled in a career education program may ~~shall~~ not be gainfully employed for more than 3 hours, unless there is no session of school the following day.

(b) During holidays and summer vacations, minors 15 years of age or younger may ~~shall~~ not be employed, permitted, or

suffered to work before 7 a.m. or after 9 p.m., for more than 8 hours in any one day, or for more than 40 hours in any one week.

(2) Minors 16 and 17 years of age may ~~shall~~ not be employed, permitted, or suffered to work before 6:00 ~~6:30~~ a.m. or after 11:00 p.m. ~~or for more than 8 hours in any one day~~ when school is scheduled the following day. ~~When school is in session, minors 16 and 17 years of age shall not work more than 30 hours in any one week.~~ On any school day, minors 16 and 17 years of age who are not enrolled in a career education program may ~~shall~~ not be gainfully employed during school hours unless the minor is in a home education program, is enrolled in an approved virtual instruction program, or the student no longer attends school pursuant to s. 1003.21.

(3) Minors 15 ~~17~~ years of age or younger may ~~shall~~ not be employed, permitted, or suffered to work in any gainful occupation for more than 6 consecutive days in any one week.

(4) Minors 15 ~~17~~ years of age or younger may ~~shall~~ not be employed, permitted, or suffered to work for more than 4 hours continuously without an interval of at least 30 minutes for a meal period; and for the purposes of this law, a ~~no~~ period of less than 30 minutes is not ~~shall be~~ deemed to interrupt a continuous period of work. Minors 16 or 17 years of age must be granted breaks and meal periods in the same manner as similarly permitted for employees who are 18 years of age or older.

(5) ~~The provisions of~~ Subsections (1)-(4) do ~~shall~~ not

apply to:

(a) Minors 16 and 17 years of age who have graduated from high school or received a high school equivalency diploma.

(b) Minors who are within the compulsory school attendance age limit who hold a valid certificate of exemption issued by the school superintendent or his or her designee pursuant to ~~the provisions of~~ s. 1003.21(3).

(c) Minors enrolled in a public educational institution who qualify on a hardship basis such as economic necessity or family emergency. ~~Such determination shall be made by~~ The school superintendent or his or her designee shall make such determination and issue~~, and~~ a waiver of hours ~~shall be issued~~ to the minor and the employer. The form and contents thereof shall be prescribed by the department.

(d) Minors ~~Children~~ in domestic service in private homes, minors ~~children~~ employed by their parents, or pages in the Florida Legislature.

(6) The presence of a ~~any~~ minor in any place of employment during working hours is ~~shall be~~ prima facie evidence of his or her employment therein.

(7) Minors 16 and 17 years of age may be employed, permitted, or suffered to work the same number of hours as a person who is 18 years of age or older.

Section 2. Section 877.25, Florida Statutes, is amended to read:

877.25 Local ordinance required; effect.—Sections 877.20-877.24 do not apply in a county or municipality unless the governing body of the county or municipality adopts an ordinance that incorporates by reference ~~the provisions of~~ ss. 877.20-877.24. Sections 877.20-877.24 do not preclude county or municipal ordinances regulating the presence of minors, as defined in s. 450.012(3), in public places and establishments which provide restrictions more stringent or less stringent than the curfew imposed under s. 877.22. However, a curfew adopted by a county or municipal ordinance must also include the exceptions contained in s. 877.24.

Section 3. This act shall take effect July 1, 2024.

HB 81

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 81 Civil Penalties Under The Gas Safety Law of 1967
SPONSOR(S): Brackett
TIED BILLS: **IDEN./SIM. BILLS:** SB 366

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy, Communications & Cybersecurity Subcommittee	16 Y, 0 N	Phelps	Keating
2) Commerce Committee		Phelps	Hamon

SUMMARY ANALYSIS

The Gas Safety Law of 1967 (Gas Safety Law) authorizes the Public Service Commission (PSC) to regulate the safe transmission and distribution of natural gas in Florida. The PSC has the power to perform any and all acts necessary or appropriate to enforce compliance with the Gas Safety Law, which includes imposing maximum civil penalties. The current maximum civil penalties are $25,000 for each violation of the Gas Safety Law and $500,000 for any related series of violations.

The federal counterpart to Florida's Gas Safety Law, the Pipeline Safety Act, authorizes the U.S. Department of Transportation/Pipeline and Hazardous Materials Safety Administration (PHMSA) to implement federal pipeline safety standards for interstate and intrastate gas pipelines. PHMSA's current maximum civil penalty amounts are $257,664 for each pipeline safety violation and $2,576,627 for any related series of violations.

The Pipeline Safety Act allows states to assume authority over intrastate gas pipelines subject to annual certifications with PHMSA. The PSC is currently the state agency certified by PHMSA to exercise this authority. However, the PSC received a letter this year stating that its certification is at risk due to Florida's lower civil penalties compared to those of PHMSA, which may reduce the PSC's enforcement capabilities.

The bill increases the maximum monetary penalties for violations of the Gas Safety Law to mirror those currently used by PHMSA.

- The maximum daily penalty is increased from $25,000 to $257,664.
- The maximum aggregate penalty cap is increased from $500,000 to $2,576,627 for any related series of violations.

The bill does not impose any compliance costs but may increase costs on private sector and local government entities that commit violations.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Federal Law

The U.S. Department of Transportation/Pipeline and Hazardous Materials Safety Administration (PHMSA) implements federal pipeline safety standards for interstate and intrastate gas pipelines, hazardous liquid pipelines, and underground natural gas storage under the Pipeline Safety Act.[1] The Pipeline Safety Act authorizes state assumption of the intrastate regulatory, inspection, and enforcement responsibilities subject to an annual certification with PHMSA.[2] State agencies must adopt standards that comply with the Pipeline Safety Act to qualify for certification.[3]

A state agency that does not satisfy the criteria for certification may enter into an agreement with PHMSA to undertake certain aspects of the natural gas safety programs for intrastate facilities on behalf of PHMSA.[4] The state agency under such an agreement would conduct safety inspections and identify violations, and PHMSA would enforce those violations.[5] PHMSA may enforce these violations by issuing warnings, compliance orders, and civil penalties.[6]

Federal agencies are required to adjust minimum and maximum civil penalty amounts based upon inflationary measures to preserve the penalty's deterrent impact.[7] As a result, in 2023 PHMSA increased the maximum penalty for daily violations of the Pipeline Safety Act to $257,664 and the total maximum penalty for any related series of violations to $2,576,627.[8]

Florida Law

The Gas Safety Law authorizes the Public Service Commission (PSC) to regulate the safe transmission and distribution of natural gas in Florida.[9] The Gas Safety Law grants the PSC exclusive jurisdiction over "all persons, corporations, partnerships, associations, public agencies, municipalities, or other legal entities engaged in the operation of gas transmission or distribution facilities with respect to their compliance with the rules and regulations governing safety standards."[10]

The PSC has rulemaking authority to implement the Gas Safety Law[11] and promulgates rules covering the design, improvement, fabrication, installation, inspection, repair, reporting, testing, and safety standards of gas transmission and gas distribution systems.[12] The PSC is currently the state agency certified by PHMSA to inspect and enforce intrastate gas pipelines.[13]

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[1] *See* 49 U.S.C. §§ 60102-60143.
[2] 49 U.S.C. §§ 60105(e), 60106(d).
[3] 49 U.S.C. § 60105(b).
[4] 49 U.S.C. § 60106(d).
[5] *Id.*
[6] *See* 49 C.F.R §§ 190.201-190.243 (2023).
[7] Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. Pub. L. 114-74, 129 Stat. 599, 114th Congress, (Nov. 2, 2015).
[8] 49 C.F.R § 190.223(a) (2023).
[9] S. 368.01-061, F.S.
[10] S. 368.05(1), F.S.; *see also* S. 368.021, F.S. (providing more entities subject to PSC jurisdiction).
[11] S. 368.03, F.S.; S. 368.05(2), F.S.
[12] *See* ch. 25-12, F.A.C.
[13] Florida Public Service Commission, Agency Analysis of 2023 House Bill 81, p. 2 (October 26, 2023).

The PSC has the power to perform any and all acts necessary or appropriate to enforce compliance with the Gas Safety Law and the Pipeline Safety Act,[14] including imposing civil penalties for noncompliance.[15] Any person who violates the Gas Safety Law is subject to a maximum daily penalty of $25,000 for each violation.[16] The total maximum penalty for any related series of violations is $500,000.[17]

PHMSA's Annual Certification of PSC

PHMSA conducts annual "Progress Reports" to determine whether a state complies with the Pipeline Safety Act and qualifies for certification and grant funds.[18] The Progress Report assigns points to different areas of compliance, including civil penalty thresholds.[19] The PSC received a four-point deduction on its 2022 Progress Report due to Florida's lower civil penalty amounts compared to those of PHMSA.[20] The continued loss of points may result in a reduced certification that removes the PSC's enforcement capabilities.[21]

Effect of Bill

The bill increases the maximum monetary penalties for any violation of the Gas Safety Law by mirroring those currently used by PHMSA. The maximum daily penalty is increased from $25,000 to $257,664. The maximum aggregate penalty cap is increased from $500,000 to $2,576,627 for any related series of violations. The bill provides that the new penalties will take effect July 1, 2024.

The bill may assist the state in maintaining its certification by PHMSA to enforce the Pipeline Safety Act and the Gas Safety Law.

B. SECTION DIRECTORY:

Section 1: Amends s. 368.061, F.S., relating to penalties for violations of the Gas Safety Law.

Section 2: 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:

[14] S. 368.05(2), F.S. (stating that the PSC may require repairs and improvements
[15] S. 368.061(1), F.S.
[16] *Id.*
[17] *Id.*
[18] Email from Zach Barrett of the U.S. Dep't of Transportation to Andrew Giles Fay, Chairman of the Florida PSC (May 23, 2023), at 1.
[19] *Id.* at 2; *see also* 49 U.S.C. § 60105(b)(7) (stating that States have discretion to enforce civil penalties substantially the same as those provided by PHMSA).
[20] *Id.*
[21] *Id.*

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not impose additional compliance costs. However, the bill may impact private sector entities if the PSC assesses penalties on such entities above the current statutory limit.

D. FISCAL COMMENTS:

The bill does not impose additional compliance costs on local governments. However, the bill may increase fiscal impacts on local government-owned entities subject to PSC jurisdiction if the PSC assesses penalties on such entities above the current statutory limit.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not require or authorize rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

PHMSA is required to increase the maximum civil penalties based upon inflationary measures, and may be required to increase the penalty amounts in the future. This may require subsequent amendments to the civil penalties in Florida's Gas Safety Law.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Not applicable.

A bill to be entitled

An act relating to civil penalties under The Gas Safety Law of 1967; amending s. 368.061, F.S.; increasing the civil penalty amount for violating The Gas Safety Law of 1967; making grammatical changes; providing an effective date.

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

Section 1. Subsection (1) of section 368.061, Florida Statutes, is amended to read:

368.061 Penalty.—

(1) Any person who violates any provision of this part, or any regulation issued under this part ~~hereunder~~, is ~~shall be~~ subject to a civil penalty not to exceed $257,664 ~~$25,000~~ for each violation for each day that the ~~such~~ violation persists, except that the maximum civil penalty may ~~shall~~ not exceed $2,576,627 ~~$500,000~~ for any related series of violations.

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

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

Commerce Committee
HB 81 by Rep. Brackett
Civil Penalties Under The Gas Safety Law of 1967

AMENDMENT SUMMARY
January 23, 2024

Amendment 1 by Brackett (strike-all):

- Updates the maximum civil penalty amounts for violations of The Gas Safety Law to match the updated federal maximum civil penalties.
- Requires the Public Service Commission (PSC) to establish maximum civil penalty amounts for violations of The Gas Safety Law to be effective after July 1, 2025, based upon consideration of (a) the consumer price index, (b) penalties established in federal law for pipeline safety violations, and (c) maintaining certification with the U.S. Department of Transportation/Pipeline and Hazardous Materials Safety Administration (PHMSA).
- Requires the PSC to revise the maximum civil penalty amounts at least annually based upon the considerations stated above.
- Authorizes the PSC to adopt implementing rules.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Commerce Committee

Representative Brackett offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (1) of section 368.061, Florida Statutes, is amended, and subsection (4) is added to that section, to read:

368.061 Penalty.—

(1) A ~~Any~~ person who violates ~~any provision of~~ this part, or any regulation issued hereunder, is ~~shall be~~ subject to a civil penalty not to exceed the following:

(a) Until June 30, 2025, $266,015 ~~$25,000~~ for each violation for each day that such violation persists, except that the maximum civil penalty may ~~shall~~ not exceed $2,660,135 ~~$500,000~~ for any related series of violations.

(b) After July 1, 2025, maximum penalties established by the Florida Public Service Commission by rule. In establishing such penalties, the commission must consider the penalties established in paragraph (a) and make revisions based upon consideration of the consumer price index, penalties established in federal law for pipeline safety violations, and the intent of the legislature that the commission maintain its certification with the Pipeline and Hazardous Materials Safety Administration, or any of its successor agencies, to enforce pipeline safety. The commission shall review the penalties established in this paragraph at least annually and revise as necessary, utilizing the considerations specified in this paragraph.

(4) The commission may adopt rules to implement this section.

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

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

Remove everything before the enacting clause and insert:
An act relating to civil penalties under The Gas Safety Law of 1967; amending s. 368.061, F.S.; increasing the civil penalty amount for violating The Gas Safety Law of 1967; requiring the Florida Public Service Commission, after a date certain and at least annually thereafter, to establish and revise maximum penalties by rule based on specified factors; providing rulemaking authority; providing an effective date.

CS/HB 215

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 215 Risk Retention Groups
SPONSOR(S): Insurance & Banking Subcommittee, Truenow
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

A risk retention group (RRG) is a type of liability insurance company owned by its members. RRGs allow businesses with similar insurance needs to pool risks and form their own insurance companies under a combination of state and federal laws. Members of an RRG must be engaged in similar businesses or activities that have similar exposures due to the type of business, trade, product, service, premises, or operations. RRGs may only provide liability insurance; the law defines liability insurance as coverage for liability for damages to persons or property arising out of any business, trade, product, professional service, premises, operation, or activity of a state or local government.

RRGs must be domiciled in a state, but once licensed by the state of domicile, RRGs are permitted to insure members in all states. They must complete a registration process in the non-domiciliary states in which they want to do business. RRGs may operate in Florida if they obtain a certificate of authority as a liability insurer, or are licensed in another state and provide a copy of their business plan and annual financial statement to the Office of Insurance Regulation and designate the Chief Financial Officer as their agent for service of process.

Fronting is the use of a licensed, admitted insurer to issue an insurance policy on behalf of a self-insured organization or captive insurer without transferring any risk. The risk of loss under the policy remains with the self-insured entity or captive insurer, but the authorized insurer assumes a credit risk because it would be required to honor the policy if the insured fails to do so. This provides proof of coverage that is needed to satisfy financial responsibility laws when states require evidence of coverage written by an admitted insurer. Insurers typically charge between 5 and 10 percent of the premium being written in exchange for serving as fronting companies. Currently, an RRG cannot provide the coverage to its members in Florida that is required to satisfy motor vehicle financial responsibility laws. Therefore, it must utilize a fronting company.

Florida law contains financial responsibility requirements for owners or operators of motor vehicles, whether they are used for personal or commercial purposes. In general, the owner or operator of a motor vehicle must insure against losses from liability for bodily injury, death, and property damage by either purchasing auto insurance from an insurance carrier authorized by OIR to do business in Florida, or by obtaining a certificate of self-insurance from the Department of Highway Safety and Motor Vehicles after demonstrating the ability to cover potential losses arising out of the ownership, maintenance, or use of a motor vehicle.

The bill establishes that motor vehicle insurance coverage issued by RRGs operating under federal law, and registered to do business in the state, satisfies the financial responsibility requirements of state motor vehicle law.

The bill has no impact on local or state government revenues or expenditures. It has an indeterminate positive and negative direct economic impact on the private sector.

The bill is effective on July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Risk Retention Groups

A risk retention group (RRG) is a type of liability insurance company owned by its members.[1] RRGs allow businesses with similar insurance needs to pool risks and form their own insurance companies under a combination of state and federal laws.[2] Members of an RRG must be engaged in similar businesses or activities that have similar exposures due to the type of business, trade, product, service, premises, or operations.[3]

RRGs may only provide liability insurance; the law defines liability insurance as coverage for liability for damages to persons or property arising out of any business, trade, product, professional service, premises, operation, or activity of a state or local government.[4] However, liability insurance does not include an employer's liability to its employees; thus, risk retention groups may not issue workers' compensation insurance policies to their members.[5]

Federal law treats risk retention groups differently than traditional insurance companies. Authorized insurers must be licensed in every state in which they operate and the domicile state serves as the primary regulator. In 1986, Congress passed the Liability Risk Retention Act (LRRA) to help businesses and other entities obtain liability insurance that had become either unaffordable or unavailable.[6] Under the LRRA, RRGs must be domiciled in a state, but once licensed by the state of domicile, RRGs are permitted to insure members in all states.[7] As a federal law, the LRRA preempts state regulation, and makes it easier for RRGs to do business throughout the country.[8] Those RRGs that were chartered prior to 1985 may operate under the laws of Bermuda or the Cayman Islands.[9]

Despite being governed by the LRRA, RRGs must complete a registration process in the non-domiciliary states in which they want to do business, and must designate those states' insurance commissioners as their agents for service of process for any legal proceedings originating in those states.[10] Additionally, RRGs must submit a plan of operation or feasibility study to the insurance commissioner of the domiciliary state before they may offer insurance in any state.[11] The plan or study must include the coverages, deductibles, coverage limits, rates and rating classification systems for each line of commercial liability insurance the RRG plans to cover.[12]

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[1] National Association of Insurance Commissioners (NAIC), *Risk Retention Groups*, https://content.naic.org/cipr-topics/risk-retention-groups (last visited Dec. 4, 2023).
[2] *Id.*
[3] 15 U.S.C. §3901(a)(4)(F) and s. 627.942(9)(f), F.S.
[4] 15 U.S.C. 3901(a)(2)(A) and s. 627.942(9)(g), F.S.
[5] 15 U.S.C. 3901(a)(2)(B) and s. 627.942(4), F.S.
[6] Captive Insurance Companies Association (CICA), *Risk Retention Resources*, https://www.cicaworld.com/risk-retention-resources/#:~:text=The%20Liability%20Risk%20Retention%20Act%20(LRRA)%20is%20a%20federal%20law,crisis%E2%80%9D%20in%20the%20United%20States (last visited Dec. 4, 2023). The LRRA consists of sections 15 U.S.C.§§ 3902-3906.
[7] *Id.*
[8] *Id.*
[9] 15 U.S.C. § 3901(a)(4) and s. 627.942(9), F.S.
[10] NAIC, *supra* note 1.
[11] *Id.*
[12] *Id.*

State regulators may also require RRGs to comply with state laws relating to claim settlement and false or fraudulent acts, pay premium taxes, and submit to financial exams if such exam has not been completed by the state in which the RRG is domiciled.[13]

States cannot require RRGs to participate in any insolvency guaranty association.[14] However, states may require notice that insurance provided by RRGs is not protected by an insolvency guaranty association.[15] Unlike authorized insurers, RRGs do not submit rate and form filings with a state regulator for approval. Instead, risk retention groups apportion risk among their members; thus, rates are based on an actuarial analysis of the membership and policies can be tailored to suit the needs of the membership.[16]

Risk Retention Groups in Florida

RRGs may operate in Florida if they obtain a certificate of authority as a liability insurer, or are licensed in another state and provide a copy of their business plan and annual financial statement to the Office of Insurance Regulation (OIR) and designate the Chief Financial Officer as their agent for service of process.[17] According to OIR, 146 risk retention groups are licensed in a state other than Florida and registered to do business in Florida.[18]

Domestic RRGs pay the same premium taxes as other domestic insurers.[19] Risk retention groups registered to operate in Florida but licensed in another state pay the same premium taxes as surplus lines insurers.[20] All risk retention groups operating in Florida must use agents who are licensed and appointed in Florida.[21]

Fronting Arrangements

The International Risk Management Institute (IRMI) describes "fronting" as the use of a licensed, admitted insurer to issue an insurance policy on behalf of a self-insured organization or captive insurer without transferring any risk.[22] The risk of loss under the policy remains with the self-insured entity or captive insurer, but the authorized insurer assumes a credit risk because it would be required to honor the policy if the insured fails to do so.[23] This provides proof of coverage that is needed to satisfy financial responsibility laws when states require evidence of coverage written by an admitted insurer.[24] Insurers typically charge between 5 and 10 percent of the premium being written in exchange for serving as fronting companies.[25]

The Florida Insurance Code (Code)[26] describes a fronting company as an authorized insurer which by reinsurance or otherwise generally transfers more than 50 percent to one unauthorized insurer, or more

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[13] 15 U.S.C. § 3902(a)(1).
[14] 15 U.S.C. § 3902(a)(2).
[15] 15 U.S.C. § 3902(a)(1).
[16] NAIC, *supra* note 1.
[17] *See* ss. 627.943 and 627.944, F.S.
[18] Florida Office of Insurance Regulation, *Active Company Search*, https://companysearch.myfloridacfo.gov/ (last visited Dec. 6, 2023).
[19] S. 627.943(4), F.S. Pursuant to s. 624.509, F.S., premium taxes (typically 1.75 percent of the premium) are collected by the licensed insurer and paid to the Department of Revenue on or before March 1 of each year. A domestic insurer is one formed under Florida law. S. 624.06(1), F.S.
[20] S. 627.944(3), F.S. Pursuant to s. 626.932, F.S., premium taxes (4.94 percent of the premium) are collected by the licensed insurance agent and paid to the Department of Financial Services on a quarterly basis; premiums are also reported to the Florida Surplus Lines Service Office (FSLSO) which oversees the reporting requirements of eligible surplus lines insurers.
[21] Ss. 627.943(5) and 627.944(12), F.S.
[22] IRMI, *fronting*, https://www.irmi.com/term/insurance-definitions/fronting (last visited Dec. 6, 2023).
[23] *Id.*
[24] *Id.* Chapter 324, F.S. sets forth the financial responsibility laws for owners and operators of motor vehicles, whether used for personal or commercial purposes.
[25] IRMI, *supra* note 22.
[26] Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S., constitute the "Florida Insurance Code."

than 75 percent to two or more unauthorized insurers, of the entire risk of loss on all of the insurance written by it in Florida.[27] The unauthorized insurers that receive the risk do not meet the requirements to be an accredited or trusteed reinsurer in Florida.[28] Additionally, no authorized insurer is permitted to act as a fronting company for any unauthorized insurer which is not an approved reinsurer.[29]

Florida law explicitly prohibits:

- An authorized insurer or licensed motor vehicle service agreement company from acting as a fronting company for any unauthorized insurer or unlicensed motor vehicle service agreement company.[30]
- An authorized insurer or licensed home warranty association from acting as a fronting company for any unauthorized insurer or unlicensed home warranty association.[31]
- An authorized insurer or licensed service warranty association from acting as a fronting company for any unauthorized insurer or unlicensed service warranty association.[32]

The Code does not contemplate an authorized insurer acting as a fronting company for an RRG.

Financial Responsibility Law

Chapter 324, F.S., sets forth the financial responsibility laws for owners or operators of motor vehicles, whether they are used for personal or commercial purposes. In general, the owner or operator of a motor vehicle must insure against losses from liability for bodily injury, death, and property damage by either purchasing auto insurance from an insurance carrier authorized by OIR to do business in Florida,[33] or by obtaining a certificate of self-insurance from the Department of Highway Safety and Motor Vehicles (DHSMV) after demonstrating the ability to cover potential losses arising out of the ownership, maintenance, or use of a motor vehicle.[34]

When the owner or operator of a motor vehicle purchases liability insurance to satisfy the financial responsibility law, the policy must be issued by an insurance company authorized to do business in Florida.[35] When an owner or operator self-insures a vehicle or fleet of vehicles, the owner or operator must provide audited financial statements to DHSMV showing an unencumbered net worth that satisfies the Financial Responsibility Law.[36]

Effect of the Bill

The bill establishes that motor vehicle insurance coverage issued by RRGs operating under federal law, and registered to do business in the state, satisfies the financial responsibility requirements of state motor vehicle law.

B. SECTION DIRECTORY:

Section 1. Amends s. 324.021, F.S., relating to definitions; minimum insurance required.

Section 2. Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

[27] S. 624.404(4)(b), F.S. *See also* s. 624.410, F.S.
[28] *Id.*; s*ee also* s. 624.410, F.S.
[29] S. 624.404(4)(a), F.S.
[30] S. 634.241, F.S.
[31] S. 634.326, F.S.
[32] S. 634.429, F.S.
[33] S. 324.021(8), F.S.
[34] Ss. 324.161 and 324.171, F.S. *See also* Florida Department of Highway Safety and Motor Vehicles, Self-Insurance, https://www.flhsmv.gov/insurance/self-insurance/firm/ (last visited Dec. 18, 2023).
[35] S. 324.021(8), F.S.
[36] S. 324.171, F.S.

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 will have a positive direct economic impact on private sector businesses that save money by receiving coverage from the RRGs of which they are a member instead of having to pay a fronting company. However, it will have a negative impact on insurers that have acted as fronting companies for the placement of coverage by RRGs.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On December 13, 2023, the Insurance & Banking Subcommittee considered the bill, adopted a strike-all amendment, and reported the bill favorably as a committee substitute. The amendment made the following changes to the bill:

- Provided that motor vehicle insurance coverage issued by risk retention groups operating under federal law, and registered to do business in the state, satisfies the financial responsibility requirements of state motor vehicle law.

- Preserved current law regarding risk retention groups within the Florida Insurance Code.

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

A bill to be entitled

An act relating to risk retention groups; amending s. 324.021, F.S.; providing that motor vehicle insurance coverage issued by risk retention groups operating under federal law satisfies financial responsibility requirements under state motor vehicle law; providing an effective date.

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

Section 1. Subsection (8) of section 324.021, Florida Statutes, is amended to read:

324.021 Definitions; minimum insurance required.—The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

(8) MOTOR VEHICLE LIABILITY POLICY.—Any owner's or operator's policy of liability insurance furnished as proof of financial responsibility pursuant to s. 324.031, insuring such owner or operator against loss from liability for bodily injury, death, and property damage arising out of the ownership, maintenance, or use of a motor vehicle in not less than the limits described in subsection (7) and conforming to the requirements of s. 324.151, issued by any insurance company

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

authorized to do business in this state, including, but not limited to, a risk retention group operating in accordance with 15 U.S.C. ss. 3901 et seq., which conducts business in this state pursuant to s. 627.944. The owner, registrant, or operator of a motor vehicle is exempt from providing such proof of financial responsibility if he or she is a member of the United States Armed Forces and is called to or on active duty outside this state or the United States, or if the owner of the vehicle is the dependent spouse of such active duty member and is also residing with the active duty member at the place of posting of such member, and the vehicle is primarily maintained at such place of posting. The exemption provided by this subsection applies only as long as the member of the armed forces is on such active duty outside this state or the United States and the owner complies with the security requirements of the state of posting or any possession or territory of the United States.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 283 Self-service Storage Facility Liens
SPONSOR(S): Civil Justice Subcommittee, Borrero
TIED BILLS: **IDEN./SIM. BILLS:** SB 456

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 5 N, As CS	Mawn	Jones
2) Commerce Committee		Wright	Hamon
3) Judiciary Committee			

SUMMARY ANALYSIS

The Self-Storage Facility Act, set out in Part III of Ch. 83, F.S., regulates the relationship between the owner of a self-service storage facility or self-contained storage unit and the facility's or unit's tenants. Under the Act, the facility or unit owner has a lien upon all personal property located at a self-service storage facility or in a self-contained storage unit, for rent, labor charges, or other charges relating to the personal property and for expenses necessary for its preservation or reasonably incurred in its sale or other disposition under the Act. Such lien attaches when the personal property is brought to the self-service storage facility or when the tenant takes possession of the self-contained storage unit, and the lien's priority is as provided in s. 83.808, F.S.

To enforce such a lien, a self-service storage facility or self-contained storage unit owner may sell the tenant's personal property as provided in the Act. However, before any such sale may occur, the facility or unit owner must give notice of an impending sale to the tenant in person, by e-mail, or by first-class mail with a certificate of mailing to the tenant's last known address, and conspicuously post such notice at the self-service storage facility or on the self-contained storage unit. Such notice must specify that, unless the claim is paid within the time stated in the notice, the personal property will be advertised for sale or other disposition and will be sold or otherwise disposed of at a specified time and place. Following the expiration of the time given in the notice, the facility or unit owner must also:

- Advertise the sale in a newspaper of general circulation in the area where the facility or unit is located once a week for two consecutive weeks; or
- If there is no such newspaper, post the advertisement at least ten days before the sale in at least three conspicuous places in the neighborhood where the facility or unit is located.

CS/HB 283 requires that a rental agreement for storage space contain a provision authorizing the tenant to designate an alternate contact person, which person may be contacted only for purposes of providing the required notice of sale or as the rental agreement otherwise authorizes. The bill also:

- Specifies that the designation of an alternate contact person does not give such person an interest in the stored contents.
- Requires that the notice of sale be given in a specified manner to the alternate contact person.
- Requires that a rental agreement contain a warning that stored contents, if advertised for sale, will be described in the advertisement.
- Authorizes the advertisement of sale to be published on a public website that customarily conducts or advertises personal property auctions in lieu of newspaper publication and specifies how the sale must be advertised if there is no qualifying newspaper and the facility or unit owner does not publish online.
- Requires that, if an advertisement of sale is to be published on a public website, the notice sent to the tenant must identify the public website on which the advertisement is to be published.

The bill does not appear to have a fiscal impact on state or local governments. The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Self-Service Storage Facility Act Definitions

The Self-Storage Facility Act, set out in Part III of Ch. 83, F.S., regulates the relationship between the owner of a self-service storage facility or a self-contained storage unit and the facility's or unit's tenants. Significantly, the Act allows the owner to seize and sell the personal property within the storage unit if the tenant does not pay rent and specified conditions are met. Under the Act:

- "Last known address" means the street address or post office box address provided by the tenant in the latest rental agreement or in a subsequent written change-of-address notice provided by hand delivery, first-class mail, or e-mail;
- "Owner" means the owner, operator, lessor, or sublessor of a self-service storage facility or self-contained storage unit or his or her agent or any other person authorized by him or her to manage the facility or to receive rent from a tenant under a rental agreement;
- "Rental agreement" means any agreement or lease which establishes or modifies terms, conditions, rules, or any other provisions concerning the use and occupancy of a self-service storage facility or of a self-contained storage unit;
- "Self-contained storage unit" means any unit not less than 200 cubic feet in size, including, but not limited to, a trailer, box, or other shipping container, which is leased by a tenant primarily for use as storage space whether the unit is located at a facility owned or operated by the owner or at another location designated by the tenant;
- "Self-service storage facility" means any real property designed and used for the purpose of renting or leasing individual storage space to tenants who are to have access to such space for the purpose of storing and removing personal property and where no individual storage space is used for residential purposes; and
- "Tenant" means a person or the person's sublessee, successor, or assign entitled to the use of storage space at a self-service storage facility or in a self-contained storage unit, under a rental agreement, to the exclusion of others.[1]

Liens Under the Self-Storage Facility Act

A lien is a claim against property that evidences a debt, obligation, or duty.[2] A self-service storage facility or self-contained storage unit owner has a lien upon all personal property, whether or not owned by the tenant, located at the self-service storage facility or in a self-contained storage unit for rent, labor charges, or other charges relating to the property and for expenses necessary for its preservation or reasonably incurred in its sale or other disposition under the Self-Storage Facility Act.[3] Such lien attaches when the personal property is brought to the storage facility or when the tenant takes possession of the self-contained storage unit, and the lien's priority[4] is as provided in s. 83.808, F.S.; however, in the event of default, the owner must give notice to persons holding perfected security interests[5] in which the tenant is named as the debtor.[6]

Withholding Access to Personal Property Upon Nonpayment of Rent

[1] S. 83.803, F.S.
[2] Fla. Jur. 2d Liens § 37:1.
[3] S. 83.805, F.S.
[4] A lien's priority determines the order in which the lienholder will be paid after sale of the property to which the lien attached. Generally, earlier-recorded liens take priority over later-recorded liens. State and federal law may also specify a particular lien's priority. Legal Information Institute, Debtor and Creditor, https://www.law.cornell.edu/wex/debtor_and_creditor (last visited Jan. 11, 2024).
[5] A security interest arises when, in exchange for a loan, a borrower pledges in a security agreement specified assets owned by the borrower, which assets the lender may take and sell if the borrower defaults on the loan. Legal Information Institute, *Secured Transactions*, https://www.law.cornell.edu/wex/secured_transactions (last visited Jan. 11, 2024).
[6] S. 83.805, F.S.

If a tenant in a self-service storage facility or self-contained storage unit fails to pay the rent for such storage space when it becomes due, the facility or unit owner may, without notice, after five days from the date the rent was due, deny the tenant access to the personal property located in the facility or unit.[7] In denying the tenant access to such personal property, the owner may proceed without judicial process – that is, without obtaining a court order – if this can be done without breach of the peace.[8]

Lien Enforcement: Notice of Sale or Other Disposition

To satisfy an owner's lien under the Self-Storage Facility Act, s. 83.806, F.S., specifies that the owner must notify the tenant by written notice delivered in person, by e-mail, or by first-class mail with a certificate of mailing to the tenant's last known address, and such notice must be conspicuously posted at the self-service storage facility or on the self-contained storage unit. If the facility or unit owner sends notice of a pending sale of property to the tenant's last known e-mail address and does not receive a response, return receipt, or delivery confirmation from the same e-mail address, the owner must send notice of the sale to the tenant by first-class mail with a certificate of mailing to the tenant's last known address before the sale.[9]

The notice must include:

- An itemized statement of the facility or unit owner's claim, showing the amount due at the time of the notice and the date when the amount became due;
- The same description, or a reasonably similar description, of the personal property as provided in the rental agreement;
- A demand for payment within a specified time of not less than 14 days after the notice's delivery;
- A conspicuous statement that, unless the claim is paid within the time stated in the notice, the personal property will be advertised for sale or other disposition and will be sold or otherwise disposed of at a specified time and place; and
- The name, street address, and telephone number of the owner whom the tenant may contact to respond to the notice.[10]

The notice is presumed delivered when it is deposited with the United States Postal Service and properly addressed with postage prepaid.[11]

Lien Enforcement: Advertisement of Sale or Other Disposition

After the expiration of the time given in the notice of sale, an advertisement of the sale or other disposition must be published once a week for two consecutive weeks in a newspaper of general circulation in the area where the self-service storage facility or self-contained storage unit is located.[12] A lien sale may be conducted on a public website that customarily conducts personal property auctions, and the facility or unit owner is not required to hold a license to post property for online sale.[13] Should a sale involve the property of multiple tenants, one advertisement may be used to dispose of the property at any one sale.[14]

[7] S. 83.8055, F.S.
[8] *Id.*
[9] S. 83.806, F.S.
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] *Id.*

The advertisement must include:

- A brief and general description of what is believed to constitute the personal property contained in the storage unit;
- The address of the self-service storage facility or the address where the self-contained storage unit is located and the tenant's name; and
- The time, place, and manner of the sale or other disposition, which sale or other disposition must take place at least 15 days after the first publication.[15]

However, if there is no newspaper of general circulation in the area where the self-service storage facility or self-contained storage unit is located, the advertisement must be posted at least ten days before the date of the sale or other disposition in at least three conspicuous places in the neighborhood where the self-service storage facility or self-contained storage unit is located.[16]

Lien Enforcement: Sale or Other Disposition

Any sale or other disposition of a tenant's personal property must conform to the terms of the notification and must be conducted in a commercially reasonable manner.[17] However, before any such sale or other disposition, the tenant may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under the Self-Storage Facility Act and thereby redeem the personal property.[18] Upon receipt of such payment, the owner must return the property to the tenant and thereafter has no liability to any person with respect to such personal property.[19] However, if the tenant fails to redeem the personal property or satisfy the lien, including reasonable expenses, he or she will be deemed to have unjustifiably abandoned the self-service storage facility or self-contained storage unit, and the owner may resume possession of the premises for himself or herself.[20]

In the event of a sale, the facility or unit owner may satisfy his or her lien from the sale's proceeds, if the owner's lien has priority over all other liens on the personal property.[21] The lien rights of secured lienholders are automatically transferred to the remaining proceeds of the sale, and the balance, if any, must be held by the owner for delivery on demand to the tenant.[22] A notice of any balance must be delivered to the tenant in person or by first-class mail with a certificate of mailing to the tenant's last known address.[23] If the tenant fails to claim the balance within two years after the sale date, the proceeds are deemed abandoned, and the facility or unit owner has no further obligation to pay the balance.[24]

If the facility or unit owner's lien does not have priority over all other liens, the sale proceeds must be held for the benefit of those lienholders with priority over the owner's lien.[25] A notice of the amount of the sale proceeds must be delivered by the facility or unit owner to the tenant and secured lienholders in person or by first-class mail with a certificate of mailing to their last known addresses.[26] If the tenant or the secured lienholders do not claim the sale proceeds within two years after the sale date, the proceeds are deemed abandoned, and the owner has no further obligation to pay the proceeds.[27]

[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] *Id.*

Lien Enforcement: Motor Vehicles and Watercraft

If a lien is claimed on a motor vehicle or a watercraft and rent and other charges related to such property remain unpaid for 60 days after the maturity of the obligation to pay the rent and other charges, the facility or unit owner may sell the property under the Self-Storage Facility Act or have the property towed.[28] If a motor vehicle or watercraft is towed, the facility or unit owner is not liable for the motor vehicle or watercraft or any damages thereto once a wrecker takes possession of such property.[29] However, such wrecker must comply with all notification and sale requirements set out in s. 713.78, F.S., relating to liens for recovering, towing, or storing vehicles and vessels.[30]

Rental Agreements

Section 83.808, F.S., sets out additional provisions that govern rental agreements under the Self-Service Storage Facility Act. Specifically, a rental agreement must contain a provision disclosing whether the applicant is a member of the uniformed services as that term is defined in 10 U.S.C. s. 101(a)(5).[31] Further, the owner of a self-service storage facility or self-contained storage unit may charge a tenant a reasonable late fee for:

- Each period that he or she fails to pay rent due under the rental agreement. The amount of the late fee and the conditions for imposing such fee must be stated in the rental agreement or in an addendum to such agreement.[32] For purposes of the Act, a late fee of $20, or 20 percent of the monthly rent, whichever is greater, is reasonable and does not constitute a penalty.[33]
- Any expenses incurred as a result of rent collection or lien enforcement.[34]

However, s. 83.809, F.S., clarifies that nothing in the Act may be construed as impairing or affecting the right of any person to create additional rights, duties, and obligations in a rental agreement, and the provisions of the Act are in addition to all other rights allowed by law in a creditor-debtor or landlord-tenant relationship.

Effect of Proposed Changes

Rental Agreements

CS/HB 283 amends s. 83.808, F.S., to require that a rental agreement for storage space in a self-service storage facility or self-contained storage unit contain a provision authorizing the tenant to designate an optional alternate contact person, which person may be contacted only for the purposes of giving the notice of sale required under the Self-Storage Facility Act or as the rental agreement otherwise authorizes. Under the bill, the designation of an alternate contact person does not give such person an interest in the stored contents.

The bill also amends this section to require that such a rental agreement include a warning that, if the property contained in the storage unit is advertised for sale or other disposition, a description of what is believed to constitute such personal property will be published in the advertisement for sale.

[28] *Id.*
[29] *Id.*
[30] *Id.*
[31] Where a tenant is an active duty member of the uniformed services and deployed, the Servicemembers Civil Relief Act provides additional protections for the tenant's property. S. 83.808, F.S.
[32] *Id.*
[33] *Id.*
[34] *Id.*

Lien Enforcement: Notice

The bill amends s. 83.806, F.S., to specify that the written notice required by that section to be sent to the tenant before any sale or disposition of the tenant's personal property must also be sent to the alternate contact person designated by the tenant, if any, at such person's last known address. Under the bill, if the facility or unit owner sends notice of a pending sale to the alternate contact person's last known e-mail address and receives no response, return receipt, or delivery confirmation from such e-mail address, the owner must send notice of the sale to the alternate contact person by first-class mail with a certificate of mailing to such person's last known address before proceeding with the sale.

Further, the bill amends this section to require that, if the advertisement of sale will be published on a public website, the notice sent to the tenant (and the alternate contact person, if applicable) must include the name of the website on which the advertisement will be published.

Lien Enforcement: Sale or Other Disposition

The bill amends s. 83.806, F.S., to allow the publishing of an advertisement of sale or other disposition on a public website that customarily conducts or advertises personal property auctions, which publication must be for 7 consecutive full days, in lieu of newspaper publication. Further, the bill specifies that, if there is no qualifying newspaper of general circulation and the facility or unit owner does not publish the advertisement on a qualifying public website, the advertisement must be posted at least ten days before the date of the sale or other disposition in at least three conspicuous places in the neighborhood in which the self-service storage facility or self-contained storage unit is located.

Effective Date

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

B. SECTION DIRECTORY:

Section 1: Amends s. 83.806, F.S., relating to enforcement of lien.
Section 2: Amends s. 83.808, F.S., relating to contracts.
Section 3: 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 a positive economic impact on:

- Owners of a self-service storage facility or self-contained storage unit to the extent that such an owner chooses to publish the advertisement of the sale on a qualifying public website instead of in a newspaper and thereby reduces his or her publication costs.
- Tenants of a self-service storage facility or self-contained storage unit to the extent that their designation of an alternate contact person leads to the tenant receiving notice of an upcoming sale and the tenant is thereby able to pay the rent amount he or she owes and redeem his or her personal property.

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:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 11, 2024, the Civil Justice Subcommittee considered an amendment and reported the bill favorably as a committee substitute. The amendment:

- Restored to current law the requirement that an advertisement of sale published in a newspaper be published once a week for two consecutive weeks.
- Required that, if the advertisement of sale will be published on a public website, the notice to the tenant must identify the website on which the advertisement will be published.
- Specified that an advertisement of sale published on a public website must be published for seven consecutive full days.
- Restored to current law the requirement that a sale of stored contents be held no earlier than 15 days after the first publication of the advertisement of sale.
- Required that a rental agreement include a warning that, if the property is advertised for sale or other disposition, a description of what is believed to constitute the personal property contained in the storage unit will be published in the advertisement.

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

A bill to be entitled

An act relating to self-service storage facility liens; amending s. 83.806, F.S.; revising written notice requirements relating to the satisfaction of an owner's lien; revising publication requirements relating to advertising the sale or other disposition of self-service storage facilities; amending s. 83.808, F.S.; requiring that rental agreements authorize tenants to designate an optional alternate contact for purposes of providing specified notice; specifying that designating an alternate contact does not give such person an interest in the contents stored at a self-service storage facility or in a self-contained storage unit; requiring that rental agreements include a specified warning; providing an effective date.

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

Section 1. Subsections (1) and (4) of section 83.806, Florida Statutes, are amended, and paragraph (f) is added to subsection (2) of that section, to read:

83.806 Enforcement of lien.—An owner's lien as provided in s. 83.805 may be satisfied as follows:

(1) The tenant must ~~shall~~ be notified by written notice

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

delivered in person, by e-mail, or by first-class mail with a certificate of mailing to the tenant's last known address and the last known address of the alternate contact person designated by the tenant under the rental agreement, if any, and conspicuously posted at the self-service storage facility or on the self-contained storage unit. If the owner sends notice of a pending sale of property to the tenant's and the alternate contact person's last known e-mail address and does not receive a response, return receipt, or delivery confirmation from the same e-mail address, the owner must send notice of the sale to the tenant and the alternate contact person by first-class mail with a certificate of mailing to the tenant's and the alternate contact person's last known address before proceeding with the sale.

(2) The notice shall include:

(f) If the advertisement for sale will be published on a public website that customarily conducts or advertises personal property auctions, the name of the website on which the advertisement will be published.

(4) After the expiration of the time given in the notice, an advertisement of the sale or other disposition must ~~shall~~ be published once a week for 2 consecutive weeks in a newspaper of general circulation in the area in which ~~where~~ the self-service storage facility or self-contained storage unit is located or for 7 consecutive full days on a public website that customarily

conducts or advertises personal property auctions.

(a) A lien sale may be conducted on a public website that customarily conducts personal property auctions. The facility or unit owner is not required to hold a license to post property for online sale. ~~Inasmuch~~ As any sale may involve property of more than one tenant, a single advertisement may be used to dispose of property at any one sale.

(b) The advertisement must ~~shall~~ include:

1. A brief and general description of what is believed to constitute the personal property contained in the storage unit, as provided in paragraph (2)(b).

2. The address of the self-service storage facility or the address at which ~~where~~ the self-contained storage unit is located and the name of the tenant.

3. The time, place, and manner of the sale or other disposition. The sale or other disposition shall take place at least 15 days after the first publication.

(c) If there is no newspaper of general circulation in the area in which ~~where~~ the self-service storage facility or self-contained storage unit is located and the owner does not publish the advertisement on a public website that customarily conducts or advertises personal property auctions, the advertisement must ~~shall~~ be posted at least 10 days before the date of the sale or other disposition in at least three conspicuous places in the neighborhood in which ~~where~~ the self-service storage facility or

self-contained storage unit is located.

Section 2. Subsection (4) is added to section 83.808, Florida Statutes, to read:

83.808 Contracts.—

(4) A rental agreement must contain the following:

(a) A provision authorizing the tenant to designate an optional alternate contact person, which person may be contacted only for purposes of providing notice under s. 83.806(1) or as otherwise authorized by the rental agreement. Designating an alternate contact person does not give such person an interest in the contents stored at the self-service storage facility or in the self-contained storage unit.

(b) A warning that, if the property is advertised for sale or other disposition, a description of what is believed to constitute the personal property contained in the storage unit will be published in the advertisement.

Section 3. This act shall take effect July 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 303 Rabies Vaccinations
SPONSOR(S): Regulatory Reform & Economic Development Subcommittee, Killebrew
TIED BILLS: **IDEN./SIM. BILLS:** SB 334

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	14 Y, 0 N, As CS	Thompson	Anstead
2) Commerce Committee		Thompson	Hamon

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).

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. 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.

Currently, Florida law does not appear to allow anyone other than a licensed veterinarian to administer the rabies vaccine. According to Board rule, rabies is recognized as a disease that is communicable to humans and a public health significance, and as a result, only a veterinarian is authorized to immunize or treat an animal for this disease.

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.

The bill is expected to have a positive fiscal impact on 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); 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,[6] or other employees of a licensed veterinarian, who administer medication or provide help or support under the responsible supervision[7] 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[8] institutions;
- Certain graduated intern/resident veterinarians of accredited institutions;

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[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] 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 Nov. 30, 2023).
[7] 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.
[8] 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 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[9] 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.[10]

Any permanent or mobile establishment where a licensed veterinarian practices must have a premises permit issued by DBPR.[11] 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.[12]

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.[13]

For Fiscal Year 2021-2022, there were 12,360 actively licensed veterinarians in Florida. DBPR received 568 complaints, which resulted in 26 disciplinary actions.[14]

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."[15]

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.[16] 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.[17]

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[9] *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...."
[10] *See* s. 474.203, F.S.
[11] S. 474.215(1), F.S.
[12] S. 474.216, F.S.
[13] S. 474.2185, F.S.
[14] 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 Nov. 30, 2023).
[15] World Health Organization, Rabies, Sep. 20, 2023, https://www.who.int/news-room/fact-sheets/detail/rabies (last visited Dec. 14, 2023).
[16] S. 828.30(1), F.S.
[17] *See* s. 828.27(2), F.S

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.[18]

Upon vaccination, the licensed veterinarian is required to provide the animal's owner and the animal control authority with a rabies vaccination certificate.[19] 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.[20]

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.[21] 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.[22]

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.[23]

Effect of the Bill

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:

[18] S. 828.30(2), F.S.

[19] 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.

[20] S. 828.30(3), F.S.

[21] 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.

[22] R. 61G18-17.005, F.A.C.

[23] R. 61G18-17.006, F.A.C.

Section 1: Amends s. 828.30, F.S.; authorizing certain persons to administer rabies vaccinations to certain animals under indirect supervision of a veterinarian.

Section 2: Amends s. 474.203, F.S., conforming provisions relating to exemptions.

Section 3: Amends s. 767.16, F.S., conforming provisions relating to police canine or service dog; exemption.

Section 4: Amends s. 828.29, F.S., conforming provisions relating to dogs and cats transported or offered for sale; health requirements; consumer guarantee.

Section 5: 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 currently required to be onsite to administer rabies vaccinations.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may reduce the amount of rabies cases in the state, the associated risks to the health of humans and animals, and related expenses.

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 does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On December 13, 2023, the Regulatory Reform & Economic Development Subcommittee considered the bill, adopted one amendment, and reported the bill favorably as a committee substitute. The amendment made a technical change that corrected a scrivener's error.

A bill to be entitled

An act relating to rabies vaccinations; amending s. 828.30, F.S.; authorizing certain persons to administer rabies vaccinations to certain animals under indirect supervision of a veterinarian; defining the term "indirect supervision"; conforming provisions; 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. 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 2. 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 3. 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 4. 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 5. This act shall take effect July 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 473 Cybersecurity Incident Liability
SPONSOR(S): Giallombardo
TIED BILLS: **IDEN./SIM. BILLS:** SB 658

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Commerce Committee		Bauldree	Hamon
2) State Administration & Technology Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Per Florida law, local governments are required to adopt cybersecurity standards that safeguard the local government's data, information technology, and information technology resources to ensure availability, confidentiality, and integrity. The standards must be consistent with generally accepted best practices for cybersecurity, including the National Institute for Standards and Technology (NIST) cybersecurity framework.

The NIST is a non-regulatory federal agency housed within the U.S. Department of Commerce. NIST is charged with providing a prioritized, flexible, repeatable, performance-based, and cost-effective framework that helps owners and operators of critical infrastructure identify, assess, and manage cyber risk. While the framework was developed with critical infrastructure in mind, it can be used by organizations in any sector of the economy or society.

Under the bill, a county or municipality that substantially complies with the standards required by state law is not liable in connection with a cybersecurity incident.

The bill also provides that a sole proprietorship, partnership, corporation, trust, estate, cooperative, association, or other commercial entity or third-party agent, that acquires, maintains, stores, or uses personal information is not liable in connection with a cybersecurity incident if the entity substantially complies with measures to protect and secure electronic data containing personal information as required by Florida law and has adopted a cybersecurity program that substantially aligns with the current version of any of the standards specified in the bill. The bill provides that the scale and scope of "substantial alignment" with a standard specified in the bill must be based on the size and complexity of the entity or third-party agent, the nature and scope of the activities of the entity or third-party agent, and the sensitivity of the information to be protected.

The bill does not establish a private cause of action. It provides that the failure of a county, municipality, or commercial entity or third-party to substantially implement a cybersecurity program as specified in the bill is not evidence of negligence and does not constitute negligence per se.

The bill does not affect state or local government revenues or expenditures.

The bill takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Access to Courts

The Florida Constitution broadly protects the right to access the courts, which "shall be open to every person for redress of any injury..."[1] However, this constitutional right is not unlimited.

In *Kluger v. White*,[2] the Supreme Court of Florida stated that it would not completely prohibit the Legislature from altering a cause of action, but neither would it allow the Legislature "to destroy a traditional and long-standing cause of action upon mere legislative whim..." The takeaway from *Kluger* and other relevant case law is that the Legislature may:

- Reduce the right to bring a cause of action as long as the right is not entirely abolished.[3]
- Abolish a cause of action that is not "traditional and long-standing"—that is, a cause of action that did not exist at common law, and that did not exist in statute before the adoption of the Florida Constitution's Declaration of Rights.[4]
- Abolish a cause of action if the Legislature either:
  - Provides a reasonable commensurate benefit in exchange;[5] or
  - Shows an "overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown."[6]

Tort Liability and Negligence

A "tort" is a wrong for which the law provides a remedy. The purpose of tort law is to fairly compensate a person harmed by another person's wrongful acts, whether intentional, reckless, or negligent, through a civil action or other comparable process. A properly-functioning tort system:

- Provides a fair and equitable forum to resolve disputes;
- Appropriately compensates legitimately harmed persons;
- Shifts the loss to responsible parties;
- Provides an incentive to prevent future harm; and
- Deters undesirable behavior.[7]

"Negligence" is a legal term for a type of tort action that is unintentionally committed. In a negligence action, the plaintiff is the party that brings the lawsuit, and the defendant is the party that defends against it. To prevail in a negligence lawsuit, a plaintiff must demonstrate that the:

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[1] Art. I, s. 21, Fla. Const.
[2] *Kluger v. White*, 281 So. 2d 1 (Fla. 1973).
[3] *See Achord v. Osceola Farms Co.*, 52 So. 3d 699 (Fla. 2010).
[4] *See Anderson v. Gannett Comp.*, 994 So. 2d 1048 (Fla. 2008) (false light was not actionable under the common law); *McPhail v. Jenkins*, 382 So. 2d 1329 (Fla. 1980) (wrongful death was not actionable under the common law); *see also Kluger*, 281 So. 2d at 4 ("We hold, therefore, that where a right of access to the courts for redress for a particular injury has been provided by statutory law predating the adoption of the Declaration of Rights of the Constitution of the State of Florida, or where such right has become a part of the common law of the State . . . the Legislature is without power to abolish such a right without providing a reasonable alternative . . . unless the Legislature can show an overpowering public necessity. . .").
[5] *Kluger*, 281 So. 2d at 4; *see Univ. of Miami v. Echarte*, 618 So. 2d 189 (Fla. 1993) (upholding a statutory cap on medical malpractice damages because the Legislature provided arbitration, which is a "commensurate benefit" for a claimant); *accord Lasky v. State Farm Ins. Co.*, 296 So. 2d 9 (Fla. 1974); *but see Smith v. Dept. of Ins.*, 507 So. 2d 1080 (Fla. 1992) (striking down a noneconomic cap on damages, which, while not wholly abolishing a cause of action, did not provide a commensurate benefit).
[6] *Kluger*, 281 So. 2d at 4-5 (noting that in 1945, the Legislature abolished the right to sue for several causes of action, but successfully demonstrated "the public necessity required for the total abolition of a right to sue") (citing *Rotwein v. Gersten*, 36 So. 2d 419 (Fla. 1948); *see Echarte*, 618 So. 2d at 195 ("Even if the medical malpractice arbitration statutes at issue did not provide a commensurate benefit, we would find that the statutes satisfy the second prong of *Kluger* which requires a legislative finding that an 'overpowering public necessity' exists, and further that 'no alternative method of meeting such public necessity can be shown'").
[7] Am. Jur. 2d Torts s. 2.

- Defendant had a legal duty of care requiring the defendant to conform to a certain standard of conduct for the protection of others, including the plaintiff, against unreasonable risks;
- Defendant breached his or her duty of care by failing to conform to the required standard;
- Defendant's breach caused the plaintiff's injury; and
- Plaintiff suffered actual damage or loss resulting from his or her injury.[8]

Courts distinguish varying degrees of civil negligence by using terms such as:

Slight Negligence	The failure to exercise great care. This often applies to injuries caused by common carries charged with the duty to exercise the highest degree of care toward their passengers.[9]
Ordinary Negligence	The failure to exercise that degree of care which an ordinary prudent person would exercise; or, in other words, a course of conduct which a reasonable and prudent person would know might possibly result in injury to others.[10]
Gross Negligence	A course of conduct which a reasonable and prudent person knows would probably and most likely result in injury to another.[11] To prove gross negligence, a plaintiff must usually show that the defendant had knowledge or awareness of imminent danger to another and acted or failed to act with a conscious disregard for the consequences.[12] Once proven, gross negligence may support a punitive damage[13] award.[14]

In Florida, before a court awards damages in a negligence action, the jury generally assigns a fault percentage to each party under the comparative negligence rule. Florida applies[15] a "pure" comparative negligence rule, which allows a plaintiff to recover damages proportional to his or her fault percentage.[16] For example, if a plaintiff is 40 percent at fault for an accident causing the plaintiff's injury and the defendant is 60 percent at fault, the plaintiff would recover 60 percent of his or her damages.

The Florida Rules of Civil Procedure generally require a plaintiff in a civil action to file a complaint and require a defendant to file an answer to the complaint.[17] Florida is a "fact-pleading jurisdiction." This means that a pleading setting forth a claim for relief, including a complaint, must generally state a cause of action and contain a:

- Short and plain statement of the grounds on which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds to support it;
- Short and plain statement of the ultimate facts[18] showing the pleader is entitled to relief; and
- Demand for the relief to which the pleader believes he or she is entitled.[19]

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[8] 6 *Florida Practice Series* s. 1.1; *see Barnett v. Dept. of Financial Services*, 303 So. 3d 508 (Fla. 2020).
[9] *See Faircloth v. Hill*, 85 So. 2d 870 (Fla. 1956); *see also Holland America Cruises, Inc. v. Underwood*, 470 So. 2d 19 (Fla. 2d DCA 1985); *Werndli v. Greyhound Corp.*, 365 So. 2d 177 (Fla. 2d DCA 1978); 6 *Florida Practice Series* s. 1.2.
[10] *See De Wald v. Quarnstrom*, 60 So. 2d 919 (Fla. 1952); *see also Clements v. Deeb*, 88 So. 2d 505 (Fla. 1956); 6 *Florida Practice Series* s. 1.2.
[11] *See Clements*, 88 So. 2d 505; 6 *Florida Practice Series* s. 1.2.
[12] *See Carraway v. Revell*, 116 So. 2d 16 (Fla. 1959).
[13] Punitive damages are awarded in addition to actual damages to punish a defendant for behavior considered especially harmful. Florida generally caps punitive damage awards at $500,000 or triple the value of compensatory damages, whichever is greater, and caps cases of intentional misconduct with a financial motivation at two million dollars or four times the amount of compensatory damages, whichever is greater. S. 768.73(1), F.S.
[14] *See Glaab v. Caudill*, 236 So. 2d 180 (Fla. 2d DCA 1970); 6 *Florida Practice Series* s. 1.2; s. 768.72(2), F.S.
[15] The comparative negligence standard does not apply to any action brought to recover economic damages from pollution, based on an intentional tort, or to which the joint and several liability doctrines is specifically applied in ch. 403, 498, 517, 542, and 895, F.S. S. 768.81(4), F.S.
[16] S. 768.81(2), F.S.; *see Williams v. Davis*, 974 So. 2d 1052 (Fla. 2007).
[17] Fla. R. Civ. P. 1.100.
[18] Ultimate facts are facts that must be accepted for a claim to prevail, usually inferred from a number of supporting evidentiary facts, which themselves are facts making other facts more probable. *See* Legal Information Institute, *Ultimate Fact*, https://www.law.cornell.edu/wex/ultimate_fact (last visited Jan. 18, 2024); *see also* Legal Information Institute, *Evidentiary Facts*, https://www.law.cornell.edu/wex/evidentiary_fact (last visited Jan. 18, 2024).
[19] *See Goldschmidt v. Holman*, 571 So. 2d 422 (Fla. 1990); Fla. R. Civ. P. 1.110.

However, certain allegations[20] must be plead with "particularity," which is a heightened level of pleading requiring a statement of facts sufficient to satisfy the elements of each claim.

Burden of Proof and Presumptions

The burden of proof is an obligation to prove a material fact in issue.[21] Generally, the party who asserts the material fact in issue has the burden of proof.[22] In a civil proceeding, for example, the burden of proof is on the plaintiff to prove the allegations contained in his or her complaint. Further, a defendant in either a criminal or a civil proceeding has the burden to prove any affirmative defenses[23] he or she may raise in response to the charges or allegations. However, there are certain statutory and common law presumptions[24] that may shift the burden of proof from the party asserting the material fact in issue to the party defending against such fact.[25] These presumptions remain in effect following the introduction of evidence rebutting the presumption, and the factfinder must decide if such evidence is strong enough to overcome the presumption.[26] A presumption is a legal inference that can be made with knowing certain facts. Most presumptions are able to be rebutted, if proven to be false or thrown into sufficient doubt by the evidence.[27]

Cybersecurity Standards

Per Florida law, local governments are required to adopt cybersecurity standards that safeguard the local government's data, information technology, and information technology resources to ensure availability, confidentiality, and integrity.[28] The standards must be consistent with generally accepted best practices for cybersecurity, including the National Institute for Standards and Technology (NIST) cybersecurity framework.[29] Once the standards are adopted, each local government is to notify the Florida Digital Service (FLDS)[30] as soon as possible.[31]

NIST is a non-regulatory federal agency housed within the U.S. Department of Commerce. NIST is charged with providing a prioritized, flexible, repeatable, performance-based, and cost-effective framework that helps owners and operators of critical infrastructure identify, assess, and manage cyber risk. While the framework was developed with critical infrastructure in mind, it can be used by organizations in any sector of the economy or society.[32] The framework is designed to complement, and not replace, an organization's own unique approach to cybersecurity risk management. As such, there are a variety of ways to use the framework and the decision about how to apply it is left to the implementing organization. For example, an organization may use its current processes and consider the framework to identify opportunities to strengthen its cybersecurity risk management. The framework, overall, provides an outline of best practices that helps organizations decide where to focus resources for cybersecurity protection.[33] Other cybersecurity standards include:

[20] These allegations include fraud, mistake, condition of the mind, and denial of performance or occurrence. Fla. R. Civ. P. 1.1 20(b),(c).
[21] 5 *Florida Practice Series* s. 16:1.
[22] *Id.*; *see Berg v. Bridle Path Homeowners Ass'n, Inc.*, 809 So. 2d 32 (Fla. 4th DCA 2002).
[23] An affirmative defense is a defense which, if proven, negates criminal or civil liability even if it is proven that the defendant committed the acts alleged. Examples include self-defense, entrapment, insanity, necessity, and *respondeat superior*. Legal Information Institute, *Affirmative Defense*, https://www.law.cornell.edu/wex/affirmative_defense (last visited Jan. 18, 2024).
[24] These presumptions tend to be social policy expressions, such as the presumption that all people are sane or that all children born in wedlock are legitimate. 5 *Florida Practice Series* s. 16:1.
[25] 5 *Florida Practice Series* s. 16:1.
[26] *Id.*
[27] Legal Information Institute, *Presumption*, https://www.law.cornell.edu/wex/presumption (last visited Jan. 18, 2024).
[28] S.282.3185(4)(a), F.S.
[29] *Id*.
[30] FLDS works under Department of Management Services to implement policies for information technology and cybersecurity for state agencies.
[31] S.282.3185(4)(d), F.S.
[32] National Institute of Standards and Technology, *Framework for Improving Critical Infrastructure Cybersecurity*, https://nvlpubs.nist.gov/nistpubs/CSWP/NIST.CSWP.04162018.pdf (last visited March 7, 2023).
[33] *Id.*

NIST special publication 800-171	Provides recommended requirements for protecting the confidentiality of controlled unclassified information. If a manufacturer is part of a Department of Defense, General Services Administration, NASA, or other state or federal agency supply chain then they must comply with these security requirements.[34]
NIST special publications 800-53 and 800-53A	A category of security and privacy controls. Covers the steps in the Risk Management Framework that address security controls for federal information systems.[35]
The Federal Risk and Authorization Management Program security assessment framework	Organization established by the General Services Administration (a federal government program) that provides U.S. federal agencies, state agencies, and their vendors with a standardized set of best practices to assess, adopt, and monitor the use of cloud-based technology services under the Federal Information Security Management Act (FISMA).[36]
CIS Critical Security Controls	The Center for Internet Security (CIS) Critical Security Controls are a prescriptive and simplified set of best practices for strengthening cybersecurity for different organizations. CIS was created in response to extreme data losses experienced by organizations in the U.S. defense industrial base.[37]
The International Organization for Standardization/International Electrotechnical Commission 27000 – series family of standards	ISO/IEC 27001 (ISO) enables organizations of all sectors to manage security of financial information, intellectual property, employee data, and information entrusted by third parties. ISO has auditors and is an international standard. There are 804 technical committees and subcommittees concerned with such standards of development.[38]

Florida law also requires certain covered entities,[39] governmental entities,[40] or third-party agents to take reasonable measures to protect and secure data in electronic form containing personal information.[41]

Effect of the Bill

The bill provides that specified entities that substantially comply with certain standards are not liable in connection with a cybersecurity incident.

[34] NIST, *What is the NIST SP 800-171 and Who Needs to Follow It?*, https://www.nist.gov/blogs/manufacturing-innovation-blog/what-nist-sp-800-171-and-who-needs-follow-it-0#:~:text=NIST%20SP%20800-171%20is%20a%20NIST%20Special%20Publication,protecting%20the%20confidentiality%20of%20controlled%20unclassified%20information%20%28CUI%29 (last visited Jan. 18, 2024).

[35] NIST, *Selecting Security and Privacy Controls: Choosing the Right Approach*, https://www.nist.gov/blogs/cybersecurity-insights/selecting-security-and-privacy-controls-choosing-right-approach (last visited Jan. 18, 2024).

[36] RiskOptics, *How State and Local Agencies Can Use FedRAMP*, https://reciprocity.com/how-state-and-local-agencies-can-use-fedramp/#:~:text=The%20Federal%20Risk%20and%20Authorization%20Management%20Program%20%28FedRAMP%29,cloud%20products%20offered%20by%20cloud%20service%20providers%20%28CSPs%29 (last visited Jan. 18, 2024).

[37] CIS Security, *CIS Critical Security Controls*, https://www.cisecurity.org/controls (last visited Jan. 18, 2024).

[38] ITGovernance, *ISO 27001, The International Security Standard*, https://www.itgovernanceusa.com/iso27001#:~:text=ISO%2027001%20is%20a%20globally%20recognized%20information%20security,trusted%20benchmark.%20Protect%20your%20data%2C%20wherever%20it%20lives (last visited Jan. 18, 2024).

[39] "Covered entity" means a sole proprietorship, partnership, corporation, trust, estate, cooperative, association, or other commercial entity that acquires, maintains, stores, or uses personal information. For purposes of the notice requirements in subsections (3)-(6), the term includes a governmental entity. S. 501.171(1), F.S.

[40] "Governmental entity" means any department, division, bureau, commission, regional planning agency, board, district, authority, agency, or other instrumentality of this state that acquires, maintains, stores, or uses data in electronic form containing personal information. *Id.*

[41] S. 501.171. F.S.

Under the bill, a county or municipality that substantially complies with cybersecurity standards required by Florida law is not liable in connection with a cybersecurity incident.

The bill also provides that a sole proprietorship, partnership, corporation, trust, estate, cooperative, association, or other commercial entity or third-party agent that acquires, maintains, stores, or uses personal information is not liable in connection with a cybersecurity incident if the entity substantially complies with measures to protect data containing personal information, as required by Florida law, and has adopted a cybersecurity program that substantially aligns with the current version of any of the following:

- NIST Framework for Improving Critical Infrastructure Cybersecurity;
- NIST special publication 800-171;
- NIST special publications 800-53 and 800-53A;
- The Federal Risk and Authorization Management Program security assessment framework;
- CIS Critical Security Controls; or
- The International Organization for Standardization/International Electrotechnical Commission 27000 – series family of standards.

Under the bill, if the entity or third-party agent is regulated by the state or federal government, or both, or is otherwise subject to the requirements of any of the following laws and regulations, it must substantially align its cybersecurity program to the current version of:

- The security requirements of the Health Insurance Portability and Accountability Act of 1996;[42]
- Title V of the Gramm-Leach-Bliley Act of 1999 as amended;[43]
- The Federal Information Security Modernization Act of 2014;[44] or
- The Health Information Technology for Economic and Clinical Health Act.[45]

The bill provides that the scale and scope of the entity's or third-party agent's "substantial alignment" with a standard specified in the bill must be based on the following factors:

- The size and complexity of the entity or third-part agent;
- The nature and scope of the activities of the entity or third-party agent; and
- The sensitivity of the information to be protected.

Under the bill, any commercial entity or third-party agent that substantially complies with a combination of industry-recognized cybersecurity frameworks or standards, including the payment card industry data security standard, gains a presumption against liability in connection with a cybersecurity incident. To maintain this presumption, it must adopt revised frameworks or standards within one year after the latest publication date stated in the revisions. In an action in connection with a cybersecurity incident, if the defendant is an entity covered by the bill, the defendant holds the burden of proof to establish substantial compliance.

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[42] To comply with the HIPAA Security Rule, covered entities must: (1) ensure confidentiality of all electronic protected health information, (2) detect and safeguard against anticipated threats to information security, (3) protect against anticipated impermissible disclosures, and (4) certify compliance by their workforce. Centers for Disease Control and Prevention, *Health Insurance Portability and Accountability Act of 1996 (HIPAA)*, https://www.cdc.gov/phlp/publications/topic/hipaa.html (last visited Jan. 19, 2024).

[43] Title V of this Act requires the Federal Trade Commission, in conjunction with other regulators, to issue regulations ensuring that financial institutions protect the privacy of consumers' personal financial information. Federal Trade Commission, *Gramm-Leach-Bliley Act*, https://www.ftc.gov/legal-library/browse/statutes/gramm-leach-bliley-act (last visited Jan. 19, 2024).

[44] The Federal Information Security Modernization Act requires agencies to report the status of their information security programs to OMB and requires Inspectors General (IG) to conduct annual independent assessments of those programs. U.S. Chief Information Officers Council, *Federal Information Security Modernization Act (FISMA)*, https://www.cio.gov/policies-and-priorities/FISMA/ (last visited Jan. 19, 2024).

[45] The Health Information Technology for Economic and Clinical Health Act addresses the privacy and security concerns associated with the electronic transmission of health information, in part, through several provisions that strengthen the civil and criminal enforcement of the HIPAA rules. U.S. Department of Health and Human Services, *HITECH Act Enforcement Interim Final Rule*, https://www.hhs.gov/hipaa/for-professionals/special-topics/hitech-act-enforcement-interim-final-rule/index.html (last visited Jan. 19, 2024).

The bill does not establish a private cause of action. It provides that the failure of a county, municipality, or commercial entity or third-party to substantially implement a cybersecurity program as specified in the bill is not evidence of negligence and does not constitute negligence per se.

The bill provides that the act shall take effect upon becoming law.

B. SECTION DIRECTORY:

Section 1: Creates s. 768.401, F.S., relating to limitation on liability for cybersecurity incidents.

Section 2: Provides that the bill is effective upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill provides an incentive for local governments and certain commercial entities and third-party agents to take actions that better protect data (including taxpayer and consumer personal information), information technology, and information technology resources that, if accessed by unauthorized persons, could cause harm to persons and businesses. This may reduce the frequency and impact of cyber-attacks in the state.

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 does not require or authorize rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Not applicable.

A bill to be entitled

An act relating to cybersecurity incident liability; creating s. 768.401, F.S.; providing that a county, municipality, commercial entity, or third-party agent that complies with certain requirements is not liable in connection with a cybersecurity incident; requiring certain entities to adopt certain revised frameworks or standards within a specified time period; providing that a private cause of action is not established; providing that certain failures are not evidence of negligence and do not constitute negligence per se; specifying that the defendant in certain actions has a certain burden of proof; providing an effective date.

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

Section 1. Section 768.401, Florida Statutes, is created to read:

768.401 Limitation on liability for cybersecurity incidents.—

(1) A county or municipality that substantially complies with s. 282.3185 is not liable in connection with a cybersecurity incident.

(2) A sole proprietorship, partnership, corporation, trust, estate, cooperative, association, or other commercial

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

entity or third-party agent that acquires, maintains, stores, or uses personal information is not liable in connection with a cybersecurity incident if the entity substantially complies with s. 501.171, if applicable, and has:

(a) Adopted a cybersecurity program that substantially aligns with the current version of any standards, guidelines, or regulations that implement any of the following:

1. The National Institute of Standards and Technology (NIST) Framework for Improving Critical Infrastructure Cybersecurity.

2. NIST special publication 800-171.

3. NIST special publications 800-53 and 800-53A.

4. The Federal Risk and Authorization Management Program security assessment framework.

5. The Center for Internet Security (CIS) Critical Security Controls.

6. The International Organization for Standardization/International Electrotechnical Commission 27000-series (ISO/IEC 27000) family of standards; or

(b) If regulated by the state or Federal Government, or both, or if otherwise subject to the requirements of any of the following laws and regulations, substantially aligned its cybersecurity program to the current version of the following, as applicable:

1. The Health Insurance Portability and Accountability Act

of 1996 security requirements in 45 C.F.R. part 160 and part 164 subparts A and C.

2. Title V of the Gramm-Leach-Bliley Act of 1999, Pub. L. No. 106-102, as amended.

3. The Federal Information Security Modernization Act of 2014, Pub. L. No. 113-283.

4. The Health Information Technology for Economic and Clinical Health Act requirements in 45 C.F.R. parts 160 and 164.

(3) The scale and scope of substantial alignment with a standard, law, or regulation under paragraph (2)(a) or paragraph (2)(b) by a covered entity or third-party agent, as applicable, is appropriate if it is based on all of the following factors:

(a) The size and complexity of the covered entity or third-party agent.

(b) The nature and scope of the activities of the covered entity or third-party agent.

(c) The sensitivity of the information to be protected.

(4) Any commercial entity or third-party agent covered by subsection (2) that substantially complies with a combination of industry-recognized cybersecurity frameworks or standards to gain the presumption against liability pursuant to subsection (2) must, upon the revision of two or more of the frameworks or standards with which the entity complies, adopt the revised frameworks or standards within 1 year after the latest publication date stated in the revisions and, if applicable,

comply with the Payment Card Industry Data Security Standard (PCI DSS).

(5) This section does not establish a private cause of action. Failure of a county, municipality, or commercial entity to substantially implement a cybersecurity program that is in compliance with this section is not evidence of negligence and does not constitute negligence per se.

(6) In an action in connection with a cybersecurity incident, if the defendant is an entity covered by subsection (1) or subsection (2), the defendant has the burden of proof to establish substantial compliance.

Section 2. This act shall take effect upon becoming a law.

Commerce Committee
HB 473 by Rep. Giallombardo
Cybersecurity Incident Liability

AMENDMENT SUMMARY
January 23, 2024

Amendment 1 by Giallombardo (line 22):

- Provides that, in addition to a county or municipality, a political subdivision of the state that substantially complies with specified cybersecurity standards in Florida law on a voluntary basis is not liable in connection with a cybersecurity incident.

Amendment 2 by Giallombardo (line 79):

- Provides that the failure of a political subdivision of the state to substantially implement a cybersecurity program that is in compliance with the provisions of the bill is not evidence of negligence and does not constitute negligence per se.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Commerce Committee

Representative Giallombardo offered the following:

Amendment (with title amendment)

Remove line 22 and insert:

with s. 282.3185, and any other political subdivision of the state that substantially complies with s. 282.3185 on a voluntary basis, is not liable in connection with a

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

Remove line 4 and insert:

municipality, other political subdivision of the state, commercial entity, or third-party agent

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Commerce Committee

Representative Giallombardo offered the following:

Amendment

Remove line 79 and insert:

action. Failure of a county, municipality, other political subdivision of the state, or commercial entity

CS/HB 481

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 481 Building Construction Regulations and System Warranties
SPONSOR(S): Civil Justice Subcommittee, Maggard
TIED BILLS: **IDEN./SIM. BILLS:** SB 612

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	16 Y, 0 N, As CS	Mawn	Jones
2) Commerce Committee		Wright	Hamon
3) Judiciary Committee			

SUMMARY ANALYSIS

The Florida Building Codes Act ("Building Code"), set out in part IV of ch. 553, F.S., sets minimum standards for the design, construction, erection, alteration, modification, repair, and demolition of structures in the state. The Building Code also incorporates all state laws and rules pertaining to such standards.

An electrical disconnect switch is a switch that isolates all wiring in a structure, or the wiring in a dedicated electrical circuit, from its power source. Each component of an electrical circuit, including the disconnect switch, is rated for a maximum flow of electric current, measured in amperes. Under Florida law, an HVAC unit must have a dedicated electrical disconnect switch; electricity runs from the power source to the switch through the switch's "line side," and from the switch's "load side" to the HVAC unit. Installation of an HVAC unit or components thereof must be done in compliance with the unit's or component's amperage requirements. However, only a licensed electrical contractor may perform "line side" work on a dedicated HVAC electrical disconnect switch. Thus, where components of a structure's existing electrical circuit cannot handle the amperage requirements of a new or repaired HVAC unit, a licensed electrical contractor is generally needed to upgrade the insufficient components before the HVAC system contractor may turn on the new or repaired HVAC unit.

A warranty is, in essence, a contract making assurances about the condition of a product, which contract requires the product's manufacturer, distributor, or retailer to replace, repair, or issue a refund for the product under the circumstances specified in the warranty agreement. Under current law, an HVAC system warranty runs with the property on which the system is fixed and thus transfers to a subsequent purchaser thereof automatically. An HVAC system warranty is also considered registered if it was installed by a licensed contractor who then provides specified documentation to the warrantor and the consumer; however, a warrantor can still refuse to honor a warranty's terms if the warranty is unregistered.

CS/HB 481:

- Expands the scope of work for specified HVAC system contractors to include specified line-side repairs or replacements and the repair or replacement of specified components for dedicated HVAC circuits under specified conditions.
- Prohibits the conditioning of an HVAC system warranty on product registration and specifies that the full length of such a warranty's coverage term begins on the date a licensed contractor installs the system.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Building Code

The Florida Building Codes Act ("Building Code"), established in part IV of ch. 553, F.S., provides a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single state building code that must be applied, administered, and enforced uniformly and consistently across the state.[1] The Building Code is adopted by the Commission and enforced by local governments.[2]

The Building Code's primary purpose is the regulation of new construction and existing structure modifications to achieve the highest safety level and the fewest construction defects.[3] To accomplish this, the Building Code sets minimum standards for the design, construction, erection, alteration, modification, repair, and demolition of structures in the state, and incorporates all state laws and rules pertaining to such standards.[4]

Plan Review and Building Permits

Each local government must issue building permits for construction projects within its jurisdiction.[5] However, the building official may not issue a building permit before first reviewing the plans and specifications and finding that such plans and specifications comply with the Building Code.[6] No person, firm, or corporation may construct, erect, alter, repair, secure, or demolish any structure without first obtaining a building permit, if required, from the building official.[7]

Inspections and Violations

For any construction requiring a building permit, the building official[8] must inspect the work to ensure that it complies with the Building Code.[9] Where a local government determines that an engineer, architect, or contractor has committed a "material violation" of the Building Code and has failed to correct the violation within a reasonable time, the local government must impose a fine on such licensee of no less than $500 and no more than $5,000 per violation.[10] A "material violation," as the term is used here, is a violation existing within a completed building, structure, or facility which may result, or has resulted, in physical harm to a person or significant damage to the performance of a building or its systems.[11]

[1] S. 553.72(1), F.S.
[2] Ss. 125.56, 553.72, 553.73, and 553.74, F.S.
[3] Fla. Bldg. Comm., *Advanced Florida Building Code Principals*, http://www.floridabuilding.org/Upload/Courses_trp/421-2-MATERIAL-Adv%20FL%20Bldg%20Code%20-%20Course%20PDF%20version%207.0.pdf (last visited Jan. 11, 2024).
[4] S. 553.73(1), F.S. The civil rights portions of the Accessibility Code are not incorporated.
[5] A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific construction activity. Ss. 125.01(1)(bb), 125.56(1), 468.603(2), and 553.80(1), F.S.
[6] Ss. 125.56 and 553.79, F.S.
[7] Building permits are generally not required for cosmetic improvements, such as painting or flooring replacement. S. 553.79, F.S.
[8] A building official is a local government employee or a person contracted with a government entity who supervises building code activities. *Id.*
[9] *Id.*
[10] S. 553.781, F.S.
[11] *Id.*

Certificates of Completion or Occupancy

The building official issues a certificate of completion when an existing building or structure is renovated or remodeled without a change in its occupancy or use, or when a shell building[12] is newly constructed, and such work passes its final building inspection.[13] When a new structure to be occupied[14] passes its final building inspection, the building official issues a certificate of occupancy.[15] A building or structure requiring a certificate of completion or occupancy generally may not be used or occupied until the appropriate certificate is issued; however, the building official may issue a temporary certificate of completion or occupancy before the project's close if a portion of the building or structure may be safely used or occupied.[16] The temporary certificate grants the applicant the same rights as a certificate of completion or occupancy but expires after a set time period unless the building official grants an extension.[17] A building official may also suspend or revoke a temporary or final certificate of occupancy or completion if the certificate was issued in error or on the basis of incorrect information or where it is determined that the building or structure is in violation of any ordinance, regulation, or Building Code provision.[18]

HVAC System Contractors

Job Scopes

Chapter 489, F.S., regulates the profession of contracting in the state. Generally speaking, a contractor is the person who, for compensation, undertakes to, submits a bid to, or does himself or herself or by others construct, repair, alter, remodel, add to, demolish, subtract from, or improve any building or structure, and whose job scope is substantially similar to the job scopes described in s. 489.105, F.S.[19] Such job scopes include a:

- "Class A air-conditioning contractor," meaning a contractor whose services are unlimited in the execution of contracts requiring the experience, knowledge, and skill to install, maintain, repair, fabricate, alter, extend, or design central air-conditioning, heating, and ventilation ("HVAC") systems and to perform other related tasks, including replacing, disconnecting, or reconnecting power wiring on the load side[20] of the dedicated existing electrical disconnect switch.[21]
- "Class B air-conditioning contractor," meaning a contractor whose services are limited in the execution of contracts requiring the experience, knowledge, and skill to install, maintain, repair, fabricate, alter, extend, or design HVAC systems and to perform other related tasks, including replacing, disconnecting, or reconnecting power wiring on the load side of the dedicated existing electrical disconnect switch.[22]
- "Mechanical contractor," meaning a contractor whose services are unlimited in the execution of contracts requiring the experience, knowledge, and skill to install, maintain, repair, fabricate, alter, extend, or design HVAC systems and to perform other tasks,[23] including replacing,

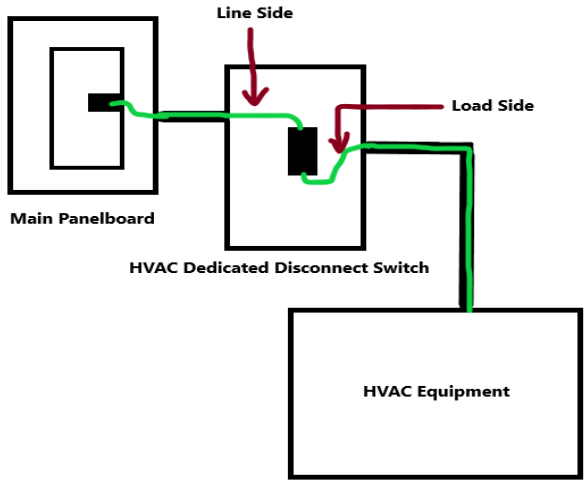
[12] A shell building separates a structure's interior space from its exterior and generally consists of the foundation, outer walls, roofing, windows, and exterior doors. When a shell building is constructed, the developer leaves the structure's interior unfinished so that the purchaser or tenant may contract with other construction professionals to customize its elements (including flooring, ceilings, interior walls, interior doors, and electrical fittings). Nassau County Building/Code Enforcement Department, *Guidelines for Shell Building and Tenant Build-Out Permits*, https://www.nassaucountyfl.com/DocumentCenter/View/13984/Guidelines-for-Shell-Building-and-Tenant-Build-Out-Permits?bidId (last visited Jan. 11, 2024).
[13] Passage of a final building inspection includes obtaining approvals for all permits issued for the project (such as building and fire permits and sub-permits such as electrical, mechanical, elevator, plumbing, and roof permits). S. 553.79(17)(a), F.S.; S. 110, Fla. Bldg. Code, 7th Ed. (2020).
[14] This includes an existing building or structure for which the occupancy classification is changing.
[15] S. 111, Fla. Bldg. Code, 7th Ed. (2020).
[16] Typically, the building official also requires that any outstanding work be nearing completion before issuing a temporary certificate. *See* City of Tampa, *Apply for a Temporary Certificate of Occupancy*, https://www.tampa.gov/document/apply-temporary-certificate-occupancy-tco-35571 (last visited Jan. 11, 2024) (requiring an applicant for a temporary certificate of occupancy to affirm that construction will be complete within 90 days); *id.*
[17] S. 111, Fla. Bldg. Code, 7th Ed. (2020).
[18] *Id.*
[19] S. 489.105(3), F.S.
[20] The electrical wiring to the disconnect feed is fed from the "load side," or outgoing side.
[21] S. 489.105(3), F.S.
[22] *Id.*
[23] In addition to the tasks a class A contractor may perform, a mechanical contractor may work on medical and fuel gas lines.

disconnecting, or reconnecting power wiring on the load side of the dedicated existing electrical disconnect switch.[24]

HVAC System Contractor Limitations

An electrical disconnect switch is a switch that isolates all wiring in a home or other structure, or the wiring in a dedicated electrical circuit,[25] from its power source.[26] Electricity to a disconnect switch is fed from the "load side," or outgoing side, of the power source to the "line side," or incoming side, of the switch; electricity is then fed from the "load side" of the disconnect switch to the "line side" of the device to be powered.[27] The components of an electrical circuit, including an electrical disconnect switch, are rated for a maximum flow of electrical current, measured in amperes; the higher the ampere rating, the more continuous electrical current an electrical circuit can handle without the risk of component deterioration or overheating.[28]

Under Florida law, an HVAC unit must have a dedicated electrical disconnect switch, which switch must be located within sight of and be readily accessible from the HVAC unit.[29] Electricity runs from the power source to the dedicated HVAC electrical disconnect switch through the switch's "line side," and from the switch's "load side" to the HVAC unit, as indicated in the diagram below:



Under Florida law, only a licensed electrical contractor may perform "line side" work on the dedicated HVAC electrical disconnect switch.[30] Thus, HVAC system contractors, whether they are class A, class B, or mechanical, are currently prohibited from replacing, disconnecting, or reconnecting power wiring on the line side of the dedicated HVAC disconnect switch or from repairing or replacing power wiring, disconnects, breakers, or fuses for dedicated HVAC circuits. However, the Building Code requires that HVAC units and components thereof be installed in compliance with the amperage requirements of the unit or component.[31] Thus, where components of a home or structure's existing electrical circuit cannot handle the ampere requirements of the new or repaired HVAC unit, a licensed electrical contractor is

[24] *Id.*
[25] A "dedicated electrical circuit" has its own circuit breaker and supports a single outlet; thus, only one electrically powered device can draw power from that circuit at any given time. Harrison Electric, Inc. *Dedicated Circuits: What They Are & How to Determine If You Need Them*, Aug. 16, 2021, https://harrison-electric.com/Blog/entryid/243/dedicated-circuits-what-they-are-how-to-determine-if-you-need-them (last visited Jan. 11, 2024).
[26] Power will flow to the breaker so long as the power source is operational, but power will only flow from the breaker through the structure if the disconnect switch is flipped to the "on" position. This is what is meant by "isolate." American Electrical, Inc., *Switching to Safety: Exploring the Importance of Disconnect Switches in Electrical Systems*, Jun 20, 2023, https://www.linkedin.com/pulse/switching-safety-exploring-importance-disconnect/ (last visited Jan. 11, 2024).
[27] Barbara Bellesi Zito, *Line vs. Load Wire: What's the Difference*, May 5, 2023, https://www.angi.com/articles/line-vs-load-wire.htm (last visited Dec. 20, 2023).
[28] Dave Robbs, *What are Amps, Watts, Volts, and Ohms, How Stuff Works*, Oct. 3, 2022, https://science.howstuffworks.com/environmental/energy/question501.htm (last visited Jan. 11, 2024).
[29] S. 301.10, Florida Building Code (7th Ed. 2020); s. 440.14 of NFPA 70, National Electrical Code (2023 ed.).
[30] S. 489.505(12), F.S.
[31] S. 301.10, Florida Building Code (7th Ed. 2020); s. 440.14 of NFPA 70, National Electrical Code (2023 ed.).

generally needed to upgrade the insufficient components before the HVAC contractor may safely turn on the new or repaired HVAC unit.

Circuit Breaker Locks

In general, a circuit breaker lock is a device which keeps a breaker in an "off" position and prevents unexpected electricity reenergization during equipment repair.[32]

HVAC System Warranties

General Background

A warranty is, in essence, a contract making assurances about the condition of a product, which contract requires the product's manufacturer or seller to replace, repair, or issue a refund for the product under the circumstances specified in the warranty agreement.[33] A warranty can be either express or implied.[34] An express warranty is a verbal or written assurance for a product, which warranty is created by an affirmation of fact or promise made by the seller to the buyer that relates to the goods, by any description of the goods that is made part of the basis of the bargain, or by any sample or model that is made part of the basis of the bargain.[35] Conversely, an implied warranty is an unstated assurance that the product is made for its intended purpose, which warranty exists in addition to any express warranty.[36] However, there is no implied warranty where a seller states that the product is sold "as is," "with all faults," or where the seller uses similar language.[37]

Manufacturer's, Distributor's, and Retailer's Warranties

A manufacturer's, distributor's, or retailer's warranty protects a consumer from defects in a faulty product and generally attaches to a product at the time of its sale.[38] Such warranties are considered limited warranties because their coverage period generally lasts only for a certain time period after the product's sale, which time period is specified in the warranty agreement.[39]

Once the coverage period expires, the consumer may have the option to purchase an extended warranty under different coverage terms from the original warranty provider or a third-party provider to extend the product's protection period.[40] Such a warranty may also be purchased at any time to protect the consumer from common issues not typically covered by a standard manufacturer's, distributor's, or retailer's warranty, such as installation error or cosmetic defects.

Magnuson-Moss Warranty Act

The Magnuson-Moss Warranty Act ("Act")[41] governs consumer product warranties at the federal level. Passed in 1975, the Act requires the manufacturers and sellers of consumer products to provide

[32] Herbert Post, *Circuit Breaker Lockout Installation*, TradeSafe, Jun. 22, 2022, https://trdsf.com/blogs/news/circuit-breaker-lockout-installation#:~:text=A%20circuit%20breaker%20lockout%20is,the%20repair%20work%20is%20done (last visited Jan. 19, 2024); Grainger, *Circuit Breaker Lockout Devices*, https://www.grainger.com/category/safety/lockout-tagout/electrical-lockout-devices/circuit-breaker-lockout-devices (last visited Jan. 19, 2024).
[33] Will Kenton, *Warranty Definition, How it Works, Types, and Example*, Investopedia, Oct. 6, 2023, https://www.investopedia.com/terms/w/warranty.asp (last visited Jan. 11, 2024).
[34] 45 Fla. Jur 2d Sales and Exchanges of Goods § 156.
[35] S. 672.313, F.S.
[36] S. 672.314, F.S.
[37] S. 672.316, F.S.
[38] Kenton, *supra* note 32.
[39] *Id.*
[40] Tom Scott, *Extended Warranties vs. Manufacturer Warranties: What's the Difference?*, Fortegra, July 9, 2019, https://blog.fortegra.com/extended-warranties-vs.-manufacturer-warranties-whats-the-difference (last visited Jan. 11, 2024).
[41] 15 U.S.C. ss. 2301-2312 (1975).

consumers with detailed information about warranty coverage before and after the sale of the warranted product.[42] The Act defines three types of consumers:

- The buyer of a consumer product;
- Any person to whom such product is transferred during the duration of an applicable warranty; and
- Any other person who is entitled by the terms of such warranty or under applicable State law to enforce the warranty's obligations.[43]

HVAC System Warranties

Before July 1, 2023, if a residential property that included an HVAC system was conveyed to a new owner, a manufacturer's warranty in effect on that system or a component thereof would not necessarily pass to the new owner, and if it did, the coverage period might be shortened or additional conditions might be imposed. Whether or not a warranty would pass to the new owner, and what consequences would attach, depended on the warranty agreement's terms and conditions.

However, in 2023, the Florida Legislature passed CS/HB 1203, which, in pertinent part, provided that an HVAC manufacturer's warranty runs with the property on which the HVAC system is a fixture, not with the original purchaser; thus, in the sale of a residential property as described above, the manufacturer's warranty automatically passes to the new owner. Further, the bill specified that:

- The warranty continues in effect as if the new owner were the original purchaser of the covered system or component;
- A warrantor continues to be obligated under the terms of a manufacturer's warranty agreement for a warranty so transferred and may not charge a fee for such transfer; and
- Such a transfer does not extend the remaining time of the warranty's coverage period.

Further, before July 1, 2023, it was possible for an HVAC system manufacturer to refuse to honor the terms of an HVAC system warranty if the purchaser of the HVAC system or a component covered by the warranty did not register the warranty with the manufacturer. However, under 2023 CS/HB 1203, a manufacturer's HVAC warranty is deemed registered with the manufacturer if a contractor licensed under Part I of ch. 489, F.S.:

- Installs the new HVAC system; and
- Provides the manufacturer with the date of issuance of the certificate of occupancy for installations relating to new construction, or the serial number of the HVAC system for installations relating to existing construction, as applicable.

Such a contractor must document the installation through an invoice or a receipt and give the invoice or receipt to the customer.

Effect of Proposed Changes

HVAC Contractors

CS/HB 481 amends s. 489.105, F.S., to broaden the definitions of "class A air-conditioning contractor," "class B air-conditioning contractor," and "mechanical contractor" to include a contractor whose services may, with proper use of a circuit breaker lock, extend to the execution of contracts requiring the skill, knowledge, and experience to:

- Replace, disconnect, and reconnect power wiring on the line side of the dedicated existing electrical disconnect switch on a single-phase electrical system; and
- Repair or replace power wiring, disconnects, breakers, or fuses for dedicated HVAC circuits.

[42] The Act does not apply if a seller or manufacturer does not provide a warranty on the product. Jason Gordon, *Magnuson Moss Warranty Act – Explained*, The Business Professor, Sept. 26, 2021, https://thebusinessprofessor.com/en_US/consumer-law/magnuson-moss-warranty-act (last visited Jan. 11, 2024).

[43] *O'Connor v. BMW of North America, LLC*, 905 So. 2d 235, 236–37 (Fla. 2d DCA 2005); *see also*, s. 2310(d) of the Act (providing that "a consumer who is damaged by the failure of a supplier, warrantor, or service contractor to comply with any obligation under this title, or under a written warranty, implied warranty, or service contract, may bring suit for damages…").

Practically speaking, this would allow class A air-conditioning, class B air-conditioning, and mechanical contractors to complete an HVAC system repair or replacement without having to wait for a licensed electrical contractor to complete the line-side work or to repair or replace dedicated HVAC circuit components.

HVAC System or System Component Warranties

The bill amends s. 559.956, F.S., to remove language:

- Indicating that an HVAC system manufacturer's warranty is deemed registered if a licensed contractor installs the new HVAC system and provides the manufacturer with the date of issuance of the certificate of occupancy for installations relating to new construction or the serial number of the HVAC system for installations relating to existing construction.
- Requiring a licensed contractor who installs a new HVAC system to document the installation through an invoice or receipt and provide the invoice or receipt to the customer.

Instead, the bill creates s. 559.957, F.S., to specify that the full length of a manufacturer's, distributor's, or retailer's HVAC system or system component warranty is effective in Florida on the date of installation if installed by a contractor licensed under Part I of Ch. 48, F.S. Under this new section created by the bill, if an HVAC system or system component manufacturer, distributor, or retailer provides a warranty or product registration card form, or an electronic, online warrant or product registration form, the card or form must contain the following information, which information must be displayed in a clear and conspicuous manner:

- The card or form is for the product registration.
- Failure to complete and return the card or form does not diminish any warranty rights or decrease the warranty length.
- Any offered manufacturer's, distributor's, or retailer's HVAC system or system component warranty may not be in any way conditioned upon the product registration.

Similarly, the bill amends s. 559.956, F.S., to specify that an HVAC system manufacturer's warranty may not be in any way conditioned upon product registration. Under the bill, s. 559.956, F.S., applies if:

- A sale of a residential property that includes an HVAC system as a fixture occurs on or after July 1, 2024; and
- A manufacturer's warranty is still in effect on the HVAC system or a system component.

Practically speaking, this means that if the purchaser of an HVAC system or system component for which a manufacturer's, distributor's, or retailer's warranty is provided fails to register the product, the warranty continues in full force and effect as though it had been registered. Further, on or after July 1, 2024, the new owner of a residential property sold with an HVAC system for which a manufacturer's warranty is still in place would not have to register the product with the manufacturer for the warranty to transfer and continue in full effect.

Effective Date

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

B. SECTION DIRECTORY:

Section 1: Amends s. 489.105, F.S., relating to definitions.
Section 2: Amends s. 559.956, F.S., relating to registration and transfers of heating, ventilation, and air-conditioning system manufacturer warranties; required contractor documentation.
Section 3: Creates s. 559.957, F.S., relating to registration of heating, ventilation, and air-conditioning systems; prohibition against warranty conditioned upon registration.
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 a positive economic impact on the private sector to the extent that it:

- Preserves an HVAC system or system component warranty where the original consumer, or a subsequent purchaser, does not register the product.
- Allows a class A air-conditioning, class B air-conditioning, or mechanical contractor to complete the line-side procedures of an HVAC system or system component repair or replacement in a manner that reduces costs for a consumer.

Further, the bill may have a negative economic impact on HVAC manufacturers, distributors, and retailers to the extent that such persons must honor warranties they would not have otherwise had to honor.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 11, 2024, the Civil Justice Subcommittee adopted two amendments and reported the bill favorably as a committee substitute, as follows:

- The first amendment removed a provision authorizing an attorney fee award to the prevailing party in a Building Code or Accessibility Code interpretation challenge.
- The second amendment clarified that an HVAC contractor authorized by the bill to perform specified work on the line side of the dedicated existing electrical disconnect switch on a single-phase electrical system, and to repair or replace specified components for dedicated HVAC circuits, may do so only with proper use of a circuit breaker lock.

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

A bill to be entitled

An act relating to building construction regulations and system warranties; amending s. 489.105, F.S.; revising definitions; amending s. 559.956, F.S.; providing a specified effective date for provisions relating to HVAC manufacturer's warranty transfers; prohibiting HVAC manufacturer's warranties from being conditioned upon the product registration; providing applicability; removing provisions relating to HVAC manufacturer's warranty registration; creating s. 559.957, F.S.; providing the effective date for certain HVAC systems and components warranties under a specified circumstance; providing required information for warranty and product registration cards and forms; prohibiting HVAC systems and components warranties from being conditioned upon the product registration; providing an effective date.

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

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

489.105 Definitions.—As used in this part:

(3) "Contractor" means the person who is qualified for, and is only responsible for, the project contracted for and

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means, except as exempted in this part, the person who, for compensation, undertakes to, submits a bid to, or does himself or herself or by others construct, repair, alter, remodel, add to, demolish, subtract from, or improve any building or structure, including related improvements to real estate, for others or for resale to others; and whose job scope is substantially similar to the job scope described in one of the paragraphs of this subsection. For the purposes of regulation under this part, the term "demolish" applies only to demolition of steel tanks more than 50 feet in height; towers more than 50 feet in height; other structures more than 50 feet in height; and all buildings or residences. Contractors are subdivided into two divisions, Division I, consisting of those contractors defined in paragraphs (a)-(c), and Division II, consisting of those contractors defined in paragraphs (d)-(q):

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

connection therewith, and any duct cleaning and equipment sanitizing that requires at least a partial disassembling of the system; to install, maintain, repair, fabricate, alter, extend, or design, if not prohibited by law, piping, insulation of pipes, vessels and ducts, pressure and process piping, and pneumatic control piping; to replace, disconnect, or reconnect power wiring on the line or load side of the dedicated existing electrical disconnect switch on single phase electrical systems; to repair or replace power wiring, disconnects, breakers, or fuses for dedicated HVAC circuits with proper use of a circuit breaker lock; to install, disconnect, and reconnect low voltage heating, ventilating, and air-conditioning control wiring; and to install a condensate drain from an air-conditioning unit to an existing safe waste or other approved disposal other than a direct connection to a sanitary system. The scope of work for such contractor also includes any excavation work incidental thereto, but does not include any work such as liquefied petroleum or natural gas fuel lines within buildings, except for disconnecting or reconnecting changeouts of liquefied petroleum or natural gas appliances within buildings; potable water lines or connections thereto; sanitary sewer lines; swimming pool piping and filters; or electrical power wiring. A Class A air-conditioning contractor may test and evaluate central air-conditioning, refrigeration, heating, and ventilating systems, including duct work; however, a mandatory licensing requirement

is not established for the performance of these specific services.

(g) "Class B air-conditioning contractor" means a contractor whose services are limited to 25 tons of cooling and 500,000 Btu of heating in any one system in the execution of contracts requiring the experience, knowledge, and skill to install, maintain, repair, fabricate, alter, extend, or design, if not prohibited by law, central air-conditioning, refrigeration, heating, and ventilating systems, including duct work in connection with a complete system only to the extent such duct work is performed by the contractor as necessary to complete an air-distribution system being installed under this classification, and any duct cleaning and equipment sanitizing that requires at least a partial disassembling of the system; to install, maintain, repair, fabricate, alter, extend, or design, if not prohibited by law, piping and insulation of pipes, vessels, and ducts; to replace, disconnect, or reconnect power wiring on the line or load side of the dedicated existing electrical disconnect switch on single phase electrical systems; to repair or replace power wiring, disconnects, breakers, or fuses for dedicated HVAC circuits with proper use of a circuit breaker lock; to install, disconnect, and reconnect low voltage heating, ventilating, and air-conditioning control wiring; and to install a condensate drain from an air-conditioning unit to an existing safe waste or other approved disposal other than a

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

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

system; to install, maintain, repair, fabricate, alter, extend, or design, if not prohibited by law, piping, insulation of pipes, vessels and ducts, pressure and process piping, pneumatic control piping, gasoline tanks and pump installations and piping for same, standpipes, air piping, vacuum line piping, oxygen lines, nitrous oxide piping, ink and chemical lines, fuel transmission lines, liquefied petroleum gas lines within buildings, and natural gas fuel lines within buildings; to replace, disconnect, or reconnect power wiring on the line or load side of the dedicated existing electrical disconnect switch on single phase electrical systems; to repair or replace power wiring, disconnects, breakers, or fuses for dedicated HVAC circuits with proper use of a circuit breaker lock; to install, disconnect, and reconnect low voltage heating, ventilating, and air-conditioning control wiring; and to install a condensate drain from an air-conditioning unit to an existing safe waste or other approved disposal other than a direct connection to a sanitary system. The scope of work for such contractor also includes any excavation work incidental thereto, but does not include any work such as potable water lines or connections thereto, sanitary sewer lines, swimming pool piping and filters, or electrical power wiring. A mechanical contractor may test and evaluate central air-conditioning, refrigeration, heating, and ventilating systems, including duct work; however, a mandatory licensing requirement is not established for the performance of

these specific services.

Section 2. Section 559.956, Florida Statutes, is amended to read:

559.956 ~~Registrations and~~ Transfers of heating, ventilation, and air-conditioning system manufacturer warranties~~; required contractor documentation~~.—

(1) If a residential real property that includes a heating, ventilation, and air-conditioning (HVAC) system as a fixture to the property is conveyed to a new owner on or after July 1, 2024, a manufacturer's warranty in effect on that system or a component of that system:

(a) Is automatically transferred to the new owner; and

(b) Continues in effect as if the new owner was the original purchaser of such system or component, as applicable.

(2) A warrantor continues to be obligated under the terms of a manufacturer's warranty agreement for a warranty transferred under this section and may not charge a fee for the transfer of the warranty.

(3) The transfer of a manufacturer's warranty under this section does not extend the remaining term of the warranty.

(4) A manufacturer's warranty of a HVAC system or a component of the system may not be in any way conditioned upon the product registration.

(5) This section applies if:

(a) A sale of a residential property that includes an HVAC

system as a fixture to the property occurs on or after July 1, 2024.

(b) A manufacturer's warranty is still in effect on the HVAC system or a component of the system.

~~(4) A manufacturer's warranty for an HVAC system is deemed registered with the manufacturer if a contractor licensed under part I of chapter 489:~~

~~(a) Installs the new HVAC system; and~~

~~(b) Provides the manufacturer of the HVAC system with the date of the issuance of the certificate of occupancy for installations relating to new construction, or the serial number of the HVAC system for installations relating to existing construction, as applicable.~~

~~(5) A contractor licensed under part I of chapter 489 who installs a new HVAC system must document the installation through an invoice or a receipt and provide the invoice or receipt to the customer.~~

Section 3. Section 559.957, Florida Statutes, is created to read:

559.957 Registration of heating, ventilation, and air-conditioning systems; prohibition against warranty conditioned upon registration.—

(1) The full length of a manufacturer's, distributor's, or retailer's warranty of a heating, ventilation, and air-conditioning (HVAC) system or any component of the system is

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effective in this state on the date of installation if installed by a contractor licensed under part I of chapter 489.

(2) If a manufacturer, distributor, or retailer of a HVAC system or any component of the system provides a warranty or product registration card or form, or an electronic, online warranty or product registration form, the card or form must contain the following information, displayed in a clear and conspicuous manner:

(a) The card or form is for the product registration.

(b) Failure to complete and return the card or form does not diminish any warranty rights or decrease the warranty length.

(3) Any offered manufacturer's, distributor's, or retailer's warranty of a HVAC system or a component of the system may not be in any way conditioned upon the product registration.

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

CS/HB 551

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 551 Designation of Eligible Telecommunications Carriers
SPONSOR(S): Energy, Communications & Cybersecurity Subcommittee, Barnaby
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 478

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy, Communications & Cybersecurity Subcommittee	14 Y, 0 N, As CS	Bauldree	Keating
2) Commerce Committee		Bauldree	Hamon

SUMMARY ANALYSIS

The federal Lifeline program (Lifeline) provides telecommunications service discounts for qualifying low-income consumers. Consumers may qualify to participate in Lifeline either through program-based or income-based eligibility standards. Qualifying households can receive a discount on their monthly phone or broadband Internet bills from providers which have been designated as eligible telecommunications carriers (ETCs).

Pursuant to federal law, state commissions are granted authority to designate a company as an ETC. In Florida, the Public Service Commission (PSC) oversees Lifeline. Florida law does not authorize the PSC to designate wireless carriers as ETCs. If a company is not subject to the jurisdiction of the state commission, the company must petition the Federal Communications Commission (FCC) for ETC designation.

The bill authorizes the PSC to designate wireless providers as ETCs for the limited purpose of providing Lifeline service.

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

The bill provides that it will take effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

In 1985 the Lifeline program (Lifeline) was created by federal law, providing telecommunications service discounts for qualifying low-income consumers. Lifeline's initial goal was to ensure that all Americans had the opportunity and security that basic phone service provides. Over time, that goal has evolved to include broadband service. Qualifying households can receive up to a $9.25 discount on their monthly phone or broadband Internet bills from wireline service providers that have been designated as eligible telecommunications carriers (ETCs). Alternatively, consumers may choose to receive monthly wireless minutes and/or measured data service from designated wireless providers.[1]

Consumers may qualify to participate in Lifeline either through program-based or income-based eligibility standards. Program-based eligibility is determined by a customer's enrollment in specific qualifying programs. Customers can qualify for Lifeline by being enrolled in any of the following programs:

- Supplemental Nutrition Assistance Program (SNAP)
- Medicaid
- Federal Public Housing Assistance
- Supplemental Security Income
- Veterans or Survivors Pension Program
- Bureau of Indian Affairs Programs, including Tribal Temporary Assistance to Needy Families, Head Start Subsidy, and National School Lunch Program.[2]

Consumers whose total household income is less than 135 percent of the Federal Poverty Guidelines may participate in Lifeline under the income-based standard. The Federal Poverty Guidelines are annually updated by the United States Department of Health and Human Services.[3]

Florida Lifeline ETC Designation

Pursuant to federal law, state commissions[4] are granted authority to designate a company as an ETC.[5] In Florida, the Public Service Commission (PSC) oversees Lifeline. As permitted by federal law, the PSC designates telecommunications companies[6] as ETCs pursuant to standards outlined in federal law.[7, 8] Telecommunications providers must be designated as an ETC in order to participate in the Lifeline program.[9] Florida law requires that an ETC must provide Lifeline service to qualified residential subscribers as defined in the ETC's published schedules.[10]

Designation of Wireless Carriers

Florida law does not authorize the PSC to designate commercial mobile radio service providers (wireless carriers) as ETCs. If a wireless carrier is not subject to the jurisdiction of the state commission, the company must petition the Federal Communications Commission (FCC) for ETC

[1] Public Service Commission (PSC), *2022 Florida Lifeline Assistance Report,* December 2022, p. 3., https://www.floridapsc.com/pscfiles/website-files/PDF/Publications/Reports/Telecommunication/LifelineReport/2022.pdf.
[2] *Id.*
[3] *Id.* at 4.
[4] The term state commission means the commission, board or official (by whatever name designated) that, under the laws of any state, has regulatory jurisdiction with respect to intrastate operations of carriers. 47 C.F.R. § 54.5 (1997).
[5] Florida Public Service Commission, Agency Analysis of 2024 Senate Bill 478, p. 1 (Nov. 28, 2023).
[6] A telecommunications company does not include commercial mobile radio service providers. S. 364.02(13), F.S.
[7] S. 364.10(1)(a), F.S.
[8] *See* 47 C.F.R. § 54.5 (1997).
[9] Florida Public Service Commission, Agency Analysis of 2024 Senate Bill 478, p. 1 (Nov. 28, 2023).
[10] S. 364.10(1)(a), F.S.

designation.[11] The PSC indicates that, since 2011, there have been 37 ETC applications by wireless carriers to the FCC for which no action has been taken.[12]

Effect of the Bill

The bill authorizes the PSC to designate wireless carriers as ETCs for the limited purpose of providing Lifeline service. The bill does not grant the PSC jurisdiction over wireless carriers for any other purpose.

B. SECTION DIRECTORY:

Section 1: Amends s. 364.10, F.S., relating to Lifeline service.

Section 2: Provides that the bill is effective upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.[13]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to the PSC, allowing wireless providers to petition the PSC for ETC designation may result in a more expedited application process, which may lead to more companies offering service with a Lifeline discount.[14] The bill does not alter the pool of eligible consumers.

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 government.

2. Other:

[11] Florida Public Service Commission, Agency Analysis of 2024 Senate Bill 478, p. 1 (Nov. 28, 2023).
[12] *Id.*
[13] Florida Public Service Commission, Agency Analysis of 2024 Senate Bill 478, p. 2 (Nov. 28, 2023).
[14] *Id.* at 2.

None.

B. RULE-MAKING AUTHORITY:

The bill does not authorize or require rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On December 12, 2023, the Energy, Communications & Cybersecurity Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment clarified the Public Service Commission's regulatory jurisdiction with respect to wireless carriers.

This analysis is drafted to the committee substitute as passed by the Energy, Communications & Cybersecurity Subcommittee.

A bill to be entitled

An act relating to designation of eligible telecommunications carriers; amending s. 364.10, F.S.; revising the definition of the term "eligible telecommunications carrier"; authorizing the Public Service Commission to designate certain entities as eligible telecommunications carriers for a specified purpose; providing legislative intent; providing construction; providing an effective date.

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

Section 1. Present paragraph (i) of subsection (2) of section 364.10, Florida Statutes, is redesignated as subsection (4) of that section, subsection (3) is added to that section, and paragraph (a) of subsection (1) of that section is amended, to read:

364.10 Lifeline service.—

(1)(a) An eligible telecommunications carrier shall provide a Lifeline Assistance Plan to qualified residential subscribers, as defined in the eligible telecommunications carrier's published schedules. For the purposes of this section, the term "eligible telecommunications carrier" means an entity ~~a telecommunications company, as defined by s. 364.02, which is~~ designated as an eligible telecommunications carrier by the

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commission pursuant to 47 C.F.R. s. 54.201 and this section.

(3)(a) The commission has the power and authority to designate an entity, upon petition and in accordance with 47 C.F.R. s. 54.201, as an eligible telecommunications carrier, provided that such entity is:

1. A telecommunications company; or

2. A commercial mobile radio service provider.

(b) This legislative authority is intended to be sufficient to enable the commission, for the limited purpose of providing Lifeline service under this section, to approve any of the types of entities specified in paragraph (a) as an eligible telecommunications carrier. The commission may exercise such authority in addition to the commission jurisdiction otherwise specified in this chapter.

(c) This subsection does not confer upon the commission any regulatory jurisdiction over commercial mobile radio service providers that were previously designated as eligible telecommunications carriers before the enactment of this subsection.

Section 2. This act shall take effect upon becoming a law.

Commerce Committee
CS/HB 551 by Rep. Barnaby
Designation of Eligible Telecommunication Carriers

AMENDMENT SUMMARY
January 23, 2024

Amendment 1 by Barnaby (lines 37-44 with title amendment):

- Removes language related to the Public Service Commission's regulatory jurisdiction beyond matters not addressed in the bill.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

Remove lines 37-44 and insert:

telecommunications carrier.

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

Remove lines 8-9 and insert:

purpose; providing legislative intent; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 623 Home Warranty Transfers
SPONSOR(S): Insurance & Banking Subcommittee, Steele
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

A warranty agreement is a contract that may be given by a builder or purchased by a builder from a home warranty association. In Florida, home warranty associations are regulated by the Office of Insurance Regulations (OIR) and must maintain certain minimum financial standards to do business. The home warranty agreement often covers home systems and common appliances, whereas a builder warranty covers structural components of a home. A home warranty agreement is tied to the owner selling the home and does not transfer to the person buying the home unless the home seller transfers it to the new owner.

The bill makes warranties covering structural components of a home automatically transfer with the property when it is sold, rather than transferring it only if a separate assignment is made within 15 days of the sale of the residence.

The bill also:

- Defines structural components to include things such as the roof, plumbing system, electrical system, foundation, basement, exterior/interior walls, ceilings, floors, stucco, or spray foam.
- Applies the automatic transfer requirement to all express written warranties issued by the home builder or purchased by the builder from a home warranty association.
- Provides that the transfer of a warranty does not modify or extend the warranty's commencement date or its duration, nor is the scope of coverage expanded due to the transfer.
- Specifies that the builder is not transacting insurance when providing a compliant warranty to a home buyer.
- Prohibits the provision of indemnification against consequential damages resulting from the failure of any structural component except through insurance.

Also, the bill establishes that it is an unfair method of competition and an unfair or deceptive acts or practice for a home warranty association, builder, or insurer to fail to continue to perform obligations under a transferred home warranty agreement.

This bill provides an effective date as of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

A warranty is an assurance that a manufacturer or seller makes about the condition of its product.[1] A warranty means that a manufacturer or seller will replace or repair the product under certain instances. A warranty can be either express or implied.[2]

An express warranty is a verbal or written assurance for the product.[3] On the other hand, an implied warranty is an unstated assurance that the product is made for its intended purpose.[4] An implied warranty is in addition to an express warranty. However, an implied warranty may be negated or limited by an express warranty. There is no implied warranty if a seller states that the product is "as is", "with all faults", or similar language.[5]

Home Warranties

A home warranty is a contract or agreement between the homeowner and the issuing company, safeguarding the homeowner from expenses related to the repair or replacement of structural components or appliances in the home.[6] This protection extends to issues caused by normal wear and tear or defects in these components or appliances.[7]

Home warranty contracts or agreements can be drafted by a Home Warranty Association licensed under s. 634.303, F.S., or by an authorized insurance company permitted to offer coverage in this category.[8]

Builder Warranties

A builder warranty, like a home warranty, is a contractual agreement between the builder and the homeowner, shielding the homeowner from expenses related to the repair or replacement of structural components in the home.[9]

Despite these similarities, there are distinctions in their coverage.[10] While a home warranty typically covers household appliances and systems, such as refrigerators and heating/cooling systems, and is commonly associated with residential real estate transactions, a builder warranty—also referred to as a structural warranty—is specifically provided by a builder to a homebuyer.[11] The purpose of the builder warranty is to safeguard the homebuyer against significant structural defects in workmanship and materials used during the construction of the new home by the builder.[12]

Magnuson-Moss Warranty Act

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[1] S. 681.102(22), F.S.
[2] 45 Fla. Jur 2d Sales and Exchanges of Goods § 156.
[3] "An express warranty is created by an affirmation of fact or promise made by the seller to the buyer that relates to the goods, by any description of the goods that is made part of the basis of the bargain, or by any sample or model that is made part of the basis of the bargain." S. 672.313, F.S.
[4] S. 672.314, F.S.
[5] S. 672.316, F.S.
[6] S. 634.301(2), F.S.
[7] *Id*.
[8] S. 634.303, F.S.
[9] S. 634.301(2), F.S.
[10] Quality Builders Warranty, *What is a Structural Warranty?*, https://qbwc.com/blog-news/what-is-a-structural-warranty/ (last visited Dec. 18, 2023).
[11] *Id*.
[12] *Id*.

The Magnuson-Moss Warranty Act (MMWA)[13] is a federal law that governs consumer product warranties. Passed in 1975, the Act requires manufacturers and sellers of consumer products to provide consumers with detailed information about warranty coverage before and after the sale of the warranted product.[14]

The MMWA defines three kinds of consumers:

- a buyer of any consumer product;
- any person to whom such product is transferred during the duration of an implied or express warranty applicable to the product; and
- any other person who is entitled by the terms of such warranty or under applicable State law to enforce the obligations of the warranty.[15]

Home and Builder Warranties – Current Situation

The elective market in Florida allows a builder, seller, buyer, or owner of a home to choose whether they would like to purchase a home warranty to cover against the cost of repair or replacement, or furnishes repair or replacement, of any structural component or appliance of a home, caused by wear and tear or a defect of a structural component or appliance.[16]

Warranty associations and companies in Florida, including those associations selling home and service warranties, and those companies selling motor vehicle service agreements, are regulated by the Office of Insurance Regulation (OIR).[17] OIR regulates the insurance industry in Florida. OIR is responsible for the regulation of all activities in the state concerning insurers and other risk bearing entities, including licensing, rates, policy forms, market conduct, claims, issuance of certificates of authority, solvency, viatical settlements, premium financing, and administrative supervision.[18]

While warranties are not considered traditional insurance products, OIR regulates warranty associations and companies similarly to the way in which it regulates insurers.[19] Home and service warranty associations must be licensed by OIR[20] and must maintain certain minimum financial standards in order to do warranty business in Florida.[21]

The following chart reflects the number of licensed warranty associations in Florida as of December 6, 2023:[22]

Type of Association/Company	Number of Licensees
Home Warranty Association	46
Service Warranty Association	101
Motor Vehicle Warranty Company	119
Total	**266**

[13] 15 U.S.C. §§ 2301-2312 (1975).
[14] MMWA does not apply if a seller or manufacturer does not provide a warranty on their product. Jason Gordon, *Magnuson Moss Warranty Act – Explained*, The Business Professor, Sept. 26, 2021, https://thebusinessprofessor.com/en_US/consumer-law/magnuson-moss-warranty-act (last visited Dec 4, 2023).
[15] *O'Connor v. BMW of N. Am., LLC*, 905 So. 2d 235, 236–37 (Fla. 2d DCA 2005); *see also*, § 2310(d) of MMWA provides that, "a consumer who is damaged by the failure of a supplier, warrantor, or service contractor to comply with any obligation under th is title, or under a written warranty, implied warranty, or service contract, may bring suit for damages…"
[16] S. 634.301(2), F.S.
[17] *See* ch. 634, F.S.
[18] Florida Office of Insurance Regulation, *Organization and Operation, https://floir.com/about-us/organization-and-operation#:~:text=The%20Florida%20Office%20of%20Insurance,settlements%2C%20premium%20financing%2C%20and%20administrative (last visited Dec. 7, 2023). See also s. 624.308, F.S., and R. 69O, et seq., F.A.C.*]
[19] *See* ch. 634, F.S.
[20] Ss. 634.303 and 634.403, F.S. Neither the Florida Insurance Code nor this section grants permission for any home warranty association to conduct insurance business beyond what is specifically defined as home warranty or to participate in any other form of insurance. Any engagement in alternative insurance types requires explicit authorization through a certificate of authority i ssued by the office under the provisions of the Florida Insurance Code. S. 634.325, F.S.
[21] Ss. 634.3077 and 634.406, F.S.
[22] Data retrieved from OIR Active Company Search application, https://floir.com/CompanySearch/index.aspx (last visited Dec. 6, 2023).

Home warranty providers must ensure that every home warranty is sent or delivered to the warranty holder within 45 days after the commencement of coverage, subject to the insurer's or home warranty association's premium payment requirements.[23] Furthermore, all home warranty contracts are transferable.[24] The contract should explicitly inform the purchaser of their right to assign it within 15 days of selling or transferring the home. The home warranty company may charge an assignment fee not exceeding $40.[25] The home warranty may be assigned, as well from a home builder, who initially purchased the warranty, to subsequent home purchasers.[26]

Currently, several companies offer warranties covering structural components of a home in Florida; however, Florida law does not regulate these warranties. Below are companies that provide builder warranties:[27]

Manufacturer	Coverage Offered
America's Preferred Structural Warranty	• 1-year coverage on workmanship • 1 or 2-year coverage on home systems • 10-year coverage on structural defects
2-10 HBW	• 1-year coverage for workmanship • 2-year coverage for distribution systems • 10-year coverage for qualifying structural defects on newly built homes
Residential Warranty Company	• 1-year coverage for workmanship • 7-year coverage for qualifying structural defects • 10-year coverage for qualifying structural defects

Effect of the Bill

The bill makes warranties covering structural components of a home automatically transfer with the property when it is sold, rather than transferring it only if a separate assignment is made within 15 days of the sale of the residence.

The bill also:

- Defines structural components to include things such as the roof, plumbing system, electrical system, foundation, basement, exterior/interior walls, ceilings, floors, stucco, or spray foam.
- Applies the automatic transfer requirement to all express written warranties issued by the home builder or purchased by the builder from a home warranty association.
- Provides that the transfer of a warranty does not modify or extend the warranty's commencement date or its duration, nor is the scope of coverage expanded due to the transfer.

[23] S. 634.312(2), F.S.
[24] S. 634.312(1), F.S.
[25] *Id*.
[26] *Id*. Certain exemptions in the home warranty association statute cover cases where builders or appliance sellers offer standard guarantees without extra charges, exclude service contracts with non-profits handling repairs, and accept contracts aligning with Florida's Insurance Code for systems and appliances, excluding structural components. Individuals affiliated with a domestic insurer are exempt if they avoid offering home warranties to Florida residents, but compliance requires the insurer to directly issue warranties or provide a specific policy. Non-compliance, as determined by the Office of Insurance Regulation, subjects the person to home warranty association regulations. Additionally, the regulations do not apply to programs offering warranties on new homes if supported by an insurance policy from a licensed Florida insurer, contingent on approval by the Office. S. 634.301(2), F.S.
[27] America's Preferred Structural Warranty, *Coverage*, https://www.apsw.com/. 2-10 HBW, *Structural Warranties*, https://www.2-10.com/builders-warranty/structural-warranties/. Residential Warranty Company, *Structural Warranties vs Extended Warranties – What's the Difference*?, https://www.rwcwarranty.com/homeowners-2/structural-warranties-vs-extended-warranties/.

- Specifies that the builder is not transacting insurance when providing a compliant warranty to a home buyer.
- Prohibits the provision of indemnification against consequential damages resulting from the failure of any structural component except through insurance.

Finally, the bill establishes that it is an unfair method of competition and an unfair or deceptive acts or practice for a home warranty association, builder, or insurer to fail to continue to perform obligations under a transferred home warranty agreement.

This bill provides an effective date as of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 634.312, F.S., relating to forms; required provisions and procedures.

Section 2: Amends s. 634.331, F.S., relating to coverage of property for sale.

Section 3: Creates Part IV of Ch. 634, F.S., relating to miscellaneous provisions.

Section 4: Renames Ch. 634 from "Warranty Associations" to "Warranties and Warranty Associations."

Section 5: 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:

There may be a positive economic impact for property owners and subsequent owners as they can benefit from the remaining home warranty coverage for their residential real property without needing additional paperwork due to the currently required separate assignment agreement. The home purchaser could bear lower out of pocket costs if there is covered damage or wear and tear.

Home warranty associations and insurers may experience nominal increased costs due to the bill's prohibition on assignment fees.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect counties or municipalities governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None provided by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 3 of the bill was amended to fix a technical redundancy in the statute, which restates a definition of a term already defined in s. 634.301(8), F.S., i.e., the term "listing period" already includes the date the sale is closed.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On December 13, 2023, the Insurance & Banking Subcommittee considered the bill, adopted a strike-all amendment, and reported the bill favorably as a committee substitute. The amendment made the following changes to the bill:

- Clarified that, if a home warranty covers structural components, it must automatically transfer to the new homeowner upon the sale of the home.
    - Structural components include things such as the roof, plumbing system, electrical system, foundation, basement, exterior/interior walls, ceilings, floors, stucco, or spray foam.
- Applied the automatic transfer requirement to express written warranties issued by the home builder or purchased by the builder from home warranty association.
- Provided that the transfer of a warranty does not modify or extend the warranty's commencement date or its duration, nor is the scope of coverage expanded due to the transfer.
- Specified that the builder is not transacting insurance when providing a compliant warranty to a home buyer.
- Prohibited the provision of indemnification against consequential damages resulting from the failure of any structural component except through insurance.

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

A bill to be entitled

An act relating to home warranty transfers; amending s. 634.312, F.S.; limiting application of provisions relating to home warranty contract assignments; amending s. 634.331, F.S.; making technical changes; conforming provisions to changes made by the act; creating part IV of ch. 634, F.S., entitled "Miscellaneous Provisions"; creating s. 634.601, F.S., providing definitions; creating s. 634.602, F.S.; providing requirements for express written warranties and home warranties transferred to subsequent home purchaser; providing construction; creating s. 634.603, F.S.; defining an unfair method of competition and unfair or deceptive act or practice; renaming ch. 634, F.S.; providing an effective date.

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

Section 1. Subsection (1) of section 634.312, Florida Statutes, is amended to read:

634.312 Forms; required provisions and procedures.—

(1) Except as provided in s. 634.602: ~~All~~

(a) Home warranty contracts are assignable in a consumer transaction and must contain a statement informing the purchaser of the home warranty of her or his right to assign it, at least

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

within 15 days from the date the home is sold or transferred, to a subsequent retail purchaser of the home covered by the home warranty and all conditions on such right of transfer.

(b) The home warranty company may charge an assignment fee not to exceed $40.

(c) Home warranty assignments include, but are not limited to, the assignment from a home builder who purchased the home warranty to a subsequent home purchaser.

Section 2. Section 634.331, Florida Statutes, is amended to read:

634.331 Coverage of property for sale.—A home warranty may provide coverage of residential property during the listing period of such property for a period not to exceed 12 months, provided that the home warranty company charges the warranty purchaser a separately identifiable charge for the listing period coverage in an amount equal to at least 15 percent of the annual premium charged for the home warranty and the charge for such coverage is due at the ~~earlier of the~~ end of the listing period ~~or the date the sale of the residential property is closed~~. The requirements in s. 634.602 apply to a home warranty that is transferred to the home purchaser.

Section 3. Part IV of chapter 634, Florida Statutes, consisting of sections 634.601, 634.602, and 634.603, Florida Statutes, is created to read:

PART IV

Miscellaneous Provisions

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

(1) "Builder" means the primary contractor of a home who possesses the requisite skill, knowledge, and experience, and has the responsibility, to supervise, direct, manage, and control the contracting activities of the business organization with which she or he is connected and who has the responsibility to supervise, direct, manage, and control the construction work on a job for which she or he has obtained the building permit. Construction work includes, but is not limited to, construction of structural components.

(2) "Home warranty" or "warranty" has the same meaning as in s. 634.301.

(3) "Home warranty association" has the same meaning as in s. 634.301.

(4) "Indemnify" means to undertake repair or replacement of a home's structural component, or pay compensation for such repair or replacement by cash, check, or other similar means, including, but not limited to, electronic means.

(5) "Structural component" means one or more essential elements of a home, including, but not limited to, the roof, plumbing system, electrical system, foundation, basement, exterior or interior walls, ceilings, floors, or spray foam. As

used in this subsection, the term "exterior walls" includes, but is not limited to, any siding, stucco, or paint on the exterior walls.

634.602 Structural component indemnification or coverage.—

(1) If a builder is obligated on and provides a home purchaser an express written warranty that indemnifies a home purchaser against the cost of repairing the structural components of a home, the express written warranty and all indemnification rights thereunder automatically transfer to any subsequent purchaser of the home for the duration of the express written warranty.

(2) If a builder purchases a home warranty from a licensed home warranty association covering the structural components of a home, the home warranty and all indemnification rights thereunder automatically transfer to any subsequent purchaser for the duration of the home warranty.

(3) This section does not modify or extend the commencement date or the duration, or expand the scope of coverage, of the express written warranty or home warranty, as applicable, beyond the express written warranty's or home warranty's terms.

(4) This section does not:

(a) Require a builder that is obligated on and provides a home purchaser an express written warranty to obtain a license under the Florida Insurance Code, and such practice does not

constitute the transaction of insurance subject to the requirements of the code, unless otherwise required by law.

(b) Permit the provision of indemnification against consequential damages arising from the failure of any structural component, which practice constitutes the transaction of insurance subject to the requirements of the Florida Insurance Code.

634.603 Unfair method of competition and unfair or deceptive act or practice defined.—It is an unfair method of competition and unfair or deceptive act or practice to fail to continue to perform obligations under the terms of an express written warranty or a home warranty transferred to a subsequent home purchaser as required in s. 634.602.

Section 4. Chapter 634, Florida Statutes, entitled "Warranty Associations," is renamed "Warranties and Warranty Associations."

Section 5. This act shall take effect July 1, 2024.

COMMERCE COMMITTEE

CS/HB 623 by Rep. Steele
Home Warranty Transfers

AMENDMENT SUMMARY
January 23, 2024

Amendment 1 by Rep. Steele (Line 112): The amendment clarifies the application of the unfair competition and trade practices portion of the bill to avoid a possible conflict with existing law applicable to home warranty associations.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Commerce Committee

Representative Steele offered the following:

Amendment (with title amendment)

Remove lines 112-113 and insert:

written warranty transferred to a subsequent home purchaser as required in s. 634.602. This section applies to a method, act, or practice of a home builder, and its successors or assignees, regarding an express written warranty issued by the home builder. Sections 634.335 and 634.336 and any otherwise applicable law apply to a method, act, or practice of a home warranty association, including, but not limited to, its successors or assignees, regarding an home warranty issued by a home warranty association.

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

Remove line 14 and insert:
competition and unfair or deceptive act or practice; providing for application;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 825 Underground Facilities
SPONSOR(S): Koster
TIED BILLS: **IDEN./SIM. BILLS:** SB 708

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy, Communications & Cybersecurity Subcommittee	14 Y, 0 N	Phelps	Keating
2) Commerce Committee		Phelps	Hamon

SUMMARY ANALYSIS

Chapter 556, F.S., is the "Underground Facility Damage Prevention and Safety Act" (Act). The stated purpose of the Act is to identify and locate underground facilities prior to an excavation or demolition to prevent injury to persons or property or interruption of services resulting from damage to those facilities. To accomplish this, the Act creates a not-for-profit corporation, Sunshine State One-Call of Florida, Inc. (SSOCOF), to administer a free-access notification system.

This bill amends the "Underground Facility Damage Prevention and Safety Act" by:

- Extending the time for excavators to notify SSOCOF before excavating to three full business days;
- Extending the time for potentially affected member operators to mark the location of their underground facilities in relation to the proposed excavation or demolition to three full business days; and
- Implementing an enhanced civil penalty for an excavator's failure to notify a high-priority subsurface installation (HPSI) operator of the start time and date of a planned excavation if the HPSI operator provides timely notice of the existence of a HPSI.

The bill may have an insignificant, positive fiscal impact on state and local government revenues. The bill does not appear to impact state or local government expenditures.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Underground Facility Damage Prevention and Safety Act

Chapter 556, F.S., is the "Underground Facility Damage Prevention and Safety Act" (Act). The goal of the Act is to identify and locate underground facilities[1] prior to an excavation or demolition to prevent injury to persons or property or interruption of services resulting from damage to those facilities.[2] To accomplish this, the Act creates a not-for-profit corporation to administer a free-access notification system whereby a person intending to conduct excavation or demolition activities can give prior notice to the system of the person's intended activities, allowing operators of underground facilities the opportunity to identify and locate their nearby facilities.[3] All operators of underground facilities in the state are required to be members of the corporation ("member operators") and are required to use and participate in the system.[4]

The not-for-profit corporation created under the Act is Sunshine State One-Call of Florida, Inc. (SSOCOF), which exercises its powers through a board of directors.[5] SSOCOF is required to provide a single toll-free telephone number within Florida which excavators can use to notify member operators of planned excavation or demolition activities through the system.[6] The person intending to conduct excavation or demolition must notify the system not less than two full business days before beginning the operations, and not less than 10 full business days before beginning any excavation or demolition that is beneath state waters.[7] The person must also provide specified identification, location, and operational information which remain valid for 30 calendar days.[8] Upon receipt of this notice, the system provides to the person a list of names of the member operators who will be advised of the notification.[9]

The system operator in turn notifies the potentially affected member operators of the planned excavation or demolition activities.[10] Within two full business days after the time the notification is received by the system (or 10 days if the proposed excavation is in proximity to facilities beneath state waters), potentially affected member operators must determine the location of their underground facilities in relation to the proposed excavation or demolition.[11] If this cannot be done in this time period, the member operator must contact the person giving notice and negotiate a new schedule and time that

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[1] S. 556.102(16), F.S., defines "underground facility" as "any public or private personal property which is buried, placed below ground, or submerged on any member operator's right-of-way, easement, or permitted use which is being used or will be used in connection with the storage or conveyance of water; sewage; electronic, telephonic, or telegraphic communication; electric energy; oil; petroleum products; natural gas; optical signals; or other substances, and includes, but is not limited to, pipelines, pipes, sewers, conduits, cables, valves, and lines. For purposes of this act, a liquefied petroleum gas line regulated under chapter 527 is not an underground facility unless such line is subject to the requirements of Title 49 C.F.R. adopted by the Department of Agriculture and Consumer Services, provided there is no encroachment on any member operator's right-of-way, easement, or permitted use. Petroleum storage systems subject to regulation pursuant to chapter 376 are not considered underground facilities for the purposes of this act unless the storage system is located on a member operator's right-of-way or easement. Storm drainage systems are not considered underground facilities."

[2] S. 556.101(3), F.S.

[3] S. 556.101(2), F.S.

[4] S. 556.103(1), F.S.

[5] S. 556.103, F.S.

[6] S. 556.104, F.S.

[7] S. 556.105(1)(a), F.S.

[8] S. 556.105(1)(c), F.S.

[9] S. 556.105(3), F.S.

[10] S. 556.105(5), F.S.

[11] S. 556.105(5) and (9), F.S.

is agreeable and does not unreasonably delay the excavator.[12] If a member operator determines that a proposed excavation or demolition is in proximity to or conflicts with an underground facility, the member operator must identify the horizontal route of the facility in a specified manner.[13]

An excavator is required to delay excavations until the first of the following events occurs: (1) each member operator's underground facilities have been marked and located; (2) the excavator has been notified that no member operator has underground facilities in the area described in the notice; or (3) expiration of the time allowed for markings.[14] If a member operator has not located and marked its underground facilities within the time allowed for marking, the excavator may proceed with the excavation, provided the excavator does so with reasonable care and uses detection equipment or other acceptable means to locate underground facilities.[15] An excavator may not conduct demolition in an area until all member operators' underground facilities have been marked and located or removed.[16]

The Act also establishes violations of certain provisions as noncriminal infractions that are enforceable by citations which may be issued by any local or state law enforcement officer, government code inspector, or code enforcement officer.[17] The Act establishes a civil penalty of $500, plus court costs, for such infractions.[18] Violations of certain provisions involving an underground facility transporting hazardous materials regulated by the Pipeline and Hazardous Materials Safety Administration of the United States Department of Transportation (PHMSA) are noncriminal infractions subject to enhanced civil penalties of $2,500, plus court costs.[19]

High-priority Subsurface Installations

A high-priority subsurface installation (HPSI) is an "underground gas transmission or gas distribution pipeline, or an underground pipeline used to transport gasoline, jet fuel, or any other refined petroleum product or hazardous or highly volatile liquid, such as anhydrous ammonia or carbon dioxide."[20] Currently, if an excavation is proposed within 15 feet of such an installation, as identified by the operator, the HPSI member operator shall notify the excavator of the existence of the installation and shall mark its location in the time frame provided by s. 556.105, F.S.[21] After receiving this notice, the excavator must provide notice to the HPSI member operator of the planned excavation start date and time.[22] If the HPSI member operator does not provide timely notice, the excavator may proceed to excavate without notifying the HPSI member operator of the excavation start date and time.[23]

Increased Locate/Ticket Requests

Due to increased development in Florida over the last decade, the number of locate requests to the SSOCOF system has increased over 50% from fiscal year (FY) 2014-2015 to FY 2022-2023.[24] The growth in requests has made it difficult for SSOCOF to fulfill all of them within the two day timeframe required by law; approximately 16% of locate requests were not fulfilled within two days over SSOCOF's last fiscal year.[25] This allows excavators to proceed with reasonable care in conducting the excavation without member operators marking their facilities.

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[12] S. 556.105(5)(a), F.S.
[13] S. 556.105(5)(a) and (b), F.S.
[14] S. 556.105(6), F.S.
[15] *Id*.
[16] S. 556.105(6)(b), F.S.
[17] S. 556.107, F.S.
[18] S. 556.107(1)(c), F.S.
[19] S. 556.107(1)(c)2., F.S.
[20] S. 556.102(8), F.S.
[21] S. 556.116(1), F.S.
[22] *Id*. A failure to provide the date and start of an excavation is not listed among the five violations for which an excavator can be issued a citation under s. 556.107(1)(a)2.
[23] *Id*.
[24] *Compare* Sunshine 881, *2014-15 Annual Report*, p. 3, available at https://www.sunshine811.com/annual-reports (1.4 million tickets), *with* Sunshine 881, *2022-23 Annual Report*, p. 3, available at https://www.sunshine811.com/annual-reports (2.2 million tickets).
[25] Email from Chris Lyon, Attorney, Lewis, Longman & Walker, P.A. *representing Sunshine 811*, HB 825, (Jan. 4, 2024).

Effect of Bill

Extension of Time

The bill extends the time for excavators to notify SSOCOF before excavating from at least two full business days to at least three full business days.

The bill also extends the time for potentially affected member operators to determine the location of their underground facilities in relation to a proposed excavation or demolition from two full business days to three full business days.

Penalties for HPSI Infractions

The bill makes an excavator's failure to notify the HPSI member operator of the start time and date of a planned excavation (if the HPSI member operator has provided a timely notice of the existence of a HPSI) a violation under s. 556.107(1)(a)(2), F.S. This subjects the excavator to an enhanced civil penalty of $2,500 plus court costs for each infraction.[26]

The act will take effect October 1, 2024.

B. SECTION DIRECTORY:

Section 1. Amends s. 556.105, F.S., relating to procedures.

Section 2. Amends s. 556.107, relating to violations.

Section 3. Reenacts s. 556.102(8), F.S., relating to definitions.

Section 4. Reenacts s. 556.108, F.S., relating to exemptions.

Section 5. Reenacts s. 556.114(1)-(4), F.S., relating to low-impact marking practices.

Section 6. Reenacts s. 556.116(1)-(2)(a)-(d), F.S., relating to high-priority subsurface installations.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill may have an indeterminate, positive impact on state government revenues.

   The bill adds that certain violations of s. 556.116(1), F.S., are subject to an enhanced civil penalty of $2,500 plus court costs. If a citation is issued by the State Fire Marshal for such a violation, 80 percent of the civil penalty collected by the clerk of the court must be distributed to the State Fire Marshal and 20 percent must be retained by the clerk in addition to any court costs.[27] The significance of any increase in revenue as a result of this penalty depends entirely on compliance with and enforcement of s. 556.116(1), F.S.

2. Expenditures:

   None.

[26] S. 556.107(1)(c)(2), F.S.
[27] *Id*.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill may have an indeterminate, positive impact on local government revenues.

The bill adds that certain violations of s. 556.116(1), F.S., are subject to an enhanced civil penalty of $2,500 plus court costs. If the citation for a noncriminal infraction is issued by a local law enforcement officer, local government code inspector, or a code enforcement officer, 80 percent of the penalty collected will be distributed to the local governmental entity whose employee issued the citation and the remaining 20 percent will be retained by the clerk of the court to cover administrative costs. The significance of this increase, however, will depend entirely on compliance with and enforcement of Chapter 556, F.S.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Excavators will become subject to a fine of $2,500 for failing to notify HPSI member operators of a planned excavation start time and date. This may encourage greater compliance with this provision of the Act.

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 does not require or authorize rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Not applicable.

A bill to be entitled

An act relating to underground facilities; amending s. 556.105, F.S.; revising the timeframe within which an excavator is required to provide certain information through the free-access notification system established by Sunshine State One-Call of Florida, Inc., before beginning certain excavation or demolition activities; revising the timeframes during which member operators who receive such notifications are required to mark the horizontal route of an underground facility and provide a positive response to the system; making technical changes; reordering and amending s. 556.107, F.S., and reenacting paragraph (3)(a) of that section; providing a noncriminal infraction subject to enhanced civil penalties for a specified violation; making technical changes; reenacting ss. 556.102(8), 556.108, and 556.114(1)-(4), F.S., relating to the definition of the term "high-priority subsurface installation," exemptions to certain notification requirements, and low-impact marking practices, respectively, to incorporate the amendment made to s. 556.105, F.S., in references thereto; reenacting s. 556.116(1) and (2)(a)-(d), F.S., relating to high-priority subsurface installations, to incorporate the amendments made to

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

ss. 556.105 and 556.107, F.S., in references thereto; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1), paragraph (a) of subsection (5), and paragraph (a) of subsection (9) of section 556.105, Florida Statutes, are amended to read:

556.105 Procedures.—

(1)(a) Not less than 3 ~~2~~ full business days before beginning any excavation or demolition that is not beneath the waters of the state, and not less than 10 full business days before beginning any excavation or demolition that is beneath the waters of the state, an excavator shall provide the following information through the system:

1. The name of the individual who provided notification and the name, address, including the street address, city, state, zip code, and telephone number of her or his employer.

2. The name and telephone number of the representative for the excavator, and a valid electronic address to facilitate a positive response by the system should be provided, if available.

3. The county, the city or closest city, and the street address or the closest street, road, or intersection to the location where the excavation or demolition is to be performed,

and the construction limits of the excavation or demolition.

4. The commencement date and anticipated duration of the excavation or demolition.

5. Whether machinery will be used for the excavation or demolition.

6. The person or entity for whom the work is to be done.

7. The type of work to be done.

8. The approximate depth of the excavation.

(5) All member operators within the defined area of a proposed excavation or demolition shall be promptly notified through the system, except that member operators with state-owned underground facilities located within the right-of-way of a state highway need not be notified of excavation or demolition activities and are under no obligation to mark or locate the facilities.

(a) If a member operator determines that a proposed excavation or demolition is in proximity to or in conflict with an underground facility of the member operator, except a facility beneath the waters of the state, which is governed by paragraph (b), the member operator must ~~shall~~ identify the horizontal route by marking to within 24 inches from the outer edge of either side of the underground facility by the use of stakes, paint, flags, or other suitable means within 3 ~~2~~ full business days after the time the notification is received under subsection (1). If the member operator is unable to respond

within such time, the member operator must ~~shall~~ communicate with the person making the request and negotiate a new schedule and time that is agreeable to, and should not unreasonably delay, the excavator.

(9)(a) After receiving notification from the system, a member operator shall provide a positive response to the system within 3 ~~2~~ full business days, or 10 such days for an underwater excavation or demolition, indicating the status of operations to protect the facility.

Section 2. Paragraph (a) of subsection (1) of section 556.107, Florida Statutes, is reordered and amended, and paragraph (a) of subsection (3) is reenacted, to read:

556.107 Violations.—

(1) NONCRIMINAL INFRACTIONS.—

(a)1. Violations of the following provisions are noncriminal infractions:

a. Section 556.105(1), relating to providing required information.

c.~~b.~~ Section 556.105(5)(c), relating to excavation practices in tolerance zones.

d.~~c.~~ Section 556.105(6), relating to the avoidance of excavation.

e.~~d.~~ Section 556.105(11), relating to the need to stop excavation or demolition because marks are no longer visible, or, in the case of underwater facilities, are inadequately

documented.

f.~~e.~~ Section 556.105(12), relating to the need to cease excavation or demolition activities because of contact or damage to an underground facility.

b.~~f.~~ Section 556.105(5)(a) and (b), relating to identification of underground facilities, if a member operator does not mark an underground facility, but not if a member operator marks an underground facility incorrectly.

g. Section 556.109(2), relating to falsely notifying the system of an emergency situation or condition.

h. Section 556.114(1), (2), (3), and (4), relating to a failure to follow low-impact marking practices, as defined therein.

2. Violations of the following provisions involving an underground facility transporting hazardous materials ~~that are~~ regulated by the Pipeline and Hazardous Materials Safety Administration of the United States Department of Transportation are noncriminal infractions, subject to enhanced civil penalties under paragraph (c):

a. Section 556.105(1), relating to providing required information.

b. Section 556.105(5)(c), relating to excavation practices in tolerance zones.

c. Section 556.105(6), relating to the avoidance of certain excavation.

d. Section 556.105(11), relating to the need to stop excavation or demolition because certain marks are removed, no longer visible, or inadequately documented.

e. Section 556.105(12), relating to the need to cease excavation or demolition activities because of contact or damage to an underground facility.

f. Section 556.116(1), relating to a failure to notify of the planned excavation start date and time before beginning excavation, if the member operator provides timely notice of the existence of a high-priority subsurface installation.

(3) MISDEMEANORS.—

(a) Any person who knowingly and willfully removes or otherwise destroys the valid stakes or other valid physical markings described in s. 556.105(5)(a) and (b) used to mark the horizontal route of an underground facility commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. For purposes of this subsection, stakes or other nonpermanent physical markings are considered valid for 30 calendar days after information is provided to the system under s. 556.105(1)(a).

Section 3. For the purpose of incorporating the amendment made by this act to section 556.105, Florida Statutes, in a reference thereto, subsection (8) of section 556.102, Florida Statutes, is reenacted to read:

556.102 Definitions.—As used in this act:

(8) "High-priority subsurface installation" means an underground gas transmission or gas distribution pipeline, or an underground pipeline used to transport gasoline, jet fuel, or any other refined petroleum product or hazardous or highly volatile liquid, such as anhydrous ammonia or carbon dioxide, if the pipeline is deemed to be critical by the operator of the pipeline and is identified as a high-priority subsurface installation to an excavator who has provided a notice of intent to excavate under s. 556.105(1), or would have been identified as a high-priority subsurface installation except for the excavator's failure to give proper notice of intent to excavate.

Section 4. For the purpose of incorporating the amendment made by this act to section 556.105, Florida Statutes, in a reference thereto, section 556.108, Florida Statutes, is reenacted to read:

556.108 Exemptions.—The notification requirements provided in s. 556.105(1) do not apply to:

(1) Any excavation or demolition performed by the owner of a single-family residential property, not including property that is subdivided or is to be subdivided into more than one single-family residential property; or for such owner by a member operator or an agent of a member operator when such excavation or demolition is made entirely on such land, and only up to a depth of 10 inches; provided due care is used and there is no encroachment on any member operator's right-of-way,

easement, or permitted use.

(2) Any excavation or demolition associated with normal agricultural or railroad activities, provided such activities are not performed on any operator's marked right-of-way, easement, or permitted use.

(3) Any excavation or demolition that occurs as the result of normal industrial activities, provided such activities are confined to the immediate secured property of the facility and the activities are not performed on any operator's marked right-of-way, easement, or permitted use. For the purposes of this act, the industrial activities are limited to the following list of Standard Industrial Classifications: Industry Group Numbers 141, 206, 242, 243, and 491, and Major Group Numbers 13, 26, 28, and 29, as published by the United States Office of Management and Budget in 1987.

(4) Any excavation of 18 inches or less for:

(a) Surveying public or private property by surveyors or mappers as defined in chapter 472 and services performed by a pest control licensee under chapter 482, excluding marked rights-of-way, marked easements, or permitted uses where marked, if mechanized equipment is not used in the process of such surveying or pest control services and the surveying or pest control services are performed in accordance with the practice rules established under s. 472.027 or s. 482.051, respectively;

(b) Maintenance activities performed by a state agency and

its employees when such activities are within the right-of-way of a public road; however, if a member operator has permanently marked facilities on such right-of-way, mechanized equipment may not be used without first providing notification; or

(c) Locating, repairing, connecting, adjusting, or routine maintenance of a private or public underground utility facility by an excavator, if the excavator is performing such work for the current owner or future owner of the underground facility and if mechanized equipment is not used.

(5)(a) Any excavation with hand tools by a member operator or an agent of a member operator for:

1. Locating, repairing, connecting, or protecting, or routine maintenance of, the member operator's underground facilities; or

2. The extension of a member operator's underground facilities onto the property of a person to be served by such facilities.

(b) The exemption provided in this subsection is limited to excavations to a depth of 30 inches if the right-of-way has permanently marked facilities of a company other than the member operator or its agents performing the excavation.

Section 5. For the purpose of incorporating the amendment made by this act to section 556.105, Florida Statutes, in references thereto, subsections (1) through (4) of section 556.114, Florida Statutes, are reenacted to read:

556.114 Low-impact marking practices.—

(1) An excavator providing notice under s. 556.105(1)(a) shall identify in its notice only the area that will be excavated during the period that the information in such notice is considered valid under s. 556.105(1)(c).

(2) When an excavator has not completed an excavation noticed under s. 556.105(1)(a) within the period that the information in the notice is considered valid under s. 556.105(1)(c), the excavator must provide a subsequent notice to the system under s. 556.105(1)(a) to continue with the excavation, and such subsequent notice shall identify only the remaining area to be excavated.

(3) When an excavation site cannot be described in information provided under s. 556.105(1)(a) with sufficient particularity to enable the member operator to ascertain the excavation site, and if the excavator and member operator have not mutually agreed otherwise, the excavator shall premark the proposed area of the excavation before a member operator is required to identify the horizontal route of its underground facilities in the proximity of any excavation. However, premarking is not required when the premarking could reasonably interfere with traffic or pedestrian control.

(4) A member operator shall identify the horizontal route of its underground facilities as set forth in s. 556.105(5)(a) and (b), and excavators shall premark an excavation site as set

forth in subsection (3) using flags or stakes or temporary, nonpermanent paint or other industry-accepted low-impact marking practices.

Section 6. For the purpose of incorporating the amendments made by this act to sections 556.105 and 556.107, Florida Statutes, in references thereto, subsection (1) and paragraphs (a) through (d) of subsection (2) of section 556.116, Florida Statutes, are reenacted to read:

556.116 High-priority subsurface installations; special procedures.—

(1) When an excavator proposes to excavate or demolish within 15 feet of the horizontal route of an underground facility that has been identified as a high-priority subsurface installation by the operator of the facility, the operator shall, in addition to identifying the horizontal route of its facility as set forth in s. 556.105(5)(a) and (b), and within the time period set forth in s. 556.105(9)(a) for a positive response, notify the excavator that the facility is a high-priority subsurface installation. If the member operator provides such timely notice of the existence of a high-priority subsurface installation, an excavator shall notify the operator of the planned excavation start date and time before beginning excavation. If the member operator does not provide timely notice, the excavator may proceed, after waiting the prescribed time period set forth in s. 556.105(9)(a), to excavate without

notifying the member operator of the excavation start date and time. The exemptions stated in s. 556.108 apply to the notification requirements in this subsection.

(2)(a) An alleged commission of an infraction listed in s. 556.107(1) which results in an incident must be reported to the system and the State Fire Marshal by a member operator or an excavator within 24 hours after learning of the alleged occurrence of an incident.

(b) Upon receipt of an allegation that an incident has occurred, the member operator or excavator shall transmit an incident report to the State Fire Marshal, who shall conduct an investigation to determine whether an incident has occurred, and, if so, whether a violation of s. 556.107(1)(a) was a proximate cause of the incident. The State Fire Marshal may authorize his or her agents, as provided in ss. 633.114, 633.116, and 633.118, to conduct investigations of incidents.

(c) The State Fire Marshal or his or her agents as provided in ss. 633.114, 633.116, and 633.118 may issue a citation and impose a civil penalty against a violator in an amount not to exceed $50,000 if the person violated a provision of s. 556.107(1)(a) and that violation was a proximate cause of the incident. However, if a state agency or political subdivision caused the incident, the state agency or political subdivision may not be fined in an amount in excess of $10,000.

(d) The civil penalty imposed under this subsection is in

addition to any amount payable as a result of a citation relating to the incident under s. 556.107(1)(a).

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

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	12 Y, 0 N	Thompson	Anstead
2) Commerce Committee		Thompson	Hamon

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;

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[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:

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[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

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[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

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[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]

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[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]

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[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.

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[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.

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[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]

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[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.

HB 1461

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1461 Pub. Rec./Investigations by the Department of Legal Affairs
SPONSOR(S): McFarland
TIED BILLS: HB 1459 **IDEN./SIM. BILLS:** SB 1682

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Commerce Committee		Wright	Hamon
2) Ethics, Elections & Open Government Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

HB 1459, to which this bill is linked:

- Requires certain entities and persons that produce or offer AI content to the Florida public to:
  - Create certain safety and transparency standards, and
  - Make certain disclosures.
- Prohibits any entity or person from knowingly producing, generating, incorporating, or synthesizing child pornography through AI.

The Department of Legal Affairs (DLA), upon belief that any entity or person is in violation of the provisions of HB 1459, may bring an action under the Florida Deceptive and Unfair Trade Practices Act.

This bill creates a public record exemption for all information held by DLA pursuant to a notification or an investigation of a violation. The bill provides that the confidential and exempt 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 in certain instances; 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:

- Information that is otherwise confidential or exempt;
- Personal identifying information;
- A computer forensic report;
- Information that would otherwise reveal weaknesses in data security; and
- Information that would otherwise disclose proprietary information.

The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2029, unless reviewed and saved from repeal through reenactment by the Legislature. It also includes a statement of public necessity as required by the Florida Constitution.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Public Records

The Florida Constitution sets forth the state's public policy regarding access to government records, guaranteeing 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 an exemption[2] from public record requirements provided the exemption passes by a 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.[3]

Current law also addresses the public policy regarding access to government records by guaranteeing every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt.[4] Furthermore, the Open Government Sunset Review (OGSR) Act[5] provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose and the "Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and that cannot be accomplished without the exemption."[6] An identifiable public purpose is served if the exemption meets one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- Protect trade or business secrets.[7]

Pursuant to the OGSR Act, a new public record exemption, or the substantial amendment of an existing public record exemption, is repealed on October 2nd of the fifth year following enactment, unless the Legislature reenacts the exemption.[8]

Artificial Intelligence

The term "artificial intelligence" (AI) was coined at the Dartmouth Summer Research Project on Artificial Intelligence, a conference held in 1956. Since 2010, there has been a lot of advancement in AI research, which has been attributed to the "availability of large datasets, improved machine learning approaches and algorithms, and more powerful computers."[9]

AI encompasses a large field of existing and emerging technologies, methodologies, and application areas. The Congressional Research Service has recently stated that AI is "generally thought of as computerized systems that work and react in ways commonly thought to require intelligence."[10] The

[1] Art. I, s. 24(a), Fla. Const.
[2] A "public record exemption" means a provision of general law which provides that a specified record, or portion thereof, is not subject to the access requirements of s. 119.07(1), F.S., or s. 24, Art. I of the Florida Constitution. *See* s. 119.011(8), F.S.
[3] Art. I, s. 24(c), Fla. Const.
[4] *See* s. 119.01, F.S.
[5] S. 119.15, F.S.
[6] S. 119.15(6)(b), F.S.
[7] *Id*.
[8] S. 119.15(3), F.S.
[9] Congressional Research Service, *Artificial Intelligence: Overview, Recent Advances, and Considerations for the 118th Congress, available at* https://crsreports.congress.gov/product/pdf/R/R47644 (last visited Jan. 20, 2024).
[10] *Id.*

application of AI extends to areas such as "natural language processing, facial recognition, and robotics."[11]

Department of Legal Affairs

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.[12]

House Bill 1459 (2024)

The bill:

- Requires an entity or person who produces or offers for use or interaction AI content or technology for a commercial purpose, and makes such content or technology available to the Florida public, to create safety and transparency standards that:
  - Alert consumers that such content or technology is generated by AI.
  - Allow such content or technology to be recognizable as generated by AI to other AI.
- Requires an entity or a person to provide a clear and conspicuous notice on its Internet homepage or landing page if it provides an AI mechanism to communicate or interact with Florida consumers for a commercial purpose.
- Prohibits any entity or person from knowingly producing, generating, incorporating, or synthesizing child pornography through AI.
- Requires any state agency that uses AI to disclose if a person is interacting with AI when interacting with the agency and ensure that any confidential information accessible to an AI system remains confidential.

Any violation of the bill by a person or entity is an unfair and deceptive trade practice actionable under FDUTPA solely by DLA. The bill does not establish a private cause of action.

The bill also creates an advisory council called the Government Technology Modernization Council to study and monitor the development and deployment of AI systems and provide reports on such systems to the Governor and the Legislature.

Effect of Proposed Changes

The bill creates a public record exemption for all information held by DLA pursuant to a notification or an investigation of a violation by an entity or person of the requirements created by HB 1459. Such information is made confidential and exempt[13] from public record requirements until the investigation is completed or is no longer active.[14]

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[11] *Id.*

[12] OPPAGA, Office of the Attorney General (Department of Legal Affairs), https://oppaga.fl.gov/ProgramSummary/ProgramDetail?programNumber=1026 (last visited Jan. 19, 2024); *see also* ch. 16 and s. 20.11, F.S.

[13] There is a difference between records the Legislature designates *exempt* from public record requirements and those the Legislature designates *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); *State v. Wooten*, 260 So. 3d 1060, 1070 (Fla. 4th DCA 2018); *City of Rivera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. *See* Op. Att'y Gen. Fla. 04-09 (2004).).

[14] The bill states that the public record exemption should be construed in conformity with s. 119.071(2)(c), F.S. Section 119.071(2)(c), F.S., creates an exemption for active criminal investigative and criminal intelligence information. Section 119.011(3), F.S., defines the terms "criminal intelligence information," "criminal investigative information," and "active."

During an active investigation, the confidential and exempt information 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 DLA believes to be a victim of an improper use or disposal of customer records, except that information which remains 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 ceases to be active, the following information held by DLA remains confidential and exempt:

- Information that is otherwise confidential or exempt;
- Personal identifying information;
- A computer forensic report;
- Information that would otherwise reveal weaknesses in an entity or person's data security; and
- Information that would otherwise disclose an entity or person's proprietary information.[15]

The bill provides the constitutionally required public necessity statement, which states that, if released, information held by DLA pursuant to a notification or an investigation of a violation by commercial entities of the requirements created by HB 1459 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 OGSR Act and will repeal on October 2, 2029, unless reenacted by the Legislature.

The bill will become effective on the same date that HB 1459 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: Amends s. 501.174, F.S., as created by HB 1459 (2024), to create a public record exemption for investigations related to s. 501.174, F.S.
Section 2: Provides a public necessity statement as required by the Florida Constitution.
Section 3: Provides a contingent effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

[15] The bill defines the term "proprietary information" to mean information that is owned or controlled by the entity or person; is intended to be private and is treated by the entity or person as private because disclosure would harm the entity or person 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 reveals competitive interests.

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 record 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 held by DLA pursuant to a notification or 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 information and personal identifying information, which does not appear to be broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

The bill does not require rulemaking, nor does the bill confer or alter DLA's rulemaking authority.

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. 501.174, 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 artificial intelligence transparency 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 (10) of section 501.174, Florida Statutes, as created by HB 1459 or similar legislation, 2024 Regular Session, is renumbered as subsection (11), and a new subsection (10) is added to that section to read:

501.174 Artificial intelligence transparency.—

(10)(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

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

investigation is completed or ceases to be active. This exemption shall be construed in conformity with s. 119.071(2)(c).

(b) During an active investigation, information made confidential and exempt pursuant to paragraph (a) may be disclosed by the department:

1. In the furtherance of its official duties and responsibilities;

2. For print, publication, or broadcast if the department determines that such release would assist in notifying the public or locating or identifying a person 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 the business operations of the entity or person.

5. Information that would disclose the proprietary information of the business operations of the entity or person.

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

1. Is owned or controlled by the entity or person.

2. Is intended to be private and is treated by the entity or person as private because disclosure would harm the entity or person.

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 business operations of the entity or person 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. 501.174, 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. 501.174, 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. 501.174, 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. 501.174, 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. 501.174, 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 entity or person. 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 the business operations of the entity or person. The release of this information could result in the identification of vulnerabilities in the cybersecurity system of the business operations of the entity or person and be used to harm the entity or person 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. 501.174, 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 1459 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

COMMERCE COMMITTEE

HB 1461 by Rep. McFarland
Pub. Rec./Investigations by the Department of Legal Affairs

AMENDMENT SUMMARY
January 23, 2024

Amendment 1 by Rep. McFarland (strike-all):

- Clarifies that the public record exemption applies to information held by the Department of Legal Affairs to ensure records received or created by the department relating to its investigations of certain entities and persons is protected.
- Clarifies that information that is otherwise confidential or exempt remains protected at the conclusion of the investigation.
- Removes a duplicative public record exemption for trade secrets.
- Conforms the public necessary statement to the changes made to the public record exemption.
- Makes a technical change to conform the bill to changes made in the PCS for HB 1459, to which this bill is linked.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (8) of section 501.174, Florida Statutes, as created by HB 1459 or similar legislation, 2024 Regular Session, is renumbered as subsection (9) and a new subsection (8) is added to that section to read:

501.174 Artificial intelligence transparency.—

(8)(a) All information held by the department pursuant to a notification of a violation under this section or an investigation 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 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 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 held by the department shall remain confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. Information that is otherwise confidential or exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. Personal identifying information.

3. A computer forensic report.

4. Information that would otherwise reveal weaknesses in the data security of an entity or person.

5. Information that would disclose the proprietary information of an entity or person.

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

1. Is owned or controlled by the entity or person.

2. Is intended to be private and is treated by the entity or person as private because disclosure would harm the entity or person 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. Reveals competitive interests, the disclosure of which would impair the competitive advantage of the entity or person 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 held by the Department of Legal

Affairs pursuant to a notification of a violation of s. 501.1736, Florida Statutes, or an investigation 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 that is otherwise confidential or exempt from public records requirements once an investigation is completed or ceases to be active would undo the specific statutory exemption protecting that information; thus, clarifying that any protections currently afforded to such information are not removed.

(3) An investigation of a violation of s. 501.1736, Florida Statutes, is likely to result in the gathering of sensitive personal identifying information, which could include 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 families to possible privacy violations, as it would reveal information of a sensitive personal nature.

(4) Notices received by the department and information generated during an investigation of a violation of s. 501.1736, Florida Statutes, are likely to contain proprietary information. Such information 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 through a public records request could destroy the value of the proprietary information and cause a financial loss to the entity or person. Release of such information could give business competitors an unfair advantage.

(5) Information held by the department may contain a computer forensic report or information that could reveal weaknesses in the data security of an entity or person. The release of this information could result in the identification of vulnerabilities in the cybersecurity system of the entity or person and be used to harm the entity or person and clients.

(6) The harm that may result from the release of information held by the department pursuant to a notification or investigation 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 1459 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

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

Remove lines 5-6 and insert:
investigations by the Department of Legal Affairs of certain artificial

PCS for HB 133

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 133 Criminal History of Licensees and Employees
SPONSOR(S): Commerce Committee
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

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

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

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

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

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

DBPR also administers and enforces the Beverage Law, which requires licenses for businesses in the alcohol industry and payment of various associated fees and taxes. A provision in the Beverage Law, s. 562.13(3), F.S., prohibits a licensed alcohol vendor from employing a manager or bartender who has been convicted of certain crimes within the prior five years.

Related to professions under the Beverage Law, the bill repeals s. 562.13(3), F.S., to allow any licensed alcohol vendor to employ any manager or bartender with certain criminal history.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Department of Business and Professional Regulation

The Department of Business and Professional Regulation (DBPR) has 12 divisions that regulate several Florida professions and businesses.[1]

Chapter 455, F.S., applies to the regulation of professions constituting "any activity, occupation, profession, or vocation regulated by DBPR in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation."[2] Chapter 455, F.S., provides general DBPR powers and sets forth the procedural and administrative framework for all professional DBPR boards.[3]

Barbers

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

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

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

Cosmetologists

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

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

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

Criminal History – Barbers and Cosmetologists

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

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

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

Sexual Predators

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

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

Qualifying convictions for sexual predator designation include:

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

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

Forcible Felonies

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

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

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

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

Vocational Training in Correctional Facilities

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

Beverage Law

The Division of Alcoholic Beverages and Tobacco (ABT) in DBPR administers and enforces the Beverage Law.[25]

In general, the Beverage Law[26] provides for a structured three-tiered distribution system consisting of the manufacturer, distributor, and vendor.[27] The manufacturer creates the beverages. The distributor obtains the beverages from the manufacturer and delivers them to the vendor. The vendor makes the ultimate sale to the consumer.[28]

Florida has adopted the three-tier system. Exceptions to the three-tier regulatory system permit in-state wineries,[29] breweries,[30] and craft distilleries to be licensed as a vendor and sell directly to consumers under certain circumstances.[31]

Currently, it is unlawful for any licensed vendor to employ a manager or a bartender who has, within the prior five years, been convicted:[32]

- Of any offense against the beverage laws of Florida, the United States, or any other state.
- In this state or any other state or the United States of soliciting for prostitution, pandering, letting premises for prostitution, keeping a disorderly place, or any felony violation of the Florida Comprehensive Drug Abuse Prevention and Control Act,[33] or the controlled substances act of any other state or the United States.
- Of any felony in this state, any other state, or the United States.

The term "conviction" is defined to "include an adjudication of guilt on a plea of guilty or nolo contendere or forfeiture of a bond when such person is charged with a crime."[34]

[18] Florida Department of Corrections, *Bureau of Education*, http://www.dc.state.fl.us/development/programs.html (last visited Nov. 1, 2023).
[19] Florida Department of Corrections, *Blackwater River Correctional Facility*, http://www.dc.state.fl.us/ci/185.html (last visited Nov. 1, 2023).
[20] Florida Department of Corrections, *Graceville Correctional Facility*, http://www.dc.state.fl.us/ci/159.html (last visited Nov. 1, 2023).
[21] Florida Department of Corrections, *Lake City Correctional Facility*, http://www.dc.state.fl.us/ci/219.html (last visited Nov. 1, 2023).
[22] Florida Department of Corrections, *Lowell Correctional Institution*, http://www.dc.state.fl.us/ci/314.html (last visited Nov. 1, 2023).
[23] Florida Department of Corrections, *Homestead Correctional Institution*, http://www.dc.state.fl.us/ci/419.html (last visited Nov. 1, 2023).
[24] Florida Department of Corrections, *Gadsden Correctional Facility*, http://www.dc.state.fl.us/ci/111.html (last visited Nov. 1, 2023).
[25] S. 561.02, F.S.
[26] S. 561.01(6), F.S., provides that the "The Beverage Law" means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.
[27] *See* s. 561.14, F.S.
[28] S. 561.14(3), F.S.
[29] *See* s. 561.221(1), F.S.
[30] *See* s. 561.221(2), F.S.
[31] *See* s. 565.03, F.S.
[32] S. 562.13(3)(a), F.S.
[33] Ch. 893, F.S.
[34] S. 562.13(3)(a), F.S.

These restrictions do not apply to the following vendors who operate places of business where beverages are sold for consumption off the premises:[35]

- Vendors of malt beverages.[36]
- Vendors of beverages containing malt, wines, and fortified wines.[37]

Effect of Proposed Changes

Criminal History – Barbers and Cosmetologists

The bill amends s. 455.213, F.S., to reduce the time frame, from five years to three years, that an applicable board may look back at and use a criminal conviction as grounds to deny an application for licensure as a barber or cosmetologist.[38]

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

Vocational Training in Correctional Facilities

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

Beverage Law

The bill repeals s. 562.13(3), F.S., of the Beverage Law, to allow any licensed alcohol vendor to employ any manager or bartender with certain criminal history.

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

B. SECTION DIRECTORY:

Section 1: Amends s. 455.213, F.S., relating to general licensing provisions.
Section 2: Repeals s. 562.13(3), F.S., relating to employment of bartenders by certain vendors prohibited; exceptions.
Section 3: 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:

[35] S. 562.13(3)(b), F.S.
[36] S. 563.02(1)(a), F.S.
[37] S. 564.02(1)(a), F.S.
[38] For purposes of calculating the recidivism rate for inmates released from custody, the Florida Department of Corrections uses the definition of "recidivism" in s. 945.041(2), F.S., which means an inmate's rearrest, reconviction, reincarceration, or probation revocation within a three-year time period following the inmate's release from incarceration.

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may allow more people to become licensed as barbers or cosmetologists, or employed as managers or bartenders, by reducing disqualifications to licensure or employment.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to criminal history of licensees and employees; amending s. 455.213, F.S.; providing a period of time when a conviction, or any other adjudication, for a crime may not be grounds for denial of licensure as a barber or cosmetologist; providing an exception; requiring the applicable board to approve certain educational program credits offered to inmates in certain institutions or facilities for purposes of satisfying training requirements for licensure as a barber or cosmetologist; amending s. 562.13; F.S.; repealing a provision prohibiting the employment of managers and bartenders by certain vendors; providing an effective date.

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

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

455.213 General licensing provisions.—

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

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

for licensure as:

1. A barber under chapter 476;

2. A cosmetologist or cosmetology specialist under chapter 477;

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

a. Air-conditioning contractor;

b. Electrical contractor;

c. Mechanical contractor;

d. Plumbing contractor;

e. Pollutant storage systems contractor;

f. Roofing contractor;

g. Sheet metal contractor;

h. Solar contractor;

i. Swimming pool and spa contractor;

j. Underground utility and excavation contractor; or

k. Other specialty contractors; or

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

(b)1. A conviction, or any other adjudication, for a crime more than 3 years before the date the application is received by the applicable board may not be grounds for denial of a license specified in subparagraph (a)1. or subparagraph (a)2. unless the

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

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

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

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

Section 2. Subsection (3) of section 562.13, Florida Statutes, is amended to read:

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

562.13 Employment of minors or certain other persons by certain vendors prohibited; exceptions.—

~~(3)(a) It is unlawful for any vendor licensed under the beverage law to employ as a manager or person in charge or as a bartender any person:~~

~~1. Who has been convicted within the last past 5 years of any offense against the beverage laws of this state, the United States, or any other state.~~

~~2. Who has been convicted within the last past 5 years in this state or any other state or the United States of soliciting for prostitution, pandering, letting premises for prostitution, keeping a disorderly place, or any felony violation of chapter 893 or the controlled substances act of any other state or the Federal Government.~~

~~3. Who has, in the last past 5 years, been convicted of any felony in this state, any other state, or the United States.~~

~~The term "conviction" shall include an adjudication of guilt on a plea of guilty or nolo contendere or forfeiture of a bond when such person is charged with a crime.~~

~~(b) This subsection shall not apply to any vendor licensed under the provisions of s. 563.02(1)(a) or s. 564.02(1)(a).~~

Section 3. This act shall take effect July 1, 2024.

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

PCS for HB 1459

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1459 Advanced Technology
SPONSOR(S): Commerce Committee
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

Artificial intelligence (AI) encompasses a large field of existing and emerging technologies, methodologies, and application areas. AI is generally thought of as computerized systems that work and react in ways commonly thought to require intelligence. The application of AI extends to areas such as natural language processing, facial recognition, and robotics. As the use of AI technologies has grown, so too have discussions of whether and how to regulate them. Potential regulatory options include a broad regulation of AI technologies that could be used across sectors, or a more targeted approach, regulating the use of AI technologies in particular sectors.

The bill:

- Requires an entity or person who produces or offers for use or interaction AI content or technology for a commercial purpose, and makes such content or technology available to the Florida public, to create safety and transparency standards that:
  - Alert consumers that such content or technology is generated by AI.
  - Allow such content or technology to be recognizable as generated by AI to other AI.
- Requires an entity or a person to provide a clear and conspicuous notice on its Internet homepage or landing page if it provides an AI mechanism to communicate or interact with Florida consumers for a commercial purpose.
- Prohibits any entity or person from knowingly using an image of an identifiable child in producing, generating, incorporating, or synthesizing child pornography through AI.
- Requires any state agency that uses AI to disclose if a person is interacting with AI when interacting with the agency and ensure that any confidential information accessible to an AI system remains confidential.

Any violation of the provisions of the bill by a person or entity is an unfair and deceptive trade practice actionable under FDUTPA solely by the Department of Legal Affairs at the Attorney General's Office. The bill does not establish a private cause of action.

The bill amends the definition of child pornography to include "any image or presentation produced, generated, incorporated, or synthesized through artificial intelligence that uses an image of an identifiable minor to depict or portray a minor engaged in sexual conduct," which makes using such technology for such purposes a crime.

The bill also creates an advisory council called the Government Technology Modernization Council to study and monitor the development and deployment of AI systems and provide reports on such systems to the Governor and the Legislature.

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

Artificial Intelligence

In the 1950s, a generation of scientists, mathematicians, and philosophers, including Alan Turing, conceptualized the possibility of artificial intelligence (AI). In his 1950 paper *Computing Machinery and Intelligence*, Turing discussed "how to build intelligent machines and how to test their intelligence."[1]

The term "artificial intelligence" itself was coined at the Dartmouth Summer Research Project on Artificial Intelligence, a conference held in 1956. Since 2010, there has been a lot of advancement in AI research, which has been attributed to the "availability of large datasets, improved machine learning approaches and algorithms, and more powerful computers."[2]

AI encompasses a large field of existing and emerging technologies, methodologies, and application areas. The Congressional Research Service has recently stated that AI is "generally thought of as computerized systems that work and react in ways commonly thought to require intelligence."[3] The application of AI extends to areas such as "natural language processing, facial recognition, and robotics."[4]

Generative Artificial Intelligence

Generative AI (GenAI) refers to "machine learning (ML) models developed through training on large volumes of data" for the purpose of generating new content, and has undergone rapid advancement over the past few years.[5]

GenAI, and subsets called large language models (LLMs) and generative adversarial networks (GANs), are developed through training on data sets, largely collected from public internet sites, in order to generate content. When a user provides a prompt, the model may generate text, image, video, and computer code responses with "human-like quality." The Congressional Research Service found that recent technological advances combined with the open availability of these tools to the public has led to widespread use.[6]

Specifically, to synthesize content, a GAN pits two neural networks—a generator and discriminator—against each other. Two scholars from the University of Texas at Austin describe the functionality as follows: "To synthesize an image of a fictional person, the generator starts with a random array of pixels and iteratively learns to synthesize a realistic face. On each iteration, the discriminator learns to distinguish the synthesized face from a corpus of real faces; if the synthesized face is distinguishable from the real faces, then the discriminator penalizes the generator. Over multiple iterations, the generator learns to synthesize increasingly more realistic faces until the discriminator is unable to distinguish it from real faces."[7]

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[1] Rockwell Anyoha, *Can Machines Think?*, Harvard University, Aug. 28, 2017, https://sitn.hms.harvard.edu/flash/2017/history-artificial-intelligence/ (last visited Jan. 20, 2024).
[2] Congressional Research Service, *Artificial Intelligence: Overview, Recent Advances, and Considerations for the 118th Congress, available at* https://crsreports.congress.gov/product/pdf/R/R47644 (last visited Jan. 20, 2024).
[3] *Id.*
[4] *Id.*
[5] *Id.*; *See also* Congressional Research Service, *Generative Artificial Intelligence: Overview, Issues, and Questions for Congress, available at* https://crsreports.congress.gov/product/pdf/IF/IF12426 (last visited Jan. 14, 2024).
[6] CRS, *supra* note 1.
[7] Sophie Nightingale and Hany Ford, *AI-synthesized faces are indistinguishable from real faces and more trustworthy*, Proceedings of the National Academy of Sciences of the United States of America (PNAS), Feb. 14, 2022, https://www.pnas.org/doi/10.1073/pnas.2120481119 (last visited Jan. 20, 2024).

Potential Benefits and Risks of Artificial Intelligence

According to PricewaterhouseCoopers, "AI technologies could increase global GDP by $15.7 trillion, a full 14%, by 2030," with health, retail, and financial services experiencing the most growth.[8] Some potential benefits include:

- **Financial sector** –The use of AI and algorithms in the financial sector may:[9]
  - Make decision-making more efficient, less emotional, and more analytic for investing, portfolio management, loan applications, mortgages and retirement planning.
  - Prevent fraud and detect financial anomalies in large institutions.
- **Health Sector** – The use of AI and algorithms in the health sector may:[10]
  - Help diagnose and predict disease or illness.
  - Help predict potential challenges and allocate resources to patient education, sensing, and proactive interventions to keep patients out of the hospital.
  - Create a multifaceted and highly personalized picture of person's well-being.
- **Transportation Sector** – The use of AI and algorithms in the transportation sector may:
  - Develop vehicle guidance, braking, and lane-changing systems for cars, trucks, buses, and drone delivery systems.
  - Develop systems to prevent collisions with the use of cameras and sensors.
  - Provide real-time information analysis and safety measures for the development of autonomous vehicles.
- **Government Sector** – The use of AI and algorithms in the government sector may:[11]
  - Help to create smart cities and e-governance. Examples include:
    - The George AI chatbot, a customer service virtual assistant created by the Georgia Department of Labor.
    - AI monitoring of live footage from cameras in forests and mountains for signs of smoke by western states including California, Nevada, and Oregon.
  - Help metropolitan areas adopt systems for citizen service delivery, urban and environmental planning, energy use, and crime prevention.
- **Customer Service** – The use of AI and algorithms in customer service may:[12]
  - Provide customer service to consumers through the use of chatbots and other customer service-oriented tools to increase customer engagement, resulting in increased sales opportunities with reduced costs to the business.

However, developments in AI raise important policy, regulatory and ethical issues. Potential risks are associated with removing humans from the decision-making process, as is the case when AI technology becomes more advanced over time.[13] Some potential risks include:

- **Bias:**[14]
  - Because AI algorithms are all based on data input by humans, and such data is based on human choices, responses or decisions, there is a risk that such algorithms can contain bias, inaccuracies, ethical considerations, and value choices, which can take many forms including historical, racial, or other discrimination, without intervention.
- **Workforce:**[15]
  - Integrating AI into the workforce brings uncertainty and challenge to the labor market, e.g., to what extent will AI replace jobs. There may need to be significant investments from business leaders and governments for retraining and reskilling the workforce.
- **Legal Liability:**[16]

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[8] National Conference of State Legislatures, *Approaches to Regulating Artificial Intelligence: A Primer*, Aug. 10, 2023, https://www.ncsl.org/technology-and-communication/approaches-to-regulating-artificial-intelligence-a-primer (last visited Jan. 20, 2024).
[9] *Id.*; Darrell West and John Allen, *How artificial intelligence is transforming the world*, Brookings Institute, Apr. 24, 2018, https://www.brookings.edu/articles/how-artificial-intelligence-is-transforming-the-world/ (last visited Jan. 20, 2024).
[10] NCSL, *supra* note 6.
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] *Id.*

    - There are questions concerning who is legally liable when AI systems harm or discriminate against people, especially as new and emerging use cases for AI platforms are developed and integrated.
- **Security Risks:**[17]
    - AI systems present cybersecurity and national security risks, including:
        - AI companies collecting large amounts of personal data for AI training and use.
        - Bad actors developing advanced cyberattacks, bypassing security measures, and exploiting vulnerabilities in various private and public systems.
    - Traditional cybersecurity risk assessment tools are generally inadequate for addressing such risks.

Efforts to Regulate Artificial Intelligence

As the use of AI technologies has grown, so too have discussions of whether and how to regulate them. Potential regulatory options include a broad regulation of AI technologies that could be used across sectors, or a more targeted approach, regulating the use of AI technologies in particular sectors.[18]

In 2023, 31 states introduced at least 191 bills concerning AI, with 14 of the bills becoming laws.[19] As reported by the National Conference of State Legislatures:[20]

- Connecticut required the state Department of Administrative Services to conduct an inventory of all systems that employ AI and are in use by any state agency and, beginning Feb. 1, 2024, perform ongoing assessments of systems that employ AI and are in use by state agencies to ensure that no such system results in unlawful discrimination or disparate impact.
- Louisiana adopted a resolution requesting the Joint Committee on Technology and Cybersecurity to study the impact of AI in operations, procurement and policy.
- Maryland established the Industry 4.0 Technology Grant Program to assist certain small and medium-sized manufacturing enterprises with implementing new "industry 4.0" technology or related infrastructure. The definition of industry 4.0 includes AI.
- Texas, North Dakota, Puerto Rico, and West Virginia created AI advisory councils to study and monitor AI systems developed, employed or procured by state agencies.

Additionally, the following laws were passed in previous years:

- California prohibits any person from using a bot to communicate or interact with another person online with the intent to mislead the other person about its artificial identity in order to incentivize a purchase or sale of goods or services in a commercial transaction or to influence a vote in an election.[21]
- Illinois requires an employer that asks applicants to record video interviews and uses an AI analysis of applicant-submitted videos to:[22]
    - Notify each applicant in writing before the interview that AI may be used to analyze the applicant's facial expressions and consider the applicant's fitness for the position;
    - Provide each applicant with an information sheet before the interview explaining how the AI works and what characteristics it uses to evaluate applicants; and
    - Obtain written consent from the applicant to be evaluated by the AI program.

While there is no broad framework for AI regulation in the United States, federal laws on AI have been enacted over the past few years to guide actions within the federal government. For example, the

[17] *Id*; Bernard Marr, *The 15 Biggest Risks Of Artificial Intelligence*, Forbes, Jun. 2, 2023, https://www.forbes.com/sites/bernardmarr/2023/06/02/the-15-biggest-risks-of-artificial-intelligence/?sh=603d66292706 (last visited Jan. 20, 2024).
[18] CRS, *supra* note 2.
[19] National Conference of State Legislatures, *State of Play | An Inside Look at Artificial Intelligence Policy and State Actions*, Jan. 9, 2024, https://www.ncsl.org/state-legislatures-news/details/state-of-play-an-inside-look-at-artificial-intelligence-policy-and-state-actions (last visited Jan. 20, 2024).
[20] National Conference of State Legislatures, *Artificial Intelligence 2023 Legislation*, Jan. 12, 2024, https://www.ncsl.org/technology-and-communication/artificial-intelligence-2023-legislation (last visited Jan. 20, 2024).
[21] Cal. B&P Code §§ 17940-17943
[22] 2019 IL Public Act 101-0260

National Artificial Intelligence Initiative Act of 2020, establishes the American AI Initiative and provides directions for AI research, development, and evaluation activities at federal science agencies.[23]

The European Union has proposed the Artificial Intelligence Act (AIA), which would create broad regulatory oversight for the development and use of a wide range of AI applications, with requirements varying by risk category, from banning systems with unacceptable risk to allowing free use of those with minimal or no risk.[24] In an effort to begin implementation of the AIA, a related new rule was agreed to in December, 2023, which includes requiring human oversight in creating and deploying the systems and banning indiscriminate scraping of images from the internet to create a facial recognition database.[25]

Artificial Intelligence Used to Create Child Pornography

Recently, there has been an increase in AI production of child pornography. Offenders may use downloadable open source GenAI and GAN models, which can produce images quickly, to devastating effects.[26] Hidden inside the foundation of popular AI image-generators are thousands of images of child sexual abuse, which have made it easier for offenders and AI systems to produce realistic and explicit imagery of fake children as well as transform social media photos of fully clothed children into child sexual abuse material (CSAM).[27]

In September, 2023, analysts at the Internet Watch Foundation (IWF) found in one dark web CSAM forum, a total of 20,254 AI-generated photos posted within the prior month. The analysts spent 87.5 hours assessing 11,108 of these images. In total, the IWF judged 2,978 images to be criminal. Most were realistic enough to be treated the same way as non-AI CSAM.[28]

Additionally, Stanford Internet Observatory recently found more than 3,200 images of suspected child sexual abuse in the giant AI database LAION, an index of online images and captions that's been used to train leading AI image-makers.[29]

Nishant Vishwamitra, an assistant professor at the University of Texas at San Antonio who is working on the detection of deepfakes and AI CSAM images online, stated that "the scale at which such images can be created is worrisome."[30]

Child Pornography Laws

Federal Law

Generally, the First Amendment does not protect child pornography. In *New York v. Ferber*,[31] the United States Supreme Court (Supreme Court) recognized that states have a compelling interest in safeguarding the physical and psychological well-being of minors and in preventing their sexual exploitation and abuse. The Supreme Court noted that it was "unlikely that visual depictions of children . . . lewdly exhibiting their genitals would often constitute an important and necessary part of a literary performance or scientific or educational work."[32] Under these principles, states have criminalized possessing, distributing, and other acts involving child pornography. However, the constitutionality of

[23] CRS, *supra* note 2.
[24] Id; European Commission, *Regulatory Framework Proposal on Artificial Intelligence*, https://digital-strategy.ec.europa.eu/en/policies/regulatory-framework-ai (last visited Jan. 20, 2024).
[25] Adam Satariano, *E.U. Agrees on Landmark Artificial Intelligence Rules*, NY Times, Dec. 8, 2024, https://www.nytimes.com/2023/12/08/technology/eu-ai-act-regulation.html (last visited Jan. 20, 2024).
[26] Matt Burgess, *The AI-Generated Child Abuse Nightmare Is Here*, Wired, Oct. 24, 2023, https://www.wired.com/story/generative-ai-images-child-sexual-abuse/ (last visited Jan. 20, 2024).
[27] Matt O'Brien and Haleluya Hadero, *Study shows AI image-generators are being trained on explicit photos of children*, PBS NewsHour, Dec. 20, 2023, https://www.pbs.org/newshour/science/study-shows-ai-image-generators-are-being-trained-on-explicit-photos-of-children (Last visited Jan. 21, 2024).
[28] *Id.*
[29] O'Brien and Hadero, *supra* note 27.
[30] *Id.*
[31] 458 U.S. 747 (1982).
[32] *Id.* at 762-63.

criminalizing such acts is less clear when the images at issue are morphed pornography, which is created when the innocent image of a child is combined with a separate, sexually explicit image, usually of an adult. The children depicted in these images were not harmed in the image, as they were not photographed while engaging in a sexual or obscene act.[33]

Child Pornography Prevention Action of 1996

Prior to 1996, federal law criminalized a variety of acts relating to child pornography.[34] At that time, federal statutes described images of a minor actually engaging in sexually explicit conduct.[35] In 1996, Congress passed the Child Pornography Prevention Action of 1996 (CPPA),[36] creating a definition of "child pornography" that for the first time criminalized acts relating to morphed child pornography.

In 2002, the Supreme Court decided *Ashcroft v. Free Speech Coalition*,[37] a case in which a California trade association for the adult entertainment industry challenged the CPPA as unconstitutionally overbroad. A provision made it a crime to possess or distribute images depicting sexually explicit conduct which could be created by using advanced computer imaging techniques to "create realistic images of children who do not exist" (i.e., virtual child pornography).[38]

The Supreme Court held that the speech criminalized in the challenged provision of the CPPA violated the First Amendment since it extended the federal prohibition against child pornography to sexually explicit images that **"appeared to" depict minors but were "produced without using any real children."**[39] The Supreme Court decided that "by prohibiting child pornography that did not depict an actual child," the CPPA "abridged the freedom to engage in a substantial amount of lawful speech" and was therefore overbroad and unconstitutional.[40]

While the *Ashcroft* decision did not specifically address the constitutionality of the CPPA provision that prohibits *morphed* child pornography, it did note, in dictum, that **"[a]lthough morphed images may fall within the definition of virtual child pornography, they implicate the interests of real children…"**[41] This suggests that morphed child pornography may not be protected by the First Amendment.[42]

Congress attempted to remedy the constitutional issues raised in *Ashcroft* by passing the "Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act" (Protect Act) in 2003.[43] The Protect Act, in part, narrowed the definition of virtual child pornography in the CPPA to include only virtual or computer-generated images that are "indistinguishable from" images of actual minors engaging in sexually explicit conduct.[44] The definition of morphed child pornography in the CPPA remained unchanged by the Protect Act.

To date, the federal statutes relating to morphed child pornography have been upheld.[45]

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[33] Stacey Steinberg, *Changing Faces: Morphed Child Pornography Images and the First Amendment*, 68 Emory L.J. 909 (2019).
[34] *See*, e.g., 18 USC §2252 (1994 ed.).
[35] *U.S. v. Hotaling*, 599 F.Supp.2d 306, 309 (N.D.N.Y. 2008); *see also* 18 USC §§ 2252 and 2256 (1994 ed.).
[36] Pub. L. No. 104-208.
[37] 535 U.S. 234 (2002).
[38] *Supra*, note 8.
[39] *Supra*, note 9, at 256.
[40] *Id*.
[41] *Id*. at 242.
[42] *McFadden v. Alabama*, 67 So.3d 169, 181-82 (Ala. Crim. App. 2010).
[43] Pub. L. No. 108-21.
[44] 18 USC §2256(8)(B).
[45] In *United States v. Bach*, the defendant was convicted of possessing morphed child pornography. The image at issue showed a young nude boy sitting in a tree, grinning, with his pelvis tilted upward, his legs opened wide, and a full erection. The photograph of a well-known child entertainer's head had been "skillfully inserted onto the photograph of the nude boy so that the resulting image appeared to be a nude picture of the child entertainer sitting in the tree." The defendant appealed, arguing that his conviction was invalid because the definition of morphed child pornography violated the First Amendment. The United States Court of Appeals for the Eighth Circuit disagreed, holding that morphed child pornography "implicate[s] the interests of real children" and creates a lasting record of an identifiable minor child seemingly engaged in sexually explicit activity. *United States v. Bach*, 400 F.3d 622, 632 (8th Cir. 2005); *United States v. Ramos*, 685 F.3d 120, 134 (2d Cir. 2012), *cert. denied*, 133 S.Ct. 567 (2012); *see also Doe v. Boland*, 630 F.3d 491, 497 (6th Cir. 2011); s*ee also United States v. Hotaling*, 634 F.3d 725 (2d Cir. 2008), cert. denied, 132

In 2014, in *United States v. Anderson*,[46] the defendant was charged with distribution of morphed child pornography relating to an image in which the face of a minor female was superimposed over the face of an adult female engaging in sex with an adult male.[47] The defendant moved to dismiss the charge, arguing that the definition of morphed child pornography was unconstitutionally overbroad.[48] The court noted that in the image at issue "no minor was sexually abused."[49] However, the court held that because such images falsely portray identifiable children engaging in sexual activity, such images implicate the compelling governmental interest in protecting minors.[50] Using this reasoning, the court applied a strict scrutiny balancing test and held that the definition of morphed child pornography was constitutional as applied to the facts of *Anderson*.

In an MSNBC report, the U.S. Justice Department claims AI-generated CSAM may be prosecutable under existing federal child pornography laws. However, the U.S. Justice Department could not show such a prosecution to date.[51]

Florida Law

Currently, Florida law defines "child pornography" as:

- Any image depicting a minor engaged in sexual conduct; or
- Any image that has been created, altered, adapted, or modified by electronic, mechanical, or other means, to portray an identifiable minor engaged in sexual conduct.[52]

Current law defines "sexual conduct" as:

- Actual or simulated[53] sexual intercourse, deviate sexual intercourse, sexual bestiality,[54] masturbation, or sadomasochistic abuse;[55]
- Actual or simulated lewd exhibition of the genitals;
- Actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast, with the intent to arouse or gratify the sexual desire of either party; or
- Any act or conduct which constitutes sexual battery[56] or simulates that sexual battery is being or will be committed.[57, 58]

As it relates to child pornography, Florida law defines "identifiable child" as a person:

- Who was a minor at the time the image was created, altered, adapted, or modified, or whose image as a minor was used in the creating, altering, adapting, or modifying of the image; and
- Who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark, or other recognizable feature.[59, 60]

S.Ct. 843 (2011) (citing *Bach*, the Court held that "child pornography created by digitally altering sexually explicit photographs of adults to display the face of a child is not protected expressive speech under the First Amendment.).

[46] 759 F.3d 891 (8th Cir. 2014).

[47] *Id*.

[48] *Id*.

[49] *Id*. at 895.

[50] *Id*. at 896.

[51] Frank Figliuzzi, *A loophole makes it hard to punish these despicable AI-generated nude photos*, MSNBC, Nov. 7, 2023, https://www.msnbc.com/opinion/msnbc-opinion/ai-generated-nudes-new-jersey-students-rcna123931 (last visited Jan. 20, 2024).

[52] S. 827.071(1)(b), F.S.

[53] "Simulated" means the explicit depiction of conduct set forth in current law which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals, or buttocks. S. 827.071(1)(n), F.S.

[54] "Sexual bestiality" means any sexual act between a person and an animal involving the sex organ of the one and the mouth, anus, or female genitals of the other. S. 827.071(1)(k), F.S.

[55] "Sadomasochistic abuse" means flagellation or torture by or upon a person, or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction from inflicting harm on another or receiving such harm oneself. S. 827.071(1)(i), F.S.

[56] "Sexual battery" means oral, anal, or female genital penetration by, or union with, the sexual organ of another or the anal or female genital penetration of another by any other object; however, "sexual battery" does not include an act done for a bona fide medical purpose. S. 827.071(1)(j), F.S.

[57] S. 827.071(1)(l), F.S.

[58] A mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct." *Id*.

[59] S. 827.071(1)(e), F.S.

[60] The term may not be construed to require proof of the actual identity of the identifiable minor. *Id*.

Florida law contains a variety of provisions prohibiting acts relating to child pornography, including under ch. 827, F.S., relating to "Abuse of Children," and ch. 847, F.S., relating to "Obscenity."

Current law makes it a:

- Second degree felony for a person to possess with the intent to promote any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, includes child pornography. Possession of three or more copies of such photographs, etc., is prima facie evidence of a person's intent to promote.[61]
- Third degree felony for any person to knowingly possess, control, or intentionally view[62] a photograph, motion picture, or other image that, in whole or in part, he or she knows includes any child pornography.[63]
- Third degree felony for any person who knew or reasonably should have known that he or she was transmitting child pornography to another.[64]

Advisory Councils

Under Florida law, an "advisory council" means an advisory body created by specific statutory enactment and appointed to function on a continuing basis. Generally, an advisory council is enacted to study the problems arising in a specified functional or program area of state government and to provide recommendations and policy alternatives.[65]

The Code of Ethics for Public Officers and Employees[66] establishes ethical standards for public officials, which includes any person elected or appointed to hold office in any agency and any person serving on an advisory council.[67] The code is intended to ensure that public officials conduct themselves independently and impartially, and do not use their offices for private gain other than compensation provided by law. The code pertains to various ethical issues, such as ethics trainings, voting conflicts, full and public disclosure of financial interests, and standards of conduct.[68]

Florida Cybersecurity Advisory Council

The Department of Management Services (DMS) oversees information technology (IT)[69] governance and security for the executive branch in Florida.[70] The Florida Digital Service (FLDS) is housed within DMS and was established in 2020 to replace the Division of State Technology.[71] FLDS works under DMS to implement policies for information technology and cybersecurity for state agencies.[72]

An advisory council under Chapter 282, F.S., regulating communications, technology, and cybersecurity, is the Florida Cybersecurity Advisory Council (CAC) within DMS.[73] CAC assists state agencies in protecting IT resources from cyber threats and incidents.[74] The CAC must assist FLDS in

[61] S. 827.071(4), F.S.
[62] "Intentionally view" means to deliberately, purposefully, and voluntarily view. Proof of intentional viewing requires establishing more than a single image, motion picture, exhibition, show, image, data, computer depiction, representation, or other presentation was viewed over any period of time. S. 827.071(1)(b), F.S.
[63] S. 827.071(5)(a), F.S. The statute also specifies that the possession, control, or intentional viewing of each such photograph, or other image, is a separate offense. If such photograph or other image includes child pornography depicting more than one child, then each child in each photograph or image that is knowingly possessed, controlled, or intentionally viewed is a separate offense.
[64] S. 847.0137, F.S.
[65] S. 20.03(7), F.S.; *See also* s. 20.052, F.S.
[66] *See* Part III, Chapter 112, F.S.
[67] S. 112.313(1), F.S.
[68] *See* Part III, Chapter 112, F.S.
[69] The term "information technology" means equipment, hardware, software, firmware, programs, systems, networks, infrastructure, media, and related material used to automatically, electronically, and wirelessly collect, receive, access, transmit, display, store, record, retrieve, analyze, evaluate, process, classify, manipulate, manage, assimilate, control, communicate, exchange, convert, converge, interface, switch, or disseminate information of any kind or form. S. 282.0041(19), F.S.
[70] *See* s. 20.22, F.S.
[71] Ch. 2020-161, L.O.F.
[72] *See* s. 20.22(2)(b), F.S.
[73] S. 282.319(1), F.S.
[74] S. 282.319(2), F.S.

implementing best cybersecurity practices, taking into consideration the final recommendations of the Florida Cybersecurity Task Force – a task force created to review and assess the state's cybersecurity infrastructure, governance, and operations.[75] The CAC meets at least quarterly to:

- Review existing state agency cybersecurity policies;
- Assess ongoing risks to state agency IT;
- Recommend a reporting and information sharing system to notify state agencies of new risks;
- Recommend data breach simulation exercises;
- Assist FLDS in developing cybersecurity best practice recommendations; and
- Examine inconsistencies between state and federal law regarding cybersecurity.[76]

The CAC must work with NIST[77] and other federal agencies, private sector businesses, and private security experts to identify which local infrastructure sectors, not covered by federal law, are at the greatest risk of cyber-attacks and to identify categories of critical infrastructure as critical cyber infrastructure if cyber damage to the infrastructure could result in catastrophic consequences.[78]

The CAC must also prepare and submit a comprehensive report to the Governor, the President of the Senate, and the Speaker of the House of Representatives that includes data, trends, analysis, findings, and recommendations for state and local action regarding ransomware incidents as stated below:

- Descriptive statistics, including the amount of ransom requested, duration of the incident, and overall monetary cost to taxpayers of the incident;
- A detailed statistical analysis of the circumstances that led to the ransomware incident which does not include the name of the state agency or local government, network information, or system identifying information;
- Statistical analysis of the level of cybersecurity employee training and frequency of data backup for the state agencies or local governments that reported incidents;
- Specific issues identified with current policy, procedure, rule, or statute and recommendations to address those issues; and
- Other recommendations to prevent ransomware incidents.

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.[79] FDUTPA was modeled after the Federal Trade Commission (FTC) Act.[80]

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.[81] 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.[82] In certain circumstances, consumers may also file suit through private actions.[83]

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[75] S. 282.319(3), F.S.
[76] S. 282.319(9), F.S.
[77] NIST, otherwise known as the National Institute of Standards and Technology, "is a non-regulatory government agency that develops technology, metrics, and standards to drive innovation and economic competitiveness at U.S.-based organizations in the science and technology industry." Nate Lord, *What is NIST Compliance*, DataInsider (Dec. 1, 2020), *https://www.digitalguardian.com/blog/what-nist-compliance* (last visited Jan. 20, 2024).
[78] S. 282.319(10), F.S.
[79] Ch. 73-124, L.O.F.; s. 501.202, F.S.
[80] 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).
[81] 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).
[82] S. 501.203(2), F.S.
[83] S. 501.211, F.S.

The DLA and the SAO have powers to investigate FDUTPA claims, which include:[84]

- 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.[85]

FDUTPA may not be applied to certain entities in certain circumstances, including:[86]

- 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.

Effect of the Bill

Government Technology Modernization Council

The bill creates an advisory council the Government Technology Modernization Council (council) within DMS under Chapter 282, F.S.

The bill provides that the purpose of the council is to study and monitor the development and deployment of AI systems and provide reports on such systems to the Governor and the Legislature.

The bill requires the council to meet at least quarterly to:

- Assess and provide guidance on necessary legislative reforms and the creation of a state code of ethics for AI systems in state government.
- Assess the effect of automated decision systems on constitutional and other legal rights, duties, and privileges of residents of this state.
- Study the potential benefits, liabilities, and risks that this state, residents of this state, and businesses may incur as a result of implementing automated decision systems.
- Recommend legislative and administrative actions that the Legislature and state agencies may take to promote the development of data modernization in Florida.
- Assess where AI is deployed today.
- Evaluate common standards for AI safety and security measures.
- Assess how governmental entities and the private sector are using AI with a focus on opportunity areas for deployments in systems across this state.
- Determine how AI is being exploited by bad actors, including foreign countries of concern.[87]

The bill requires the council to submit annual legislative recommendations it considers necessary to modernize government technology to the President of the Senate and the Speaker of the House of Representatives any legislative, beginning June 30, 2024.

[84] S. 501.206(1), F.S.
[85] 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.
[86] S. 501.212(4), F.S.
[87] Section 287.138(1), F.S., lists the following as foreign countries of concern: People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, and the Syrian Arab Republic.

The bill requires the council to submit an annual comprehensive report that includes data, trends, analysis, findings, and recommendations for state and local action regarding ransomware incidents to the Governor, the President of the Senate, and the Speaker of the House of Representatives, beginning December 1, 2024. At a minimum, the report must include:

- A summary of recommendations by relevant national entities on technology systems in state government, including, but not limited to, AI, cloud computing, identity management, and financial technology.
- An assessment of the impact of using AI systems on the liberty, finances, livelihood, and privacy interests of residents of Florida.
- Recommended policies necessary to:
  - Protect the privacy interests of Florida residents from any decrease in employment caused by AI systems.
  - Ensure that residents of this state are free from unfair discrimination caused or compounded by the employment of AI systems.
  - Promote the development and deployment of AI systems in Florida.
- Any other information the council considers relevant.

The bill provides that the council is comprised of the following members:

- The Lieutenant Governor.
- The state chief information officer.
- The State Surgeon General.
- The Secretary of Health Care Administration.
- A representative of the computer crime center of the Department of Law Enforcement, appointed by the executive director of the Department of Law Enforcement.
- The Chief Inspector General.
- Thirteen representatives of institutions of higher education located in this state or the private sector with senior level experience or expertise in AI, cloud computing, identity management, data science, machine learning, government procurement, and constitutional law, with seven appointed by the Governor, three appointed by the President of the Senate, and three appointed by the Speaker of the House of Representatives.
- One member of the Senate, appointed by the President of the Senate or his or her designee.
- One member of the House of Representatives, appointed by the Speaker of the House of Representatives or his or her designee.
- The Secretary of DMS, or his or her designee, who serves as the ex officio, nonvoting executive director of the council.

The bill provides that members serve a term of 4 years, except that sitting members of the Senate and the House of Representatives serve terms that correspond with their terms of office.[88] A vacancy is filled for the remainder of the unexpired term in the same manner as the initial appointment. All members of the council are eligible for reappointment.

The bill provides that members of the council serve without compensation, but are entitled to receive reimbursement for per diem and travel expenses.[89]

Members of the council must maintain the confidential and exempt status of information received in the performance of their duties and responsibilities. A current or former member of the council must follow the Code of Ethics for Public Officers and Employees, and may not disclose or use information not available to the general public and gained by reason of his or her official position, except for information relating exclusively to governmental practices, for his or her personal gain or benefit or for the personal gain or benefit of any other person or business entity. Members of the council must sign an agreement acknowledging such requirements.

Artificial Intelligence Transparency

[88] For the purpose of providing staggered terms, the initial appointments of members made by the Governor are for terms of 2 years.
[89] As allowed under s. 112.061, F.S.

The bill provides that "artificial intelligence" means software that is developed with machine-learning, logic and knowledge-based, or statistical approaches and can, for a given set of human-defined objectives, generate or synthesize outputs such as content, predictions, recommendations, or decisions influencing certain environments.

The bill requires an entity or person who produces or offers for use or interaction AI content or technology for a commercial purpose, and makes such content or technology available to the Florida public, to create safety and transparency standards that:

- Alert consumers that such content or technology is generated by AI.
- Allow such content or technology to be recognizable as generated by AI to other AI.

If a natural person in Florida is able to communicate or interact with an entity or person for commercial purposes through an AI mechanism, the bill requires such entity or a person to provide a clear and conspicuous statement on its Internet homepage or landing page that such mechanism is generated by AI.

The bill prohibits any entity or person from knowingly using an image of an identifiable child in producing, generating, incorporating, or synthesizing child pornography through AI.

Any violation of the bill by a person or entity is an unfair and deceptive trade practice actionable under FDUTPA solely by DLA.[90] In addition to other FDUTPA remedies, DLA may collect a civil penalty of up to $50,000 per violation. DLA may also adopt rules to implement the bill.

The bill does not establish a private cause of action.

For purposes of bringing an action pursuant to the bill, any entity or person who produces or uses AI that is distributed to or viewable by the public in this state 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.

The bill requires any state agency[91] that uses AI to disclose if a person is interacting with AI when interacting with the agency and ensure that any confidential information accessible to an AI system remains confidential.

Criminal Acts

The bill amends the definition of child pornography to include any image or presentation produced, generated, incorporated, or synthesized through artificial intelligence that uses an image of an identifiable minor to depict or portray a minor engaged in sexual conduct, which makes using such technology for such purposes a crime

This definition will apply to criminal acts related to child pornography.

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

B. SECTION DIRECTORY:

Section 1: Creates s. 282.802, F.S.; creating the Government Technology Modernization Council.
Section 2: Creates s. 501.174, F.S.; providing requirements for entities using AI systems; providing penalties.
Section 3: Amends s. 775.0847, F.S.; amending a definition.

[90] 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.

[91] As defined in s. 282.318(2), which is any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government; the Justice Administrative Commission; and the Public Service Commission. The term does not include university boards of trustees or state universities.

Section 4: Amends s. 827.071, F.S.; amending a definition.
Section 5: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The bill may require additional expenditures for creating and running the council. 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:

The bill will require entities that use AI in certain circumstances to provide disclaimers.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Generally, the First Amendment does not protect child pornography. In *New York v. Ferber*,[92] the United States Supreme Court recognized that states have a compelling interest in safeguarding the physical and psychological well-being of minors and in preventing their sexual exploitation and abuse. Under these principles, states have criminalized possessing, distributing, and other acts involving child pornography. The constitutionality of criminalizing such acts when the images at issue are morphed pornography has generally been upheld,[93] but the constitutionality of criminalizing such acts when the images are generated or synthesized using AI from a database of identifiable children, but creating an image not of an identifiable child, is less clear.

B. RULE-MAKING AUTHORITY:

[92] 458 U.S. 747 (1982).
[93] *United States v. Bach*, 400 F.3d 622, 632 (8th Cir. 2005); *United States v. Ramos*, 685 F.3d 120, 134 (2d Cir. 2012), *cert. denied,* 133 S.Ct. 567 (2012); *see also Doe v. Boland,* 630 F.3d 491, 497 (6th Cir. 2011); s*ee also United States v. Hotaling,* 634 F.3d 725 (2d Cir. 2008), cert. denied, 132 S.Ct. 843 (2011).

The bill allows DLA to adopt rules related to enforcing provisions related to AI disclaimers, and use of AI in certain material.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to advanced technology; creating s. 282.802, F.S.; creating the Government Technology Modernization Council within the Department of Management Services for a specified purpose; providing for council membership, meetings, and duties; requiring the council to submit specified recommendations to the Legislature and specified reports to the Governor and the Legislature by specified dates; creating s. 501.174, F.S.; providing definitions; requiring certain entities and persons to create safety and transparency standards for content, images, and videos generated by artificial intelligence; requiring disclosures for certain communications, interactions, and content; prohibiting the use of artificial intelligence in the creation of child pornography under certain conditions; providing applicability; requiring certain state agencies to provide certain disclosures; 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 that the act does not establish private causes of action; providing that certain entities and persons are subject to the jurisdiction of state

courts; authorizing the department to adopt rules; amending s. 775.0847, F.S.; amending a definition; amending s. 827.071, F.S.; amending a definition; providing an effective date.

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

Section 1. Section 282.802, Florida Statutes, is created to read:

282.802 Government Technology Modernization Council.—

(1) The Government Technology Modernization Council, an advisory council as defined in s. 20.03(7), is created within the department. Except as otherwise provided in this section, the advisory council shall operate in a manner consistent with s. 20.052.

(2) The purpose of the council is to study and monitor the development and deployment of artificial intelligence systems and provide reports on such systems to the Governor and the Legislature.

(3) The council shall be comprised of the following members:

(a) The Lieutenant Governor.

(b) The state chief information officer.

(c) The State Surgeon General.

(d) The Secretary of Health Care Administration.

(e) A representative of the computer crime center of the Department of Law Enforcement, appointed by the executive director of the Department of Law Enforcement.

(f) The Chief Inspector General.

(g) Thirteen representatives of institutions of higher education located in this state or the private sector with senior level experience or expertise in artificial intelligence, cloud computing, identity management, data science, machine learning, government procurement, and constitutional law, with seven appointed by the Governor, three appointed by the President of the Senate, and three appointed by the Speaker of the House of Representatives.

(h) One member of the Senate, appointed by the President of the Senate or his or her designee.

(i) One member of the House of Representatives, appointed by the Speaker of the House of Representatives or his or her designee.

(4) Members shall serve for terms of 4 years, except that sitting members of the Senate and the House of Representatives shall serve terms that correspond with their terms of office. For the purpose of providing staggered terms, the initial appointments of members made by the Governor shall be for terms of 2 years. A vacancy shall be filled for the remainder of the unexpired term in the same manner as the initial appointment. All members of the council are eligible for reappointment.

(5) The Secretary of Management Services, or his or her designee, shall serve as the ex officio, nonvoting executive director of the council.

(6) Members of the council shall serve without compensation but are entitled to receive reimbursement for per diem and travel expenses pursuant to s. 112.061.

(7) Members of the council shall maintain the confidential and exempt status of information received in the performance of their duties and responsibilities as members of the council. In accordance with s. 112.313, a current or former member of the council may not disclose or use information not available to the general public and gained by reason of his or her official position, except for information relating exclusively to governmental practices, for his or her personal gain or benefit or for the personal gain or benefit of any other person or business entity. Members of the council shall sign an agreement acknowledging the provisions of this subsection.

(8) The council shall meet at least quarterly to:

(a) Assess and provide guidance on necessary legislative reforms and the creation of a state code of ethics for artificial intelligence systems in state government.

(b) Assess the effect of automated decision systems on constitutional and other legal rights, duties, and privileges of residents of this state.

(c) Study the potential benefits, liabilities, and risks

that this state, residents of this state, and businesses may incur as a result of implementing automated decision systems.

(d) Recommend legislative and administrative actions that the Legislature and state agencies as defined in s. 282.318(2) may take to promote the development of data modernization in this state.

(e) Assess where artificial intelligence is deployed today.

(f) Evaluate common standards for artificial intelligence safety and security measures.

(g) Assess how governmental entities and the private sector are using artificial intelligence with a focus on opportunity areas for deployments in systems across this state.

(h) Determine how artificial intelligence is being exploited by bad actors, including foreign countries of concern as defined in s. 287.138(1).

(9) By June 30, 2024, and each June 30 thereafter, the council shall submit to the President of the Senate and the Speaker of the House of Representatives any legislative recommendations considered necessary by the council to modernize government technology.

(10) By December 1, 2024, and each December 1 thereafter, the council shall submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a comprehensive report that includes data, trends, analysis,

findings, and recommendations for state and local action regarding ransomware incidents. At a minimum, the report must include:

(a) A summary of recommendations by relevant national entities on technology systems in state government, including, but not limited to, artificial intelligence, cloud computing, identity management, and financial technology.

(b) An assessment of the impact of using artificial intelligence systems on the liberty, finances, livelihood, and privacy interests of residents of this state.

(c) Recommended policies necessary to:

1. Protect the privacy interests of residents of this state from any decrease in employment caused by artificial intelligence systems.

2. Ensure that residents of this state are free from unfair discrimination caused or compounded by the employment of artificial intelligence systems.

3. Promote the development and deployment of artificial intelligence systems in this state.

(d) Any other information the council considers relevant.

Section 2. Section 501.174, Florida Statutes, is created to read:

501.174 Artificial intelligence transparency.—

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

(a) "Artificial intelligence" means software that is

developed with machine-learning, logic and knowledge-based, or statistical approaches and can, for a given set of human-defined objectives, generate or synthesize outputs such as content, predictions, recommendations, or decisions influencing certain environments.

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

(2) An entity or person who produces or offers for use or interaction artificial intelligence content or technology for a commercial purpose, and makes such content or technology available to the Florida public, must create safety and transparency standards that:

(a) Alert consumers that such content or technology is generated by artificial intelligence.

(b) Allow such content or technology to be recognizable as generated by artificial intelligence to other artificial intelligence.

(3) If a natural person in this state is able to communicate or interact with an entity or person for commercial purposes through an artificial intelligence mechanism, such entity or a person must provide a clear and conspicuous statement on the entity's or person's Internet homepage or landing page that such mechanism is generated by artificial intelligence.

(4) Any entity or person may not knowingly produce, generate, incorporate, or synthesize through artificial

intelligence child pornography as defined in s. 775.0847.

(5) Any state agency as defined in s. 282.318(2) that uses artificial intelligence must disclose if a person is interacting with artificial intelligence when interacting with the agency and ensure that any confidential information accessible to an artificial intelligence system remains confidential.

(6)(a) Any violation of subsection (2), subsection (3), or subsection (4) is an unfair and deceptive trade practice actionable under part II of chapter 501 solely by the department. If the department has reason to believe that a violation of this section has occurred, the department, as the enforcing authority, may bring an action for an unfair or deceptive act or practice. For the purpose of bringing an action pursuant to this section, ss. 501.211 and 501.212 do not apply. In addition to other remedies under part II of chapter 501, the department may collect a civil penalty of up to $50,000 per violation of this section.

(b) This section does not establish a private cause of action.

(7) For purposes of bringing an action pursuant to this section, any entity or person who produces or uses artificial intelligence that is distributed to or viewable by the public in this state 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.

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

Section 3. Paragraph (b) of subsection (1) of section 775.0847, Florida Statutes, is amended to read:

775.0847 Possession or promotion of certain images of child pornography; reclassification.—

(1) For purposes of this section:

(b) "Child pornography" means:

1. Any image depicting a minor engaged in sexual conduct; ~~or~~

2. Any image that has been created, altered, adapted, or modified by electronic, mechanical, or other means, to portray an identifiable minor engaged in sexual conduct; or

3. Any image or presentation produced, generated, incorporated, or synthesized through artificial intelligence as defined in s. 501.174 that uses an image of an identifiable minor to depict or portray a minor engaged in sexual conduct.

For purposes of sentencing under chapter 921 and determining incentive gain-time eligibility under chapter 944, a felony offense that is reclassified under this section is ranked one level above the ranking under s. 921.0022 or s. 921.0023 of the offense committed.

Section 4. Paragraph (b) of subsection (1) of section 827.071, Florida Statutes, is amended to read:

827.071 Sexual performance by a child; child pornography; penalties.—

(1) As used in this section, the following definitions shall apply:

(b) "Child pornography" means:

1. Any image depicting a minor engaged in sexual conduct; ~~or~~

2. Any image that has been created, altered, adapted, or modified by electronic, mechanical, or other means, to portray an identifiable minor engaged in sexual conduct; or

3. Any image or presentation produced, generated, incorporated, or synthesized through artificial intelligence as defined in s. 501.174 that uses an image of an identifiable minor to depict or portray a minor engaged in sexual conduct.

Section 5. This act shall take effect July 1, 2024.