



THE VOICE OF FLORIDA RETAILING

2023
**LEGISLATIVE
SESSION REPORT**

MESSAGE FROM THE PRESIDENT

Florida's 2023 Legislative Session was truly one for the books. With Governor Ron DeSantis riding record popularity, and a super majority in both chambers, there was nothing holding Republicans back from tackling an ambitious agenda. While education, right to life and social reform issues drew headlines nationwide, lawmakers quietly (and sometimes not so quietly) tackled significant issues of interest for Florida's retail industry.

Early passage of a landmark tort reform package set the tone for a session that saw the passage of legislation ranging from protections against onerous local ordinances to funding for the fight against organized retail crime. Retailers got a small increase in their commission for lottery sales, the telephone solicitation act was cleaned up and more.

The State's strong financial position allowed Legislators to send a record-setting \$117 billion budget to the Governor while setting aside \$10.9 billion in reserve funds. In addition, the Legislature cut \$2.7 billion in taxes for Florida's consumers and businesses between the annual tax package, the Senate President's Live Local affordable housing initiative, and the Governor's toll road relief approved last December.

What follows is a brief summary of the outcomes most relevant to Florida's retailers. Over the next few weeks we will be pushing out more detailed explanations of the data privacy bill, immigration requirements, the tax package and more. In the interim, we hope you will reach out directly with any questions. It is a pleasure to serve this industry and we thank you for your membership and support.

R. Scott Shalley



Legislative
Session

2023



CIVIL REMEDIES—TORT REFORM: HB 837 BY SENATOR TRAVIS HUTSON, REPRESENTATIVE TOMMY GREGORY, AND REPRESENTATIVE TOM FABRICIO

This game-changing legislation will change the legal climate for the better in Florida and protect retailers from the plague of frivolous lawsuits. FRF was a strong supporter of this proposal, and our lobbying was supplemented by an active public relations campaign.

This legislation was signed into law by Governor DeSantis on March 24, 2023 – making it one of the first significant pieces of legislation to become law this session. The majority of the changes went into effect immediately upon becoming law and apply to all cases filed after March 24, 2023; the changes regarding the statute of limitations apply prospectively to causes of action accruing after the effective date.

The passage of this bill will benefit all Florida businesses, particularly through the following measures:

- Reduces the statute of limitations to file a negligence claim from four years to two years.
- Creates a uniform and transparent process for the admissibility of evidence to a jury when calculating actual medical damages in a personal injury or wrongful death action – this will allow the parties to present the actual medical costs rather than the inflated costs associated with “letters of protection.”
- Requires juries to consider the fault of all persons who contributed to an injury on the premises of a business – not just the owner of the premises. This applies to instances when an action is brought against the owner of a property or business by a third party who was lawfully on that property and was injured by the criminal act of a third party.
- Changes Florida’s comparative negligence system from a “pure” comparative negligence system to a “modified” comparative negligence system – meaning that if a plaintiff is found to be more than 50% at fault for his or her injury, he or she may not recover damages from any defendant. This change does not apply to medical negligence.

This legislation would not have been possible without the concurrent leadership and support of **President Kathleen Passidomo** and **Speaker Paul Renner**. We can’t overstate the significance of this legislation that will immediately change Florida’s reputation of runaway frivolous lawsuits to one of balance for all parties involved.



FLORIDA TELEPHONE SOLICITATION ACT (FTSA): HB 761 BY SENATOR CLAY YARBOROUGH AND REPRESENTATIVE TOM FABRICIO

Legislation that passed in 2021 expanded businesses’ liability for specific telemarketing practices and created a new private right of action for consumers. Although the legislation was targeting scams calls about automobile warranties, the legislation required all businesses that engage in certain forms of telemarketing to update various telephone solicitation practices. There were many unintended consequences, and the plaintiffs’ bar wasted no time in seeking to test the limits of this law.

HB 761 clears up many ambiguities and provides clarity for retailers. The bill passed in the last days of Session and is another important piece of tort reform and will stop retailers from being sued for simply communicating with their customers. We have communicated our support for the bill to Governor Ron DeSantis’ office and await his signature.



THE 2023 TAX PACKAGE — HB 7063

Earlier in the year, Governor Ron DeSantis proposed a package that included more than \$2 billion dollars in tax relief for Florida families, and in the final tax package, the legislature mirrored many of his ideas.

We greatly appreciate the opportunity for Florida retailers to give back to Florida families. The FRF Team worked extensively – and collaboratively – with legislative staff to ensure that the tax holidays are friendly to both retailers and consumers. Several of you contributed to these conversations and we are grateful that many of our recommendations were incorporated into the final package.

Business Rent Tax: Perhaps the most significant element of this tax package is a reduction of the Business Rent Tax from 5.5% to 4.5% beginning December 1, 2023. This buy down of the tax will bring near term relief prior to the cut to 2% which will occur August 2024, as a result of the E-Fairness legislation from 2021.

Sales tax holidays (STH) and permanent exemptions in the legislation include:

- Two Back-to-School STHs—July 24-August 6, 2023, and January 1-14, 2024.
- Two Disaster Preparedness STHs—May 27-June 9, 2023, and August 8-September 8, 2023. New for this STH is an exemption of several household items such as laundry detergent or paper towels under \$30.
- Freedom Week is now Freedom Summer—May 29-September 4, 2023.
- A permanent sales tax elimination on certain baby and toddler products as well as diapers and incontinence products.
- A permanent sales tax elimination of specific dental hygiene products.
- And so many more...

Please click [this link](#) for a full breakdown of the House Tax Package.

TECHNOLOGY TRANSPARENCY/DATA PRIVACY – SB 262 BY SENATOR JENNIFER BRADLEY AND REPRESENTATIVE FIONA MCFARLAND

After three years of spirited debate, legislative leaders came together to successfully pass a data privacy bill. While concerns remain, legislators adopted many of the recommendations of the business community and narrowed the scope of the proposal. The bill has no private cause of action, preserves loyalty programs, and broadly exempts most retailers by defining “controller” as a for-profit company conducting business in Florida that makes in excess of \$1 billion or more in global revenues AND either derive 50% of that revenue from data sales, or if they sell/use voice assisted technology. It also now pulls in companies that run an App store.

This legislation passed in the final hours of the legislative session and now awaits the Governor’s signature. If signed into law, the bill has an implementation date of July 1, 2024, which will allow for needed amendments/improvements to be considered in the 2024 legislative session.

The bill also includes a new section regarding the sale of “sensitive data” that applies to entities that meet the first 3 criteria of a Controller: entities that operate for profit in Florida and collect personal data of consumers (most, if not all retailers).

The new section prohibits these entities from engaging in the “sale of personal data that is sensitive data without receiving prior consent from the consumer, or if the sensitive data is of a known child, without processing that data with the affirmative authorization for such processing by a known child who is between 13 and 18 years old, or in accordance with the Children’s Online Privacy Protection Act for a known child under the age of 13.” An entity that engages in the sale of sensitive data must provide the following notice: “NOTICE: This website may sell your sensitive personal data”.

The bill also limits a device that has voice or facial recognition, video or audio recording or any other electronic or visual feature that collects data from using those features for surveillance by a controller, processor, of affiliate of a controller or processor when such features are not in active use by the consumer, unless otherwise expressly authorized by the consumer.

Please see [here](#) for the full text of the final legislation.



THE FLORIDA ORGANIZED RETAIL CRIME EXCHANGE (FORCE)

FORCE was officially launched on December 2, 2021 and has grown into the most active ORC platform in the United States. With participation from retailers, prosecutors, and federal, state, and local law enforcement, the platform plays a key role in the fight against organized retail crime.

Working closely with the Office of Attorney General Ashley Moody, FRF was successful in obtaining a \$100,000 appropriation to support the FORCE platform and our ongoing ORC efforts. We will be working this summer with AG Moody to develop a long-term funding plan. Special thanks to Senator Jim Boyd for his leadership in procuring this appropriation.



LOCAL ORDINANCES - SB 170 BY SENATOR JAY TRUMBULL AND REPRESENTATIVE ROBBIE BRACKETT

SB 170 is a game changer with regard to proposed local ordinances that impact local businesses. The bill requires that local governments make important considerations prior to the passage of local ordinances and gives certain additional rights to those challenging local ordinances.

If signed into law, the provisions take effect on October 1, 2023, with one exception noted below.

- Requires counties and cities to produce a “business impact estimate” prior to passing an ordinance, with exceptions. The estimate must be published on the local government’s website and include certain information, such as the proposed ordinance’s purpose, estimated economic impact on businesses, and compliance costs.
- Imposes certain conditions on lawsuits brought by any party to challenge the legal validity of local ordinances as preempted by state law, arbitrary, or unreasonable.
- Requires the local government to suspend enforcement of an ordinance of such legal challenge, under certain circumstances.
- Requires the court to give those cases in which enforcement of the ordinance is suspended priority over other pending cases and render a preliminary or final decision as expeditiously as possible.
- Provides that a court may award up to \$50,000 in attorney fees to a prevailing plaintiff who successfully challenges an ordinance as arbitrary or unreasonable.
- The bill also provides, remedially and effective upon becoming a law, that properly noticed consideration of a proposed ordinance may be continued to a subsequent meeting under certain circumstances without further publication, mailing, or posted notice.



LOTTERY RETAILER COMPENSATION – RETAILERS GET A BUMP

With FRF support, language included in the state budget conforming bill increase the commission to retailers for lottery ticket sales from 5.75 percent to 6 percent of the purchase price.

INTERCHANGE FEES ON TAXES (NO SWIPE FEES ON SALES TAXES): HB 677 BY REPRESENTATIVE MIKE CARUSO AND SB 564 BY SENATOR TRAVIS HUTSON

FRF lead an effort and participated in a coalition of business associations asking the legislature to prohibit credit card companies from charging swipe fees on sales tax. Credit card companies are making a profit on a state mandated collection while retailers are forced to pay the swipe fee out-of-pocket.

The banking industry mounted a massive lobbying and public relations campaign in opposition to the legislation. Even with this strong opposition, the bill passed six committees—more than in any other state – before being stalled in both chambers. We are grateful to all of you who provided lobbying support and expert testimony on this effort. While the bill ultimately failed, we are in conversations with Speaker Paul Renner about a potential study relating to this important issue.

UNLAWFUL IMMIGRATION – SB 1718 BY SENATOR BLAISE INGOGLIA AND REPRESENTATIVE KIYAN MICHAEL

This legislation amends various Florida statutes to address several provisions related to unauthorized individuals in the state. The changes in the law will apply to human smuggling, domestic security, driver's license restrictions, Florida Bar admittance, medical treatment and very notably, new requirements for private employers.

This legislation was approved by the Governor and signed into law on Wednesday, May 10th. Apart from the penalties for employers for noncompliance which are noted below, this bill took effect upon signing and is now current law.

Employment Verification:

- Requires a private employer to verify a person's employment within 3 business days after the first day the new employee begins working for pay.
- Beginning July 1, 2023, a private employer with 25 or more employees must use the E-Verify system to verify a new employee's eligibility to work.
- If the E-Verify system is unavailable for 3 business days after first day of employment of the new employee, the employer must use the I-9 form to verify employment eligibility and must document the unavailability of the E-Verify system.
- An employer that uses the E-Verify system must certify on its first return each calendar year to the tax service provider that it is in compliance the requirement when making contributions to or reimbursing the state's unemployment compensation or reemployment assistance system.
- A copy of official verification must be kept for at least 3 years.

Enforcement/Penalties – Beginning July 1, 2024:

- If the Department of Economic Opportunity (DEO or department) finds or is notified by a certain authority that an employer has knowingly employed an unauthorized alien without verifying employment eligibility, the department must enter an order pursuant to Chapter 120 making that determination and requiring repayment of any economic development incentives provided by the state.
- If DEO determines a violation, the department shall place an employer on probation for a 1-year period and require the employer report quarterly to the department to demonstrate compliance.
- A subsequent violation within 24 months within the first violation constitutes grounds for the suspension or revocation of all licenses issued by an agency subject to Chapter 120.
- For a violation involving 1 to 10 unauthorized aliens, all applicable licenses held by a private employer shall be suspended for up to 30 days.
- For a violation involving 11 to 50 unauthorized aliens, all applicable licenses held by a private employer shall be suspended for up to 60 days.
- For a violation of more than 50 unauthorized aliens, all applicable licenses held by a private employer shall be revoked.
- The bill adds DEO to the list of entities who may request copies of documentation relied upon by a private employer.
- Beginning on July 1, 2024, if DEO determines that an employer failed to use the E-Verify system to verify employment eligibility, the department must notify the employer of the determination of noncompliance and provide the employer 30 days to cure the noncompliance.
- If DEO determines the employer failed to use the E-Verify system as required three times in any 24-month period, DEO must impose a fine of \$1000 per day until the employer provides sufficient proof that the noncompliance is cured.
- Noncompliance constitutes grounds for the suspension of all licenses issued by a licensing agency subject to Chapter 120 until the noncompliance is cured.

Defenses

- An employer that uses the E-Verify system or if the system is unavailable uses the I-9 form, that employer has established a rebuttable presumption that the employer has not violated the requirements of employment eligibility verification.
- An employer that uses I-9 form to determine employment eligibility has established an affirmative defense with respect to compliance.
 - A rebuttable presumption creates an assumption of compliance with the law unless proven otherwise – burden is not on the employer to prove.
 - An affirmative defense puts the burden on the employer to prove compliance.

PRIVATE LABEL CREDIT CARDS: HB 791 BY REPRESENTATIVE ROBBIE BRACKETT

In 2014, the Florida Legislature amended the sales tax laws to create a refund or credit opportunity for businesses with private-label credit cards to recover a portion of the sales taxes previously remitted to the State on worthless accounts. Unfortunately, the Legislature chose to limit the refund or credit specific to private-label credit cards to 64.4% of the tax remitted by the business on the customer's unpaid balance due. This percentage limitation was a result of the State budget forecast at that time and the total amount of tax cuts agreed to be provided by the 2014 Legislature.

HB 791 would have increased this refund allowance to 100%. The bill in the House passed two committees but ran into trouble in the Senate when a member of the Finance and Tax Committee came out against the measure. This significantly complicated the issue and put a halt to the progress we were making. We expect this to be a priority issue for 2024.

HIV INFECTION PREVENTION DRUGS: SB 818 BY SENATOR SHEVRIN JONES AND HB 963 BY REPRESENTATIVE GALLOP FRANKLIN II.

This bill would have allowed pharmacists to screen for HIV exposure and administer HIV prevention drugs in accordance with a written protocol between a pharmacist and a supervising physician. Pharmacists have been identified by the CDC as essential in ending the HIV epidemic in the U.S. by preventing HIV infection. The number of people living with HIV in Florida at year's end 2021 is 102,502. New cases identified in 2021 number 4,708 which is the third most in the U.S. Thirteen other states have passed similar legislation to what was proposed in Florida this Session.

Unfortunately, the bills were not heard in either the House or Senate. This and other pharmacy legislation will be evaluated this summer by the FRF Pharmacy Council for consideration in 2024.

ELECTRIC VEHICLE CHARGING - SB 1176 BY SENATOR COREY SIMON AND HB 1591 BY REPRESENTATIVE RANDY MAGGARD

This bill directed the Public Service Commission to establish reasonable and fair rates for electricity used for electric charging vehicles. The bill would also have prohibited a utility from including the cost of infrastructure and EV pumps as part of the rates of all customers.

This legislation failed to get a hearing in either the House or the Senate.

LIMITED BARBERING - HB 1251 BY REP. SUSAN VALDES AND SB 1148 BY SENATOR ANA MARIA RODRIGUEZ

The bill would have allowed a person without a license to practice barbering to perform services designated by the board as limited barbering, if the person:

- Performed limited barbering under the supervision of a licensed barber in a licensed barbershop,
- Had not been disciplined relating to the practice of barbering in the previous 3 years, and
- Had successfully completed any education course requirements the board requires on sanitation safety, including education on HIV and AIDS, if such education is a condition of granting a license to practice barbering.

The FRF team engaged quickly and as a result the House bill was heard in just one committee but did not move at all in the Senate.

AFFORDABLE HOUSING “LIVE LOCAL ACT” - SB 102 BY SENATOR ALEXIS CALATAYUD AND REPRESENTATIVE DEMI BUSATTA-CABRERA

This bill, which was a priority of President Kathleen Passidomo, expands opportunities for growing families and makes it easier for them to be able to live near good jobs. Retailers especially benefit because it will be easier to retain employees.

This is the largest investment for housing efforts in state history. The bill invests \$711 million in multiple programs to expand the availability of housing, down payment assistance, and focused support for military communities. Furthermore, this legislation includes tax credits/sales tax exemptions for building materials, if used for affordable housing purposes. This bill passed early in Session and was signed into law by Governor Ron DeSantis on March 29, 2023. FRF was part of a large coalition in support of this legislation.

PUBLIC SAFETY — HB 543 BY SENATOR JAY COLLINS AND REPRESENTATIVE CHUCK BRANNAN

People who wish to carry a concealed weapon or concealed firearm, without obtaining and maintaining a concealed weapon or concealed firearm license from the Department of Agriculture and Consumer Services (DACS) may now do so lawfully. This legislation allows Floridians to carry concealed weapons without a government-issued permit, and it was signed into law by Governor Ron DeSantis on April 3, 2023

PROHIBIT USE OF SNAP BENEFITS TO PURCHASE SOFT DRINKS AND NONCARBONATED BEVERAGES WITH EQUIVALENT NUTRITIONAL VALUE- SB 814 BY SENATOR JOE GRUTERS AND HB 581 BY REPRESENTATIVE RALPH MASSULLO

This was a Memorial urging Congress to prevent SNAP benefits from being used to purchase soft drinks. The House version passed the House and was awaiting Senate action. The Senate companion was amended in its first committee stop to request the United States Department of Agriculture to perform a study on the foods typically purchased by users of SNAP. The Senate did not advance its bill and therefore both bills died.

BUSINESS MANDATES THAT FAILED TO ADVANCE

REGULATION OF SINGLE-USE PLASTIC PRODUCTS - SB 336 BY SENATOR ANA MARIA RODRIGUEZ AND HB 363 BY REPRESENTATIVE JIM MOONEY

This bill would have directed Department of Environmental Protection (DEP) to periodically update the 2010 report on retail bags analyzing the need for new or different regulation of auxiliary containers, wrappings, or disposable plastic bags used by consumers to carry products from retail establishments. The report would have been required to be updated every five years.

The bill also created a coastal community pilot program to regulate single-use plastic products. The coastal community would have been responsible for collecting pertinent data relating to the effectiveness and impacts of regulating single-use plastic products and for compiling a report for the governing body of the coastal community and DEP.

PREEMPTION OF RECYCLABLE AND POLYSTYRENE MATERIALS - SB 498 BY SEN. LINDA STEWART

This bill would have removed the state preemption of local laws regarding the regulation of auxiliary containers, wrappings, or disposable plastic bags, and the state preemption of local laws regarding the use or sale of polystyrene products to the Department of Agriculture and Consumer Services.

PREEMPTION OF THE REGULATION OF TOBACCO AND NICOTINE PRODUCTS - SB 530 BY SENATOR TINA POLSKY AND HB 519 BY REP. JERVONTE EDMONDS

These bills would repeal the state preemption relating to the minimum age for purchasing or possessing, and the regulation for the marketing, sale, or delivery of, tobacco products to the state—effectively opening the door to local regulation. Both bills failed to get a hearing and died in their first committees of reference.

2023 LEGISLATIVE SESSION STATS



1,828
Bills Filed



356
Bills Passed

Senate Bills

Passed Both Chambers
160

Passed Senate
209



Bills Filed
909



Approved by
the Governor

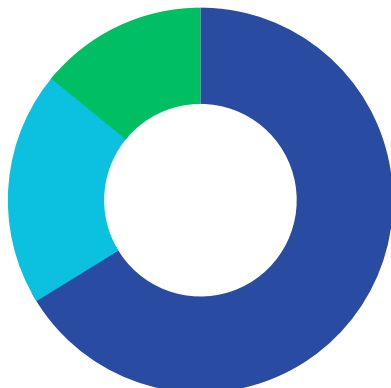
House: 13*
Senate: 20*



House Bills

Passed Both Chambers
196

Passed House
273



Bills Filed
919



\$117B
Budget



\$1.3B
Tax Relief

1%

Business Rent
Tax Decrease

*Numbers as of 1:00 PM 5/11/23