

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

COMMERCE AND TOURISM
Senator Montford, Chair
Senator Gainer, Vice Chair

MEETING DATE: Monday, January 22, 2018
TIME: 3:30—5:30 p.m.
PLACE: *Toni Jennings Committee Room*, 110 Senate Office Building

MEMBERS: Senator Montford, Chair; Senator Gainer, Vice Chair; Senators Gibson, Hutson, Passidomo, Rodriguez, Stargel, and Young

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 1028 Thurston (Similar H 1285)	Corporations; Authorizing social purpose corporations and benefit corporations to omit certain information from annual benefit reports; requiring that annual benefit reports expressly state that such information was omitted, etc. CM 01/22/2018 Favorable JU RC	Favorable Yeas 6 Nays 0
2	SB 1122 Braynon (Linked S 1124)	Florida Business and Workforce Competitiveness Trust Fund/Department of Economic Opportunity; Creating the Florida Business and Workforce Competitiveness Trust Fund within the State Treasury, to be administered by the Department of Economic Opportunity; requiring trust fund moneys to be provided to local workforce development boards to award and administer certain grants; providing that trust fund moneys are composed of a specified assessment to be imposed on certain employers; providing for future review and termination or re-creation of the trust fund, etc. CM 01/22/2018 Favorable ATD AP	Favorable Yeas 6 Nays 0
3	SB 1124 Braynon (Linked S 1122)	Reemployment Assistance Program Law Contribution Rates; Providing an adjustment, beginning on a specified date, to the contribution rate of the reemployment assistance tax for specified employers, etc. CM 01/22/2018 Fav/CS ATD AP	Fav/CS Yeas 6 Nays 0
4	SB 1574 Taddeo (Similar CS/H 813)	Unarmed Security Licenses; Authorizing security officer training classes to be offered in-person or online through certain secure websites, etc. CM 01/22/2018 Temporarily Postponed RI RC	Temporarily Postponed

COMMITTEE MEETING EXPANDED AGENDA

Commerce and Tourism

Monday, January 22, 2018, 3:30—5:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	CS/SB 616 Transportation / Passidomo (Similar CS/H 595)	Motor Vehicle Dealers; Revising the definitions of the terms "motor vehicle dealer," "franchised motor vehicle dealer," "independent motor vehicle dealer," "wholesale motor vehicle dealer," and "motor vehicle broker"; prohibiting persons from engaging in business as, serving in the capacity of, or acting as a motor vehicle broker in this state without first obtaining a certain license; adding an exception to the prohibition on persons other than a licensed motor vehicle dealer from advertising for sale or lease any motor vehicle belonging to another party, etc. TR 12/05/2017 Fav/CS CM 01/22/2018 Fav/CS RC	Fav/CS Yeas 5 Nays 0
6	CS/SB 1020 Regulated Industries / Young (Similar H 667)	Alcohol Deliveries; Including an electronic order as a type of order construed as a sale made at a vendor's licensed place of business; authorizing a manufacturer, distributor, or vendor to make certain deliveries in vehicles that are under the licensee's control and direction pursuant to a contract with a third party, etc. RI 01/10/2018 Fav/CS CM 01/22/2018 Fav/CS RC	Fav/CS Yeas 6 Nays 0

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: SB 1028

INTRODUCER: Senator Thurston

SUBJECT: Corporations

DATE: January 19, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	Favorable
2.	_____	_____	JU	_____
3.	_____	_____	RC	_____

I. Summary:

SB 1028 allows state banks and trust companies to form as a benefit corporation or social purpose corporation pursuant to parts II and III of ch. 607, F.S. In addition, the bill permits benefit corporations and social purpose corporations to omit confidential information from their annual benefit reports. The benefit or social purpose corporation must expressly state that it has made such an omission in its annual benefit report.

II. Present Situation:

State-Chartered Banks or Trust Companies

The Office of Financial Regulation (OFR) regulates state-chartered depository and non-depository financial institutions and financial service companies. One of the OFR's primary goals is to provide for and promote the safety and soundness of financial institutions while preserving the integrity of Florida's markets and financial service industries.¹ The OFR has regulatory authority over banks and trust companies, pursuant to ch. 658, F.S., of the Financial Institutions Codes ("codes"). These banks and trust companies operate pursuant to part I of ch. 607, F.S., relating to for-profit corporations, to the extent that ch. 607, F.S., does not conflict with, or is expressly superseded by, the codes.

A corporation that seeks to organize as a state-chartered bank or trust company in Florida must submit an application for authority to organize to the OFR.² The application must include the financial, business, and reasonably required biographical information for each proposed director, executive officer, and, if applicable, each trust officer.³ The OFR is required to grant the corporation's request to organize if it meets certain criteria relating to local conditions,

¹ Section 655.001, F.S.

² Section 658.19, F.S.

³ *Id.*

capitalization, paid-in capital-in surplus, qualifications of the proposed officer and directors, the corporate name of the proposed state bank or trust company, and provision of suitable quarters at the location.⁴

After OFR grants a corporation's approval to organize, the corporation must submit its articles of incorporation and filing fee to the OFR to become chartered and begin its corporate existence as a banking corporation or trust company.⁵ The OFR must then provide the proposed directors with form articles of incorporation that reflect only those provisions that are required under s. 658.23, F.S. and part I of ch. 607, F.S., dealing with for-profit corporations.⁶

Currently, the Financial Institutions Codes and part I of ch. 607, F.S., govern state banks and trust companies, unless there is a direct conflict, or where the codes specifically supersede ch. 607, F.S.⁷

Social Purpose Corporations and Benefit Corporations, Generally

In 2014, the Florida Legislature adopted legislation that governs social purpose corporations and benefit corporations.⁸ These “hybrid corporations” allow their directors and officers to both optimize stockholder welfare (commonly viewed as profit maximization) and create general public benefit.⁹ Social purpose and benefit corporations retain profit-making goals, and therefore do not qualify as charities or not-for-profit corporations under Florida law; however, their directive to create public benefit distinguishes them from traditional corporations.¹⁰

The primary difference between a social purpose corporation (governed by part II of ch. 607, F.S.) and a benefit corporation (governed by part III of ch. 607, F.S.) is the public benefit purpose imposed upon each of the corporations.¹¹ A social purpose corporation must pursue or create one or more public benefits, which may be specific.¹² In contrast, a benefit corporation must pursue or create a “general public benefit,” which is a broad purpose intended to encompass many societal and environmental factors that are affected by the business and operations of the corporation.¹³ For both types of corporation, the directors and officers are required to consider the effects of any corporate action or inaction upon the benefit goals of the corporation. Both of these corporations can be the subject of a benefit enforcement proceeding to compel them to

⁴ Section 658.21, F.S.

⁵ Section 658.23(1), F.S.

⁶ See, e.g., Florida Office of Financial Regulation, *Model Articles of Incorporation Bank, Trust Company, or Association*, available at https://www.flofr.com/PDFs/model_articles_OFR.pdf (last visited Jan. 19, 2018).

⁷ Section 658.30(1), F.S.

⁸ Chapter 2014-209, ss. 7-33, Laws of Fla (creating ss. 607.501-607.613, F.S., “Social Purpose Corporations” and “Benefit Corporations” effective Jul. 1, 2014).

⁹ John Montgomery Business Law Today, *Mastering the Benefit Corporation*, (Jul. 2, 2016) available at https://www.americanbar.org/publications/blt/2016/07/02_montgomery.html (last visited Jan. 19, 2018).

¹⁰ Stuart Cohn, Stuart Ames, *Now It's Easier Being Green: Florida's New Benefit and Social Purpose Corporations* at 2 (Nov. 2014) 88-Nov. Fla. B.J. 38., available at <https://www.floridabar.org/news/tfb-journal/?durl=%2FDIVCOM%2FJN%2Fjnjournal01.nsf%2FArticles%2FC655F4F9D7D009B585257D7E004BCB18> (last visited Jan. 19, 2018).

¹¹ *Id.*

¹² Section 607.506, F.S.

¹³ Section 607.606, F.S.

pursue or create a general or specific public benefit.¹⁴ However, neither corporation, nor any of its directors and officers, may be found monetarily liable for a failure to create or pursue public benefit. For-profit corporations and their officers and directors are not subject to a requirement to pursue public benefit.

As of May 2017, 32 states permitted benefit corporations¹⁵ and five states have legislation that allows social purpose corporations.¹⁶ Kickstarter, Ben & Jerry's, Patagonia, and King Arthur Flour are examples of benefit corporations that all operate with a commitment to environmental and social factors, as well as to their shareholders' financial interests.¹⁷ Virginia Community Capital was the first federally chartered bank to become a benefit corporation in April 2016.¹⁸

Annual Benefit Report

Section 607.612, F.S., requires benefit corporations to prepare an annual benefit report (report). The report must contain information such as:¹⁹

- A description of the ways the benefit corporation pursued the general and specific public benefit goal;
- An explanation of the third-party standard against which the benefit corporation's performance is assessed, if applicable;
- The contact information of certain directors and officers; and
- If any benefit director resigned from, refused to stand for reelection to, or was removed from his or her position.

A social purpose corporation's annual benefit report is substantially similar to a benefit corporation's, but it need only describe how it pursued a *particular* rather than general public benefit.²⁰

These annual benefit reports are not required to be audited or certified by a third-party standards provider, such as B-Lab, unless a corporation's articles of incorporation state otherwise.²¹

Additionally, a social purpose or benefit corporation must deliver their annual benefit report to each of its shareholders, and post the report publicly.²² If a social purpose or benefit corporation fails to publicly furnish its annual benefit report, one of its shareholders may bring an action to compel its provision in circuit court. The court may award the suing shareholder costs and attorney's fees.

¹⁴ Sections 607.602, 607.511, 607.611 F.S.

¹⁵ Benefit Corporation Gateway, *State-by-State Guide*, <http://www.benefitcorporationgateway.org/h/entrepreneurs-main/state-by-state-guide/> (last visited Jan. 19, 2018).

¹⁶ Rob Esposito, Shawn Pelsinger, *Social Enterprise Law Tracker: Status Tool*, <http://socentlawtracker.org/#/spcs> (last visited Jan. 19, 2018).

¹⁷ B Lab, *FAQ's*, <http://benefitcorp.net/faq> (last visited Jan. 19, 2018).

¹⁸ Cision PRWeb, *For-Profit Bank Becomes First Benefit Corporation Bank in U.S.* (Apr. 4, 2016), <http://www.prweb.com/releases/2016/03/prweb13301237.htm> (last visited Jan. 19, 2018).

¹⁹ Section 607.612, F.S.

²⁰ Section 607.512(1)(a)1., F.S.

²¹ Sections 607.512(3), 607.612(4), F.S.

²² Sections 607.513 and 607.613, F.S.

III. Effect of Proposed Changes:

Section 3 amends s. 658.23, F.S., to allow state banks and trust companies regulated under ch. 658, F.S., to form as a social purpose or benefit corporation under parts II and II of ch. 607, F.S. Specifically, the banks and trust companies that seek to form as a social purpose or benefit corporation may amend the OFR's form articles of incorporation to conform the articles to the requirements of parts II or III of ch. 607, F.S.,

Currently, these banks and trust companies must file articles of incorporation as a for-profit corporation under part I of ch. 607, F.S.

Section 4 amends s. 658.30, F.S., to clarify that bank and trust companies formed pursuant to ch. 658, F.S., are subject to ch. 607, F.S., including parts II or III (Social Purpose Corporations and Benefit Corporations), to the extent that ch. 658, F.S., does not directly conflict or expressly supersede.

Section 5 makes conforming amendments to s. 658.36, F.S.

Sections 1 and 2 amend ss. 607.512 and 607.612, F.S., to allow social purpose corporations and benefit corporations to omit information required to be kept confidential under state or federal law from their annual benefit report. If the social purpose corporation or benefit corporation does omit such information, however, it must expressly state that it did so in its annual benefit report. This allows banks and trust companies that form as social purpose or benefit corporations to maintain the confidentiality of information that is required to be confidential under the Financial Institution Codes.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

It may be more difficult for a benefit or social purpose corporation's annual benefit report to be measured against a third-party standard if information is omitted from the report. This may frustrate the purpose of certain investors, who may choose to divest themselves of a company with a redacted annual benefit report.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

While the provisions in sections 1 and 2 of the bill are made with the intent to allow banks to keep information confidential as required by law, the amendments will have the effect of allowing all social purpose or benefit corporations to omit confidential information.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 607.512, 607.612, 658.23, 658.30, 658.36.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By Senator Thurston

33-01230-18

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1 A bill to be entitled
 2 An act relating to corporations; amending ss. 607.512
 3 and 607.612, F.S.; authorizing social purpose
 4 corporations and benefit corporations to omit certain
 5 information from annual benefit reports; requiring
 6 that annual benefit reports expressly state that such
 7 information was omitted; amending s. 658.23, F.S.;
 8 authorizing banking or trust corporation applicants to
 9 modify form articles to include certain provisions;
 10 amending s. 658.30, F.S.; providing that the
 11 provisions of part II of ch. 607, F.S., entitled
 12 "Social Purpose Corporations," and part III of ch.
 13 607, F.S., entitled "Benefit Corporations," extend to
 14 certain banks and trust companies under certain
 15 circumstances; amending s. 658.36, F.S.; providing
 16 applicability for parts II and III of ch. 607, F.S.;

17 providing an effective date.
 18
 19 Be It Enacted by the Legislature of the State of Florida:

20
 21 Section 1. Subsection (4) is added to section 607.512,
 22 Florida Statutes, to read:

23 607.512 Preparation of annual benefit report.—

24 (4) Notwithstanding this section, any information that must
 25 be included in the annual benefit report which is required by
 26 state or federal law to be kept confidential may be omitted from
 27 the annual benefit report. If any such information is omitted,
 28 the annual benefit report must expressly state that such
 29 information was omitted pursuant to this subsection.

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

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30 Section 2. Subsection (5) is added to section 607.612,
 31 Florida Statutes, to read:
 32 607.612 Preparation of annual benefit report.—
 33 (5) Notwithstanding this section, any information that must
 34 be included in the annual benefit report which is required by
 35 state or federal law to be kept confidential may be omitted from
 36 the annual benefit report. If any such information is omitted,
 37 the annual benefit report must expressly state that such
 38 information was omitted pursuant to this subsection.
 39 Section 3. Subsection (2) of section 658.23, Florida
 40 Statutes, is amended, and subsection (1) of that section is
 41 republished, to read:
 42 658.23 Submission of articles of incorporation; contents;
 43 form; approval; filing; commencement of corporate existence;
 44 bylaws.—
 45 (1) Within 3 months after approval by the office and the
 46 appropriate federal regulatory agency, the applicant shall
 47 submit its duly executed articles of incorporation to the
 48 office, together with the filing fee due the Department of State
 49 under s. 607.0122.
 50 (2) The articles of incorporation ~~must shall~~ contain:
 51 (a) The name of the proposed bank or trust company.
 52 (b) The general nature of the business to be transacted or
 53 a statement that the corporation may engage in any activity or
 54 business permitted by law. Such statement ~~must shall~~ authorize
 55 all such activities and business by the corporation.
 56 (c) The amount of capital stock authorized, showing the
 57 maximum number of shares of par value common stock and of
 58 preferred stock, and of every kind, class, or series of each,

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59 together with the distinguishing characteristics and the par
60 value of all shares.

61 (d) The amount of capital with which the corporation will
62 begin business, which may not be less than the amount required
63 by the office pursuant to s. 658.21.

64 (e) A provision that the corporation is to have perpetual
65 existence unless existence is terminated pursuant to the
66 financial institutions codes.

67 (f) The initial street address of the main office of the
68 corporation, which must ~~shall~~ be in this state.

69 (g) The number of directors, which must ~~shall~~ be five or
70 more, and the names and street addresses of the members of the
71 initial board of directors.

72 (h) A provision for preemptive rights, if applicable.

73 (i) A provision authorizing the board of directors to
74 appoint additional directors, pursuant to s. 658.33, if
75 applicable.

76
77 The office shall provide to the proposed directors form articles
78 of incorporation which must include only those provisions
79 required under this section or under ~~part I of~~ chapter 607. The
80 form articles may be modified by the applicant to include any of
81 the additional provisions required by part II or part III of
82 chapter 607 which are necessary for a corporation to be a social
83 purpose or benefit corporation. The form articles shall be
84 acknowledged by the proposed directors and returned to the
85 office for filing with the Department of State.

86 Section 4. Section 658.30, Florida Statutes, is amended to
87 read:

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88 658.30 Application of the Florida Business Corporation
89 Act.—

90 (1) When not in direct conflict with or superseded by
91 specific provisions of the financial institutions codes, the
92 provisions of the Florida Business Corporation Act, part I of
93 chapter 607 and, if applicable, part II or part III of chapter
94 607, extend to state banks and trust companies formed under the
95 financial institutions codes. This section shall be liberally
96 construed to accomplish the purposes stated herein.

97 (2) Without limiting the generality of subsection (1),
98 stockholders, directors, and committees of state banks and trust
99 companies may hold meetings in any manner authorized by part I
100 of chapter 607 and, if applicable, part II or part III of
101 chapter 607, and any action by stockholders, directors, or
102 committees required or authorized to be taken at a meeting may
103 be taken without a meeting in any manner authorized by part I of
104 chapter 607.

105 Section 5. Subsection (3) of section 658.36, Florida
106 Statutes, is amended to read:

107 658.36 Changes in capital.—

108 (3) If a bank or trust company's capital accounts have been
109 diminished by losses to less than the minimum required pursuant
110 to the financial institutions codes, the market value of its
111 shares of capital stock is less than the present par value, and
112 the bank or trust company cannot reasonably issue and sell new
113 shares of stock to restore its capital accounts at a share price
114 of par value or greater of the previously issued capital stock,
115 the office, notwithstanding any other provisions of part I of
116 chapter 607 and, if applicable, part II or part III of chapter

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117 607, or the financial institutions codes, may approve special
118 stock offering plans.

119 (a) Such plans may include, but are not limited to,
120 mechanisms for stock splits including reverse splits;
121 revaluations of par value of outstanding stock; changes in
122 voting rights, dividends, or other preferences; and creation of
123 new classes of stock.

124 (b) The plan must be approved by majority vote of the bank
125 or trust company's entire board of directors and by holders of
126 two-thirds of the outstanding shares of stock.

127 (c) The office shall disapprove a plan that provides unfair
128 or disproportionate benefits to existing shareholders,
129 directors, executive officers, or their related interests. The
130 office shall also disapprove any plan that is not likely to
131 restore the capital accounts to sufficient levels to achieve a
132 sustainable, safe, and sound financial institution.

133 (d) For any bank or trust company that the office
134 determines to be a failing financial institution pursuant to s.
135 655.4185, the office may approve special stock offering plans
136 without a vote of the shareholders.

137 Section 6. This act shall take effect July 1, 2018.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/22/2018

Meeting Date

1028

Bill Number (if applicable)

Topic Corporations

Amendment Barcode (if applicable)

Name Katie Crofoot

Job Title Asst. VP of Gov't Relations

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3230

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Speaking: For Against Information

Waive Speaking: In Support Against

(The Chair will read this information into the record.)

Representing Florida Bankers Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: SB 1122

INTRODUCER: Senator Braynon

SUBJECT: Florida Business and Workforce Competitiveness Trust Fund/Department of Economic Opportunity

DATE: January 19, 2018

REVISED: 1/22/18

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Little</u>	<u>McKay</u>	<u>CM</u>	Favorable
2.	<u></u>	<u></u>	<u>ATD</u>	<u></u>
3.	<u></u>	<u></u>	<u>AP</u>	<u></u>

I. Summary:

SB 1122 creates the Florida Business and Workforce Competitive Trust Fund for use as an additional revenue source to award incentive grants to employers who hire individuals receiving reemployment assistance benefits.

Moneys in the trust fund are used to award the incentive grants. The moneys are composed of a quarterly employment and training investment assessment created by the bill. Beginning July 1, 2018, employers in the state who are currently required to pay reemployment assistant taxes under s. 443.131, F.S., at a rate of less than 5.4 percent, must pay the additional assessment created by the bill. The assessment amount is equal to one-tenth of 1 percent of the wages paid by the employer. The collection and administration of the assessment must be allocated based on a plan approved by the United States Department of Labor.

CareerSource Florida, Inc., must allocate funds to each local workforce development board, for the purpose of awarding incentive grants to employers who hire unemployed individuals. The bill also requires CareerSource Florida, Inc., to establish guidelines governing the administration of the trust fund and criteria to assist local workforce development boards in evaluating applications for incentive grant funding.

The Revenue Estimating Conference has not yet reviewed the fiscal impact of the bill. The Department of Revenue expects to incur non-recurring costs of approximately \$358,000 to implement the bill.

II. Present Situation:

Unemployment Compensation Overview

The federal Unemployment Insurance Program provides unemployment benefits to eligible workers who are unemployed through no fault of their own and who meet the requirements of state law. The program is administered as a partnership of the federal government and the states.¹ The individual states collect unemployment compensation payroll taxes on a quarterly basis, which are used to pay benefits. Subject to the approval of the United States Department of Labor (USDOL), each state also sets tax rates, benefit levels, and trust fund balances based on the state's needs.²

The Internal Revenue Service collects an annual federal payroll tax under the Federal Unemployment Tax Act (FUTA),³ used to provide grants to the states to fund costs associated with program administration and job service programs.⁴ In addition to FUTA, Florida employers are required to pay a state tax on the first \$7,000 of each employee's annual income, which is deposited into Florida's Unemployment Compensation Trust Fund (UC Trust Fund), an account used to pay unemployment compensation benefits.

Florida's most recent data indicates an unemployment rate of 3.6 percent,⁵ which is lower than the national unemployment rate of 4.1 percent.⁶

Florida's Workforce Development System Overview

The Department of Economic Opportunity (DEO), CareerSource Florida, Inc. (CareerSource Florida), and 24 local workforce development boards (LWDBs) act as partners in administering Florida's comprehensive system for the delivery of workforce strategies, services, and programs.

The DEO serves as Florida's lead workforce agency⁷ and is responsible for the fiscal and administrative affairs of the workforce development system.⁸ The DEO is also responsible for financial and performance reports, which are provided to the USDOL and other federal organizations.⁹ CareerSource Florida is a not-for-profit corporation that assists the DEO with state-level policy, planning, performance evaluation, and oversight of the delivery of workforce

¹ There are 53 programs, including the 50 states, Puerto Rico, the Virgin Islands, and the District of Columbia.

² USDOL, Employment and Training Administration, *State Unemployment Insurance Benefits*, available at <http://workforcesecurity.doleta.gov/unemploy/uifactsheet.asp> (last visited Jan. 19, 2018).

³ 26 U.S.C. 3301-3311.

⁴ FUTA also pays one-half the cost of extended unemployment benefits (during periods of high unemployment) and provides for a fund from which states may borrow, if necessary, to pay benefits. See USDOL, Employment and Training Administration, *Unemployment Insurance Tax Topic*, available at <http://workforcesecurity.doleta.gov/unemploy/uitaxtopic.asp> (last visited Jan. 19, 2018).

⁵ DEO, *Unemployment Rate Seasonally Adjusted*, available at http://lmsresources.labormarketinfo.com/charts/unemployment_rate.asp (last visited Jan. 19, 2018).

⁶ See USDOL, *Labor Force Statistics from the Current Population Survey*, available at <https://www.bls.gov/cps/> (last visited Jan. 19, 2018).

⁷ Primarily through its Division of Workforce Services. See s. 20.60, F.S.

⁸ Section 445.009(3)(c), F.S.

⁹ See s. 20.60, F.S.

services.¹⁰ CareerSource Florida is responsible for developing and implementing a 5-year state plan for the delivery of workforce services and is required to provide an annual report containing information regarding its operations, accomplishments, and audits.¹¹ The DEO and CareerSource Florida deliver Florida's workforce development services through the LWDBs and nearly 100 one-stop career centers.¹² One-stop career service centers provide Floridians local access to available workforce services, including job placement, career counseling, and skills training.¹³

Florida's Reemployment Assistance Program

Florida's unemployment insurance program was created by the Legislature in 1937,¹⁴ and was rebranded as the "Reemployment Assistance Program" in 2012.¹⁵ The DEO is responsible for administering the program.¹⁶ In addition to determining claimant eligibility, the DEO also determines the calculation and payment of reemployment assistance (RA) benefits to eligible claimants. The Department of Revenue (DOR) provides tax collection services on behalf of the DEO and deposits the taxes into the state's Unemployment Compensation Trust Fund (UC Trust Fund).¹⁷ The UC Trust Fund is used solely for the purpose of paying benefits to eligible claimants.¹⁸

Reemployment Assistance Tax Liability

Florida employers are required to pay state taxes into Florida's RA program as a cost of doing business. Employers must file quarterly reports and pay taxes within one month following after the close of each quarter. New businesses are required to report initial employment information in the month following the calendar quarter in which employment begins. The DOR reviews the reports and makes a determination of whether the business is liable to pay RA taxes.¹⁹

Generally, a business is liable to pay state reemployment tax if in the current or preceding calendar year, the employer:

- Paid more than \$1,500 in quarterly wages in a calendar year;
- Had at least one employee for any portion of a day during any 20 weeks in a calendar year; or
- Is liable under the FUTA as a result of employment in another state.²⁰

¹⁰ See s. 445.004, F.S.

¹¹ The report must be submitted to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Senate Minority Leader, and the House Minority Leader by December 1 each year. See s. 445.004, F.S.

¹² Florida Department of Economic Opportunity, *CareerSource Florida Center Directory*, <http://www.floridajobs.org/onestop/onestopdir/> (last visited Jan. 19, 2018).

¹³ See s. 445.009, F.S.

¹⁴ Chapter 18402, Laws of Fla.

¹⁵ Chapter 2012-30, Laws of Fla.

¹⁶ Section 20.60(5)(c), F.S. and Section 443.171, F.S.

¹⁷ Section 443.1316, F.S.

¹⁸ Sections 443.131 and 443.191, F.S.

¹⁹ DOR, *Employer Guide to Reemployment Tax*, available at http://floridarevenue.com/Forms_library/current/rt800002.pdf (last visited Jan. 19, 2018).

²⁰ Section 443.1215, F.S.

Florida law also specifies separate liability requirements for agricultural and domestic employers, nonprofit organizations, governmental agencies, and Indian tribes.²¹ Businesses that are otherwise not subject to RA taxation may opt to voluntarily pay into the UC Trust Fund for coverage for their employees.²²

Payment of Reemployment Assistance Taxes

Employers required to pay RA taxes are assigned a 7-digit account number, which must be identified on all transactions with the DOR. Any employer is able to file and pay RA taxes electronically. However, employers that employ 10 or more employees in any quarter during the year, and agents that prepare quarterly reports for 100 or more employers in any quarter, are required to file their quarterly reports and pay taxes electronically.²³

Reemployment Assistance Tax Rates

An employer's contributions are equal to a percentage of its wages paid for employment.²⁴ The standard rate of contributions payable is 5.4 percent,²⁵ which is also the maximum allowable tax rate under current law.²⁶ New employers are liable to pay an initial contribution of 2.7 percent, which remains in effect until the employer has made contributions for at least eight consecutive quarters.²⁷

An employer with record of at least eight quarters of contributions may be eligible to receive a variable tax rate. Variable tax rates are adjusted annually and are based on the employer's benefit experience, the balance of the UC Trust Fund, and other adjustment factors. The variable rates range from 5.4 percent to the minimum allowable tax rate, which varies annually but can never be less than 0.1 percent.²⁸

An employer's benefit experience rating is based on a comparison of the previous 12 consecutive quarters of the employer's employment records in relation to the records of all other employers.²⁹ The benefit ratio divides the benefits charged during the previous three years by the taxable wages during the same timeframe. The purpose of using the experience rating to determine RA tax rates is to stabilize the UC Trust Fund at a percentage of the taxable payrolls reported by all employers and to ensure employers are required to pay a fair share. When an eligible claimant collects RA benefits, an employer is "charged" and the employer will likely see an increased tax rate. Additionally, any employer who has been billed for an outstanding tax debt for one year or longer is assigned a penalty tax rate of 5.4 percent.

²¹ See generally ch. 443, F.S.

²² If an employer voluntarily provides coverage, the employer must report wages and pay RA taxes for a minimum of one calendar year. Section 443.121(3), F.S.

²³ DOR, *Employer Guide to Reemployment Tax*, available at http://floridarevenue.com/Forms_library/current/rt800002.pdf (last visited Jan. 19, 2018).

²⁴ Employers are required to pay taxes on the first \$7,000 of each employee's wages. Section 443.1217(2), F.S.

²⁵ Section 443.131(2)(c), F.S.

²⁶ See s. 443.131(2)(e), F.S.

²⁷ Section 443.131(2)(a), F.S.

²⁸ The final adjustment factor spreads costs not included in the variable adjustment factor to all employers whose rates are not at the initial or maximum rate. The final adjustment factor determines the minimum tax rate for the year.

²⁹ Employers that paid the initial tax rate for at least eight consecutive quarters may also be assigned a benefit ratio, which requires a separate calculation to be computed by the DOR.

Penalties for Noncompliance

Employers who fail to file timely on or before the due date are charged interest on the full amount of tax due. Employers who fail to file quarterly reports timely are charged a penalty of \$25 for each 30 days. Current law also imposes a penalty of \$50 per report and \$1 for each employee against employers who are required to file electronically and fail to do so. Additionally, the penalty for failing to submit payments by electronic means is \$50 per remittance submission.³⁰

Failure to submit a report after being given a reasonable time to do so will result in an assessment of the tax due by the DOR and will be reflected on the tax rate assigned to the employer. Unpaid tax, interest, penalty, or fees can also result in a lien against the employer's real and personal property.³¹

The DOR advises that employers can protect their reduced variable rate by timely reporting new hires, responding to requests for verification of weekly earnings, and providing complete and accurate quarterly reports.³²

Section 443.071, F.S., makes it illegal for any person or employing unit to make a false statement or representation for the purposes of preventing or reducing the cost of RA taxes. Each false statement or representation or failure to disclose a material fact constitutes a separate offence, and is considered a felony of the third degree. Individuals and employing units that fail to furnish required reports are also subject to a second-degree misdemeanor charge.

Unemployment Compensation Trust Fund

Economic conditions resulting in abnormally high unemployment accompanied by high benefit charges can cause a severe drain on the UC Trust Fund. This effect triggers the positive fund balance adjustment factor, which consequently increases tax rates for all employers. Conversely, when unemployment and benefit charges are low, the negative fund balance adjustment factor triggers, and tax rates for employers are reduced accordingly.³³

Under current law, a negative adjustment factor is required if the balance of the UC Trust Fund is greater than 5 percent of the taxable payrolls. A negative adjustment factor remains in effect until the balance of the UC Trust Fund is less than 5 percent, but more than 4 percent, of the total taxable payroll for the previous year.³⁴ A positive adjustment factor is required if the balance of the UC Trust Fund is less than 5 percent of the taxable payrolls. A positive adjustment factor

³⁰ Section 443.163, F.S.

³¹ DOR, *Employer Guide to Reemployment Tax*, available at http://floridarevenue.com/Forms_library/current/rt800002.pdf (last visited Jan. 19, 2018).

³² *Id.*

³³ During the years of 2010-2014, the Legislature made efforts to temporarily increased the tax wage base from \$7,000 to \$8,500, increased the trigger for the positive adjustment factor from 3.7 percent to 4 percent, and reduced the trigger for the negative adjustment factor from 4.7 percent to 5 percent. The Legislature also reduced the tax wage base and the adjustment factor triggers as the economy stabilized. *See* Ch. 2009-99, Laws of Fla., Ch. 2010-1, Laws of Fla., Ch. 2011-235, Laws of Fla., and Ch. 2012-30, Laws of Fla.

³⁴ Section 443.131(3)(e), F.S.

remains in effect until the trust fund balance equals or exceeds 4 percent of the total taxable payroll for the previous year.³⁵

According to a report published by the USDOL, Florida's UC Trust Fund held a balance of over \$3.6 billion at the close of the third quarter in 2017.³⁶ In determining the 2018 tax rate, the DOR determined the balance of the UC Trust Fund was above 5% of the taxable payroll from the previous year. Pursuant to s. 443.1316, F.S., a negative adjustment factor was calculated. The maximum tax rate remains at 5.4 percent and the minimum amount remains at the statutory limit of .01 percent.³⁷

III. Effect of Proposed Changes:

The bill creates the Florida Business and Workforce Competitiveness Trust Fund (FBWC Trust Fund) within the State Treasury, to be administered by the DEO.

The bill provides that the FBWC Trust Fund is established as an additional revenue source to support the growth of business in the state and provide workforce training needed to effectively address changing skill requirements as a result of new technology, retooling, new product lines, and new organizational structuring.

Beginning July 1, 2018, the bill imposes a quarterly employment and training investment assessment on employers who are currently paying contributions under s. 443.131, F.S., at a rate of less than 5.4 percent. The assessment amount is equal to one-tenth of 1 percent of the wages paid by the employer and the assessments must be used to fund the FBWC Trust Fund, which will then be provided to local workforce development boards for the purpose of awarding incentive grants to employers who hire unemployed individuals. The assessment is due at the same time, collected in the same manner, and is subject to the same penalties and interest as other contributions under s. 443.131, F.S. The assessment may not be collected in any year the balance of the UC Trust Fund requires a positive adjustment factor.

The bill directs each local workforce development board to determine award recipients and administer the incentive grants. The bill also directs CareerSource Florida to:

- Establish guidelines governing the administration of the FBWC Trust Fund;
- Establish criteria to be used by local workforce development boards in evaluating applications for funding; and
- Allocate funds to each local workforce development board.

The bill specifies that administrative costs associated with the collection of the assessment must be paid out of the revenue generated from the assessment and that the collection and administration of the assessment must be based on a plan approved by the USDOL.

³⁵ See s. 443.131(3)(e), F.S.

³⁶ USDOL, Unemployment Insurance Data Summary, 3rd Quarter 2017, available at https://workforcesecurity.doleta.gov/unemploy/content/data_stats/datasum17/DataSum_2017_3.pdf (last visited Jan. 19, 2018).

³⁷ Email from the DOR on Jan. 18, 2018 (on file with the Commerce and Tourism Committee).

The FBWC Trust Fund will terminate 4 years after its creation pursuant to s. 19(f)(2), Art. III of the State Constitution, unless terminated sooner. Before its scheduled termination, the trust fund must be reviewed as provided subsections (1) and (2) of s. 215.3206, F.S.

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Section 18, Article VII of the Florida Constitution, excuses counties and municipalities from complying with laws requiring them to spend funds or to take an action unless certain conditions are met.

To the extent the bill requires cities and counties to expend funds to pay the employment and training investment assessment, the provisions of Section 18(a), Article VII of the State Constitution may apply. If those provisions do apply, in order for the law to be binding upon the cities and counties, the Legislature must find that the law fulfills an important state interest and one of the following relevant exceptions:

- Appropriate funds estimated at the time of enactment to be sufficient to fund such expenditures;
- Authorize a county or municipality to enact a funding source not available for such local government on February 1, 1989, that can be used to generate the amount of funds necessary to fund the expenditures;
- The expenditure is required to comply with a law that applies to all persons “similarly situated,” including state and local governments;³⁸ or
- The law is either required to comply with a federal requirement or required for eligibility for a federal entitlement.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

Article III, section 19(f) of the Florida Constitution prohibits the Legislature from creating or recreating a trust fund without a three-fifths vote of the membership of each house of the legislature in a separate bill for that purpose only. In addition to creating the FWBC Trust Fund, the bill also establishes the employment and training investment assessment and directs CareerSource Florida to allocate the funds and implement an application process for the incentive grants.

³⁸ “Similarly situated” refers to those laws affecting other entities, either private or governmental, in addition to counties and municipalities.

D. Other Constitutional Issues:

The government of the State of Florida is organized according to the doctrine of the separation-of-powers, which is specifically enshrined in Article II, s. 3 of the State Constitution:

The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.

Two fundamental prohibitions are contained in the separation of powers doctrine in Florida. The first is that no branch may encroach upon the powers of the other; the second is that no branch may delegate to another branch its constitutionally assigned power.³⁹ Under the nondelegation doctrine, however, the legislature “may not delegate the power to enact a law or the right to exercise unrestricted discretion in applying the law.”⁴⁰ Further, the nondelegation doctrine precludes the legislature from delegating its powers “absent ascertainable minimal standards and guidelines.”⁴¹

This bill directs CareerSource Florida to allocate funds to local workforce development boards, absent any standards, guidelines, or funding restrictions beyond providing “workforce training needed to effectively address changing skill requirements.”

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

The Revenue Estimating Conference has not yet determined the fiscal impact of the bill. However, the bill imposes an assessment equal to one-tenth of 1 percent of the wages paid by an employer if the employer currently contributes less than the maximum allowable rate of RA taxes, which will likely increase the payroll tax burden incurred per employee.

B. Private Sector Impact:

Employers who are currently taxed for RA taxes at a rate of less than 5.4 percent must pay the additional assessment fee created by the bill. However, the rate increase may be offset by a rate reduction if CS/SB 1124 is enacted.

³⁹ *Chiles v. Children A, B, C, D, E & F*, 589 So.2d 260, 266 (Fla.1991)

⁴⁰ *Sloban v. Florida Board of Pharmacy*, 982 So.2d 26, 29 (Fla. 1st DCA 2008) (citing *Sims v. State*, 754 So.2d 657, 668 (2000)).

⁴¹ *Sloban v. Florida Board of Pharmacy*, 982 So.2d 26, 30 (Fla. 1st DCA 2008) (citing *Dep't of Bus. Reg., Div. of Alcoholic Beverages; Tobacco v. Jones*, 474 So.2d 359, 361 (Fla. 1st DCA 1985)).

C. Government Sector Impact:

The bill does not specify whether the assessment applies to public employers⁴² currently paying RA taxes.

The DOR estimates that the cost of implementing the bill will be approximately \$358,000 in nonrecurring funds. The estimate reflects the costs associated with modifying the existing tax collection system and notifying employers of the assessment.⁴³

The DEO and the Revenue Estimating Conference have not yet determined the fiscal impact of the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Pursuant to the FUTA, the USDOL oversees Florida's collection of unemployment taxes and must approve the state's tax fee structure. The Secretary of the USDOL is responsible for determining if a state's unemployment insurance law meets the requirements of federal law. Under the FUTA, the secretary annually certifies the state's compliance with federal requirements and this certification ensures that employers in the state are eligible for the full credit against the federal unemployment insurance tax. If the USDOL were to find provisions of the bill to be out of compliance, the USDOL might not certify the state's reemployment assistance program and could potentially withhold all administrative funding or cause the employer federal tax rates to increase because of loss of the entire FUTA tax credit. It is unclear whether the USDOL would approve the provisions in the bill that impose an additional assessment on employer payroll taxes and whether the USDOL would be able to do so by the effective date of the bill.

Lines 38 to 39 provide the incentive grants must be awarded "to employers to hire unemployment compensation claimants." Under state law, unemployed individuals receive "reemployment assistance benefits" after the DEO makes a determination as to the eligibility of the claimants. The language would be more accurate if the bill clarified that the incentive grants are awarded "to employers for the purpose of hiring individuals currently receiving reemployment assistance benefits."

Line 68 refers to administrative costs associated with the collection of "the trust fund" rather than "the assessment."

The enactment of CS/SB 1124 is contingent on the enactment of this bill, or similar legislation.

⁴² Public employers include state agencies, political subdivisions of the state, and their instrumentalities. Section 443.036, F.S.

⁴³ DOR, 2018 Agency Legislative Bill Analysis, *SB 1122* (Dec. 15, 2017) (on file with the Commerce and Tourism Committee).

VIII. Statutes Affected:

This bill creates section 445.015 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By Senator Braynon

35-00265-18

20181122__

A bill to be entitled

An act relating to trust funds; creating s. 445.015, F.S.; creating the Florida Business and Workforce Competitiveness Trust Fund within the State Treasury, to be administered by the Department of Economic Opportunity; providing the purpose of the trust fund; requiring trust fund moneys to be provided to local workforce development boards to award and administer certain grants; specifying duties of CareerSource Florida, Inc., with respect to the trust fund; providing that trust fund moneys are composed of a specified assessment to be imposed on certain employers; limiting eligibility of grants to certain employers; providing requirements and limitations for the assessment and administrative costs; providing for future review and termination or re-creation of the trust fund; providing a directive to the Division of Law Revision and Information; providing an effective date.

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

Section 1. Section 445.015, Florida Statutes, is created to read:

445.015 Florida Business and Workforce Competitiveness Trust Fund.—

(1) The Florida Business and Workforce Competitiveness Trust Fund is created within the State Treasury and is to be administered by the Department of Economic Opportunity.

Page 1 of 3

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

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(2) The trust fund is established for use as an additional revenue source to support the growth of businesses in this state and to provide workforce training needed to effectively address changing skill requirements as a result of new technology, retooling, new product lines, and new organizational structuring.

(3) Funds credited to the trust fund must be provided to local workforce development boards, appointed under s. 445.007, to award incentive grants to employers to hire unemployment compensation claimants. Each local workforce development board shall determine award recipients and administer grants within the funding available to it.

(4) CareerSource Florida, Inc., shall:

(a) Establish guidelines governing the administration of the trust fund;

(b) Establish criteria to be used by local workforce development boards in evaluating applications for funding; and

(c) Allocate to each local workforce development board its share of funds available under the trust fund.

(5) Moneys in the trust fund are composed of a quarterly employment and training investment assessment imposed beginning July 1, 2018, on each employer paying contributions under s. 443.131 at a rate below the maximum contribution rate of 5.4 percent as provided in s. 443.131(3)(e)2.a.(V). The assessment must be a separate assessment of one-tenth of 1 percent of wages, as described under s. 443.1217, paid by the employer.

(a) An employer is eligible for a grant award only if the employer is subject to paying contributions under s. 443.131 and is subject to the assessment.

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59 (b) The assessment is due at the same time, must be
60 collected in the same manner, and is subject to the same
61 penalties and interest as other contributions assessed under s.
62 443.131.

63 (c) The assessment may not be imposed for any year in which
64 the balance in the Unemployment Compensation Trust Fund requires
65 the computation of a positive adjustment factor as provided in
66 s. 443.131(3)(e)2.a.(III).

67 (d) Administrative costs associated with the collection of
68 the trust fund must be paid out of revenue generated from the
69 assessment. The cost of collection and administration of the
70 assessment under this subsection must be allocated based on a
71 plan approved by the United States Department of Labor.

72 (6) In accordance with s. 19(f)(2), Art. III of the State
73 Constitution, the Florida Business and Workforce Competitiveness
74 Trust Fund shall, unless terminated sooner, be terminated 4
75 years after the effective date of this act. Before its scheduled
76 termination, the trust fund shall be reviewed as provided in s.
77 215.3206(1) and (2).

78 Section 2. The Division of Law Revision and Information is
79 directed to replace the phrase "4 years after the effective date
80 of this act" where it occurs in this act with the date the trust
81 fund will terminate.

82 Section 3. This act shall take effect upon becoming a law.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/22/18

Meeting Date

1122/1124

Bill Number (if applicable)

Topic BUS & WORKFORCE COMPETITIVE FUND

Amendment Barcode (if applicable)

Name RICK BEASLEY

Job Title EXECUTIVE DIRECTOR - SOUTH FLORIDA WORKFORCE INVESTMENT BOARD

Address 7300 CORPORATE CENTER DR #500 Phone 305-929-1501

Street

MIAMI FL 33027

City

State

Zip

Email RICK.BEASLEY@CAREERSOURCE SFLCOM

Speaking: For [checked] Against [] Information []

Waive Speaking: In Support [] Against [] (The Chair will read this information into the record.)

Representing

Appearing at request of Chair: Yes [] No [checked]

Lobbyist registered with Legislature: Yes [] No [checked]

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: CS/SB 1124

INTRODUCER: Commerce and Tourism Committee and Senator Braynon

SUBJECT: Reemployment Assistance Program Law Contribution Rates

DATE: January 22, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Little	McKay	CM	Fav/CS
2.			ATD	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1124 directs the Department of Revenue to reduce the tax rate of each employer who currently pays reemployment assistance taxes at a rate below 5.4 percent if SB 1122 or similar legislation is enacted. The rate must be reduced by .01 percent each year, beginning on January 1, 2019, so long as the balance of the state's Unemployment Compensation Trust Fund does not require a positive adjustment factor.

The bill also provides that an employer whose tax rate falls below 1 percent, based on the .01 percent adjustment, will be allowed to pay less than the minimum tax rate of 0.1 percent.

The Revenue Estimating Conference has not yet reviewed the fiscal impact of the bill. The Department of Revenue expects to incur non-recurring costs of approximately \$9,300 to implement the bill.

II. Present Situation:

Unemployment Compensation Overview

The federal Unemployment Insurance Program provides unemployment benefits to eligible workers who are unemployed through no fault of their own and who meet the requirements of

state law. The program is administered as a partnership of the federal government and the states.¹ The individual states collect unemployment compensation payroll taxes on a quarterly basis, which are used to pay benefits. Subject to the approval of the United States Department of Labor (USDOL), each state also sets tax rates, benefit levels, and trust fund balances based on the state's needs.²

The Internal Revenue Service collects an annual federal payroll tax under the Federal Unemployment Tax Act (FUTA),³ used to provide grants to the states to fund costs associated with program administration and job service programs.⁴ In addition to FUTA, Florida employers are required to pay a state tax on the first \$7,000 of each employee's annual income, which is deposited into Florida's Unemployment Compensation Trust Fund (UC Trust Fund), an account used to pay unemployment compensation benefits.

Florida's most recent data indicates an unemployment rate of 3.6 percent,⁵ which is lower than the national unemployment rate of 4.1 percent.⁶

Florida's Workforce Development System Overview

The Department of Economic Opportunity (DEO), CareerSource Florida, Inc. (CareerSource Florida), and 24 local workforce development boards (LWDBs) act as partners in administering Florida's comprehensive system for the delivery of workforce strategies, services, and programs.

The DEO serves as Florida's lead workforce agency⁷ and is responsible for the fiscal and administrative affairs of the workforce development system.⁸ The DEO is also responsible for financial and performance reports, which are provided to the USDOL and other federal organizations.⁹ CareerSource Florida is a not-for-profit corporation that assists the DEO with state-level policy, planning, performance evaluation, and oversight of the delivery of workforce services.¹⁰ CareerSource Florida is responsible for developing and implementing a 5-year state plan for the delivery of workforce services and is required to provide an annual report containing information regarding its operations, accomplishments, and audits.¹¹ The DEO and CareerSource Florida deliver Florida's workforce development services through the LWDBs and nearly 100

¹ There are 53 programs, including the 50 states, Puerto Rico, the Virgin Islands, and the District of Columbia.

² USDOL, Employment and Training Administration, *State Unemployment Insurance Benefits*, available at <http://workforcesecurity.doleta.gov/unemploy/uifactsheet.asp> (last visited Jan. 19, 2018).

³ 26 U.S.C. 3301-3311.

⁴ FUTA also pays one-half the cost of extended unemployment benefits (during periods of high unemployment) and provides for a fund from which states may borrow, if necessary, to pay benefits. See USDOL, Employment and Training Administration, *Unemployment Insurance Tax Topic*, available at <http://workforcesecurity.doleta.gov/unemploy/uitaxtopic.asp> (last visited Jan. 19, 2018).

⁵ DEO, *Unemployment Rate Seasonally Adjusted*, available at http://lmsresources.labormarketinfo.com/charts/unemployment_rate.asp (last visited Jan. 19, 2018).

⁶ See USDOL, *Labor Force Statistics from the Current Population Survey*, available at <https://www.bls.gov/cps/> (last visited Jan. 19, 2018).

⁷ Primarily through its Division of Workforce Services. See s. 20.60, F.S.

⁸ Section 445.009(3)(c), F.S.

⁹ See s. 20.60, F.S.

¹⁰ See s. 445.004, F.S.

¹¹ The report must be submitted to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Senate Minority Leader, and the House Minority Leader by December 1 each year. See s. 445.004, F.S.

one-stop career centers.¹² One-stop career service centers provide Floridians local access to available workforce services, including job placement, career counseling, and skills training.¹³

Florida's Reemployment Assistance Program

Florida's unemployment insurance program was created by the Legislature in 1937,¹⁴ and was rebranded as the "Reemployment Assistance Program" in 2012.¹⁵ The DEO is responsible for administering the program.¹⁶ In addition to determining claimant eligibility, the DEO also determines the calculation and payment of reemployment assistance (RA) benefits to eligible claimants. The Department of Revenue (DOR) provides tax collection services on behalf of the DEO and deposits the taxes into the state's Unemployment Compensation Trust Fund (UC Trust Fund).¹⁷ The UC Trust Fund is used solely for the purpose of paying benefits to eligible claimants.¹⁸

Reemployment Assistance Tax Liability

Florida employers are required to pay state taxes into Florida's RA program as a cost of doing business. Employers must file quarterly reports and pay taxes within one month following after the close of each quarter. New businesses are required to report initial employment information in the month following the calendar quarter in which employment begins. The DOR reviews the reports and makes a determination of whether the business is liable to pay RA taxes.¹⁹

Generally, a business is liable to pay state reemployment tax if in the current or preceding calendar year, the employer:

- Paid more than \$1,500 in quarterly wages in a calendar year;
- Had at least one employee for any portion of a day during any 20 weeks in a calendar year; or
- Is liable under the FUTA as a result of employment in another state.²⁰

Florida law also specifies separate liability requirements for agricultural and domestic employers, nonprofit organizations, governmental agencies, and Indian tribes.²¹ Businesses that are otherwise not subject to RA taxation may opt to voluntarily pay into the UC Trust Fund for coverage for their employees.²²

¹² Florida Department of Economic Opportunity, *CareerSource Florida Center Directory*, <http://www.floridajobs.org/onestop/onestopdir/> (last visited Jan. 19, 2018).

¹³ See s. 445.009, F.S.

¹⁴ Chapter 18402, Laws of Fla.

¹⁵ Chapter 2012-30, Laws of Fla.

¹⁶ Section 20.60(5)(c), F.S. and Section 443.171, F.S.

¹⁷ Section 443.1316, F.S.

¹⁸ Sections 443.131 and 443.191, F.S.

¹⁹ DOR, *Employer Guide to Reemployment Tax*, available at http://floridarevenue.com/Forms_library/current/rt800002.pdf (last visited Jan. 19, 2018).

²⁰ Section 443.1215, F.S.

²¹ See generally ch. 443, F.S.

²² If an employer voluntarily provides coverage, the employer must report wages and pay RA taxes for a minimum of one calendar year. Section 443.121(3), F.S.

Payment of Reemployment Assistance Taxes

Employers required to pay RA taxes are assigned a 7-digit account number, which must be identified on all transactions with the DOR. Any employer is able to file and pay RA taxes electronically. However, employers that employ 10 or more employees in any quarter during the year, and agents that prepare quarterly reports for 100 or more employers in any quarter, are required to file their quarterly reports and pay taxes electronically.²³

Reemployment Assistance Tax Rates

An employer's contributions are equal to a percentage of its wages paid for employment.²⁴ The standard rate of contributions payable is 5.4 percent,²⁵ which is also the maximum allowable tax rate under current law.²⁶ New employers are liable to pay an initial contribution of 2.7 percent, which remains in effect until the employer has made contributions for at least eight consecutive quarters.²⁷

An employer with record of at least eight quarters of contributions may be eligible to receive a variable tax rate. Variable tax rates are adjusted annually and are based on the employer's benefit experience, the balance of the UC Trust Fund, and other adjustment factors. The variable rates range from 5.4 percent to the minimum allowable tax rate, which varies annually but can never be less than 0.1 percent.²⁸

An employer's benefit experience rating is based on a comparison of the previous 12 consecutive quarters of the employer's employment records in relation to the records of all other employers.²⁹ The benefit ratio divides the benefits charged during the previous three years by the taxable wages during the same timeframe. The purpose of using the experience rating to determine RA tax rates is to stabilize the UC Trust Fund at a percentage of the taxable payrolls reported by all employers and to ensure employers are required to pay a fair share. When an eligible claimant collects RA benefits, an employer is "charged" and the employer will likely see an increased tax rate. Additionally, any employer who has been billed for an outstanding tax debt for one year or longer is assigned a penalty tax rate of 5.4 percent.

Penalties for Noncompliance

Employers who fail to file timely on or before the due date are charged interest on the full amount of tax due. Employers who fail to file quarterly reports timely are charged a penalty of \$25 for each 30 days. Current law also imposes a penalty of \$50 per report and \$1 for each employee against employers who are required to file electronically and fail to do so.

²³ DOR, *Employer Guide to Reemployment Tax*, available at http://floridarevenue.com/Forms_library/current/rt800002.pdf (last visited Jan. 19, 2018).

²⁴ Employers are required to pay taxes on the first \$7,000 of each employee's wages. Section 443.1217(2), F.S.

²⁵ Section 443.131(2)(c), F.S.

²⁶ See s. 443.131(2)(e), F.S.

²⁷ Section 443.131(2)(a), F.S.

²⁸ The final adjustment factor spreads costs not included in the variable adjustment factor to all employers whose rates are not at the initial or maximum rate. The final adjustment factor determines the minimum tax rate for the year.

²⁹ Employers that paid the initial tax rate for at least eight consecutive quarters may also be assigned a benefit ratio, which requires a separate calculation to be computed by the DOR.

Additionally, the penalty for failing to submit payments by electronic means is \$50 per remittance submission.³⁰

Failure to submit a report after being given a reasonable time to do so will result in an assessment of the tax due by the DOR and will be reflected on the tax rate assigned to the employer. Unpaid tax, interest, penalty, or fees can also result in a lien against the employer's real and personal property.³¹

The DOR advises that employers can protect their reduced variable rate by timely reporting new hires, responding to requests for verification of weekly earnings, and providing complete and accurate quarterly reports.³²

Section 443.071, F.S., makes it illegal for any person or employing unit to make a false statement or representation for the purposes of preventing or reducing the cost of RA taxes. Each false statement or representation or failure to disclose a material fact constitutes a separate offence, and is considered a felony of the third degree. Individuals and employing units that fail to furnish required reports are also subject to a second-degree misdemeanor charge.

Unemployment Compensation Trust Fund

Economic conditions resulting in abnormally high unemployment accompanied by high benefit charges can cause a severe drain on the UC Trust Fund. This effect triggers the positive fund balance adjustment factor, which consequently increases tax rates for all employers. Conversely, when unemployment and benefit charges are low, the negative fund balance adjustment factor triggers, and tax rates for employers are reduced accordingly.³³

Under current law, a negative adjustment factor is required if the balance of the UC Trust Fund is greater than 5 percent of the taxable payrolls. A negative adjustment factor remains in effect until the balance of the UC Trust Fund is less than 5 percent, but more than 4 percent, of the total taxable payroll for the previous year.³⁴ A positive adjustment factor is required if the balance of the UC Trust Fund is less than 5 percent of the taxable payrolls. A positive adjustment factor remains in effect until the trust fund balance equals or exceeds 4 percent of the total taxable payroll for the previous year.³⁵

³⁰ Section 443.163, F.S.

³¹ DOR, *Employer Guide to Reemployment Tax*, available at http://floridarevenue.com/Forms_library/current/rt800002.pdf (last visited Jan. 19, 2018).

³² *Id.*

³³ During the years of 2010-2014, the Legislature made efforts to temporarily increased the tax wage base from \$7,000 to \$8,500, increased the trigger for the positive adjustment factor from 3.7 percent to 4 percent, and reduced the trigger for the negative adjustment factor from 4.7 percent to 5 percent. The Legislature also reduced the tax wage base and the adjustment factor triggers as the economy stabilized. *See* Ch. 2009-99, Laws of Fla., Ch. 2010-1, Laws of Fla., Ch. 2011-235, Laws of Fla., and Ch. 2012-30, Laws of Fla.

³⁴ Section 443.131(3)(e), F.S.

³⁵ *See* s. 443.131(3)(e), F.S.

According to a report published by the USDOL, Florida's UC Trust Fund held a balance of over \$3.6 billion at the close of the third quarter in 2017.³⁶ In determining the 2018 tax rate, the DOR determined the balance of the UC Trust Fund was above 5% of the taxable payroll from the previous year. Pursuant to s. 443.1316, F.S., a negative adjustment factor was calculated. The maximum tax rate remains at 5.4 percent and the minimum amount remains at the statutory limit of .01 percent.³⁷

III. Effect of Proposed Changes:

Beginning January 1, 2019, the bill directs the DOR to reduce the RA tax rate of each employer with an initial or variable rate below 5.4 percent by .01 percent each year, so long as the balance of the UC Trust Fund does not require a positive adjustment factor.

The bill also provides that an employer whose tax rate falls below 1 percent, based on the .01 percent adjustment, will be allowed to pay less than the minimum tax rate of 0.1 percent.

The bill takes effect if SB 1122 or similar legislation is enacted.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Section 18, Article VII of the Florida Constitution, excuses counties and municipalities from complying with laws requiring them to spend funds or to take an action unless certain conditions are met.

To the extent the bill requires cities and counties to expend funds to pay the employment and training investment assessment, the provisions of Section 18(a), Article VII of the State Constitution may apply. If those provisions do apply, in order for the law to be binding upon the cities and counties, the Legislature must find that the law fulfills an important state interest and one of the following relevant exceptions:

- Appropriate funds estimated at the time of enactment to be sufficient to fund such expenditures;
- Authorize a county or municipality to enact a funding source not available for such local government on February 1, 1989, that can be used to generate the amount of funds necessary to fund the expenditures;
- The expenditure is required to comply with a law that applies to all persons "similarly situated," including state and local governments;³⁸ or
- The law is either required to comply with a federal requirement or required for eligibility for a federal entitlement.

³⁶ USDOL, Unemployment Insurance Data Summary, 3rd Quarter 2017, *available at* https://workforcesecurity.doleta.gov/unemploy/content/data_stats/datasum17/DataSum_2017_3.pdf (last visited Jan. 19, 2018).

³⁷ Email from the DOR on Jan. 18, 2018 (on file with the Commerce and Tourism Committee).

³⁸ "Similarly situated" refers to those laws affecting other entities, either private or governmental, in addition to counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

The Revenue Estimating Conference has not yet determined the fiscal impact of the bill. However, the bill reduces the RA tax rate for employers currently paying less than 5.4 percent, which will likely decrease the payroll tax burden incurred per employee.

B. Private Sector Impact:

Employers that are currently taxed at a rate of less than 5.4 percent will likely see a reduction in the cost of RA taxes per employee.

C. Government Sector Impact:

The DOR estimates that the cost of administrating the bill will be approximately \$9,300 to modify the existing tax collection system.³⁹

The DEO and the Revenue Estimating Conference have not yet determined the fiscal impact of the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The enactment of this bill is contingent on the enactment of SB 1122 or similar legislation.

Pursuant to the FUTA, the USDOL oversees Florida's collection of unemployment taxes and must approve the state's tax fee structure. The Secretary of the USDOL is responsible for determining if a state's unemployment insurance law meets the requirements of federal law. Under the FUTA, the secretary annually certifies the state's compliance with federal requirements and this certification ensures that employers in the state are eligible for the full credit against the federal unemployment insurance tax. If the USDOL were to find provisions of the bill to be out of compliance, the USDOL might not certify the state's reemployment assistance program and could potentially withhold all administrative funding or cause the employer federal tax rates to increase because of loss of the entire FUTA tax credit. It is unclear whether the USDOL will

³⁹ DOR, 2018 Agency Legislative Bill Analysis, *SB 1124* (Dec. 18, 2017) (on file with the Commerce and Tourism Committee).

approve the tax fee structure provided by the bill and whether the USDOL would be able to do so by the effective date of this bill.

VIII. Statutes Affected:

This bill substantially amends section 443.131 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Commerce and Tourism Committee on January 22, 2018:

The committee substitute makes a technical change to provide that this bill takes effect on the same date that SB 1122 or similar legislation takes effect, if enacted in the same legislative session.

B. Amendments:

None.



784004

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/22/2018	.	
	.	
	.	
	.	

The Committee on Commerce and Tourism (Gibson) recommended the following:

Senate Amendment

Delete line 219
and insert:
SB 1122 or similar legislation takes effect, if such legislation

By Senator Braynon

35-01103-18

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1 A bill to be entitled
 2 An act relating to Reemployment Assistance Program Law
 3 contribution rates; amending s. 443.131, F.S.;
 4 providing an adjustment, beginning on a specified
 5 date, to the contribution rate of the reemployment
 6 assistance tax for specified employers; providing that
 7 the adjustment may not be in effect during certain
 8 years; conforming a provision to changes made by the
 9 act; providing a contingent effective date.

10
 11 Be It Enacted by the Legislature of the State of Florida:

12
 13 Section 1. Paragraph (e) of subsection (3) of section
 14 443.131, Florida Statutes, is amended to read:

15 443.131 Contributions.—

16 (3) VARIATION OF CONTRIBUTION RATES BASED ON BENEFIT
 17 EXPERIENCE.—

18 (e) *Assignment of variations from the standard rate.*—

19 1. As used in this paragraph, the terms "total benefit
 20 payments," "benefits paid to an individual," and "benefits
 21 charged to the employment record of an employer" mean the amount
 22 of benefits paid to individuals multiplied by:

23 a. For benefits paid prior to July 1, 2007, 1.
 24 b. For benefits paid during the period beginning on July 1,
 25 2007, and ending March 31, 2011, 0.90.
 26 c. For benefits paid after March 31, 2011, 1.
 27 2. For the calculation of contribution rates effective
 28 January 1, 2012, and thereafter:

29 a. The tax collection service provider shall assign a

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30 variation from the standard rate of contributions for each
 31 calendar year to each eligible employer. In determining the
 32 contribution rate, varying from the standard rate to be assigned
 33 each employer, adjustment factors computed under sub-sub-
 34 subparagraphs (I)-(IV) are added to the benefit ratio. This
 35 addition shall be accomplished in two steps by adding a variable
 36 adjustment factor and a final adjustment factor. The sum of
 37 these adjustment factors computed under sub-sub-subparagraphs
 38 (I)-(IV) shall first be algebraically summed. The sum of these
 39 adjustment factors shall next be divided by a gross benefit
 40 ratio determined as follows: Total benefit payments for the 3-
 41 year period described in subparagraph (b)3. are charged to
 42 employers eligible for a variation from the standard rate, minus
 43 excess payments for the same period, divided by taxable payroll
 44 entering into the computation of individual benefit ratios for
 45 the calendar year for which the contribution rate is being
 46 computed. The ratio of the sum of the adjustment factors
 47 computed under sub-sub-subparagraphs (I)-(IV) to the gross
 48 benefit ratio is multiplied by each individual benefit ratio
 49 that is less than the maximum contribution rate to obtain
 50 variable adjustment factors; except that if the sum of an
 51 employer's individual benefit ratio and variable adjustment
 52 factor exceeds the maximum contribution rate, the variable
 53 adjustment factor is reduced in order for the sum to equal the
 54 maximum contribution rate. The variable adjustment factor for
 55 each of these employers is multiplied by his or her taxable
 56 payroll entering into the computation of his or her benefit
 57 ratio. The sum of these products is divided by the taxable
 58 payroll of the employers who entered into the computation of

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59 their benefit ratios. The resulting ratio is subtracted from the
60 sum of the adjustment factors computed under sub-sub-
61 subparagraphs (I)-(IV) to obtain the final adjustment factor.
62 The variable adjustment factors and the final adjustment factor
63 must be computed to five decimal places and rounded to the
64 fourth decimal place. This final adjustment factor is added to
65 the variable adjustment factor and benefit ratio of each
66 employer to obtain each employer's contribution rate. However,
67 except for the adjustment provided in sub-subparagraph c., an
68 employer's contribution rate may not, ~~however,~~ be rounded to
69 less than 0.1 percent.

70 (I) An adjustment factor for noncharge benefits is computed
71 to the fifth decimal place and rounded to the fourth decimal
72 place by dividing the amount of noncharge benefits during the 3-
73 year period described in subparagraph (b)3. by the taxable
74 payroll of employers eligible for a variation from the standard
75 rate who have a benefit ratio for the current year which is less
76 than the maximum contribution rate. For purposes of computing
77 this adjustment factor, the taxable payroll of these employers
78 is the taxable payrolls for the 3 years ending June 30 of the
79 current calendar year as reported to the tax collection service
80 provider by September 30 of the same calendar year. As used in
81 this sub-sub-subparagraph, the term "noncharge benefits" means
82 benefits paid to an individual from the Unemployment
83 Compensation Trust Fund, but which were not charged to the
84 employment record of any employer.

85 (II) An adjustment factor for excess payments is computed
86 to the fifth decimal place, and rounded to the fourth decimal
87 place by dividing the total excess payments during the 3-year

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88 period described in subparagraph (b)3. by the taxable payroll of
89 employers eligible for a variation from the standard rate who
90 have a benefit ratio for the current year which is less than the
91 maximum contribution rate. For purposes of computing this
92 adjustment factor, the taxable payroll of these employers is the
93 same figure used to compute the adjustment factor for noncharge
94 benefits under sub-sub-subparagraph (I). As used in this sub-
95 subparagraph, the term "excess payments" means the amount of
96 benefits charged to the employment record of an employer during
97 the 3-year period described in subparagraph (b)3., less the
98 product of the maximum contribution rate and the employer's
99 taxable payroll for the 3 years ending June 30 of the current
100 calendar year as reported to the tax collection service provider
101 by September 30 of the same calendar year. As used in this sub-
102 sub-subparagraph, the term "total excess payments" means the sum
103 of the individual employer excess payments for those employers
104 that were eligible for assignment of a contribution rate
105 different from the standard rate.

106 (III) With respect to computing a positive adjustment
107 factor:

108 (A) Beginning January 1, 2012, if the balance of the
109 Unemployment Compensation Trust Fund on September 30 of the
110 calendar year immediately preceding the calendar year for which
111 the contribution rate is being computed is less than 4 percent
112 of the taxable payrolls for the year ending June 30 as reported
113 to the tax collection service provider by September 30 of that
114 calendar year, a positive adjustment factor shall be computed.
115 The positive adjustment factor is computed annually to the fifth
116 decimal place and rounded to the fourth decimal place by

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 117 dividing the sum of the total taxable payrolls for the year
 118 ending June 30 of the current calendar year as reported to the
 119 tax collection service provider by September 30 of that calendar
 120 year into a sum equal to one-fifth of the difference between the
 121 balance of the fund as of September 30 of that calendar year and
 122 the sum of 5 percent of the total taxable payrolls for that
 123 year. The positive adjustment factor remains in effect for
 124 subsequent years until the balance of the Unemployment
 125 Compensation Trust Fund as of September 30 of the year
 126 immediately preceding the effective date of the contribution
 127 rate equals or exceeds 4 percent of the taxable payrolls for the
 128 year ending June 30 of the current calendar year as reported to
 129 the tax collection service provider by September 30 of that
 130 calendar year.

131 (B) Beginning January 1, 2018, and for each year
 132 thereafter, the positive adjustment shall be computed by
 133 dividing the sum of the total taxable payrolls for the year
 134 ending June 30 of the current calendar year as reported to the
 135 tax collection service provider by September 30 of that calendar
 136 year into a sum equal to one-fourth of the difference between
 137 the balance of the fund as of September 30 of that calendar year
 138 and the sum of 5 percent of the total taxable payrolls for that
 139 year. The positive adjustment factor remains in effect for
 140 subsequent years until the balance of the Unemployment
 141 Compensation Trust Fund as of September 30 of the year
 142 immediately preceding the effective date of the contribution
 143 rate equals or exceeds 4 percent of the taxable payrolls for the
 144 year ending June 30 of the current calendar year as reported to
 145 the tax collection service provider by September 30 of that

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 146 calendar year.
 147 (IV) If, beginning January 1, 2015, and each year
 148 thereafter, the balance of the Unemployment Compensation Trust
 149 Fund as of September 30 of the year immediately preceding the
 150 calendar year for which the contribution rate is being computed
 151 exceeds 5 percent of the taxable payrolls for the year ending
 152 June 30 of the current calendar year as reported to the tax
 153 collection service provider by September 30 of that calendar
 154 year, a negative adjustment factor must be computed. The
 155 negative adjustment factor shall be computed annually beginning
 156 on January 1, 2015, and each year thereafter, to the fifth
 157 decimal place and rounded to the fourth decimal place by
 158 dividing the sum of the total taxable payrolls for the year
 159 ending June 30 of the current calendar year as reported to the
 160 tax collection service provider by September 30 of the calendar
 161 year into a sum equal to one-fourth of the difference between
 162 the balance of the fund as of September 30 of the current
 163 calendar year and 5 percent of the total taxable payrolls of
 164 that year. The negative adjustment factor remains in effect for
 165 subsequent years until the balance of the Unemployment
 166 Compensation Trust Fund as of September 30 of the year
 167 immediately preceding the effective date of the contribution
 168 rate is less than 5 percent, but more than 4 percent of the
 169 taxable payrolls for the year ending June 30 of the current
 170 calendar year as reported to the tax collection service provider
 171 by September 30 of that calendar year. The negative adjustment
 172 authorized by this section is suspended in any calendar year in
 173 which repayment of the principal amount of an advance received
 174 from the federal Unemployment Compensation Trust Fund under 42

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175 U.S.C. s. 1321 is due to the Federal Government.

176 (V) The maximum contribution rate that may be assigned to
177 an employer is 5.4 percent, except employers participating in an
178 approved short-time compensation plan may be assigned a maximum
179 contribution rate that is 1 percent greater than the maximum
180 contribution rate for other employers in any calendar year in
181 which short-time compensation benefits are charged to the
182 employer's employment record.

183 (VI) As used in this subsection, "taxable payroll" shall be
184 determined by excluding any part of the remuneration paid to an
185 individual by an employer for employment during a calendar year
186 in excess of the first \$7,000. Beginning January 1, 2012,
187 "taxable payroll" shall be determined by excluding any part of
188 the remuneration paid to an individual by an employer for
189 employment during a calendar year as described in s.

190 443.1217(2). For the purposes of the employer rate calculation
191 that will take effect in January 1, 2012, and in January 1,
192 2013, the tax collection service provider shall use the data
193 available for taxable payroll from 2009 based on excluding any
194 part of the remuneration paid to an individual by an employer
195 for employment during a calendar year in excess of the first
196 \$7,000, and from 2010 and 2011, the data available for taxable
197 payroll based on excluding any part of the remuneration paid to
198 an individual by an employer for employment during a calendar
199 year in excess of the first \$8,500.

200 b. If the transfer of an employer's employment record to an
201 employing unit under paragraph (f) which, before the transfer,
202 was an employer, the tax collection service provider shall
203 recompute a benefit ratio for the successor employer based on

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204 the combined employment records and reassign an appropriate
205 contribution rate to the successor employer effective on the
206 first day of the calendar quarter immediately after the
207 effective date of the transfer.

208 c. Beginning January 1, 2019, the tax collection service
209 provider shall adjust the contribution rate of each employer
210 with an initial or variable rate below the maximum contribution
211 rate of 5.4 percent provided in sub-sub-subparagraph a.(V) to a
212 rate computed by subtracting one one-hundredth of 1 percent from
213 the rate otherwise computed under this section. However, the
214 adjustment provided in this sub-subparagraph may not be in
215 effect for any year in which the balance in the Unemployment
216 Compensation Trust Fund requires the computation of a positive
217 adjustment factor as provided in sub-sub-subparagraph a.(III).

218 Section 2. This act shall take effect on the same date that
219 SB ____ or similar legislation takes effect, if such legislation
220 is enacted in the same legislative session or an extension
221 thereof and becomes a law.

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The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: SB 1574

INTRODUCER: Senator Taddeo

SUBJECT: Unarmed Security Licenses

DATE: January 19, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	Pre-meeting
2.			RI	
3.			RC	

I. Summary:

SB 1574 allows applicants for licensure as a class “D” licensee (security officer) to perform required pre-licensing training online. Currently, a security officer applicant must attend 40 hours of pre-licensing training in-person.

A security officer may not carry a gun in the course of his or her work unless he or she obtains an additional, class “G” license (“statewide firearm”).¹ A statewide firearm applicant must perform an additional 28 hours of classroom and range training.²

II. Present Situation:

Security Officers, Generally

The Division of Licensing within the Florida Department of Agriculture and Consumer Services (department) is responsible for investigating and issuing licenses to conduct private security, private investigative, and recovery services pursuant to ch. 493, F.S. As of December 2017, there were 134,033 class “D” security officer licenses and 379 class “DS” security officer school or facility licenses issued by the department.³

A security officer is an individual who advertises for, or performs: bodyguard services, personal or property protection; theft and loss prevention; armored car staffing; and transportation of

¹ Section 493.6105(5), F.S.

² Florida Department of Agriculture and Consumer Services, Division of Licensing, Class “G” Statewide Firearm License Training, <http://www.freshfromflorida.com/Divisions-Offices/Licensing/Private-Investigation/Private-Investigation-and-Firearms/G-License-Classroom-and-Range-Requirements> (last visited Jan. 19, 2018).

³ Florida Department of Agriculture and Consumer Services, Division of Licensing, *Number of Licensees by Type* (Dec. 31, 2017), http://www.freshfromflorida.com/content/download/7471/118627/Number_of_Licensees_By_Type.pdf (last visited Jan. 19, 2018).

prisoners.⁴ Law enforcement officers engaged in their official duties or off-duty security activities that have been approved by appropriate superiors are not considered security officers.⁵ Additionally, unarmed security officers who are employed by, and perform their work entirely on the premises of either their employer's business, a church or denominational organization, or a church cemetery are not required to be licensed as a security officer under ch. 493, F.S.⁶

A class "D" security officer licensee must obtain an additional license, a class "G" statewide firearm license, in order to be able to carry a firearm in the course of his or her work as a security officer.⁷ A class "G" license has additional statutory qualifications, such as the requirement that the applicant not be prohibited from purchasing or possessing a firearm, and requires an additional 28 hours of classroom and range training.⁸

Licensing Requirements

An applicant for a class "D" license must be at least 18 years old, and be permitted to work in the U.S. as either a citizen, permanent legal resident, or possessor of a work visa.⁹ Additionally, the applicant must evince that he or she has no disqualifying criminal history, is of good moral character, and has no history of mental illness or substance abuse.¹⁰

So the department may review and investigate the fitness of a class "D" license applicant, the applicant must submit an application with general, personal information, including:

- The applicant's social security number or alien registration number;
- A statement of all criminal convictions, findings of guilt, and pleas of guilty or nolo contendere, regardless of adjudication of guilt;
- A statement whether he or she has ever been adjudicated incompetent or committed to a mental institution;
- A full set of fingerprints and associated fees for processing and retaining the information; and
- A waiver permitting the department to conduct investigations into the applicant's personal background.¹¹

In addition, the applicant must submit a \$45 license fee¹² and proof of successful completion of 40 hours of professional training at a school or training facility that is licensed by the

⁴ Section 493.6101(19), F.S.; *see also*, Florida Department of Agriculture and Consumer Services, *Private Security*, <http://www.freshfromflorida.com/Divisions-Offices/Licensing/Private-Security> (last visited Jan. 19, 2018).

⁵ Section 493.6102(1), F.S.

⁶ Section 493.6102(4), (13), F.S.

⁷ Sections 493.6115(2) and 493.6301(6) F.S.

⁸ *See* note 2, *supra*; s. 493.6106(1)(g), F.S.

⁹ 493.6106(1), F.S.

¹⁰ *Id.*

¹¹ Section 493.6105, F.S., *see also*, Florida Department of Agriculture and Consumer Services, Application for Class "D" Security Officer License, available at: <http://forms.freshfromflorida.com/16007.pdf> (last visited Jan. 19, 2018)

¹² Section 493.6302(1)(d), F.S.; *see also*, Florida Department of Agriculture and Consumer Services, *Private Investigation, Security, Recovery: Chapter 493, Florida Statutes New License Fee Schedule*, available at: http://www.freshfromflorida.com/content/download/33389/815718/FS493_License_Fees.pdf (last visited Jan. 19, 2018).

department.¹³ A class “D” licensee must renew his or her license every two years, and provide associated fees.¹⁴

Security Officer Schools and Training Facilities

Schools and training facilities that wish to provide instruction and training for class “D” license applicants must become licensed as a class “DS” licensee under ch. 493, F.S.¹⁵ The application for this license must include:

- The name and address of the school or training facility. If the applicant is an individual, his or her name, address, and social security or alien registration number;
- The street address of the place at which the school or facility will conduct training; and
- A copy of the school or facility’s training curriculum and final examination.

In addition, the school or training facility must submit a \$60 initial license fee,¹⁶ and renew its license every two years.¹⁷

III. Effect of Proposed Changes:

Section 1 amends s. 493.6303(4), F.S., to permit required training for class “D” licensure to be performed by in-person instruction or via a school or facility’s secure website. The department must verify that a class “D” applicant attended and successfully completed the training.

Section 2 amends s. 493.6304(2), F.S., to require class “DS” license applicants, security officer schools or training facilities, to provide their name and website address on their application if they plan to provide training for class “D” licensure online.

Section 3 provides an effective date of July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹³ Section 493.6303(4)(a), F.S.

¹⁴ Section 493.6113, F.S.

¹⁵ Section 493.6304, F.S.

¹⁶ Section 493.6304(1); *see also*, Florida Department of Agriculture and Consumer Services, *Private Investigation, Security, Recovery: Chapter 493, Florida Statutes New License Fee Schedule*, available at:

http://www.freshfromflorida.com/content/download/33389/815718/FS493_License_Fees.pdf (last visited Jan. 19, 2018).

¹⁷ Section 493.6113, F.S.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

After an initial outlay to develop online services, schools and training facilities may incur savings by foregoing classroom costs. The schools and training facilities may pass on these savings to license applicants in the form of reduced course fees.

C. Government Sector Impact:

There may be an increase in class “D” security guard applicants, because it will be more convenient for those who do not have access to in-person training to complete the licensure requirements. The department may also need to adopt rules to implement this bill. The department states that any additional regulatory work can be performed by existing staff.¹⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 493.6304(2)(b), F.S., requires security officer school or training facility applicants to provide “the street address of the place at which the training is to be conducted.” This requirement may be inapplicable to schools or facilities that will perform online training.

Additionally, it is unclear how the department will be able to independently verify that an applicant attended and successfully completed online training at a training school or facility.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 493.6303, 493.6304.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

¹⁸ Florida Department of Agriculture and Consumer Services, *HB 813 Agency Analysis* (Dec. 27, 2017), on file with the Senate Committee on Commerce and Tourism.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



640980

LEGISLATIVE ACTION

Senate

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House

The Committee on Commerce and Tourism (Taddeo) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (a) of subsection (4) of section
493.6303, Florida Statutes, is amended to read:

493.6303 License requirements.—In addition to the license
requirements set forth elsewhere in this chapter, each
individual or agency must comply with the following additional
requirements:



640980

11 (4) (a) An applicant for a Class "D" license must submit
12 proof of successful completion of a minimum of 40 hours of
13 professional training at a school or training facility licensed
14 by the department. Such training may be conducted by in-person
15 instruction or online through the school or facility's secure
16 website, provided that the applicant's identity, attendance, and
17 successful completion of training are verified, and such
18 verification is provided to the department upon completion of
19 the training. The department shall by rule establish the general
20 content, ~~and~~ number of hours of each subject area to be taught,
21 and reporting requirements for verification of the training
22 submission.

23 Section 2. Paragraphs (a) and (b) of subsection (2) of
24 section 493.6304, Florida Statutes, are amended to read:

25 493.6304 Security officer school or training facility.—

26 (2) The application shall be signed and verified by the
27 applicant under oath as provided in s. 92.525 and must contain,
28 at a minimum, the following information:

29 (a) The name and address of the school or training
30 facility, or if the training is conducted online, the school or
31 facility's name and website address, and, if the applicant is an
32 individual, her or his name, address, and social security or
33 alien registration number.

34 (b) The street address or website address of the place at
35 which the training is to be conducted.

36 Section 3. This act shall take effect July 1, 2018.

37
38 ===== T I T L E A M E N D M E N T =====

39 And the title is amended as follows:



640980

40 Delete everything before the enacting clause
41 and insert:

42 A bill to be entitled
43 An act relating to licensure of unarmed security
44 guards; amending s. 493.6303, F.S.; authorizing
45 security officer training classes to be offered online
46 under certain circumstances; requiring the Department
47 of Agriculture and Consumer Services to establish
48 reporting requirements for verification of training
49 submission; amending s. 493.6304, F.S.; conforming
50 provisions to changes made by the act; providing an
51 effective date.

By Senator Taddeo

40-01475B-18

20181574__

1 A bill to be entitled
 2 An act relating to unarmed security licenses; amending
 3 s. 493.6303, F.S.; authorizing security officer
 4 training classes to be offered in-person or online
 5 through certain secure websites; amending s. 493.6304,
 6 F.S.; conforming provisions to changes made by the
 7 act; providing an effective date.
 8
 9 Be It Enacted by the Legislature of the State of Florida:
 10
 11 Section 1. Paragraph (a) of subsection (4) of section
 12 493.6303, Florida Statutes, is amended to read:
 13 493.6303 License requirements.—In addition to the license
 14 requirements set forth elsewhere in this chapter, each
 15 individual or agency must comply with the following additional
 16 requirements:
 17 (4) (a) An applicant for a Class "D" license must submit
 18 proof of successful completion of a minimum of 40 hours of
 19 professional training at a school or training facility licensed
 20 by the department. Such training may be conducted by in-person
 21 instruction or online through the school or facility's secure
 22 website provided that the applicant's identity, attendance, and
 23 successful completion of the training are verified by the
 24 department. The department shall by rule establish the general
 25 content and number of hours of each subject area to be taught.
 26 Section 2. Paragraph (a) of subsection (2) of section
 27 493.6304, Florida Statutes, is amended to read:
 28 493.6304 Security officer school or training facility.—
 29 (2) The application shall be signed and verified by the

Page 1 of 2

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

40-01475B-18

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30 applicant under oath as provided in s. 92.525 and must contain,
 31 at a minimum, the following information:
 32 (a) The name and address of the school or training
 33 facility, or if the training is conducted online, the school or
 34 facility's name and website address, and, if the applicant is an
 35 individual, her or his name, address, and social security or
 36 alien registration number.
 37 Section 3. This act shall take effect July 1, 2018.

Page 2 of 2

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on General
Government
Banking and Insurance
Environmental Preservation and Conservation
Military and Veterans Affairs, Space, and
Domestic Security
Transportation

SENATOR ANNETTE TADDEO
40th District

MEMORANDUM

To: Senator Bill Montford, Chair of the Commerce and Tourism Committee
From: Senator Annette Taddeo
Subject: Committee Agenda Request
Date: January 17, 2018

I respectfully request that **Senate Bill 1574**, relating to Unarmed Security Licenses, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in black ink, appearing to be "AS", written over a horizontal line.

Senator Annette Taddeo
Florida Senate, District 40

REPLY TO:

- 10689 North Kendall Drive, Suite 212, Miami, Florida 33176 (305) 596-3003
- 224 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5040

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: CS/CS/SB 616

INTRODUCER: Commerce and Tourism Committee, Transportation Committee, and Senators Passidomo and Perry

SUBJECT: Motor Vehicle Dealers

DATE: January 23, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Jones</u>	<u>Miller</u>	<u>TR</u>	<u>Fav/CS</u>
2.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 616 amends provisions relating to motor vehicle dealer licensing by the Department of Highway Safety and Motor Vehicles (DHSMV). The bill:

- Expands the definition of “motor vehicle dealer” to include those who lease motor vehicles;
- Amends the definitions of “franchised motor vehicle dealer,” “independent motor vehicle dealer,” and “wholesale motor vehicle dealer” to remove the term “dealing in” motor vehicles;
- Deletes the following from the definition of motor vehicle dealers:
 - Persons who solely deal in motor vehicles by owning or hosting a publication or website which displays motor vehicles for sale by licensed dealers; and
 - Persons primarily engaged in the business of short-term motor vehicle rentals (rental terms that do not exceed 12 months), who are not involved in the retail sale of vehicles;
- Modifies the definition of “motor vehicle broker;” requires that any advertisement or solicitation by a motor vehicle broker include conspicuous notice that the broker receives a fee and is not a licensed motor vehicle dealer;
- Provides that a licensed manufacturer, distributor, or importer is not considered a motor vehicle broker;
- Requires motor vehicle brokers to be licensed by the DHSMV in order to conduct business in Florida, which includes meeting application requirements, paying licensing fees, and following laws and rules related to licensure;

- Allows persons who contract with a motor vehicle dealer, but are not licensed as motor vehicle dealers, to advertise vehicles that belong to another party for sale;
- Requires pre-licensing dealer training requirements for *all* applicants, including motor vehicle brokers; and
- Allows franchised motor vehicle dealers to renew their license on an annual, rather than biennial, basis.

The bill will likely have a negative fiscal impact on motor vehicle brokers, other persons required to obtain a license from the DHSMV, and licensed dealer training schools. See V. Fiscal Impact Statement. The DHSMV will incur costs associated with an increase of license applications; however, the DHSMV will receive increased application fees in order to review and process such applications.

The bill takes effect January 1, 2019.

II. Present Situation:

The Florida Department of Highway Safety and Motor Vehicles (DHSMV), Division of Motorist Services, regulates motor vehicle dealers and related licenses.¹ The DHSMV licenses, regulates, and assists both licensed dealers and consumers of the motor vehicle industry.² Each year, the DHSMV issues and renews over 13,000 licenses for motor vehicle, auction, salvage, wholesale, mobile home, recreational vehicle dealers and manufacturers, distributors, and importers.³

Section 320.27(1)(c), F.S., defines a “motor vehicle dealer” as any person engaged in the business of buying, selling, or dealing in motor vehicles or offering or displaying motor vehicles for sale at wholesale or retail, or who may service and repair vehicles pursuant to a franchise agreement.⁴ A person who buys, sells, offers for sale, displays for sale or deals in three or more motor vehicles in any 12-month period is presumed to be a motor vehicle dealer.⁵

The term “motor vehicle dealer” does not include:⁶

- Persons who dispose of or sell vehicles acquired for their own personal or business use, or acquired by foreclosure or operation of law, provided such vehicles are acquired and sold in good faith and not for the purpose of avoiding dealer licensing provisions;
- Persons engaged in the business of manufacturing, selling, or offering or displaying for sale no more than 25 trailers in a 12-month period;
- Public officers performing their official duties;

¹ Section 320.27, F.S.; Florida Department of Highway Safety and Motor Vehicles, *Licensing Requirements for Motor Vehicle Dealers*, <http://www.flhsmv.gov/dmv/dealer.html> (last visited Jan. 19, 2018).

² Florida Department of Highway Safety and Motor Vehicles, *Dealer Handbook, Vol. 17*, p. 9(2015), available at <http://flhsmv.gov/dmv/DealerHandbook.pdf> (last visited Jan. 19, 2018).

³ *Id.*

⁴ As defined in s. 320.60(1), F.S., an “agreement” or “franchise agreement” means “a contract, franchise, new motor vehicle franchise, sales and service agreement, or dealer agreement or any other terminology used to describe the contractual relationship between a manufacturer, factory branch, distributor, or importer, and a motor vehicle dealer, pursuant to which the motor vehicle dealer is authorized to transact business pertaining to motor vehicles of a particular line-make.”

⁵ Section 320.60(11)(b), F.S.

⁶ Section 320.27(1)(c), F.S.

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

Section 320.27(1)(d), F.S., defines a “motor vehicle broker” as any person who offers to procure or procures motor vehicles for the general public, including soliciting or advertising, but who does not store, display, or take ownership of any vehicle for the purpose of selling the vehicle. A motor vehicle broker is not required to obtain a motor vehicle dealer license.

Motor Vehicle Dealer Licenses

Motor vehicle dealers are required to be licensed by the state to conduct business. Currently, there are six classes of motor vehicle dealer licenses:⁷

- *Independent Dealer*: for persons dealing in used motor vehicles only;
- *Franchise Dealer*: for a licensee who sells new vehicles under an agreement with a manufacturer;
- *Service Facility*: for dealerships that perform maintenance or repairs of motor vehicles pursuant to a motor vehicle warranty;
- *Wholesale Dealer*: for licensees who may only buy from, sell to, and deal at wholesale with licensed dealers;
- *Auction Dealer*: for those licensed to sell vehicles to licensed dealers through the bid process; and
- *Salvage Dealer*: for licensees who deal in salvage or wrecked vehicles.

A person may advertise and offer for sale his or her own vehicle without a motor vehicle dealer license.⁸ Only licensed motor vehicle dealers may offer for sale a vehicle that belongs to another party.⁹ The only exceptions are transactions with motor vehicle auctions or sales that result from a legal proceeding, court order, estate settlement, or by operation of law.

Motor Vehicle Dealer License Application Requirements and Fees

An applicant for initial licensure must submit a preliminary filing to the DHSMV that proposes the site of the motor vehicle dealership, and other relevant information.¹⁰ If a DHSMV Division of Motorist Services Regional Office approves the preliminary filing, the applicant must then submit an application to the DHSMV with required documentation, which may include:¹¹

- A \$25,000 surety bond or a letter of credit;
- The business location’s lease or proof of ownership;
- Pre-licensing dealer training course completion certificate;

⁷ See, note 1, *supra*.

⁸ Section 320.27(2), F.S.

⁹ *Id.*

¹⁰ Florida Department of Highway Safety and Motor Vehicles, *Dealer Handbook, Vol. 17*, p. 37-38 (2015), available at <http://flhsmv.gov/dmv/DealerHandbook.pdf> (last visited Jan. 19, 2018).

¹¹ See s. 320.27, F.S.

- A garage liability insurance certificate, or a general liability insurance policy coupled with a business automobile policy;
- The business' registration with the Florida Department of State, Division of Corporations;
- Specified corporate papers;
- A sales tax number and Federal Employer Identification Number; and
- The applicant's fingerprints for the purpose of performing a background check performed by the Florida Department of Law Enforcement and the Federal Bureau of Investigation.

The application must be coupled with a \$300 fee per main location of the proposed dealership.¹² The applicant must certify that the business location is not a residence, provides an adequately equipped office, affords sufficient unoccupied space to store motor vehicles offered and displayed for sale, and is suitable for keeping and maintaining books, records necessary to conduct such business, which shall be available at all reasonable hours to inspection by the DHSMV.¹³ The applicant also must certify that the motor vehicle dealer business is the principal business conducted at that location.

Upon application approval by the DHSMV, a dealer license is valid until December 31 for franchise motor vehicle dealers and April 30 for independent, wholesale, or auction dealers.¹⁴ A motor vehicle dealer license must be renewed every two years.¹⁵ A license renewal fee is \$75 for the second year; thereafter, motor vehicle dealers may renew their license for a period of one or two years for \$75 for each year. Additionally, a dealer who renews a license with the DHSMV within 45 days after the license's expiration date will be assessed a \$100 delinquent fee.¹⁶ If the renewal is more than 45 days late, a new initial application and application fee is required. Furthermore, a licensee is required to obtain a supplemental license for each permanent additional place of business for a \$50 annual fee.¹⁷ At the appropriate time, a change of location fee of \$50 is assessed, should it apply.¹⁸

Motor Vehicle Dealer Training and Continuing Education Requirements

Initial license applications must include a verification that, within the preceding six months, the applicant (or designated employee) attended a training and information seminar conducted by a licensed motor vehicle dealer training school.¹⁹ The training must review statutory dealer requirements, including required bookkeeping and recordkeeping procedures, and requirements for the collection of sales and use taxes. An applicant who has held a valid motor vehicle dealer's license continuously within the past two years and who remains in good standing with the DHSMV is exempt from this pre-licensing requirement.

¹² See, s. 320.27(3), F.S., Rule 15C-7.003, Fla. Admin. Code, and note 1, *supra*.

¹³ Section 320.27(3), F.S.

¹⁴ Section 320.27(4), F.S.

¹⁵ Section 320.27(3), F.S.

¹⁶ Section 320.27(4), F.S.

¹⁷ Section 320.27(5), F.S.

¹⁸ Section 320.27(3), F.S.

¹⁹ Section 320.27(4), F.S. A list of licensed dealer training schools is available on the DHSMV website. See *Licensed Dealer Training Schools* (Oct. 9, 2017), https://www.flhsmv.gov/pdf/dealerservices/l_dealer_trng_sch.pdf (last visited Jan. 19, 2018).

Applicants who apply for an independent motor vehicle dealer license are required to submit verification to the DHSMV that, within the preceding six months, he or she²⁰ has *successfully completed*²¹ training conducted by a motor vehicle dealer training school. Such training includes:

- Training in titling and registration of motor vehicles;
- Training in laws relating to financing, and unfair and deceptive trade practices; and
- Training in other information that the DHSMV feels will promote good business practices.

Upon renewal of an independent motor vehicle dealer license, the dealer must submit certification to the DHSMV that the dealer²² has completed eight hours of continuing education, which includes at least two hours of legal or legislative issues, one hour of DHSMV issues, and five hours of relevant motor vehicle industry topics.²³

Additional Licensee Requirements

Motor vehicle dealers are required to follow numerous state laws and procedures in order to maintain their dealer license. Any person who violates these license requirements can be found guilty of a second-degree misdemeanor,²⁴ and could be liable under civil law in violation of Florida's Deceptive and Unfair Trade Practices Act.²⁵

Section 320.27, F.S., provides requirements for motor vehicle dealers to maintain their licensed status, as well as conduct for which the DHSMV may deny, suspend, or revoke a license. For example, s. 320.27(9)(a), F.S., provides that the DHSMV may deny, suspend, or revoke such license upon proof that an applicant or licensee has committed fraud or willful misrepresentation in obtaining a license, has been convicted of a felony, or has failed to provide payment to the DHSMV. Additionally, the DHSMV may deny, suspend, or revoke a license if a licensee has established a pattern of wrongdoing.²⁶ The terms "licensee" and "motor vehicle dealer" appear to be used interchangeably throughout s. 320.27, F.S.

III. Effect of Proposed Changes:

Motor Vehicle Dealer and Broker Definitions

The bill amends the definitions of "motor vehicle dealer" and "motor vehicle broker." Specifically, the bill expands the term "motor vehicle dealer" to include any person who:

- Leases three or more motor vehicles in any 12-month period;
- Engages in possessing, storing, or displaying three or more motor vehicles for retail sale or lease in a 12-month period;
- Advertises motor vehicles held in his or her inventory for retail sale or lease;
- Compensates customers for vehicles at wholesale or retail (trade-ins);

²⁰ Or an owner, partner, officer, director of the applicant, or a full-time, management-level employee of the applicant. Section 320.27(4), F.S.

²¹ Section 320.27(4)(b), F.S., provides that "successful completion" of the training is determined by an exam administered at the end of the course and attendance of no less than 90 percent of the total hours required by the school.

²² Section 320.27(4), F.S.

²³ Section 320.27(4)(a), F.S.

²⁴ Section 320.27(8), F.S.

²⁵ Part II, ch. 501, F.S.

²⁶ See s. 320.27(9)(b), F.S.

- Negotiates with customers regarding the terms of sale or lease for a motor vehicle;
- Provides test drives of motor vehicles he or she is offering for retail sale or lease; or
- Delivers or arranges for delivery a motor vehicle in conjunction with the retail sale or lease of a motor vehicle.

The bill clarifies that those who own a publication or host a website that displays vehicles for sale by licensed motor vehicle dealers are not required to obtain a motor vehicle dealer license. Additionally, a licensed motor vehicle manufacturer, factory branch, distributor, or importer²⁷ may sell motor vehicles to a franchised motor vehicle dealer without being licensed as a motor vehicle dealer as well.

The bill prohibits motor vehicle dealers from transferring a manufacturer's statement of origin for a motor vehicle to any person who intends to sell the motor vehicle in Florida, unless that person is a licensed motor vehicle dealer who is authorized by a franchise agreement to buy, sell, or lease such vehicles.

The bill adds that persons, other than licensed motor vehicle dealers, may advertise vehicles that belong to another party for sale or lease if the advertiser contracts with a motor vehicle dealer.

The bill amends the definition of "motor vehicle broker" to clarify that brokers assist the general public in purchasing or leasing a motor vehicle from a licensed dealer. Current law defines a broker's practice as "offering to procure, or procuring motor vehicles for the general public." The bill also requires motor vehicle brokers to give conspicuous notice on any advertisement or solicitation he or she makes that states he or she is receiving a fee and is not a licensed motor vehicle dealer. Additionally, the bill clarifies that a licensed manufacturer, distributor, or importer is not a motor vehicle broker.

The bill also updates the definitions of "franchised motor vehicle dealer," "independent motor vehicle dealer," and "wholesale motor vehicle dealer" to remove the term "dealing in" motor vehicles.²⁸

The bill adds that the definition of "independent motor vehicle dealer" includes persons in the business of leasing motor vehicles, but exempts from the term "motor vehicle dealer" persons primarily engaged in the business of short-term vehicle rentals (which do not exceed 12 months) who are not involved in the retail sale of motor vehicles.

Motor Vehicle Broker Licensing Requirements

The bill amends s. 320.27(2), F.S., to require motor vehicle brokers to be licensed to engage in business in the state. Motor vehicle brokers will be required to apply for a license with the DHSMV, pay licensing fees, and follow other requirements of licensees provided in law. It is unclear how the DHSMV will implement the bill's new broker licensing requirements, as some requirements for motor vehicle dealers may not be appropriate for motor vehicle brokers.

²⁷ Section 320.61, F.S.

²⁸ Current law refers to each as any person who engages in the business of buying, selling, or dealing in motor vehicles. *See* ss. 320.27(1)(c)2. and 3., F.S.

Pre-licensing Dealer Training and Continuing Education Requirements

The bill extends the licensure requirement that an applicant (or its designated employee) verify that it attended a requisite training and information seminar in its initial application to include motor vehicle brokers.

The bill adds s. 320.27(4)(d), F.S., requiring that each franchised motor vehicle dealer certify that the dealer operator, owner, partner, director, or general manager of the licensee has completed industry certification on legal and legislative issues. The dealer may provide the certification on either an annual or biennial basis, requiring four hours of training for the former and eight for the latter. Only a Florida-based, non-profit, dealer-owned, statewide industry association of franchised motor vehicle dealers with state and federal compliance credentials approved by the DHSMV may provide the certification, and such association may charge a fee for providing the industry certification. For licensees that belong to a dealership group,²⁹ certification may be satisfied for all licensees by one designated owner, officer, director, or manager of the group. Certification shall be required in a classroom setting in a convenient location within Florida. Designated individuals shall receive certificates of completion, which must be filed with their license renewal form.

Technical Changes and Effective Date

The bill makes technical and conforming changes throughout s 320.27(4), F.S., to provide clarity.

The bill takes effect January 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

²⁹ The bill defines “dealership group” as “two or more licensed franchise motor vehicle dealers with a common owner which has legal or equitable title of at least 80 percent of each dealer in the group.”

B. Private Sector Impact:

The bill will likely have a negative fiscal impact on motor vehicle brokers and other persons who will be considered a “motor vehicle dealer” and required to be licensed by the DHSMV.

C. Government Sector Impact:

DHSMV will likely incur costs associated with an increase of license applications; however, DHSMV will receive increased application fees in order to review and process such applications.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 320.27 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Commerce and Tourism on January 22, 2018:**

The CS:

- Excludes from the definition of a motor vehicle dealer a motor vehicle manufacturer, distributor, or importer who is licensed under s. 320.61, F.S., and who sells cars only to a franchised motor vehicle dealer;
- Returns practice to current law by allowing individuals without a motor vehicle dealer license to offer or sell motor vehicle service agreements when a car is sold or leased;
- Prohibits a motor vehicle dealer from transferring a manufacturer’s statement of origin for a motor vehicle to any person who intends to sell the car in Florida, unless that person is a licensed motor vehicle dealer who is authorized by a franchise agreement to buy, sell, or lease such vehicles;
- Requires the DHSMV to send a statement of required continuing education or industry certification requirements that the licensee must complete along with the notice of license renewal;
- Allows franchised motor vehicle dealers to renew their license on an annual or biennial basis, and provides pro-rated industry certification standards for such filings;
- Maintains the current requirement that each initial application include verification that the applicant successfully attended and training and information seminar, and expands the requirement to include motor vehicle broker applicants;

- Changes the effective date to January 1, 2019; and
- Makes conforming changes throughout.

CS by Transportation on December 5, 2017:

The CS:

- Adds that a person who leases three or more vehicles in any 12-month period shall be presumed to be a motor vehicle dealer, and adds references to leasing throughout the “motor vehicle dealer” definition;
- Exempts from the term “motor vehicle dealer” persons who are primarily engaged in the business of short-term vehicle rentals (which do not exceed 12 months) and who are not involved in the retail sale of motor vehicles;
- Removes language from s. 320.27(1)(c), F.S., requiring a vehicle to be titled as a used vehicle when a motor vehicle dealer transferring the motor vehicle does not meet certain qualifications;
- Amends the definition of “franchised motor vehicle dealer”, “independent motor vehicle dealer” and “wholesale motor vehicle dealer” to remove the term “dealing in” motor vehicles;
- Reinserts language previously removed by the bill, which provides that a motor vehicle broker does not store, display, or take ownership of any vehicle for the purpose of selling such vehicles;
- Adds that a licensed manufacturer, distributor, or importer is not considered a motor vehicle broker;
- Includes additional requirements for pre-licensing training for independent motor vehicle dealers that were removed by the bill and currently required of all motor vehicle dealer applicants;
- Adds that the franchised motor vehicle dealer industry certification be provided by a statewide industry association of franchised motor vehicles dealers, and such association may charge a fee for providing industry certification; and
- Provides industry certification requirements for licensees in dealership groups, and defines the term “dealership group” for purposes of s. 320.27, F.S.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/22/2018	.	
	.	
	.	
	.	

The Committee on Commerce and Tourism (Passidomo) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraphs (c) and (d) of subsection (1) and subsections (2), (3), and (4) of section 320.27, Florida Statutes, are amended to read:

320.27 Motor vehicle dealers.—

(1) DEFINITIONS.—The following words, terms, and phrases when used in this section have the meanings respectively



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11 ascribed to them in this subsection, except where the context
12 clearly indicates a different meaning:

13 (c) "Motor vehicle dealer" means any person engaged in the
14 business of buying, selling, or leasing ~~dealing in~~ motor
15 vehicles or offering or displaying motor vehicles for sale or
16 lease at wholesale, excluding sales from a manufacturer, factory
17 branch, distributor, or importer licensed pursuant to s. 320.61
18 to a franchised motor vehicle dealer licensed pursuant to this
19 section, or at retail, or who may service and repair motor
20 vehicles pursuant to an agreement as defined in s. 320.60(1).
21 Any person who buys, sells, or leases ~~deals in~~ three or more
22 motor vehicles in any 12-month period or who offers or displays
23 for sale or lease three or more motor vehicles in any 12-month
24 period is shall be prima facie presumed to be a motor vehicle
25 dealer. Any person who engages in any of the following
26 activities is deemed to be a motor vehicle dealer: possessing,
27 storing, or displaying motor vehicles that such person offers
28 for retail sale or lease; advertising motor vehicles held in
29 inventory which such person offers for retail sale or lease;
30 compensating customers for vehicles at wholesale or retail, also
31 known as trade-ins; negotiating with customers regarding the
32 terms of sale or lease for a motor vehicle; providing test
33 drives of motor vehicles that such person offers for retail sale
34 or lease; delivering or arranging for the delivery of a motor
35 vehicle in conjunction with the retail sale or lease of the
36 motor vehicle by such person engaged in such business. The terms
37 "selling" and "sale" include lease-purchase transactions. A
38 motor vehicle dealer may, at retail or wholesale, sell a
39 recreational vehicle as described in s. 320.01(1)(b)1.-6. and



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40 8., acquired in exchange for the sale or lease of a motor
41 vehicle, provided such acquisition is incidental to the
42 principal business of being a motor vehicle dealer. However, a
43 motor vehicle dealer may not buy a recreational vehicle for the
44 purpose of resale unless licensed as a recreational vehicle
45 dealer pursuant to s. 320.771. ~~A motor vehicle dealer may apply
46 for a certificate of title to a motor vehicle required to be
47 registered under s. 320.08(2)(b), (c), and (d), using a
48 manufacturer's statement of origin as permitted by s. 319.23(1),
49 only if such dealer is authorized by a franchised agreement as
50 defined in s. 320.60(1), to buy, sell, or deal in such vehicle
51 and is authorized by such agreement to perform delivery and
52 preparation obligations and warranty defect adjustments on the
53 motor vehicle; provided this limitation shall not apply to
54 recreational vehicles, van conversions, or any other motor
55 vehicle manufactured on a truck chassis. The transfer of a motor
56 vehicle by a dealer not meeting these qualifications shall be
57 titled as a used vehicle. The classifications of motor vehicle
58 dealers are defined as follows:~~

59 1. "Franchised motor vehicle dealer" means any person who
60 engages in the business of repairing, servicing, buying,
61 selling, or leasing ~~dealing in~~ motor vehicles pursuant to an
62 agreement as defined in s. 320.60(1). A motor vehicle dealer may
63 apply for a certificate of title to a motor vehicle required to
64 be registered under s. 320.08(2)(b), (c), and (d) or s.
65 320.08(3)(a), (b), or (c), using a manufacturer's statement of
66 origin as permitted by s. 319.23(1), only if such dealer is
67 authorized by a franchise agreement as defined in s. 320.60(1)
68 to buy, sell, or lease such vehicles and to perform delivery and



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69 preparation obligations and warranty defect adjustments on the
70 motor vehicle. This limitation does not apply to recreational
71 vehicles, van conversions, or any other motor vehicle
72 manufactured on a truck chassis. A motor vehicle dealer may not
73 transfer a manufacturer's statement of origin for a motor
74 vehicle to any person who intends to sell such motor vehicle in
75 this state unless such person is a licensed motor vehicle dealer
76 authorized by a franchise agreement to buy, sell, or lease such
77 vehicles.

78 2. "Independent motor vehicle dealer" means any person
79 other than a franchised or wholesale motor vehicle dealer who
80 engages in the business of buying, selling, or leasing ~~dealing~~
81 ~~in~~ motor vehicles, and who may service and repair motor
82 vehicles.

83 3. "Wholesale motor vehicle dealer" means any person who
84 engages exclusively in the business of buying or ~~selling, or~~
85 ~~dealing in~~ motor vehicles at wholesale or with motor vehicle
86 auctions. Such person shall be licensed to do business in this
87 state, shall not sell or auction a vehicle to any person who is
88 not a licensed dealer, and shall not have the privilege of the
89 use of dealer license plates. Any person who buys, sells, or
90 deals in motor vehicles at wholesale or with motor vehicle
91 auctions on behalf of a licensed motor vehicle dealer and as a
92 bona fide employee of such licensed motor vehicle dealer is not
93 required to be licensed as a wholesale motor vehicle dealer. In
94 such cases it shall be prima facie presumed that a bona fide
95 employer-employee relationship exists. A wholesale motor vehicle
96 dealer shall be exempt from the display provisions of this
97 section but shall maintain an office wherein records are kept in



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98 order that those records may be inspected.

99 4. "Motor vehicle auction" means any person offering motor
100 vehicles or recreational vehicles for sale to the highest bidder
101 where buyers are licensed motor vehicle dealers. Such person
102 shall not sell a vehicle to anyone other than a licensed motor
103 vehicle dealer.

104 5. "Salvage motor vehicle dealer" means any person who
105 engages in the business of acquiring salvaged or wrecked motor
106 vehicles for the purpose of reselling them and their parts.

107
108 Notwithstanding anything in this subsection to the contrary, the
109 term "motor vehicle dealer" does not include persons not engaged
110 in the purchase, ~~or~~ sale, or lease of motor vehicles as a
111 business who are disposing of vehicles acquired for their own
112 use or for use in their business or acquired by foreclosure or
113 by operation of law, provided such vehicles are acquired and
114 sold in good faith and not for the purpose of avoiding the
115 provisions of this law; persons engaged in the business of
116 manufacturing, selling, or offering or displaying for sale or
117 lease at wholesale or retail no more than 25 trailers in a 12-
118 month period; public officers while performing their official
119 duties; receivers; trustees, administrators, executors,
120 guardians, or other persons appointed by, or acting under the
121 judgment or order of, any court; banks, finance companies, or
122 other loan agencies that acquire motor vehicles as an incident
123 to their regular business; motor vehicle brokers; persons whose
124 sole dealing in motor vehicles is owning a publication in which,
125 or hosting a website on which, licensed motor vehicle dealers
126 display vehicles for sale; persons primarily engaged in the



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127 business of the short-term rental of motor vehicles, which
128 rental term may not exceed 12 months, who are not involved in
129 the retail sale or lease of motor vehicles; and motor vehicle
130 rental and leasing companies that sell motor vehicles only to
131 motor vehicle dealers licensed under this section. Vehicles
132 owned under circumstances described in this paragraph may be
133 disposed of at retail, wholesale, or auction, unless otherwise
134 restricted. A manufacturer of fire trucks, ambulances, or school
135 buses may sell such vehicles directly to governmental agencies
136 or to persons who contract to perform or provide firefighting,
137 ambulance, or school transportation services exclusively to
138 governmental agencies without processing such sales through
139 dealers if such fire trucks, ambulances, school buses, or
140 similar vehicles are not presently available through motor
141 vehicle dealers licensed by the department.

142 (d) "Motor vehicle broker" means any person engaged in the
143 business of, or who holds himself or herself out through
144 solicitation, advertisement, or other means as being in the
145 business of, assisting ~~offering to procure or procuring motor~~
146 ~~vehicles for~~ the general public in purchasing or leasing a motor
147 vehicle from a licensed motor vehicle dealer. A motor vehicle
148 broker may, ~~or who holds himself or herself out through~~
149 ~~solicitation, advertisement, or otherwise as one who offers to~~
150 ~~procure or procures motor vehicles for the general public, and~~
151 ~~who does~~ not store, display, or take ownership of any vehicles
152 for the purpose of selling such vehicles. Any advertisement or
153 solicitation by a motor vehicle broker must include conspicuous
154 notice that the broker is receiving a fee and must clearly state
155 that the broker is not a licensed motor vehicle dealer. A



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156 licensed manufacturer, distributor, or importer is not
157 considered a motor vehicle broker.

158 (2) LICENSE REQUIRED.—No person shall engage in business
159 as, serve in the capacity of, or act as a motor vehicle dealer
160 or motor vehicle broker in this state without first obtaining a
161 license therefor in the appropriate classification as provided
162 in this section. With the exception of transactions with motor
163 vehicle auctions, no person other than a licensed motor vehicle
164 dealer may advertise for sale or lease any motor vehicle
165 belonging to another party unless as a direct result of a bona
166 fide legal proceeding, court order, settlement of an estate, or
167 by contract with a motor vehicle dealer, or by operation of law.
168 However, owners of motor vehicles titled in their names may
169 advertise and offer motor vehicles for sale on their own
170 behalfes, provided such vehicles are acquired and sold in good
171 faith and not for the purpose of avoiding the requirements of
172 this section ~~behalf~~. It shall be unlawful for a licensed motor
173 vehicle dealer to allow any person other than its a bona fide
174 employee to use the motor vehicle dealer license for the purpose
175 of acting in the capacity of or conducting motor vehicle sales
176 or lease transactions as a motor vehicle dealer. Any person
177 acting ~~selling or offering a motor vehicle for sale~~ in violation
178 of the licensing requirements of this subsection, or who
179 misrepresents to any person his or her ~~its~~ relationship with any
180 manufacturer, importer, ~~or~~ distributor, or motor vehicle dealer,
181 in addition to the penalties provided herein, shall be deemed to
182 have committed ~~guilty of~~ an unfair and deceptive trade practice
183 ~~as defined~~ in violation of part II of chapter 501 and shall be
184 subject to the provisions of subsections (8) and (9).



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185 (3) APPLICATION AND FEE.—The application for the license
186 shall be in such form as may be prescribed by the department and
187 shall be subject to such rules with respect thereto as may be so
188 prescribed by it. Such application shall be verified by oath or
189 affirmation and shall contain a full statement of the name and
190 birth date of the person or persons applying therefor; the name
191 of the firm or copartnership, with the names and places of
192 residence of all members thereof, if such applicant is a firm or
193 copartnership; the names and places of residence of the
194 principal officers, if the applicant is a body corporate or
195 other artificial body; the name of the state under whose laws
196 the corporation is organized; the present and former place or
197 places of residence of the applicant; and prior business in
198 which the applicant has been engaged and the location thereof.
199 Such application shall describe the exact location of the place
200 of business and shall state whether the place of business is
201 owned by the applicant and when acquired, or, if leased, a true
202 copy of the lease shall be attached to the application. The
203 applicant shall certify that the location provides an adequately
204 equipped office and is not a residence; that the location
205 affords sufficient unoccupied space upon and within which
206 adequately to store all motor vehicles offered and displayed for
207 sale; and that the location is a suitable place where the
208 applicant can in good faith carry on such business and keep and
209 maintain books, records, and files necessary to conduct such
210 business, which shall be available at all reasonable hours to
211 inspection by the department or any of its inspectors or other
212 employees. The applicant shall certify that the business of a
213 motor vehicle dealer is the principal business which shall be



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214 conducted at that location. The application shall contain a
215 statement that the applicant is ~~either~~ franchised by a
216 manufacturer of motor vehicles, in which case the name of each
217 motor vehicle that the applicant is franchised to sell shall be
218 included; is, or an independent (nonfranchised) motor vehicle
219 dealer; or is a motor vehicle broker. The application shall
220 contain other relevant information as may be required by the
221 department, including evidence that the applicant is insured
222 under a garage liability insurance policy or a general liability
223 insurance policy coupled with a business automobile policy,
224 which shall include, at a minimum, \$25,000 combined single-limit
225 liability coverage including bodily injury and property damage
226 protection and \$10,000 personal injury protection. However, a
227 salvage motor vehicle dealer as defined in subparagraph (1)(c)5.
228 is exempt from the requirements for garage liability insurance
229 and personal injury protection insurance on those vehicles that
230 cannot be legally operated on roads, highways, or streets in
231 this state. Franchise dealers must submit a garage liability
232 insurance policy, and all other dealers must submit a garage
233 liability insurance policy or a general liability insurance
234 policy coupled with a business automobile policy. Such policy
235 shall be for the license period, and evidence of a new or
236 continued policy shall be delivered to the department at the
237 beginning of each license period. Upon making initial
238 application, the applicant shall pay to the department a fee of
239 \$300 in addition to any other fees required by law. Applicants
240 may choose to extend the licensure period for 1 additional year
241 for a total of 2 years. An initial applicant shall pay to the
242 department a fee of \$300 for the first year and \$75 for the



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243 second year, in addition to any other fees required by law. An
244 applicant for renewal shall pay to the department \$75 for a 1-
245 year renewal or \$150 for a 2-year renewal, in addition to any
246 other fees required by law. Upon making an application for a
247 change of location, the person shall pay a fee of \$50 in
248 addition to any other fees now required by law. The department
249 shall, in the case of every application for initial licensure,
250 verify whether certain facts set forth in the application are
251 true. Each applicant, general partner in the case of a
252 partnership, or corporate officer and director in the case of a
253 corporate applicant, must file a set of fingerprints with the
254 department for the purpose of determining any prior criminal
255 record or any outstanding warrants. The department shall submit
256 the fingerprints to the Department of Law Enforcement for state
257 processing and forwarding to the Federal Bureau of Investigation
258 for federal processing. The actual cost of state and federal
259 processing shall be borne by the applicant and is in addition to
260 the fee for licensure. The department may issue a license to an
261 applicant pending the results of the fingerprint investigation,
262 which license is fully revocable if the department subsequently
263 determines that any facts set forth in the application are not
264 true or correctly represented.

265 (4) LICENSE CERTIFICATE.—

266 (a) A license certificate shall be issued by the department
267 in accordance with such application when the application is
268 regular in form and in compliance with the provisions of this
269 section. The license certificate may be in the form of a
270 document or a computerized card as determined by the department.
271 The actual cost of each original, additional, or replacement



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272 computerized card shall be borne by the licensee and is in
273 addition to the fee for licensure. Such license, when so issued,
274 entitles the licensee to carry on and conduct the business of a
275 motor vehicle dealer or motor vehicle broker. Each license
276 issued to a franchise motor vehicle dealer or motor vehicle
277 broker expires on December 31 of the year of its expiration
278 unless revoked or suspended before ~~prior to~~ that date. Each
279 license issued to an independent or wholesale dealer or auction
280 expires on April 30 of the year of its expiration unless revoked
281 or suspended prior to that date. At least 60 days before the
282 license expiration date, the department shall deliver or mail to
283 each licensee the necessary renewal forms along with a statement
284 that the licensee is required to complete any applicable
285 continuing education or industry certification requirements.
286 ~~Each independent dealer shall certify that the dealer (owner,~~
287 ~~partner, officer, or director of the licensee, or a full-time~~
288 ~~employee of the licensee that holds a responsible management-~~
289 ~~level position) has completed 8 hours of continuing education~~
290 ~~prior to filing the renewal forms with the department. Such~~
291 ~~certification shall be filed once every 2 years. The continuing~~
292 ~~education shall include at least 2 hours of legal or legislative~~
293 ~~issues, 1 hour of department issues, and 5 hours of relevant~~
294 ~~motor vehicle industry topics. Continuing education shall be~~
295 ~~provided by dealer schools licensed under paragraph (b) either~~
296 ~~in a classroom setting or by correspondence. Such schools shall~~
297 ~~provide certificates of completion to the department and the~~
298 ~~customer which shall be filed with the license renewal form, and~~
299 ~~such schools may charge a fee for providing continuing~~
300 ~~education.~~ Any licensee who does not file his or her application



301 and fees and any other requisite documents, as required by law,
302 with the department at least 30 days prior to the license
303 expiration date shall cease to engage in business as a motor
304 vehicle dealer on the license expiration date. A renewal filed
305 with the department within 45 days after the expiration date
306 shall be accompanied by a delinquent fee of \$100. Thereafter, a
307 new application is required, accompanied by the initial license
308 fee. A license certificate duly issued by the department may be
309 modified by endorsement to show a change in the name of the
310 licensee, provided, as shown by affidavit of the licensee, the
311 majority ownership interest of the licensee has not changed or
312 the name of the person appearing as franchisee on the sales and
313 service agreement has not changed. Modification of a license
314 certificate to show any name change as herein provided shall not
315 require initial licensure or reissuance of dealer tags; however,
316 any dealer obtaining a name change shall transact all business
317 in and be properly identified by that name. All documents
318 relative to licensure shall reflect the new name. In the case of
319 a franchise dealer, the name change shall be approved by the
320 manufacturer, distributor, or importer. A licensee applying for
321 a name change endorsement shall pay a fee of \$25 which fee shall
322 apply to the change in the name of a main location and all
323 additional locations licensed under the provisions of subsection
324 (5). Each initial license application received by the department
325 shall be accompanied by verification that, within the preceding
326 6 months, the applicant, or one or more of his or her designated
327 employees, has attended a training and information seminar
328 conducted by a licensed motor vehicle dealer training school.
329 Any applicant for a new franchised motor vehicle dealer license



330 who has held a valid franchised motor vehicle dealer license
331 continuously for the past 2 years and who remains in good
332 standing with the department is exempt from the prelicensing
333 training requirement. Such seminar shall include, but is not
334 limited to, statutory dealer requirements, which requirements
335 include required bookkeeping and recordkeeping procedures,
336 requirements for the collection of sales and use taxes, and such
337 other information that in the opinion of the department will
338 promote good business practices. No seminar may exceed 8 hours
339 in length.

340 (b) Each initial license application received by the
341 department for licensure under subparagraph (1)(c)2. shall be
342 accompanied by verification that, within the preceding 6 months,
343 the applicant (owner, partner, officer, or director of the
344 applicant, or a full-time employee of the applicant that holds a
345 responsible management-level position) has successfully
346 completed training conducted by a licensed motor vehicle dealer
347 training school. Such training must include training in titling
348 and registration of motor vehicles, laws relating to unfair and
349 deceptive trade practices, laws relating to financing with
350 regard to buy-here, pay-here operations, and such other
351 information that in the opinion of the department will promote
352 good business practices. Successful completion of this training
353 shall be determined by examination administered at the end of
354 the course and attendance of no less than 90 percent of the
355 total hours required by such school. Any applicant who had held
356 a valid motor vehicle dealer's license continuously within the
357 past 2 years and who remains in good standing with the
358 department is exempt from the prelicensing requirements of this



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359 section. The department shall have the authority to adopt any
360 rule necessary for establishing the training curriculum; length
361 of training, which shall not exceed 8 hours for required
362 department topics and shall not exceed an additional 24 hours
363 for topics related to other regulatory agencies' instructor
364 qualifications; and any other requirements under this section.
365 The curriculum for other subjects shall be approved by any and
366 all other regulatory agencies having jurisdiction over specific
367 subject matters; however, the overall administration of the
368 licensing of these dealer schools and their instructors shall
369 remain with the department. Such schools are authorized to
370 charge a fee.

371 (c) Each application received by the department for renewal
372 of a license under subparagraph (1)(c)2. must certify that the
373 dealer (owner, partner, officer, or director of the licensee, or
374 a full-time employee of the licensee that holds a responsible
375 management-level position) has completed 8 hours of continuing
376 education prior to filing the renewal forms with the department.
377 Such certification must be filed once every 2 years. The
378 continuing education must include at least 2 hours of legal or
379 legislative issues, 1 hour of department issues, and 5 hours of
380 relevant motor vehicle industry topics. Continuing education
381 shall be provided by dealer schools licensed under paragraph (b)
382 either in a classroom setting or by correspondence. Such schools
383 shall provide certificates of completion to the department and
384 the customer which shall be filed with the license renewal form,
385 and such schools may charge a fee for providing continuing
386 education.

387 (d) Each application received by the department for renewal



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388 of a license under subparagraph (1)(c)1. must certify that the
389 dealer (dealer operator, owner, partner, officer, director, or
390 general manager of the licensee) has completed 4 hours of
391 industry certification on legal and legislative issues each year
392 prior to filing the renewal forms with the department. Industry
393 certification shall be provided by a Florida-based, nonprofit,
394 dealer-owned, statewide industry association of franchised motor
395 vehicle dealers with state and federal compliance credentials
396 approved by the department, and shall be in a classroom setting
397 in convenient locations within the state. Such association shall
398 provide certificates of completion to the department and the
399 customer which shall be filed with the license renewal form. An
400 application for renewal of a license previously issued for 1
401 year must be accompanied by a certificate establishing
402 completion of 4 hours of industry certification during the prior
403 year. An application for renewal of a license previously issued
404 for 2 years must be accompanied by certificates establishing
405 completion of 8 hours of industry certification, except that
406 renewal of a 2 year license that expires on December 31, 2019,
407 must be accompanied by a certificate establishing completion of
408 4 hours of industry certification. An association may charge a
409 fee for providing the industry certification. In the case of
410 licensees belonging to a dealership group, the required industry
411 certification may be satisfied for all licensees in the
412 dealership group through completion of the industry
413 certification by a single designated owner, officer, director,
414 or manager of the dealership group. For purposes of this
415 section, a dealership group is two or more licensed franchised
416 motor vehicle dealers with common owners having legal or



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417 equitable title of at least 80 percent of each dealer in the
418 group. A licensee who seeks to satisfy the required industry
419 certification through a dealership group must provide the
420 department with evidence of the required common ownership at the
421 time of filing the certificate of completion.

422 Section 2. This act shall take effect January 1, 2019.

423

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

425 And the title is amended as follows:

426 Delete everything before the enacting clause
427 and insert:

428 A bill to be entitled
429 An act relating to motor vehicle dealers; amending s.
430 320.27, F.S.; revising the definitions of the terms
431 "motor vehicle dealer," "franchised motor vehicle
432 dealer," "independent motor vehicle dealer,"
433 "wholesale motor vehicle dealer," and "motor vehicle
434 broker"; prohibiting persons from engaging in business
435 as, serving in the capacity of, or acting as a motor
436 vehicle broker in this state without first obtaining a
437 certain license; adding an exception to the
438 prohibition on persons other than a licensed motor
439 vehicle dealer from advertising for sale or lease any
440 motor vehicle belonging to another party; authorizing
441 owners of motor vehicles titled in their names to
442 advertise and offer motor vehicles for sale on their
443 own behalves provided such vehicles are acquired and
444 sold in good faith and not for the purpose of avoiding
445 specified requirements; prohibiting a licensed motor



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446 vehicle dealer from allowing any person other than its
447 bona fide employee to use its motor vehicle dealer
448 license for the purpose of acting in the capacity of
449 or conducting motor vehicle lease transactions as a
450 motor vehicle dealer; providing that any person acting
451 in violation of specified licensing requirements or
452 misrepresenting to any person his or her relationship
453 with any motor vehicle dealer is deemed to have
454 committed an unfair and deceptive trade practice in
455 violation of specified provisions; requiring an
456 application for a license to contain a statement that
457 the applicant is a motor vehicle broker under certain
458 circumstances; providing that a certain license
459 entitles a licensee to carry on and conduct the
460 business of a motor vehicle broker; providing that
461 each license issued to a motor vehicle broker expires
462 on a specified date of the year of its expiration
463 unless revoked or suspended before that date;
464 requiring, within a specified timeframe, the
465 Department of Highway Safety and Motor Vehicles to
466 deliver or mail to each licensee the necessary renewal
467 forms along with a statement that the licensee is
468 required to complete any applicable continuing
469 education or industry certification requirements;
470 deleting certain continuing education and
471 certification requirements; requiring applications
472 received by the department for renewal of independent
473 motor vehicle dealer licenses to certify that the
474 dealer has completed continuing education prior to



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475 filing the renewal forms with the department, subject
476 to certain requirements; providing requirements for
477 continuing education and dealer schools; authorizing
478 such schools to charge a fee for providing continuing
479 education; requiring applications received by the
480 department for renewal of franchised motor vehicle
481 dealer licenses to certify that the dealer has
482 completed certain industry certification prior to
483 filing the renewal forms with the department, subject
484 to certain requirements; providing requirements for
485 industry certification and certain statewide industry
486 associations of franchised motor vehicle dealers;
487 authorizing an association to charge a fee for
488 providing the industry certification; authorizing
489 industry certification for licensees belonging to a
490 certain dealership group to be accomplished by a
491 certain designated person; requiring a licensee who
492 seeks to satisfy the certification through a
493 dealership group to provide the department with
494 certain evidence at the time of filing the certificate
495 of completion; providing an effective date.

By the Committee on Transportation; and Senator Passidomo

596-01811-18

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1 A bill to be entitled
 2 An act relating to motor vehicle dealers; amending s.
 3 320.27, F.S.; revising the definitions of the terms
 4 "motor vehicle dealer," "franchised motor vehicle
 5 dealer," "independent motor vehicle dealer,"
 6 "wholesale motor vehicle dealer," and "motor vehicle
 7 broker"; prohibiting persons from engaging in business
 8 as, serving in the capacity of, or acting as a motor
 9 vehicle broker in this state without first obtaining a
 10 certain license; adding an exception to the
 11 prohibition on persons other than a licensed motor
 12 vehicle dealer from advertising for sale or lease any
 13 motor vehicle belonging to another party; requiring
 14 any person acting in violation of specified licensing
 15 requirements to be deemed to have committed an unfair
 16 and deceptive trade practice in violation of specified
 17 provisions; requiring an initial license certificate
 18 to be issued by the Department of Highway Safety and
 19 Motor Vehicles in accordance with an application when
 20 the application is regular in form and in compliance
 21 with specified provisions; providing for expiration of
 22 a license issued to a motor vehicle broker; deleting
 23 provisions relating to renewal forms, license
 24 certificates, and initial license applications;
 25 requiring each initial application for licensure as an
 26 independent motor vehicle dealer received by the
 27 department to be accompanied by certain verification
 28 of attending training and an information seminar;
 29 providing seminar and training requirements; providing

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30 an exemption; authorizing the department to adopt
 31 certain rules; providing that the curriculum for
 32 certain subjects is approved by any and all other
 33 regulatory agencies having jurisdiction over the
 34 specific subject matters; requiring that the overall
 35 administration of the licensing of dealer schools and
 36 their instructors remains with the department;
 37 authorizing the schools to charge a fee for training;
 38 requiring the department to deliver or mail to each
 39 licensee the necessary renewal forms within a
 40 specified period; requiring independent motor vehicle
 41 dealers to complete certain certification relating to
 42 continuing education, subject to certain requirements;
 43 defining the term "dealer"; providing requirements for
 44 continuing education; requiring dealer schools to
 45 provide certificates of completion to the department
 46 and customer; authorizing the schools to charge a fee
 47 for providing continuing education; requiring
 48 franchised motor vehicle dealers to complete certain
 49 industry certification, subject to certain
 50 requirements; authorizing a certain association to
 51 charge a fee for providing the industry certification;
 52 authorizing such certification to be accomplished by a
 53 certain designated person under certain circumstances;
 54 providing certification requirements; requiring
 55 designated individuals to receive certificates of
 56 completion; requiring a licensee who seeks to satisfy
 57 the certification through a dealership group to
 58 provide the department with certain evidence at the

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59 time of filing the certificate of completion;
 60 requiring licensees who do not file their application
 61 and any other requisite documents with, and pay the
 62 fees to, the department within a specified period to
 63 cease engaging in business; providing fees for a
 64 renewal or new application filed with the department
 65 within specified periods after the expiration date;
 66 authorizing a license certificate to be modified to
 67 show a change in the name of the licensee, subject to
 68 certain requirements; requiring a specified fee for
 69 such modification; conforming provisions to changes
 70 made by the act; providing an effective date.

71
 72 Be It Enacted by the Legislature of the State of Florida:

73
 74 Section 1. Paragraphs (c) and (d) of subsection (1) and
 75 subsections (2), (3), and (4) of section 320.27, Florida
 76 Statutes, are amended to read:

77 320.27 Motor vehicle dealers.—

78 (1) DEFINITIONS.—The following words, terms, and phrases
 79 when used in this section have the meanings respectively
 80 ascribed to them in this subsection, except where the context
 81 clearly indicates a different meaning:

82 (c) "Motor vehicle dealer" means any person engaged in the
 83 business of buying, selling, or leasing ~~dealing in~~ motor
 84 vehicles or offering or displaying motor vehicles for sale or
 85 lease at wholesale or retail, or who may service and repair
 86 motor vehicles pursuant to an agreement as defined in s.
 87 320.60(1). Any person who buys, sells, or leases ~~deals in~~ three

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88 or more motor vehicles in any 12-month period or who offers or
 89 displays for sale or lease three or more motor vehicles in any
 90 12-month period shall be prima facie presumed to be ~~engaged in~~
 91 ~~such business~~ a motor vehicle dealer. Any person who engages in
 92 any of the following activities shall be deemed to be a motor
 93 vehicle dealer: possessing, storing, or displaying motor
 94 vehicles for retail sale or lease by the person; advertising
 95 motor vehicles held in inventory by the person for retail sale
 96 or lease by the person; compensating customers for vehicles at
 97 wholesale or retail, also known as trade-ins; negotiating with
 98 customers regarding the terms of sale or lease for a motor
 99 vehicle; providing test drives of motor vehicles offered for
 100 retail sale or lease by the person; delivering or arranging for
 101 the delivery of a motor vehicle in conjunction with the retail
 102 sale or lease of the motor vehicle; or offering to sell a motor
 103 vehicle service agreement at the time of the retail sale or
 104 lease of a motor vehicle. The terms "selling" and "sale" include
 105 ~~lease-purchase transactions.~~ A motor vehicle dealer may, at
 106 retail or wholesale, sell a recreational vehicle as described in
 107 s. 320.01(1)(b)1.-6. and 8., acquired in exchange for the sale
 108 of a motor vehicle, provided such acquisition is incidental to
 109 the principal business of being a motor vehicle dealer. However,
 110 a motor vehicle dealer may not buy a recreational vehicle for
 111 the purpose of resale unless licensed as a recreational vehicle
 112 dealer pursuant to s. 320.771. ~~A motor vehicle dealer may apply~~
 113 ~~for a certificate of title to a motor vehicle required to be~~
 114 ~~registered under s. 320.08(2)(b), (c), and (d), using a~~
 115 ~~manufacturer's statement of origin as permitted by s. 319.23(1),~~
 116 ~~only if such dealer is authorized by a franchised agreement as~~

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117 ~~defined in s. 320.60(1), to buy, sell, or deal in such vehicle~~
 118 ~~and is authorized by such agreement to perform delivery and~~
 119 ~~preparation obligations and warranty defect adjustments on the~~
 120 ~~motor vehicle, provided this limitation shall not apply to~~
 121 ~~recreational vehicles, van conversions, or any other motor~~
 122 ~~vehicle manufactured on a truck chassis. The transfer of a motor~~
 123 ~~vehicle by a dealer not meeting these qualifications shall be~~
 124 ~~titled as a used vehicle.~~ The classifications of motor vehicle
 125 dealers are defined as follows:

126 1. "Franchised motor vehicle dealer" means any person who
 127 engages in the business of repairing, servicing, buying,
 128 selling, or leasing ~~dealing in~~ motor vehicles pursuant to an
 129 agreement as defined in s. 320.60(1). A motor vehicle dealer may
 130 apply for a certificate of title to a motor vehicle required to
 131 be registered under s. 320.08(2)(b), (c), or (d) or s.
 132 320.08(3)(a), (b), or (c), using a manufacturer's statement of
 133 origin as required by s. 319.23(1), only if such dealer is
 134 authorized by a franchise agreement as defined in s. 320.60(1)
 135 to buy, sell, or deal in such vehicles and is authorized by such
 136 agreement to perform delivery and preparation obligations and
 137 warranty defect adjustments on the motor vehicle. This
 138 limitation does not apply to recreational vehicles, van
 139 conversions, or any other motor vehicle manufactured on a truck
 140 chassis.

141 2. "Independent motor vehicle dealer" means any person
 142 other than a franchised or wholesale motor vehicle dealer who
 143 engages in the business of buying, selling, or leasing ~~dealing~~
 144 ~~in~~ motor vehicles, and who may service and repair motor
 145 vehicles.

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146 3. "Wholesale motor vehicle dealer" means any person who
 147 engages exclusively in the business of buying or, ~~selling, or~~
 148 ~~dealing in~~ motor vehicles at wholesale or with motor vehicle
 149 auctions. Such person shall be licensed to do business in this
 150 state, shall not sell or auction a vehicle to any person who is
 151 not a licensed dealer, and shall not have the privilege of the
 152 use of dealer license plates. Any person who buys, sells, or
 153 deals in motor vehicles at wholesale or with motor vehicle
 154 auctions on behalf of a licensed motor vehicle dealer and as a
 155 bona fide employee of such licensed motor vehicle dealer is not
 156 required to be licensed as a wholesale motor vehicle dealer. In
 157 such cases it shall be prima facie presumed that a bona fide
 158 employer-employee relationship exists. A wholesale motor vehicle
 159 dealer shall be exempt from the display provisions of this
 160 section but shall maintain an office wherein records are kept in
 161 order that those records may be inspected.

162 4. "Motor vehicle auction" means any person offering motor
 163 vehicles or recreational vehicles for sale to the highest bidder
 164 where buyers are licensed motor vehicle dealers. Such person
 165 shall not sell a vehicle to anyone other than a licensed motor
 166 vehicle dealer.

167 5. "Salvage motor vehicle dealer" means any person who
 168 engages in the business of acquiring salvaged or wrecked motor
 169 vehicles for the purpose of reselling them and their parts.
 170
 171 Notwithstanding anything in this subsection to the contrary, the
 172 term "motor vehicle dealer" does not include persons not engaged
 173 in the purchase or sale of motor vehicles as a business who are
 174 disposing of vehicles acquired for their own use or for use in

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175 their business or acquired by foreclosure or by operation of
 176 law, provided such vehicles are acquired and sold in good faith
 177 and not for the purpose of avoiding the provisions of this law;
 178 persons engaged in the business of manufacturing, selling, or
 179 offering or displaying for sale at wholesale or retail no more
 180 than 25 trailers in a 12-month period; public officers while
 181 performing their official duties; receivers; trustees,
 182 administrators, executors, guardians, or other persons appointed
 183 by, or acting under the judgment or order of, any court; banks,
 184 finance companies, or other loan agencies that acquire motor
 185 vehicles as an incident to their regular business; motor vehicle
 186 brokers; persons whose sole dealing in motor vehicles is owning
 187 a publication in, or hosting a website on, which licensed motor
 188 vehicle dealers display vehicles for sale; persons primarily
 189 engaged in the business of the short-term rental of motor
 190 vehicles, which rental term may not exceed 12 months, who are
 191 not also involved in the retail sale of motor vehicles; and
 192 motor vehicle rental and leasing companies that sell motor
 193 vehicles only to motor vehicle dealers licensed under this
 194 section. Vehicles owned under circumstances described in this
 195 paragraph may be disposed of at retail, wholesale, or auction,
 196 unless otherwise restricted. A manufacturer of fire trucks,
 197 ambulances, or school buses may sell such vehicles directly to
 198 governmental agencies or to persons who contract to perform or
 199 provide firefighting, ambulance, or school transportation
 200 services exclusively to governmental agencies without processing
 201 such sales through dealers if such fire trucks, ambulances,
 202 school buses, or similar vehicles are not presently available
 203 through motor vehicle dealers licensed by the department.

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204 (d) "Motor vehicle broker" means any person engaged in the
 205 business of, or who holds himself or herself out through
 206 solicitation, advertisement, or other means as being in the
 207 business of, assisting offering to procure or procuring motor
 208 ~~vehicles for~~ the general public in purchasing or leasing a motor
 209 vehicle from a licensed motor vehicle dealer, or who holds
 210 ~~himself or herself out through solicitation, advertisement, or~~
 211 ~~otherwise as one who offers to procure or procures motor~~
 212 ~~vehicles for the general public,~~ and who does not store,
 213 display, or take ownership of any vehicles for the purpose of
 214 selling such vehicles. Any advertisement or solicitation by a
 215 motor vehicle broker must include notice that the broker is
 216 receiving a fee and must clearly state that the broker is not a
 217 licensed motor vehicle dealer. A licensed manufacturer,
 218 distributor, or importer is not considered a motor vehicle
 219 broker.

220 (2) LICENSE REQUIRED.—No person shall engage in business
 221 as, serve in the capacity of, or act as a motor vehicle dealer
 222 or motor vehicle broker in this state without first obtaining a
 223 license therefor in the appropriate classification as provided
 224 in this section. With the exception of transactions with motor
 225 vehicle auctions, no person other than a licensed motor vehicle
 226 dealer may advertise for sale or lease any motor vehicle
 227 belonging to another party unless as a direct result of a bona
 228 fide legal proceeding, court order, settlement of an estate, ~~or~~
 229 by contract with a motor vehicle dealer, or by operation of law.
 230 However, owners of motor vehicles titled in their names may
 231 advertise and offer vehicles for sale on their own behalf. It
 232 shall be unlawful for a licensed motor vehicle dealer to allow

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233 any person other than a bona fide employee to use the motor
 234 vehicle dealer license for the purpose of acting in the capacity
 235 of or conducting motor vehicle sales transactions as a motor
 236 vehicle dealer. Any person acting selling or offering a motor
 237 ~~vehicle for sale~~ in violation of the licensing requirements of
 238 this subsection, or who misrepresents to any person its
 239 relationship with any manufacturer, importer, or distributor, in
 240 addition to the penalties provided herein, shall be deemed to
 241 have committed ~~guilty of~~ an unfair and deceptive trade practice
 242 ~~as defined in violation of~~ part II of chapter 501 and shall be
 243 subject to the provisions of subsections (8) and (9).

244 (3) APPLICATION AND FEE.—The application for the license
 245 shall be in such form as may be prescribed by the department and
 246 shall be subject to such rules with respect thereto as may be so
 247 prescribed by it. Such application shall be verified by oath or
 248 affirmation and shall contain a full statement of the name and
 249 birth date of the person or persons applying therefor; the name
 250 of the firm or copartnership, with the names and places of
 251 residence of all members thereof, if such applicant is a firm or
 252 copartnership; the names and places of residence of the
 253 principal officers, if the applicant is a body corporate or
 254 other artificial body; the name of the state under whose laws
 255 the corporation is organized; the present and former place or
 256 places of residence of the applicant; and prior business in
 257 which the applicant has been engaged and the location thereof.
 258 Such application shall describe the exact location of the place
 259 of business and shall state whether the place of business is
 260 owned by the applicant and when acquired, or, if leased, a true
 261 copy of the lease shall be attached to the application. The

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262 applicant shall certify that the location provides an adequately
 263 equipped office and is not a residence; that the location
 264 affords sufficient unoccupied space upon and within which
 265 adequately to store all motor vehicles offered and displayed for
 266 sale; and that the location is a suitable place where the
 267 applicant can in good faith carry on such business and keep and
 268 maintain books, records, and files necessary to conduct such
 269 business, which shall be available at all reasonable hours to
 270 inspection by the department or any of its inspectors or other
 271 employees. The applicant shall certify that the business of a
 272 motor vehicle dealer is the principal business which shall be
 273 conducted at that location. The application shall contain a
 274 statement that the applicant is: ~~either~~ franchised by a
 275 manufacturer of motor vehicles, in which case the name of each
 276 motor vehicle that the applicant is franchised to sell shall be
 277 included; ~~or~~ an independent (nonfranchised) motor vehicle
 278 dealer; or a motor vehicle broker. The application shall contain
 279 other relevant information as may be required by the department,
 280 including evidence that the applicant is insured under a garage
 281 liability insurance policy or a general liability insurance
 282 policy coupled with a business automobile policy, which shall
 283 include, at a minimum, \$25,000 combined single-limit liability
 284 coverage including bodily injury and property damage protection
 285 and \$10,000 personal injury protection. However, a salvage motor
 286 vehicle dealer as defined in subparagraph (1)(c)5. is exempt
 287 from the requirements for garage liability insurance and
 288 personal injury protection insurance on those vehicles that
 289 cannot be legally operated on roads, highways, or streets in
 290 this state. Franchise dealers must submit a garage liability

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291 insurance policy, and all other dealers must submit a garage
 292 liability insurance policy or a general liability insurance
 293 policy coupled with a business automobile policy. Such policy
 294 shall be for the license period, and evidence of a new or
 295 continued policy shall be delivered to the department at the
 296 beginning of each license period. Upon making initial
 297 application, the applicant shall pay to the department a fee of
 298 \$300 in addition to any other fees required by law. Applicants
 299 may choose to extend the licensure period for 1 additional year
 300 for a total of 2 years. An initial applicant shall pay to the
 301 department a fee of \$300 for the first year and \$75 for the
 302 second year, in addition to any other fees required by law. An
 303 applicant for renewal shall pay to the department \$75 for a 1-
 304 year renewal or \$150 for a 2-year renewal, in addition to any
 305 other fees required by law. Upon making an application for a
 306 change of location, the person shall pay a fee of \$50 in
 307 addition to any other fees now required by law. The department
 308 shall, in the case of every application for initial licensure,
 309 verify whether certain facts set forth in the application are
 310 true. Each applicant, general partner in the case of a
 311 partnership, or corporate officer and director in the case of a
 312 corporate applicant, must file a set of fingerprints with the
 313 department for the purpose of determining any prior criminal
 314 record or any outstanding warrants. The department shall submit
 315 the fingerprints to the Department of Law Enforcement for state
 316 processing and forwarding to the Federal Bureau of Investigation
 317 for federal processing. The actual cost of state and federal
 318 processing shall be borne by the applicant and is in addition to
 319 the fee for licensure. The department may issue a license to an

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320 applicant pending the results of the fingerprint investigation,
 321 which license is fully revocable if the department subsequently
 322 determines that any facts set forth in the application are not
 323 true or correctly represented.

(4) LICENSE CERTIFICATE.—

324 (a) An initial A license certificate shall be issued by the
 325 department in accordance with such application when the
 326 application is regular in form and in compliance with the
 327 provisions of this section. The license certificate may be in
 328 the form of a document or a computerized card as determined by
 329 the department. The actual cost of each original, additional, or
 330 replacement computerized card shall be borne by the licensee and
 331 is in addition to the fee for licensure. Such license, when so
 332 issued, entitles the licensee to carry on and conduct the
 333 business of a motor vehicle dealer or broker. Each license
 334 issued to a franchise motor vehicle dealer or motor vehicle
 335 broker expires on December 31 of the year of its expiration
 336 unless revoked or suspended prior to that date. Each license
 337 issued to an independent or wholesale dealer or auction expires
 338 on April 30 of the year of its expiration unless revoked or
 339 suspended prior to that date. ~~At least 60 days before the~~
 340 ~~license expiration date, the department shall deliver or mail to~~
 341 ~~each licensee the necessary renewal forms. Each independent~~
 342 ~~dealer shall certify that the dealer (owner, partner, officer,~~
 343 ~~or director of the licensee, or a full-time employee of the~~
 344 ~~licensee that holds a responsible management-level position) has~~
 345 ~~completed 8 hours of continuing education prior to filing the~~
 346 ~~renewal forms with the department. Such certification shall be~~
 347 ~~filed once every 2 years. The continuing education shall include~~

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349 at least 2 hours of legal or legislative issues, 1 hour of
 350 department issues, and 5 hours of relevant motor vehicle
 351 industry topics. Continuing education shall be provided by
 352 dealer schools licensed under paragraph (b) either in a
 353 classroom setting or by correspondence. Such schools shall
 354 provide certificates of completion to the department and the
 355 customer which shall be filed with the license renewal form, and
 356 such schools may charge a fee for providing continuing
 357 education. Any licensee who does not file his or her application
 358 and fees and any other requisite documents, as required by law,
 359 with the department at least 30 days prior to the license
 360 expiration date shall cease to engage in business as a motor
 361 vehicle dealer on the license expiration date. A renewal filed
 362 with the department within 45 days after the expiration date
 363 shall be accompanied by a delinquent fee of \$100. Thereafter, a
 364 new application is required, accompanied by the initial license
 365 fee. A license certificate duly issued by the department may be
 366 modified by endorsement to show a change in the name of the
 367 licensee, provided, as shown by affidavit of the licensee, the
 368 majority ownership interest of the licensee has not changed or
 369 the name of the person appearing as franchisee on the sales and
 370 service agreement has not changed. Modification of a license
 371 certificate to show any name change as herein provided shall not
 372 require initial licensure or reissuance of dealer tags; however,
 373 any dealer obtaining a name change shall transact all business
 374 in and be properly identified by that name. All documents
 375 relative to licensure shall reflect the new name. In the case of
 376 a franchise dealer, the name change shall be approved by the
 377 manufacturer, distributor, or importer. A licensee applying for

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378 a name change endorsement shall pay a fee of \$25 which fee shall
 379 apply to the change in the name of a main location and all
 380 additional locations licensed under the provisions of subsection
 381 (5). Each initial license application received by the department
 382 shall be accompanied by verification that, within the preceding
 383 6 months, the applicant, or one or more of his or her designated
 384 employees, has attended a training and information seminar
 385 conducted by a licensed motor vehicle dealer training school.
 386 Any applicant for a new franchised motor vehicle dealer license
 387 who has held a valid franchised motor vehicle dealer license
 388 continuously for the past 2 years and who remains in good
 389 standing with the department is exempt from the prelicensing
 390 training requirement. Such seminar shall include, but is not
 391 limited to, statutory dealer requirements, which requirements
 392 include required bookkeeping and recordkeeping procedures,
 393 requirements for the collection of sales and use taxes, and such
 394 other information that in the opinion of the department will
 395 promote good business practices. No seminar may exceed 8 hours
 396 in length.

397 (b) Each initial license application received by the
 398 department for licensure under subparagraph (1)(c)2. shall be
 399 accompanied by verification that, within the preceding 6 months,
 400 the applicant (owner, partner, officer, or director of the
 401 applicant, or a full-time employee of the applicant that holds a
 402 responsible management-level position) has successfully
 403 completed training conducted by a licensed motor vehicle dealer
 404 training school. Such training must include training in titling
 405 and registration of motor vehicles, laws relating to unfair and
 406 deceptive trade practices, laws relating to financing with

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407 ~~regard to buy here, pay here operations, and such other~~
 408 ~~information that in the opinion of the department will promote~~
 409 ~~good business practices. Successful completion of this training~~
 410 ~~shall be determined by examination administered at the end of~~
 411 ~~the course and attendance of no less than 90 percent of the~~
 412 ~~total hours required by such school. Any applicant who had held~~
 413 ~~a valid motor vehicle dealer's license continuously within the~~
 414 ~~past 2 years and who remains in good standing with the~~
 415 ~~department is exempt from the preclicensing requirements of this~~
 416 ~~section. The department shall have the authority to adopt any~~
 417 ~~rule necessary for establishing the training curriculum; length~~
 418 ~~of training, which shall not exceed 8 hours for required~~
 419 ~~department topics and shall not exceed an additional 24 hours~~
 420 ~~for topics related to other regulatory agencies' instructor~~
 421 ~~qualifications; and any other requirements under this section.~~
 422 ~~The curriculum for other subjects shall be approved by any and~~
 423 ~~all other regulatory agencies having jurisdiction over specific~~
 424 ~~subject matters; however, the overall administration of the~~
 425 ~~licensing of these dealer schools and their instructors shall~~
 426 ~~remain with the department. Such schools are authorized to~~
 427 ~~charge a fee.~~

428 (b) Each application for initial licensure as an
 429 independent motor vehicle dealer received by the department
 430 shall be accompanied by verification that, within the preceding
 431 6 months, the applicant or one or more of his or her designated
 432 employees has attended a training and information seminar
 433 conducted by a licensed motor vehicle dealer training school.
 434 Such seminar must include, but need not be limited to, statutory
 435 dealer requirements, which include required bookkeeping and

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436 recordkeeping procedures, requirements for the collection of
 437 sales and use taxes, and any other information that, in the
 438 opinion of the department, will promote good business practices.
 439 A seminar may not exceed 8 hours in length. Such training must
 440 include instruction in titling and registration of motor
 441 vehicles, laws relating to unfair and deceptive trade practices,
 442 laws relating to financing with regard to buy-here, pay-here
 443 operations, and such other information that in the opinion of
 444 the department promotes good business practices. Successful
 445 completion of this training shall be determined by examination
 446 administered at the end of the seminar and attendance of no less
 447 than 90 percent of the total hours required by such school. Any
 448 applicant for an independent dealer license who had held a valid
 449 motor vehicle dealer license continuously within the past 2
 450 years and who remains in good standing with the department is
 451 exempt from the preclicensing requirements of this section. The
 452 department may adopt any rule necessary for establishing the
 453 training curriculum; length of training, which shall not exceed
 454 8 hours for required department topics and shall not exceed an
 455 additional 24 hours for topics related to other regulatory
 456 agencies' instructor qualifications; and any other requirements
 457 under this section. The curriculum for other subjects shall be
 458 approved by any and all other regulatory agencies having
 459 jurisdiction over the specific subject matters; however, the
 460 overall administration of the licensing of these dealer schools
 461 and their instructors shall remain with the department. Such
 462 schools are authorized to charge a fee for training.

463 (c) At least 60 days before the license expiration date,
 464 the department shall deliver or mail to each licensee the

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465 necessary renewal forms.

466 1. Each independent motor vehicle dealer must certify that
 467 the dealer has completed 8 hours of continuing education before
 468 filing the renewal forms with the department. For purposes of
 469 this subparagraph, the term "dealer" means an owner, partner,
 470 officer, or director of the licensee, or a full-time employee of
 471 the licensee that holds a responsible management-level position.
 472 Such certification must be filed once every 2 years. The
 473 continuing education shall include at least 2 hours of
 474 instruction in legal or legislative issues, 1 hour of
 475 instruction in department issues, and 5 hours of instruction in
 476 relevant motor vehicle industry topics. Continuing education
 477 shall be provided by dealer schools licensed under paragraph (b)
 478 either in a classroom setting or by correspondence. Such schools
 479 shall provide certificates of completion to the department and
 480 the customer which must be filed with the license renewal form,
 481 and such schools may charge a fee for providing continuing
 482 education.

483 2. Each franchised motor vehicle dealer shall certify that
 484 the dealer, operator, owner, partner, director, or general
 485 manager of the licensee has completed 8 hours of industry
 486 certification on legal and legislative issues every 2 years
 487 provided by a Florida-based, nonprofit, dealer-owned, statewide
 488 industry association of franchised motor vehicle dealers with
 489 state and federal compliance credentials approved by the
 490 department. Such association may charge a fee for providing the
 491 industry certification. In the case of licensees belonging to a
 492 dealership group, the required certification may be satisfied
 493 for all licensees in the dealership group through completion of

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494 the industry certification by one designated owner, officer,
 495 director, or manager of the dealership group. For purposes of
 496 this section, a dealership group is two or more licensed
 497 franchised motor vehicle dealers with a common owner which has
 498 legal or equitable title of at least 80 percent of each dealer
 499 in the group. Certification shall be required in a classroom
 500 setting in a convenient location within the state and designated
 501 individuals shall receive certificates of completion from the
 502 organization which must be filed with their license renewal
 503 form. A licensee who seeks to satisfy the required certification
 504 through a dealership group must provide the department with
 505 evidence of the required common ownership at the time of filing
 506 the certificate of completion.

507 3. Any licensee who does not file his or her application
 508 and any other requisite documents with, and pay the fees to, as
 509 required by law, the department at least 30 days before the
 510 license expiration date must cease to engage in business as a
 511 motor vehicle dealer no later than the license expiration date.
 512 A renewal filed with the department within 45 days after the
 513 expiration date must be accompanied by a delinquent fee of \$100.
 514 Thereafter, a new application is required, accompanied by the
 515 initial license fee.

516 (d) A license certificate duly issued by the department may
 517 be modified by endorsement to show a change in the name of the
 518 licensee, provided, as shown by affidavit of the licensee, the
 519 majority ownership interest of the licensee has not changed or
 520 the name of the person appearing as franchisee on the sales and
 521 service agreement has not changed. Modification of a license
 522 certificate to show any name change as provided in this

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523 paragraph does not require initial licensure or reissuance of
524 dealer tags; however, any dealer obtaining a name change shall
525 transact all business in and be properly identified by that
526 name. All documents relative to licensure shall reflect the new
527 name. In the case of a franchised motor vehicle dealer, the name
528 change shall be approved by the manufacturer, distributor, or
529 importer. A licensee applying for a name change endorsement
530 shall pay a fee of \$25 which shall apply to the change in the
531 name of a main location and all additional locations licensed
532 under subsection (5).

533 Section 2. This act shall take effect July 1, 2018.



The Florida Senate

Committee Agenda Request

To: Senator Bill Montford, Chair
Committee on Commerce and Tourism

Subject: Committee Agenda Request

Date: December 5, 2017

I respectfully request that **Senate Bill #616**, relating to Motor Vehicle Dealers, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in black ink, appearing to read "K. Passidomo", with a horizontal line extending to the right.

Senator Kathleen Passidomo
Florida Senate, District 28

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/22/18

Meeting Date

616

Bill Number (if applicable)

Topic AUTOMOBILE DEALERS

Amendment Barcode (if applicable)

Name TED SMITH

Job Title PRESIDENT

Address 460 N. MERIDIAN ST.

Phone 850-224-2580

Street

TALLAHASSEE

City

FL

State

32301

Zip

Email teds@flada.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FLORIDA AUTO DEALERS ASSOCIATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: CS/CS/SB 1020

INTRODUCER: Commerce and Tourism Committee and Senator Young and others

SUBJECT: Alcohol Deliveries

DATE: January 22, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>McSwain</u>	<u>RI</u>	Fav/CS
2.	<u>Swift</u>	<u>McKay</u>	<u>CM</u>	Fav/CS
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1020 permits an alcoholic beverage vendor to make deliveries away from the licensed place of business for electronic orders received at the vendor's licensed place of business. An electronic order received at the licensed place of business is construed as a sale actually made at the vendor's licensed place of business. Current law permits only telephone or mail orders received at a vendor's licensed place of business to be construed as a sale actually made at the vendor's licensed place of business.

Additionally, the bill permits an alcoholic beverage manufacturer, distributor, or vendor to make deliveries away from its licensed place of business in vehicles that are under the licensee's control and direction pursuant to a contract with a third party with whom the licensee has contracted to make deliveries, including, but not limited to, a common carrier. Current law permits an alcoholic beverage manufacturer, distributor, or a vendor to make deliveries away from its place of business only in vehicles that are owned or leased by the vendor.

The bill also requires the identity and age of the recipient to be confirmed upon delivery of the alcohol.

The effective date of the bill is July 1, 2018.

II. Present Situation:

Division of Alcoholic Beverages and Tobacco

The Division of Alcoholic Beverages and Tobacco (division) within the Department of Business and Professional Regulation administers and enforces the Beverage Law,¹ which regulates the manufacture, distribution, and sale of wine, beer, and liquor.² The division is also responsible for the administration and enforcement of tobacco products under ch. 569, F.S.

Deliveries by Licensees

Section 561.57(1), F.S., permits an alcoholic beverages vendor to make deliveries away from its place of business for sales made at the licensed place of business. Telephone or mail orders received at a vendor's licensed place of business are construed as a sale actually made at the vendor's licensed place of business.³ Current law does not address orders received via the Internet or other electronic forms of communication.

Deliveries made by a manufacturer, distributor, or a vendor away from its place of business may only be made in vehicles owned or leased by the licensee. By acceptance of an alcoholic beverage license and the use of vehicles owned by or leased by the vendor, the vendor agrees the vehicle is subject to be inspected and searched without a search warrant by employees of the division or law enforcement officers to ascertain compliance with all provisions of the alcoholic beverage laws.⁴

Common carriers⁵ may transport alcoholic beverages.⁶ However, current law does not authorize manufacturers, distributors, and vendors to use common carriers to make deliveries.

A "permit carrier" is a licensee authorized to make deliveries under s. 561.57, F.S.⁷

III. Effect of Proposed Changes:

The bill amends s. 561.57(1), F.S., to permit an alcoholic beverage vendor to make deliveries away from its licensed place of business for electronic orders received at the vendor's licensed place of business. An electronic order received at the licensed place of business is construed as a sale actually made at the vendor's licensed place of business.

¹ Section 561.01(6), F.S., provides that the "Beverage Law" means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.

² Section 565.01, F.S., defines the terms "liquor," "distilled spirits," "spirituous liquors," "spirituous beverages," or "distilled spirituous liquors" to mean "that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced."

³ Section 561.57(1), F.S.

⁴ Section 561.57(2), F.S.

⁵ Section 561.01(19), F.S., defines a "common carrier" as "any person, firm, or corporation that undertakes for hire, as a regular business, the transportation of persons or commodities from place to place, offering its services to all who choose to employ it and pay its charges."

⁶ Section 561.57(5), F.S.

⁷ Section 561.01(20), F.S.

The delivery limitation in s. 561.57(2), F.S., is revised by the bill to permit a manufacturer, distributor, or vendor to make deliveries away from its licensed place of business in vehicles that are under the licensee's control and direction pursuant to a contract with a third party with whom the vendor has contracted to make deliveries, including, but not limited to, a common carrier. The bill also requires the identity and age of the recipient to be confirmed upon delivery of the alcohol.

The effective date of the bill is July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

An alcoholic beverage vendor could make deliveries away from its licensed place of business for electronic orders received at the vendor's licensed place of business.

A manufacturer, distributor, or vendor will be permitted to contract with a third party, including common carriers, to make deliveries in vehicles under the control and direction of the vendor pursuant to a contract with the third party with whom the licensee has contracted to make deliveries.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 561.57(2), F.S., provides that, by acceptance of an alcoholic beverage license, a vendor is presumed to agree to the inspection of its delivery vehicle without a search warrant by employees of the division or law enforcement officers to ascertain compliance with all provisions of the alcoholic beverage laws. This presumption does not extend to a third party, who is not an alcoholic beverage licensee, making deliveries of alcoholic beverages as authorized by the bill. Consequently, before inspecting a delivery vehicle owned or leased by a third party non-licensee, employees of the division or law enforcement may need to obtain consent from the third party before such a search, obtain a search warrant from a court based on a finding of probable cause, or conduct a warrantless search of the vehicle if it is readily mobile and law enforcement has probable cause to believe that the vehicle contains contraband or other evidence of a crime,⁸ or if there are exigent circumstances for the conduct of the search.⁹

VIII. Statutes Affected:

This bill substantially amends section 561.57 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Commerce and Tourism on January 22, 2018:

The bill also requires the identity and age of the recipient to be confirmed upon delivery of the alcohol.

CS by Regulated Industries Committee on January 10, 2018:

The committee substitute revises the bill to add the condition that the vehicles used by a third party, including common carriers, to make deliveries for the vendor must be under the control and direction of the vendor pursuant to a contract with the third party with whom the vendor has contracted to make deliveries.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

⁸ See *State v. Ross*, 209 So.3d 606 (Fla. 2d DCA 2016); and *State v. Green*, 943 So.2d 1004 (Fla. 2d DCA 2006).

⁹ The factors indicating exigent circumstances may include (1) the gravity or violent nature of the offense with which the suspect is to be charged; (2) a reasonable belief that the suspect is armed; (3) probable cause to believe that the suspect committed the crime; (4) strong reason to believe that the suspect is in the premises being entered; and (5) a likelihood that delay could cause the escape of the suspect or the destruction of essential evidence, or jeopardize the safety of officers or the public. *Lee v. State*, 856 So.2d 1133 (Fla. 1st DCA 2003), citing *United States v. Standridge*, 810 F.2d 1034, 1037 (11th Cir.), cert. denied, 481 U.S. 1072, 107 S.Ct. 2468, 95 L.Ed.2d 877 (1987).



682078

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/22/2018	.	
	.	
	.	
	.	

The Committee on Commerce and Tourism (Hutson) recommended the following:

Senate Amendment (with directory and title amendments)

Delete lines 24 - 36

and insert:

in vehicles that ~~which~~ are owned or leased by the licensee.

Alternatively, such deliveries may be made in a third-party

vehicle pursuant to a contract with a third party with whom the

licensee has contracted to make deliveries, including, but not

limited to, common carriers. Any ~~By acceptance of an alcoholic~~

~~beverage license and the use of such vehicles, The licensee~~



682078

11 ~~agrees that such~~ vehicle used to make such deliveries is shall
12 ~~always be~~ subject to inspections and searches ~~be inspected and~~
13 ~~searched~~ without a search warrant, for the purpose of
14 ascertaining that all provisions of the alcoholic beverage laws
15 are complied with, by authorized employees of the division and
16 also by sheriffs, deputy sheriffs, and police officers when
17 ~~during business hours or other times~~ the vehicle is being used
18 to transport or deliver alcoholic beverages.

19 (6) Valid proof of the recipient's identity and age shall
20 be verified and documented at the time of delivery. Deliveries
21 made pursuant to this section must comply with s. 562.11.

22
23 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

24 And the directory clause is amended as follows:

25 Delete line 14

26 and insert:

27 Florida Statutes, are amended, and subsection (6) is added to
28 that section, to read:

29
30 ===== T I T L E A M E N D M E N T =====

31 And the title is amended as follows:

32 Delete lines 7 - 9

33 and insert:

34 deliveries in a third-party vehicle under certain
35 circumstances; requiring that the recipient's identity
36 and age be verified and documented at the time of
37 delivery; requiring that deliveries comply with s.
38 562.11, F.S.; providing an effective date.

By the Committee on Regulated Industries; and Senator Young

580-02002-18

20181020c1

1 A bill to be entitled
 2 An act relating to alcohol deliveries; amending s.
 3 561.57, F.S.; including an electronic order as a type
 4 of order construed as a sale made at a vendor's
 5 licensed place of business; authorizing a
 6 manufacturer, distributor, or vendor to make certain
 7 deliveries in vehicles that are under the licensee's
 8 control and direction pursuant to a contract with a
 9 third party; providing an effective date.

10

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

12

13 Section 1. Subsections (1) and (2) of section 561.57,
 14 Florida Statutes, are amended to read:

15

561.57 Deliveries by licensees.—

16

17 (1) Vendors shall be permitted to make deliveries away from
 18 their places of business of sales actually made at the licensed
 19 place of business; provided, telephone, electronic, or mail
 20 orders received at a vendor's licensed place of business shall
 21 be construed as a sale actually made at the vendor's licensed
 22 place of business.

22

23 (2) Deliveries made by a manufacturer, distributor, or
 24 vendor away from his or her place of business may be made only
 25 in vehicles that ~~which~~ are owned or leased by the licensee or
 26 that are under the licensee's control and direction pursuant to
 27 a contract with a third party with whom the licensee has
 28 contracted with to make deliveries, including, but not limited
 29 to, common carriers. By acceptance of an alcoholic beverage
 license and the use of such vehicles, the licensee agrees that

Page 1 of 2

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

580-02002-18

20181020c1

30 such vehicle shall always be subject to be inspected and
 31 searched without a search warrant, for the purpose of
 32 ascertaining that all provisions of the alcoholic beverage laws
 33 are complied with, by authorized employees of the division and
 34 also by sheriffs, deputy sheriffs, and police officers during
 35 business hours or other times the vehicle is being used to
 36 transport or deliver alcoholic beverages.

37

Section 2. This act shall take effect July 1, 2018.

Page 2 of 2

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Health Policy, *Chair*
Appropriations Subcommittee on Pre-K - 12
Education, *Vice Chair*
Commerce and Tourism
Communications, Energy, and Public Utilities
Regulated Industries

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR DANA YOUNG

18th District

January 11, 2018

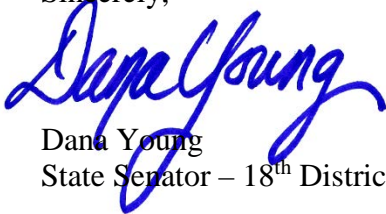
Senator Bill Montford, Chair
Commerce and Tourism Committee
310 Knott Building
404 S. Monroe Street
Tallahassee, Florida 32399-1100

Dear Chair Montford,

My Senate Bill 1020 regarding Alcohol Deliveries has been referred to your committee. I respectfully request that this bill be placed on your next available agenda.

If you have any questions, please do not hesitate to reach out to me.

Sincerely,



Dana Young
State Senator – 18th District

cc: Todd McKay, Staff Director – Commerce and Tourism Committee

REPLY TO:

- 1211 N. Westshore Blvd, Suite 409, Tampa, Florida 33607 (813) 281-5507
- 316 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5018

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/22/18

Meeting Date

1020

Bill Number (if applicable)

Topic Alcohol Delivery

Amendment Barcode (if applicable)

Name Melissa Ramba

Job Title VP Gov't Affairs

Address 227 S Adams St.

Phone 850-570-0269

Street

Tallahassee

City

FL

State

32311

Zip

Email Melissa@FRF.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Retail Federation

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

01/28/18
Meeting Date

1020
Bill Number (if applicable)

Topic Alcohol Deliveries

Amendment Barcode (if applicable)

Name Richard Turner

Job Title Senior VP of Legal & Legislative Affairs

Address 230 S. Adams St.
Street

Phone 850-224-2250

Tallahassee FL 32301
City State Zip

Email rturner@frla.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Restaurant & Lodging Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/22/2018
Meeting Date

SB 1020
Bill Number (if applicable)

Topic Retail alcohol deliveries

682078
Amendment Barcode (if applicable)

Name Eric Criss

amendment only

Job Title President

Address 110 S. Monroe st.
Street

Phone 491 3903

Tallahassee, FL 32309
City State Zip

Email eric@floridabeer.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Beer Industry of FL

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Health Policy, *Chair*
Appropriations Subcommittee on Pre-K - 12
Education, *Vice Chair*
Commerce and Tourism
Communications, Energy, and Public Utilities
Regulated Industries

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR DANA YOUNG

18th District

January 18, 2018

Senator Bill Montford, Chair
Commerce and Tourism Committee
310 Knott Building
404 S. Monroe Street
Tallahassee, Florida 32399-1100

Dear Chair Montford,

Please accept this letter as my request to be excused from the Committee Meeting on Monday, January 22, 2018. Senator Hutson will present my bill, SB 1020, as he is a prime cosponsor.

If I need to provide anything further, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Dana Young".

Dana Young
State Senator – 18th District

DY:mfh

cc: Todd McKay, Staff Director – Senate Committee on Commerce and Tourism

REPLY TO:

- 1211 N. Westshore Blvd, Suite 409, Tampa, Florida 33607 (813) 281-5507
- 316 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5018

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore



The Florida Senate

Committee Excusal Request

To: Senator Bill Montford, Chair
Committee on Commerce and Tourism

Subject: Committee Excusal Request

Date: January 22, 2018

I respectfully request to be excused from the Committee on Commerce and Tourism meeting on 1/22/18, as I will be presenting SB 1434 in the Committee on Education at the same time. Please feel free to reach out to my office if you have any questions or concerns.

Respectfully,

A handwritten signature in black ink, appearing to read "K. Passidomo", followed by a horizontal line.

Senator Kathleen Passidomo
Florida Senate, District 28

CourtSmart Tag Report

Room: EL 110

Case No.:

Type:

Caption: Senate Commerce and Tourism Committee

Judge:

Started: 1/22/2018 3:32:14 PM

Ends: 1/22/2018 4:13:08 PM

Length: 00:40:55

3:32:15 PM Meeting Called to Order
3:32:18 PM Roll Call
3:32:28 PM Quorum is Present
3:33:36 PM Tab 2 SB 1122
3:33:41 PM SB 1122 Explained by Senator Braynon
3:35:29 PM Rick Beasley rep. South Florida Workforce Investment Board Speaks in Support of SB 1122
3:36:43 PM Senator Braynon Waives Close on SB 1122
3:36:49 PM Roll Call on SB 1122
3:37:05 PM SB 1122 is Reported Favorably
3:37:18 PM Tab 3 SB 1124
3:37:38 PM Senator Braynon Explains SB 1124
3:37:56 PM Amendment Barcode 784004 Explained by Braynon
3:39:19 PM Amendment Barcode 784004 is Adopted
3:39:48 PM Senator Braynon Waives Close on SB 1124
3:39:53 PM Roll Call on SB 1124
3:40:06 PM SB 1124 is Reported Favorably
3:40:21 PM Tab 1 SB 1028
3:40:31 PM Senator Thurston Explains SB 1028
3:41:47 PM Katie Crofoot rep. Florida Bankers Assoc. Waives in Support
3:42:00 PM Senator Thurston Waives Close
3:42:03 PM Roll Call on SB 1028
3:42:18 PM SB 1028 is Reported Favorably
3:42:53 PM Vice Chair Gainer turns meeting over to Chair Montford
3:43:20 PM Tab 4 SB 1574
3:43:33 PM SB 1574 by Senator Taddeo is TP'd
3:44:06 PM Tab 6 CS/SB 1020
3:44:10 PM Senator Hutson Explains CS/SB 1020
3:44:45 PM Senator Hutson Explains Amendment Barcode 682078
3:45:33 PM Eric Criss rep. Beer Industry of FL Waives in Support for Amendment Barcode 682078
3:45:41 PM Amendment Barcode 682078 is Adopted
3:45:58 PM Richard Turner rep. Florida Restaurant and Lodging Assoc. Waives in Support
3:46:07 PM Melissa Ramba rep. Florida Retail Federation Waives in Support
3:46:17 PM Senator Hutson Waives Close on CS/SB 1020
3:46:24 PM Roll Call CS/SB 1020
3:46:34 PM CS/SB 1020 is Reported Favorably
3:46:57 PM Recess
3:47:01 PM Recording Paused
4:09:27 PM Recording Resumed
4:09:45 PM Meeting Resumed
4:10:10 PM Tab 5 CS/SB 616
4:10:14 PM Senator Hutson Explains CS/SB 616
4:10:57 PM Amendment Barcode 200912 Explained By Senator Hutson
4:11:24 PM Senator Hutson Waives Close on Amendment Barcode 200912
4:11:30 PM Amendment Barcode 200912 Adopted
4:11:39 PM Question from Senator Stargel
4:11:53 PM Senator Hutson Responds
4:12:03 PM Ted Smith rep. Florida Auto Dealers Assoc. Waives in Support
4:12:16 PM Senator Hutson Waives Close
4:12:29 PM Roll Call on CS/SB 616
4:12:36 PM CS/SB 616 is Reported Favorably
4:12:49 PM Meeting Adjourned
4:13:02 PM