I’m pleased to report that the 2022 Legislative Session was a success for Florida’s retail industry. Thanks to your support, the FRF Governmental Affairs team was successful in working with legislative leaders to advance initiatives to protect the retail industry and incentivize retail spending and employment.

Florida’s legislative leadership once again showed their respect and appreciation for the importance of maintaining a vibrant retail industry. Whether it was the fight against organized retail crime, the need for sales tax holidays, or recognizing the important role of our chain pharmacies in providing vaccinations, lawmakers consistently supported Florida’s retailers.

While many may debate the takeaways, there is no question that Florida’s “no lockdowns” philosophy has allowed for the continued growth and health of our state’s economy. With a $112.1 billion budget, the largest in Florida’s history, lawmakers where able to dole out tax breaks for consumers while still setting aside $8.9 billion for state reserves. Lawmakers passed a record eight sales tax holidays and provided a roughly 25-cents-a-gallon gas tax break for the month of October.

What follows is a summary of outcomes for legislation FRF proactively put forward as well as other legislation where the FRF team was engaged. As always, please don’t hesitate to reach out to any of us should you have any questions. It is a pleasure to serve this industry and we thank you for your membership and support.
ORGANIZED RETAIL CRIME


The passage of this legislation is monumental in providing an invaluable tool to crack down on Organized Retail Crime. The bill applies a third-degree felony for individuals or those in consort with one or more persons who commit five or more retail thefts of 10 or more items within 30 days and a second degree felony for 20 or more items regardless of the value of the items. Specifically, SB 1534 creates charges for retail-theft crimes that include multiple retail thefts occurring in a limited period of time in various merchant locations. This legislation will help with the prosecution of criminals when the value of the stolen merchandise can't be verified.

FRF supported this legislation in partnership with Attorney General Ashley Moody. Her support for this legislation demonstrates her steadfast commitment to cracking down on retail crime. SB1534 is now headed to the Governor's desk for final approval and if signed will have an effective date of October 1, 2022.

HB1227/SB 944 - Online Marketplace Transparency

2022 was our second attempt to pass this legislation—after having been heard in just one Senate committee last year, the bill passed the full Senate with a vote of 38-1. Even so, the effort to pass this bill was not without its challenges as it garnered more and more opposition as it made its way through the process. In the House, the bill passed two of three committee references and stalled in the Commerce Committee. While we are extremely disappointed in this outcome, we are already discussing strategies to build on the momentum for 2023.

The bill would help hinder the sale of stolen, counterfeit, or damaged goods by requiring high-volume third-party sellers to provide verifiable identifying information to online marketplaces. Twenty-five other states joined in the effort and filed virtually the same language in each state as the federal Integrity Notification and Fairness in Online Retail Marketplaces (INFORM) for Consumers Act. The actions in these states are having an impact on the effort at the federal level.
RETAIL PHARMACY

HB1209/SB1892 – Administration of Vaccines

This bill authorizes registered pharmacy technicians, under the supervision of a pharmacist, to administer vaccines to individuals 18 years of age and older. It also puts in statute a combined one-to-five pharmacist-to-intern or technician ratio as applied to the administration of vaccines (i.e., one pharmacist to two interns and three technicians). The FRF Pharmacy Council shared a collective sigh of relief as the bill was the absolute last piece of policy legislation to pass the 2022 Session. If signed by the Governor, the effective date will be July 1, 2022.

Registered Pharmacy Technicians are currently administering vaccines under the PREP Act and have been trained per guidelines issued by the Department of Health and Human Services. HB 1209 requires the Florida Board of Pharmacy to approve the six-hour initial licensure training and two-hour continuing education training at licensure renewal.

TAXATION

HB7071 – Taxation – Ways & Means Committee

In a procedural move not seen in the last decade, the annual House “Tax Package” was added to the list of budget conforming bills and made part of the formal Florida budget conference process. That procedural move allowed the legislation to be negotiated outside of the committee process. The procedure also meant that it could not be amended once when it was sent to the Floor for a final vote.

This Tax Package included several sales tax holidays and other sales tax relief. We are excited the Back-to-School and Disaster Preparedness were included, and for the second year, Freedom Week was as well. There are several other items that have been provided a period of sales tax relief—specifically, Energy Star appliances, baby and toddler clothing, diapers, and children’s books.

Click here for the full text of the bill and here for a spreadsheet with many more details including effective dates for each tax holiday. We will share the Department of Revenue TIPs when they become available.

On a not-so-positive note, the Legislature also added changes to Florida’s Corporate Income Tax (CIT) rate for 2022 to the Tax Package. This rate had been reduced twice since 2019—down to 3.535 percent; however, with this change the rate is scheduled to return to its original 5.5 percent beginning in 2022 and will now apply to a larger tax base. While not all of our members are required to pay Florida’s CIT, many of you will be effected.
This bill creates a legal process whereby an established business may recover loss of business damages from a county or municipality whose ordinance has caused a significant negative impact on the business. In order to bring an action against a local government the business must have been in operation for at least 3 years and must show at least a 15 percent loss of profits to the business as applied on a per location basis of the business.

If signed by the Governor, this bill will immediately take effect, and will apply to county and municipal ordinances that are enacted or amended on or after the effective date.

Another bill that FRF supported related to local ordinances, **HB403/SB280 – Local Ordinances by Rep. Mike Giallombardo/Sen. Travis Hutson**, unfortunately failed to make it to the finish line this session, but we are hopeful that it will be brought back next year. This bill would have provided for attorney fees and costs to a business for successfully challenging an ordinance that a court finds is “arbitrary and unreasonable.” The bill also would have required a local government to prepare a business impact statement prior to passing an ordinance.
BUSINESS MANDATES THAT FAILED TO ADVANCE


The bill would have created the “Florida Privacy Protection Act.” While laudable in its goal, the bill would have placed requirements upon retailers that would have been enormously expensive to implement. The bill also provided for hefty fines for non-compliance, and the House version included a private cause of action.

This legislation was a legacy priority for Speaker Chris Sprowls and of great interest to Gov. Ron DeSantis. As such, it was a factor in everything from the budget negotiations between the House and Senate to last minute deals on priorities of other powerful leaders. Its ultimate defeat came when the Senate failed to give HB9 a hearing after it was passed by the House by a vote of 103-8.

Florida Department of Agriculture and Consumer Services proposed Rule to Eliminate Polystyrene

Prior to Session, the Florida Department of Agriculture and Consumer Services finalized an agency rule that would have required that entities regulated by the department phase out and ultimately eliminate the use of polystyrene. Because the estimated costs to implement this rule exceeded $1 million over 5 years, the rule was required to be ratified by the full Legislature before going into effect.

*The proposed rule was never heard or considered by any committee and thus failed to gain the required ratification from the legislature.*
BUSINESS MANDATES THAT FAILED TO ADVANCE

HB6063/SB320 – Preemption of Recyclable & Polystyrene Materials
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.

The bill was not considered in either the House or the Senate and therefore died in committee.

HB6019 – Preemption of Over-the-Counter Drugs & Cosmetics
Rep. Anna Eskamani
This bill would have removed the state preemption of regulation of over-the-counter proprietary drugs and cosmetics. This preemption was enacted in 2020 to stop local governments from banning the sale of sunscreen.

The bill was not considered in the House and had no Senate companion and therefore died.

HB6113/SB1900 – Preemption to the State
This bill attempted to remove and repeal every state preemption in Florida Statutes.

The bill was not considered in either the House or the Senate and therefore died in committee.

HB233/SB408 – Acceptance of Cash Payments
Rep. Matt Willhite/Sen. Shevrin Jones
This bill would have required any business operating at a permanent location, temporary physical location, or a vehicle or other mobile space, to accept cash payments for services.

The bill was not considered in either the House or the Senate and therefore died in committee.
BUSINESS MANDATES THAT FAILED TO ADVANCE

HB293/SB322 – Discrimination in Labor & Employment
This bill would have prohibited an employer from providing less favorable employment opportunities (wages) to employees based on their sex.

The bill was not considered in either the House or the Senate and therefore died in committee.

HB1145/SB1580 – Management of Single Use Plastic Products
The bill would have authorized certain coastal communities to establish pilot programs to regulate single-use plastic products. It required the Florida Department of Environmental Protection to submit an updated retail bag reports with conclusions and recommendations to the Legislature every five years.

The bill was not considered in either the House or the Senate and therefore died in committee.
OTHER BILLS OF INTEREST


Also referred to the “Anti-Woke Bill” by the media, this controversial and highly debated piece of legislation passed in the final days of Session and now awaits the Governor’s signature. The bill amends the Florida Civil Rights Act (FCRA) of 1992 which protects persons from discrimination in the workplace based on race, color, religion, sex, pregnancy, national origin, age, handicap, and marital status. The FCRA also created the Florida Commission on Human Relations (Commission) which is empowered to investigate and hold hearings and act upon complaints alleging discriminatory practices.

HB 7 adds to the FCRA to expand unlawful employment practices to include subjecting any individual, as a condition of employment, to training, instruction, or any other required activity that “espouses, promotes, advances . . .” or compels” such individual to believe any of the following certain concepts.

The concepts include:
- That members of one race, color, sex, or national origin are morally superior to members of another race, color, sex, or national origin;
- That an individual, by virtue of his or her race, color, sex, or national origin, is inherently racist, sexist, or oppressive, whether consciously or unconsciously;
- That an individual’s moral character or status as either privileged or oppressed is necessarily determined by his or her race, color, sex, or national origin;
- That members of one race, color, sex, or national origin cannot and should not attempt to treat others without respect to race, color, sex, or national origin;
- That an individual, by virtue of his or her race, color, sex, or national origin, bears responsibility for, or should be discriminated against or receive adverse treatment because of, actions committed in the past by other members of the same race, color, sex, or national origin;
- That an individual, by virtue of his or her race, color, sex, or national origin, should be discriminated against or receive adverse treatment to achieve diversity, equity, or inclusion;
- That an individual should feel discomfort, guilt, anguish, or any other form of psychological distress on account of his or her race, color, sex, or national origin;
- That such virtues as merit, excellence, hard work, fairness, neutrality, objectivity, and racial colorblindness are racist or sexist, or were created by members of a particular race, color, sex, or national origin to oppress members of another race, color, sex, or national origin (continued on next page).
The bill also clarifies that discussion of the above-listed concepts is allowed as part of a course of training or instruction, “provided such training or instruction is given in an objective manner without endorsement of the concepts.” The bill does not provide any further guidance or clarification as to what constitutes an “objective manner.”

As with any other alleged violation of the FCRA, any person aggrieved by a violation of the above may file a complaint with the Commission within 365 days of the alleged violation and a potential civil action if the Commission finds reasonable cause to believe that a violation has occurred. The Attorney General may also investigate and take action on any alleged violations.

The bill passed along party lines in both the House and Senate. If signed by the Governor, this bill takes effect July 1, 2022

HB1095/SB1564 – Telephone Solicitation
Rep. Mike Beltran/Sen. Travis Hutson
This bill would have amended portions of Florida’s Telemarketing Act (FTA) which regulates telemarketers and prohibits certain types of telephonic sales calls, recorded messages, and text messages from businesses. This Act is also referred to Florida’s “Mini-TCPA” because it mirrors the Federal Telephone Consumer Protection Act.

The bills as originally filed were intended to clean up some language that was amended in the 2021 Session that resulted in unintended consequences. The Senate bill version, which was approved by the full Senate, accomplished this goal. However, the House bill, as it continued to move through the process, was amended in ways that would have unfortunately created more negative issues and would have broadened the scope of TCPA beyond the federal act. The House version ultimately failed and therefore the bill died. We expect to see a version of a Mini-TCPA bill again next year.
ENERGY LEGISLATION

“Net metering” is a billing arrangement between a utility customer and an investor-owned-utility (IOU) whereby the customer who owns on-site solar panels exports electricity generated on-site to an IOU’s system. Under the current law, IOUs required to buy generated energy from solar owners for the same price the utility charges residential customers.

HB 741 will phase in lower credit changes over a series of years, starting in 2024, and requires the Public Service Commission to adopt new rules that would take effect Jan. 1, 2029. The phased-in credit changes will be at a much lower cost which critics of the bill argue will put the cost of solar panels out of reach for many homeowners and will jeopardize up to 40,000 jobs created by the rooftop solar industry.

The bill was amended multiple times in an effort to compromise with homeowners and solar industry businesses. The only real concession was to allow current rooftop solar customers to keep their net-metering rate designs for 20 years, as many rooftop systems are financed. The bill passed along party lines in both the House and Senate. If signed by the Governor, this bill takes effect July 1, 2022.

HB0737/SB920 – Electric Vehicle Transportation Electrification Plan
In Florida, the Public Service Commission (PSC) regulates the rates of retail electric service provided by investor-owned electric utilities (IOU), including electric vehicle (EV) charging provided by an IOU.

If an entity, such as a convenience store, wishes to provide its own EV charging to the public, under current law it would not be considered a “utility” for purposes of PSC regulation. Also, if located within an exclusive service area of one of the four IOUs in Florida, these non-utility EV charging providers would have to pay the commercial electricity rate of their local IOU. The commercial electricity rate that is charged by the IOU to the non-utility EV charging provider is considered to be cost-prohibitive; thus, a non-utility wishing to provide their own EV charging station to the public is essentially unable to compete with an IOU in this market (continued on next page).
The bill would have required the PSC to adopt rules for an EV transportation electrification plan to facilitate the deployment of EV charging infrastructure in a competitively neutral manner.

*The bills were each heard and approved in their first committee stop but failed to advance further.*