

**SB 500** by **Clemens**; (Compare to CS/H 7005) Massage Establishments

134210	A	S	RCS	RI, Braynon	Delete L.17 - 81:	03/14 12:43 PM
126372	AA	S	RCS	RI, Braynon	Delete L.63 - 64:	03/14 12:43 PM

**SB 802** by **Hays**; (Similar to CS/CS/H 0057) Department of Business and Professional Regulation

596038	A	S	RCS	RI, Detert	Delete L.50 - 52:	03/14 01:12 PM
--------	---	---	-----	------------	-------------------	----------------

**SB 1344** by **Latvala**; (Identical to H 0715) Malt Beverages**SB 864** by **Thrasher**; (Compare to CS/H 0695) Coupons Furnished by Manufacturers, Distributors, or Importers of Beer

482782	D	S	RCS	RI, Thrasher	Delete everything after	03/14 01:12 PM
--------	---	---	-----	--------------	-------------------------	----------------

**SB 842** by **Stargel**; (Similar to CS/H 0795) Premises Inspections

881230	T	S	RCS	RI, Thrasher	In title, delete L.5 -	03/14 01:12 PM
--------	---	---	-----	--------------	------------------------	----------------

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**REGULATED INDUSTRIES**  
**Senator Stargel, Chair**  
**Senator Braynon, Vice Chair**

**MEETING DATE:** Thursday, March 14, 2013  
**TIME:** 11:00 a.m.—1:30 p.m.  
**PLACE:** 301 Senate Office Building

**MEMBERS:** Senator Stargel, Chair; Senator Braynon, Vice Chair; Senators Detert, Flores, Galvano, Gibson, Legg, Sachs, Sobel, and Thrasher

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>SB 500</b> Clemens (Compare CS/H 7005)	Massage Establishments; Prohibiting the operation of a massage establishment during specified times; prohibiting the use of a massage establishment as a principal domicile unless the establishment is zoned for residential use under a local ordinance; declaring that a massage establishment operating in violation of specified statutes is a nuisance that may be abated or enjoined, etc.  RI      03/14/2013 Fav/CS CA HP AP	Fav/CS Yeas 9 Nays 0
2	<b>SB 802</b> Hays (Similar CS/CS/H 57, Compare S 1462)	Department of Business and Professional Regulation; Clarifying funding requirements for the Florida Homeowners' Construction Recovery Fund; authorizing the Department of Business and Professional Regulation to transfer certain funds from the Florida Building Code Administrators and Inspectors Board to the Florida Homeowners' Construction Recovery Fund, etc.  RI      03/14/2013 Fav/CS CA AP	Fav/CS Yeas 9 Nays 0
3	<b>SB 1344</b> Latvala (Identical H 715)	Malt Beverages; Authorizing an additional size for individual containers of malt beverages sold or offered for sale by vendors at retail, etc.  RI      03/14/2013 Temporarily Postponed CM CA RC	Temporarily Postponed
4	<b>SB 864</b> Thrasher (Similar H 695)	Coupons Furnished by Manufacturers, Distributors, or Importers of Beer; Prohibiting manufacturers or importers of beer from furnishing coupons redeemable by vendors, etc.  RI      03/14/2013 Fav/CS AFT AP	Fav/CS Yeas 8 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Regulated Industries

Thursday, March 14, 2013, 11:00 a.m.—1:30 p.m.

---

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	<b>SB 842</b> Stargel (Similar CS/H 795)	Premises Inspections; Requiring the Division of Hotels and Restaurants of the Department of Business and Professional Regulation to inspect public lodgings annually; requiring the division to adopt rules for a risk-based inspection frequency for licensed public food service establishments, etc.  RI 03/14/2013 Fav/CS AGG AP	Fav/CS Yeas 8 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 Regulated Industries

BILL: CS/SB 500

INTRODUCER: Regulated Industries Committee and Senator Clemens

SUBJECT: Massage Establishments

DATE: March 14, 2013      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	Imhof	RI	Fav/CS
2.			CA	
3.			HP	
4.			AP	
5.				
6.				

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

CS/SB 500 amends various provisions relating to Massage Establishments. The bill requires the denial of a massage establishment license when an applicant has been arrested, is awaiting final disposition, or has been convicted, of certain offenses listed in s. 435.04(2), F.S., or a similar law in another jurisdiction. The bill provides that denial of a license or a disciplinary action may be based on advertising to induce or engage a client in sexual activity.

The bill creates s. 480.0475, F.S., to prohibit the operation of certain massage establishments between the hours of midnight and 5 a.m.

The bill exempts specified types of massage establishments based on location of the facility or the type of supervision over those persons performing massages. The bill prohibits the use of a massage establishment as a principal domicile in areas that are not zoned for residential use by local ordinance.

The bill provides that a person who violates s. 480.0475, F.S., commits a misdemeanor of the first degree punishable as provided in s. 775.082 or s. 775.083, F.S. A subsequent violation is a

felony of the third degree punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S. Current violations of ch. 480, F.S., are misdemeanors of the first degree.

The bill amends section 823.05, Florida Statutes, to provide that certain massage establishments that violate the bill's provisions or the identification provisions of ch. 480, F.S., can be declared nuisances that may be abated or enjoined pursuant to Florida law.

The bill provides an October 1, 2013 effective date.

The bill amends sections 480.043, 480.047, and 823.05, Florida Statutes. The bill creates section 480.0475, Florida Statutes.

## II. Present Situation:

Chapter 480, F.S., the "Massage Practice Act," (act) regulates the practice of massage. The term "massage is defined as "the manipulation of the soft tissues of the human body with the hand, foot, arm, or elbow, whether or not such manipulation is aided by hydrotherapy, including colonic irrigation, or thermal therapy; any electrical or mechanical device; or the application to the human body of a chemical or herbal preparation.""<sup>1</sup>

A person must apply to the Board of Massage Therapy (board) within the Department of Health (department) for approval to practice massage or to operate a massage establishment.<sup>2</sup> A "massage therapist" is a person licensed to administer massages for compensation,<sup>3</sup> and a massage establishment is a "site or premises, or portion thereof, wherein a massage therapist practices massage."<sup>4</sup>

Section 480.046(1), F.S., specifies numerous grounds for disciplinary action by the board,<sup>5</sup> including the following acts that are grounds for denial of a license or disciplinary action:

- Procuring a license by bribery or fraudulent misrepresentation;
- Having a license to practice massage denied, revoked, suspended, or otherwise acted against by the licensing authority of another state, territory, or country;
- Being convicted, found guilty or entering a plea of nolo contendere, regardless of adjudication, of a crime in any jurisdiction which directly relates to the practice of massage or to the ability to practice massage;
- False, deceptive, or misleading advertising;
- Aiding, assisting, procuring, or advising any unlicensed person to practice massage in violation of the act or a rule of the department or the board;
- Making deceptive, untrue, or fraudulent representations in the practice of massage;
- Being unable to practice massage with reasonable skill and safety because of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or due to any mental or physical condition;

---

<sup>1</sup>Section 480.033(3), F.S.

<sup>2</sup>Section 480.033(8), F.S.

<sup>3</sup>Section 480.033(4), F.S.

<sup>4</sup>Section 480.033(7), F.S.

<sup>5</sup>Section 480.046, F.S.

- Gross or repeated malpractice or the failure to practice massage with that level of care, skill, and treatment which is recognized by a reasonably prudent massage therapist as being acceptable under similar conditions and circumstances;
- Practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities which the licensee knows or has reason to know that she or he is not competent to perform;
- Delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such person is not qualified by training, experience, or licensure to perform;
- Violating a lawful order of the board or department previously entered in a disciplinary hearing, or failing to comply with a lawfully issued subpoena of the department;
- Refusing to permit the department to inspect the business premises of the licensee during regular business hours;
- Failing to keep the equipment and premises of the massage establishment in a clean and sanitary condition;
- Practicing massage at a site, location, or place which is not duly licensed as a massage establishment, excepting certain services permitted by board rule, at the residence or office of a client, at a sports event, at a convention, or at a trade show; or
- Violating any provision of the act, ch. 456, F.S., regarding Health Professions and Occupations, or any rules adopted pursuant to the provisions.

Pursuant to s. 480.046(2), F.S., licensure may also be denied, or certain penalties imposed, against licensees found guilty of violating any of the provision of s. 480.046(1) and s. 456.072(1), F.S. The penalties include:

- Refusal to certify, or to certify with restrictions, an application for a license.
- Suspension or permanent revocation of a license.
- Restriction of practice or license, including, but not limited to, restricting the licensee from practicing in certain settings, restricting the licensee to work only under designated conditions or in certain settings, restricting the licensee from performing or providing designated clinical and administrative services, restricting the licensee from practicing more than a designated number of hours, or any other restriction found to be necessary for the protection of the public health, safety, and welfare.
- Imposition of an administrative fine not to exceed \$10,000 for each count or separate offense. If the violation is for fraud or making a false or fraudulent representation, the board, or the department if there is no board, must impose a fine of \$10,000 per count or offense.
- Issuance of a reprimand or letter of concern.
- Placement of the licensee on probation for a period of time and subject to such conditions as the board, or the department when there is no board, may specify. Those conditions may include, but are not limited to, requiring the licensee to undergo treatment, attend continuing education courses, submit to be reexamined, work under the supervision of another licensee, or satisfy any terms which are reasonably tailored to the violations found.
- Corrective action.

- Imposition of an administrative fine in accordance with s. 381.0261 for violations regarding patient rights.
- Refund of fees billed and collected from the patient or a third party on behalf of the patient.
- Requirement that the practitioner undergo remedial education.

The board also has the power to revoke or suspend the license of a massage establishment or deny subsequent licensure if the license was obtained by fraud or misrepresentation or the licensee was found guilty of fraud, deceit, gross negligence, incompetency, or misconduct in the operation of the establishment.<sup>6</sup>

Disciplinary proceedings shall be conducted pursuant to the provisions of ch. 120, F.S., the Administrative Procedure Act.<sup>7</sup>

Sexual misconduct in the practice of massage therapy is prohibited, and is defined as violation of the massage therapist-patient relationship through which the massage therapist uses that relationship to induce or attempt to induce the patient to engage, or to engage or attempt to engage the patient, in sexual activity outside the scope of practice or the scope of generally accepted examination or treatment of the patient.<sup>8</sup>

Violations of the law or rules associated with practices of massage therapists and massage establishments are investigated by the department.<sup>9</sup> Sexual activity by any person or persons in any massage establishment is also prohibited.<sup>10</sup>

Section 823.01, F.S., provides that all nuisances that tend to annoy the community, injure the health of the citizens in general, or corrupt the public morals are second degree misdemeanors punishable by up to 60 days in jail and a fine not exceeding \$500, and that a violation of s. 823.10, F.S., regarding certain places where controlled substances are illegally kept, sold, or used, is a third degree felony punishable by a term of imprisonment not to exceeding five years and a fine not exceeding \$5,000.

Section 60.05, F.S., provides that when a nuisance defined in s. 823.05, F.S., exists, the Attorney General, state attorney, city attorney, county attorney, or any citizen of the county may sue in the name of the state to enjoin the nuisance, the person or persons maintaining it, and the owner or agent of the building or ground on which the nuisance exists. In accordance with s. 60.06, F.S., the court shall enter orders to abate the nuisance, and has the authority to enforce injunctions by contempt.

---

<sup>6</sup>Section 480.046(3), F.S.

<sup>7</sup>Section 480.046(4), F.S.

<sup>8</sup>Section 480.0485, F.S. Section 456.063, F.S., prohibits violation of the professional relationship through which the health care practitioner uses such relationship to engage or attempt to engage the patient or client, or an immediate family member, guardian, or representative of the patient or client in, or to induce or attempt to induce such person to engage in, verbal or physical sexual activity outside the scope of the professional practice of such health care profession.

<sup>9</sup>Section 480.039, F.S.

<sup>10</sup>See Rule 64B7-26.010, F.A.C., which provides a definition of sexual activity.

### III. Effect of Proposed Changes:

The bill requires the denial of a massage establishment license when an applicant has been arrested, is awaiting final disposition, or has been convicted, of certain offenses listed in s. 435.04(2), F.S., or a similar law in another jurisdiction. Section 435.04(2), F.S., includes offenses relating to sexual misconduct, abuse of aged or disabled adults, murder, certain manslaughter offenses, vehicular homicide, certain offenses against minors, kidnapping, false imprisonment, prostitution, lewd and lascivious behavior, indecent exposure, arson, burglary, certain firearms offenses, and certain felony offenses.

The bill provides that denial of a license or a disciplinary action may be based on advertising to induce or engage (or attempting to induce or engage) a client in sexual activity.

The bill creates s. 480.0475, F.S., to restrict the time of operations for certain massage establishments, by prohibiting operations between midnight and 5 a.m. The bill creates exclusions from the time restrictions for the following massage establishments:

- Located on the premises of an ambulatory surgical center, a hospice, a nursing home, a hospital, a diagnostic-imaging center, a freestanding or hospital-based therapy center, a clinical laboratory, a home health agency, a cardiac catheterization laboratory, a medical equipment supplier, an alcohol or chemical dependency treatment center, a physical rehabilitation center, a lithotripsy center, an ambulatory care center, a birth center, or certain licensed nursing home components.<sup>11</sup>
- Located on the premises of a clinic defined in part X of ch. 400, F.S.;
- Located on the premises of a hotel, motel or bed and breakfast as defined in s. 509.242, F.S., or a timeshare property as defined in s. 721.05, F.S.;
- Located on the premises of a public airport as defined in s. 330.27;
- Located on the premises of a pari-mutuel facility as defined in s. 550.002;
- In which every massage performed between midnight and 5 a.m. is performed by a massage therapist acting under the prescription of licensed persons such as physicians, physicians' assistants, chiropractic physicians, podiatric physicians, advanced registered nurse practitioners or dentists.

The bill prohibits the use of a massage establishment as a principal domicile unless the establishment is zoned for residential use by local ordinance. The phrase "principal domicile" is not defined, however, a legal domicile in Florida may be evidenced in accordance with s. 222.17, F.S., by a person filing a sworn statement at the office of the Clerk of Circuit Court showing that he or she "resides in and maintains a place of abode in that county which he or she recognizes and intends to maintain as his or her permanent home."

A person convicted of a first degree misdemeanor for violating s. 480.0475, F.S., may be sentenced to up to one year in jail and a fine not exceeding \$1,000.<sup>12</sup> A person may be convicted of a third degree felony for a second or subsequent violation, and may be sentenced to a term of

---

<sup>11</sup>Section 408.07(24), F.S.

<sup>12</sup>See ss. 775.082 and 775.083, F.S.

imprisonment not exceeding five years and a fine not to exceed \$5,000.<sup>13</sup> More severe consequences result for offenders classified as habitual felony offenders, habitual violent felony offenders, or three-time violent felony offenders.<sup>14</sup>

The bill amends s. 480.052, F.S., to allow counties or municipalities to waive the restriction on the hours of operation of massage establishments for special local events within their jurisdiction.

The bill amends s. 823.05, F.S., to declare that a massage establishment that operates in violation of the restrictions on hours of operation, or that fails to immediately present to an investigator of the department or a law enforcement officer, all required government identification for each employee or for any person performing massage in the establishment is a nuisance and may be abated<sup>15</sup> or enjoined pursuant to ss. 60.06 and 60.06, F.S.

Section 60.05, F.S., provides that when a nuisance defined in s. 823.05, F.S., exists, the Attorney General, state attorney, city attorney, county attorney, or any citizen of the county may sue in the name of the state to enjoin the nuisance, the person or persons maintaining it, and the owner or agent of the building or ground on which the nuisance exists. In accordance with s. 60.06, F.S., the court shall enter orders to abate the nuisance, and has the authority to enforce injunctions by contempt.

The bill provides an October 1, 2013 effective date.

#### **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.

---

<sup>13</sup>*Id.*

<sup>14</sup>*See* s. 775.084, F.S.

<sup>15</sup>Abated is defined as eliminated or put an end to (Black's Law Dictionary (9th ed. 2009)).

**B. Private Sector Impact:**

The bill will limit the operating hours of massage establishments that are not otherwise excluded from the time restriction between 10 p.m. and 6 a.m. Since the use of a massage establishment as a principal domicile is no longer permitted unless the location of the establishment is zoned for residential use by local ordinance, operators will be required to discontinue any existing use and monitor their locations for compliance by its employees in the future unless the establishment is located in a zoning classification that includes residential use.

**C. Government Sector Impact:**

There may be additional disciplinary proceedings investigated by the Department of Health and prosecuted by the Board of Massage. The Criminal Justice Impact Conference has not yet determined the impact of the bill. The Department of Corrections anticipates that the impact of the bill will be insignificant on the prison population and minimal on the community supervision population.<sup>16</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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

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

**CS by Regulated Industries on March 14, 2013:**

The committee substitute requires the board to deny a massage establishment license upon a finding that an applicant has been arrested, is awaiting final disposition, or has been convicted of offenses listed in s. 435.04(2), F.S., or a similar law in another jurisdiction, which include offenses relating to sexual misconduct, abuse of aged or disabled adults, murder, certain manslaughter offenses, vehicular homicide, certain offenses against minors, kidnapping, false imprisonment, prostitution, lewd and lascivious behavior, indecent exposure, arson, burglary, certain firearms offenses, and certain felony offenses.

The committee substitute provides that denial of a license or a disciplinary action may be based upon the act of advertising to induce or attempt to induce a client to engage in sexual activity, or to engage or attempt to engage a client in sexual activity.

---

<sup>16</sup>See 2013 Legislative Analysis for SB 500, Office of Legislative Affairs, Florida Department of Corrections, January 31, 2013.

The committee substitute revises the restriction on hours of operation for massage establishments to the range of midnight to 5 a.m. It exempts from the restriction on hours of operation those massage establishments located on the premises of a clinic defined in part X of ch. 400, F.S., a timeshare property defined in s. 721.05, F.S., a public airport defined in s. 330.27, or a pari-mutuel facility defined in s. 550.002, F.S. It clarifies the exemption for massages performed pursuant to prescriptions of certain licensees.

The committee substitute amends s. 480.052, F.S., to allow counties and municipalities to waive the restriction on hours of operation of massage establishments for special local events within their jurisdiction. It amends the title to conform to the provisions of the bill.

**B. Amendments:**

None.



134210

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/14/2013	.	
	.	
	.	
	.	

---

---

The Committee on Regulated Industries (Braynon) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 17 - 81  
and insert:

Section 1. Subsection (2) of section 480.043, Florida Statutes, is amended to read:

480.043 Massage establishments; requisites; licensure; inspection.-

(2) The board shall adopt rules governing the operation of establishments and their facilities, personnel, safety and sanitary requirements, financial responsibility, insurance coverage, and the license application and granting process. An



134210

13 application shall be denied upon a finding that an applicant has  
14 been arrested for and is awaiting final disposition of, or has  
15 been convicted of, regardless of adjudication, an offense in s.  
16 435.04(2) or a similar law of another jurisdiction.

17 Section 2. Present paragraphs (e) though (o) of subsection  
18 (1) of section 480.046, Florida Statutes, are redesignated as  
19 paragraphs (f) though (p), respectively, and a new paragraph (e)  
20 is added to that subsection, to read:

21 480.046 Grounds for disciplinary action by the board.—

22 (1) The following acts constitute grounds for denial of a  
23 license or disciplinary action, as specified in s. 456.072(2):

24 (e) Advertising to induce or attempt to induce a client to  
25 engage in sexual activity, or to engage or attempt to engage a  
26 client in sexual activity.

27 Section 3. Section 480.047, Florida Statutes, is amended to  
28 read:

29 480.047 Penalties.—

30 (1) It is unlawful for any person to:

31 (a) Hold himself or herself out as a massage therapist or  
32 to practice massage unless duly licensed under this chapter or  
33 unless otherwise specifically exempted from licensure under this  
34 chapter.

35 (b) Operate any massage establishment unless it has been  
36 duly licensed as provided herein, except that nothing herein  
37 shall be construed to prevent the teaching of massage in this  
38 state at a board-approved massage school.

39 (c) Permit an employed person to practice massage unless  
40 duly licensed as provided herein.

41 (d) Present as his or her own the license of another.



134210

42 (e) Allow the use of his or her license by an unlicensed  
43 person.

44 (f) Give false or forged evidence to the department in  
45 obtaining any license provided for herein.

46 (g) Falsely impersonate any other licenseholder of like or  
47 different name.

48 (h) Use or attempt to use a license that has been revoked.

49 (i) Otherwise violate any of the provisions of this act.

50 (2) Except as otherwise provided in this chapter, any  
51 person violating the provisions of this section is guilty of a  
52 misdemeanor of the first degree, punishable as provided in s.  
53 775.082 or s. 775.083.

54 Section 4. Section 480.0475, Florida Statutes, is created  
55 to read:

56 480.0475 Massage establishments; prohibited practices.—

57 (1) A person may not operate a massage establishment  
58 between the hours of midnight and 5 a.m. This subsection does  
59 not apply to a massage establishment:

60 (a) Located on the premises of a health care facility as  
61 defined in s. 408.07; a clinic as defined in part X of chapter  
62 400; a hotel, motel, or bed and breakfast inn as defined in s.  
63 509.242; a public airport as defined in s. 330.27; or a pari-  
64 mutuel facility as defined in s. 550.002; or

65 (b) In which every massage performed between the hours of  
66 midnight and 5 a.m. is performed by a massage therapist acting  
67 under the prescription of a physician or physician assistant  
68 licensed under chapter 458, an osteopathic physician or  
69 physician assistant licensed under chapter 459, a chiropractic  
70 physician licensed under chapter 460, a podiatric physician



134210

71 licensed under chapter 461, an advanced registered nurse  
72 practitioner licensed under part I of chapter 464, or a dentist  
73 licensed under chapter 466.

74 (2) A person who operates a massage establishment may not  
75 use the establishment or allow it to be used as a principal  
76 domicile unless the establishment is zoned for residential use  
77 under a local ordinance.

78 (3) A person who violates the provisions of this section  
79 commits a misdemeanor of the first degree, punishable as  
80 provided in s. 775.082 or s. 775.083. A second or subsequent  
81 violation of this section is a felony of the third degree,  
82 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

83 Section 5. Section 480.052, Florida Statutes, is amended to  
84 read:

85 480.052 Power of county or municipality to regulate  
86 massage.—

87 (1) A county or municipality, within its jurisdiction, may  
88 regulate persons and establishments licensed under this chapter.  
89 Such regulation shall not exceed the powers of the state under  
90 this act or be inconsistent with this act. This section shall  
91 not be construed to prohibit a county or municipality from  
92 enacting any regulation of persons or establishments not  
93 licensed pursuant to this act.

94 (2) A county or municipality may waive the restriction on  
95 the hours of operation of a massage establishment provided in s.  
96 485.0475 during special events that occur within the county's or  
97 municipality's jurisdiction.

98  
99 ===== T I T L E A M E N D M E N T =====



134210

100 And the title is amended as follows:  
101       Delete lines 2 - 10  
102 and insert:  
103       An act relating to massage establishments; amends s.  
104       480.043, F.S.; requiring an application to be denied  
105       upon specified findings; amending s. 480.046, F.S.,  
106       adding additional grounds for denial of a license;  
107       480.047, F.S.; revising penalties; creating s.  
108       480.0475, F.S.; prohibiting the operation of a massage  
109       establishment during specified times; providing  
110       exceptions; prohibiting the use of a massage  
111       establishment as a principal domicile unless the  
112       establishment is zoned for residential use under a  
113       local ordinance; providing criminal penalties;  
114       amending s. 480.052, F.S., authorizing a county or  
115       municipality to waive the restriction on operating  
116       hours of a massage establishment in certain instances;  
117       amending s. 823.05, F.S.; declaring that a



126372

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/14/2013	.	
	.	
	.	
	.	

---

---

The Committee on Regulated Industries (Braynon) recommended the following:

**Senate Amendment to Amendment (134210)**

Delete lines 63 - 64  
and insert:  
509.242; a timeshare property as such term is defined in  
s.721.05; a public airport as defined in s. 330.27; or a pari-  
mutuel facility as defined in s. 550.002; or

By Senator Clemens

27-00716-13

2013500\_\_

A bill to be entitled

An act relating to massage establishments; amending s. 480.047, F.S.; revising penalties; creating s. 480.0475, F.S.; providing legislative intent; prohibiting the operation of a massage establishment during specified times; providing exceptions; prohibiting the use of a massage establishment as a principal domicile unless the establishment is zoned for residential use under a local ordinance; providing penalties; amending s. 823.05, F.S.; declaring that a massage establishment operating in violation of specified statutes is a nuisance that may be abated or enjoined; providing an effective date.

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

Section 1. Section 480.047, Florida Statutes, is amended to read:

480.047 Penalties.—

(1) It is unlawful for any person to:

(a) Hold himself or herself out as a massage therapist or to practice massage unless duly licensed under this chapter or unless otherwise specifically exempted from licensure under this chapter.

(b) Operate any massage establishment unless it has been duly licensed as provided herein, except that nothing herein shall be construed to prevent the teaching of massage in this state at a board-approved massage school.

(c) Permit an employed person to practice massage unless

Page 1 of 4

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

27-00716-13

2013500\_\_

duly licensed as provided herein.

(d) Present as his or her own the license of another.

(e) Allow the use of his or her license by an unlicensed person.

(f) Give false or forged evidence to the department in obtaining any license provided for herein.

(g) Falsely impersonate any other licenseholder of like or different name.

(h) Use or attempt to use a license that has been revoked.

(i) Otherwise violate any of the provisions of this act.

(2) Except as otherwise provided in this chapter, any person violating the provisions of this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 2. Section 480.0475, Florida Statutes, is created to read:

480.0475 Massage establishments; prohibited practices.—

(1) The Legislature recognizes that, although the majority of massage establishments are operated by law-abiding citizens, a small number of establishments are operated by persons who use the establishment as a place to engage in illegal activities, such as human trafficking and prostitution. It is the intent of the Legislature to protect the public and the state's massage profession and its reputation from persons operating massage establishments that engage in illegal activity. The Legislature also intends that the perpetrators of human trafficking be penalized for their illegal conduct and that the victims of trafficking be protected and assisted by the state.

(2) A person may not operate a massage establishment

Page 2 of 4

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

27-00716-13 2013500\_\_  
 59 between the hours of 10 p.m. and 6 a.m. This subsection does not  
 60 apply to a massage establishment:

61 (a) Located on the premises of a health care facility as  
 62 defined in s. 408.07 or of a hotel, motel, or bed and breakfast  
 63 inn, as those terms are defined in s. 509.242; or

64 (b) In which every massage performed between the hours of  
 65 10 p.m. and 6 a.m. is performed by a massage therapist acting  
 66 under the direction of a physician or physician assistant  
 67 licensed under chapter 458, an osteopathic physician or  
 68 physician assistant licensed under chapter 459, a chiropractic  
 69 physician licensed under chapter 460, a podiatric physician  
 70 licensed under chapter 461, an advanced registered nurse  
 71 practitioner licensed under part I of chapter 464, or a dentist  
 72 licensed under chapter 466.

73 (3) A person operating a massage establishment may not use  
 74 or permit the establishment to be used as a principal domicile  
 75 unless the establishment is zoned for residential use under a  
 76 local ordinance.

77 (4) Any person violating the provisions of this section  
 78 commits a misdemeanor of the first degree, punishable as  
 79 provided in s. 775.082 or s. 775.083. A second or subsequent  
 80 violation of this section is a felony of the third degree,  
 81 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

82 Section 3. Subsection (3) is added to section 823.05,  
 83 Florida Statutes, to read:

84 823.05 Places and groups engaged in criminal gang-related  
 85 activity declared a nuisance; may be abated and enjoined.—

86 (3) A massage establishment as defined in s. 480.033(7)  
 87 that operates in violation of s. 480.0475 or s. 480.0535(2) is

27-00716-13 2013500\_\_  
 88 declared a nuisance and may be abated or enjoined as provided in  
 89 ss. 60.05 and 60.06.

90 Section 4. This act shall take effect October 1, 2013.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Banking and Insurance, *Vice Chair*  
Appropriations Subcommittee on Criminal and  
Civil Justice  
Appropriations Subcommittee on Finance and Tax  
Children, Families, and Elder Affairs  
Ethics and Elections  
Gaming  
Transportation

**SENATOR JEFF CLEMENS**

27th District

February 5, 2013

Chair Kelli Stargel  
310 Knott  
404 S. Monroe St  
Tallahassee, FL 32399

Dear Chair Stargel:

I respectfully request that SB500, An Act Relating to Massage Establishments, be placed on the agenda for the Regulated Industries Committee. This bill deals with the increasing human trafficking issue facing the State.

Please feel free to contact myself or my staff, should you have any questions.

Best Regards,

A handwritten signature in black ink, appearing to read "Jeff Clemens".

Jeff Clemens  
Senate District 27

Cc: Patrick Imhof

REPLY TO:

508 Lake Avenue, Unit C, Lake Worth, Florida 33460 (561) 540-1140 FAX: (561) 540-1143  
 226 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5027

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**DON GAETZ**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

1

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

3/14/2013

Meeting Date

Topic

MESSAGE

Bill Number

SB 500

Name

BRIAN H. BIBEAN

Amendment to  
Amendment Barcode

126372

(if applicable)

(if applicable)

Job Title

ATTORNEY

Address

MONROE ST / ALLIANCE BUILDING

Phone

202-7500

Street

City

TALLAHASSEE

State

Zip

FL 32301

E-mail

bbibeau@hgsllaw.com

Speaking:

For

Against

Information

Representing

AMERICAN RESORT DEVELOPMENT 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.

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/14/13  
Meeting Date

Topic \_\_\_\_\_

Bill Number 500  
*(if applicable)*

Name JANET MABEY

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title \_\_\_\_\_

Address 2866 Bay Heather Circle  
*Street*  
Gulf Breeze  
*City State Zip*

Phone 904-2502

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing Florida STATE Massage Assoc

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)

3/14/13  
Meeting Date

Topic Massage Establishments

Bill Number SB 0500  
*(if applicable)*

Name Curtis Flowers

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Major

Address 2008 E 8th Ave.  
*Street*

Phone 813 363-0375

Tampa FL 33578  
*City State Zip*

E-mail CFlowers@  
hcsa.tampa.fl.us

Speaking:  For  Against  Information

Representing Hillsborough County Sheriffs Office

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 Regulated Industries

**BILL:** CS/SB 802

**INTRODUCER:** Regulated Industries Committee and Senator Hays

**SUBJECT:** Department of Business and Professional Regulation

**DATE:** March 14, 2013      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	Imhof	RI	<b>Fav/CS</b>
2.			CA	
3.			AP	
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

CS/SB 802 amends ss. 468.631 and 489.140, F.S., relating to the funding of the Florida Homeowners' Construction Recovery Fund (Fund). The bill revises the method of funding from a surcharge based on square footage (of new construction, renovations, alterations, and additions) to a surcharge based on 1.5% of permit fees associated with enforcement of the Florida Building Code. The bill authorizes any excess funds not needed to fund the Florida Building Code Administrators and Inspectors Board (BCAIB) in the Department of Business and Professional Regulation (department) to be transferred by the department to the Fund. The bill provides that the department may not transfer excess cash to the Fund for the payment of claims if the excess cash exceeds the amount appropriated in the General Appropriations Act and any amount approved by the Legislative Budget Commission pursuant to s. 216.181, F.S.

The bill provides an October 1, 2013 effective date.

This bill amends sections 468.631 and 489.140, Florida Statutes.

## II. Present Situation:

The law currently provides for the shared allocation of a surcharge on Building Code enforcement fees (permit fees) between two trust funds administered by the Department of Business and Professional Regulation.<sup>1</sup> One of the trust funds is dedicated to payment of validated claims for sub-standard work on Florida residences by certain contractors (Fund).

The stated intent of the Legislature is that the sole purpose of that fund is to compensate any aggrieved homeowner who contracted with a licensed residential, building or general contractor (Division I Contractors) for the construction or improvement of his residence.<sup>2</sup> Payment of claims is considered only after issuance of a court judgment, an award of restitution by the Construction Industry Licensing Board, or an arbitration award, on grounds of financial mismanagement or misconduct, abandoning a construction project, or making a false statement with respect to a project and arising directly out of certain activities listed in the law. Prior to 2004, surcharges for work by both Division I (general, building and residential contractors) and Division II contractors (roofing, sheet metal, air-conditioning, mechanical, pool/spa, plumbing, underground utility/excavation, solar, pollutant storage, and specialty contractors)<sup>3</sup> were included in the Fund. The Fund was previously identified as the “Construction Industries Recovery Fund,” but was renamed as the “Florida Homeowners’ Construction Recovery Fund” by ch. 2004-84, Laws of Florida (L.O.F.).

The fund was supported at that time by a surcharge based on one-half cent per square foot of “under roof floor space” for the new construction, renovation, alteration or addition being undertaken. Only the Division I contractors were assessed this fee because the Division II contractors (e.g., plumbers or swimming pool contractors) did not have any “under roof floor space” on which to calculate the surcharge. The funds were used to regulate building administrators and inspectors, and the funds not needed for that regulation were used to reimburse homeowners for wrongdoing by both Division I and II contractors.

In 2010, the surcharge provision in s. 468.631, F.S., was amended to assess a 1.5 percent surcharge on all permit fees associated with the enforcement of the Florida Building Code.<sup>4</sup> However, the reference to the square footage surcharge that remains in s. 489.140, F.S., was not similarly revised.

The surcharge collections were changed to be deposited equally into the Florida Homeowners’ Construction Trust Fund established by s. 489.140, F.S., and the Building Code Administrators and Inspectors Fund to be used to regulate building code administrators and inspectors.<sup>5</sup> The ability of the department to transfer funds between trust funds was also eliminated.<sup>6</sup>

---

<sup>1</sup>See s. 468.631, F.S.

<sup>2</sup>See s. 489.140(2), F.S.

<sup>3</sup>See s. 489.105(3), F.S.

<sup>4</sup>See ch. 2010-176, L.O.F.

<sup>5</sup>*Id.*

<sup>6</sup>*Id.*

According to the department<sup>7</sup>, the fund received insufficient funds for several years to keep pace with consumer claims for recovery, and the resulting backlog has caused a wait of several years before funds are available for approved distributions.<sup>8</sup>

Pursuant to Section 468.631, F.S., the Florida Building Code Administrators and Inspectors Board (“BCAIB”) and the Florida Homeowners’ Construction Recovery Fund (Fund) are funded through a 1.5 percent surcharge on all permitting fees associated with enforcement of the Florida Building Code. Surcharge proceeds received by the department are allocated equally between the BCAIB and the Fund for operation of the respective programs. The Fund currently has a backlog of approximately 600 claims pending approval totaling over \$13,000,000 in requested recovery payments.<sup>9</sup> In addition, there are approved claims for which no funds are available for payment.

According to the department, in 2012-2013, twenty-four claims have been paid to date, totaling \$468,694.64, with an additional thirty claims totaling \$410,905.73 still awaiting payment.<sup>10</sup> Several claims awarded in 2011-2012 remain pending, awaiting appeal or documentation from claimants.<sup>11</sup> In 2011-2012, ninety-seven claims totaling \$1,503,781.99 were paid, and in 2010-2011, thirty-two claims totaling \$576,382.33 were paid.<sup>12</sup>

Current law does not permit the transfer of excess funds from one fund to the other. Therefore, as excess funds build up in the fund that supports the operations of the BCAIB after those operational expenses are fully funded, the unused remainder continues to accumulate. According to the department, it is anticipated that approximately \$5,000,000 could be transferred from BCAIB to the Fund in Fiscal Year 2013-14, and approximately \$1,200,000 could be transferred in subsequent years, with resolution of the current backlog of claims anticipated within approximately 2.5 years.<sup>13</sup>

### III. Effect of Proposed Changes:

The bill deletes an outdated reference to a square foot surcharge in s. 489.140, F.S., to conform to the surcharge revision adopted in the 2010 amendment to s. 468.631, F.S.<sup>14</sup>

The bill allows the transfer of funds in excess of that needed for the operations of the BCAIB to the Florida Homeowners’ Construction Recovery Fund (Fund) in order to pay pending approved claims that could not be paid due to lack of funding, and to pay a greater number of approved claims in the future. The bill provides that the department may not transfer excess cash to the Fund for the payment of claims if the excess cash exceeds the amount appropriated in the General Appropriations Act and any amount approved by the Legislative Budget Commission pursuant to s. 216.181, F.S.

---

<sup>7</sup>Email from Department of Business and Professional Responsibility, Office of Legislative Affairs, dated January 25, 2013, on file with Senate Regulated Industries.

<sup>8</sup>2013 Legislative Analysis for HB 57, Office of Legislative Affairs, Department of Business and Professional Regulation, January 10, 2013. HB 57 is the companion bill for SB 802 by Senator Hays.

<sup>9</sup>*Id.*

<sup>10</sup>*Supra* at n. 7.

<sup>11</sup>*Id.*

<sup>12</sup>*Id.*

<sup>13</sup>*Supra* at n. 8, at p. 3.

<sup>14</sup>*See* s. 6, ch. 2010-176, L.O.F.

The bill has an effective date of October 1, 2013.

**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:

None.

C. Government Sector Impact:

The bill will allow a change in funding to permit funds not needed for operation of the BCAIB to be used in processing and addressing the backlog of approved but unpaid claims from the Florida Homeowners' Construction Recovery Fund, and paying future approved claims as funding allows. The additional administrative workload associated with these claims will require additional staffing time, within current staffing and departmental resources.<sup>15</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

---

<sup>15</sup>*Supra* at n. 8, at p. 4.

**VIII. Additional Information:**

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

**CS by Regulated Industries on March 14, 2013:**

The committee substitute amends s. 468.631 to limit the authority of the department to transfer excess cash from the board's account in the Professional Regulation Trust Fund. The committee substitute provides that the department may not transfer excess cash to the Florida Homeowners' Construction Recovery Fund for the payment of claims if the excess cash exceeds the amount appropriated in the General Appropriations Act and any amount approved by the Legislative Budget Commission pursuant to s. 216.181, F.S.

- B. **Amendments:**

None.



596038

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/14/2013	.	
	.	
	.	
	.	

---

---

The Committee on Regulated Industries (Detert) recommended the following:

**Senate Amendment**

Delete lines 50 - 52  
and insert:  
Inspectors Board. The department may transfer excess cash from the board's account within the Professional Regulation Trust Fund to the Florida Homeowners' Construction Recovery Fund if the department determines that the excess cash is not required to fund the board. However, the department may not transfer excess cash to the Florida Homeowners' Construction Recovery Fund for the payment of claims if the excess cash exceeds the amount appropriated in the General Appropriations Act and any



596038

13 amount approved by the Legislative Budget Commission pursuant to  
14 s. 216.181.

By Senator Hays

11-00930B-13

2013802\_\_

A bill to be entitled

An act relating to the Department of Business and Professional Regulation; amending s. 489.140, F.S.; clarifying funding requirements for the Florida Homeowners' Construction Recovery Fund; amending s. 468.631, F.S.; authorizing the department to transfer certain funds from the Florida Building Code Administrators and Inspectors Board to the Florida Homeowners' Construction Recovery Fund; providing an effective date.

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

Section 1. Section 489.140, Florida Statutes, is amended to read:

489.140 Florida Homeowners' Construction Recovery Fund.— There is created the Florida Homeowners' Construction Recovery Fund as a separate account in the Professional Regulation Trust Fund. The recovery fund shall be funded ~~out of the receipts deposited in the Professional Regulation Trust Fund from the one-half cent per square foot surcharge on building permits collected and disbursed~~ pursuant to s. 468.631.

Section 2. Subsection (1) of section 468.631, Florida Statutes, is amended to read:

468.631 Building Code Administrators and Inspectors Fund.—

(1) This part shall be funded through a surcharge, to be assessed pursuant to s. 125.56(4) or s. 166.201 at the rate of 1.5 percent of all permit fees associated with enforcement of the Florida Building Code as defined by the uniform account

Page 1 of 2

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

11-00930B-13

2013802\_\_

criteria and specifically the uniform account code for building permits adopted for local government financial reporting pursuant to s. 218.32. The minimum amount collected on any permit issued shall be \$2. The unit of government responsible for collecting permit fees pursuant to s. 125.56 or s. 166.201 shall collect such surcharge and shall remit the funds to the department on a quarterly calendar basis beginning not later than December 31, 2010, for the preceding quarter, and continuing each third month thereafter; and such unit of government shall retain 10 percent of the surcharge collected to fund the participation of building departments in the national and state building code adoption processes and to provide education related to enforcement of the Florida Building Code. There is created within the Professional Regulation Trust Fund a separate account to be known as the Building Code Administrators and Inspectors Fund, which shall deposit and disburse funds as necessary for the implementation of this part. The proceeds from this surcharge shall be allocated equally to fund the Florida Homeowners' Construction Recovery Fund established by s. 489.140 and the functions of the Building Code Administrators and Inspectors Board. The department may transfer excess funds it determines are not required to fund the board from the board to the Florida Homeowners' Construction Recovery Fund.

Section 3. This act shall take effect October 1, 2013.

Page 2 of 2

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



The Florida Senate

## Committee Agenda Request

**To:** Senator Kelli Stargel, Chair  
Regulated Industries

CC: Patrick L. "Booter" Imhof, Staff Director  
Lynn Koon, Administrative Assistant

**Subject:** Committee Agenda Request

**Date:** February 14, 2013

---

I respectfully request that **Senate Bill #802**, relating to Department of Business and Professional Regulation, be placed on the:

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

A handwritten signature in black ink that reads "Alan Hays".

---

Senator Alan Hays  
Florida Senate, District 11  
320 Senate Office Building  
(850) 487-5011

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/14/13  
Meeting Date

Topic SB 802 - DBPR

Bill Number SB 802  
*(if applicable)*

Name Sam Verghese

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Director, Legislative Affairs

Address 1940 N. Monroe St.  
*Street*

Phone 850.487.4827

Tall. FL 32389  
*City State Zip*

E-mail Sam.Verghese@myflorida  
license.com

Speaking:  For  Against  Information

Representing Dept. of Business and Professional Regulation

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 Regulated Industries

BILL: SB 1344

INTRODUCER: Senator Latvala

SUBJECT: Malt Beverages

DATE: March 7, 2013                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	<b>Pre-meeting</b>
2.	_____	_____	CM	_____
3.	_____	_____	CA	_____
4.	_____	_____	RC	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

SB 1344 authorizes the sale of individual containers of malt beverages containing 64 ounces. Current law requires that all malt beverages sold by retail vendors of alcoholic beverages must be packaged in individual containers containing no more than 32 ounces. Current law also permits malt beverages to be packaged in bulk or in kegs or in barrels or in any individual container containing one gallon or more of malt beverage regardless of individual container type.

The effective date of the bill is July 1, 2013.

This bill substantially amends section 563.06, Florida Statutes.

**II. Present Situation:**

In Florida, alcoholic beverages are regulated by the Beverage Law.<sup>1</sup> These provisions regulate the manufacture, distribution, and sale of wine, beer, and liquor via manufacturers, distributors, and vendors.<sup>2</sup> The Division of Alcoholic Beverage and Tobacco (division) within the Department of Business and Professional Regulation is the agency authorized to administer and enforce the Beverage Law.<sup>3</sup>

**Three Tier System**

In the United States, the regulation of alcohol has traditionally been through what is termed the

<sup>1</sup> The Beverage Law means chs. 561, 562, 563, 564, 565, 567, and 568, F.S. *See s. 561.01(6), F.S.*

<sup>2</sup> *See s. 561.14, F.S.*

<sup>3</sup> Section 561.02, F.S.

“three-tier system.” The system requires that the manufacture, distribution, and sale of alcoholic beverages be separated. Retailers must buy their products from distributors who in turn buy their products from the manufacturers. Manufacturers cannot sell directly to retailers or directly to consumers. The system is deeply rooted in the perceived evils of the “tied house” in which a bar is owned or operated by a manufacturer or the manufacturer exercises undue influence over the retail vendor.<sup>4</sup>

There are some exceptions to this regulatory system. The exceptions include allowing beer brew pubs to manufacture malt beverages<sup>5</sup> and to sell them to consumers,<sup>6</sup> allowing individuals to bring small quantities of alcohol back from trips out-of-state,<sup>7</sup> and allowing in-state wineries to manufacture and sell directly to consumers.<sup>8</sup>

In a three-tier system, each license classification has clearly delineated functions. In Florida, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.<sup>9</sup> Vendors are limited to purchasing their alcoholic beverage inventory from licensed distributors, manufacturers, or bottlers.<sup>10</sup> Importers, whether resident or nonresident, are licensed to sell, or to cause to be sold, shipped, and invoiced, alcoholic beverages to licensed manufacturers or licensed distributors, and to no one else. An importer can have no direct or indirect affiliation with any vendor licensed in this state.<sup>11</sup>

Section 561.20, F.S., limits, per county, the number of alcoholic beverage licenses that may be issued that permit the sale of beer, wine, and liquor. Section 561.20, F.S., limits the number of licenses in a county to one license per 7,500 residents within the county. These limited alcoholic beverage licenses are known as quota licenses. New quota licenses are created and issued when there is an increase in the population of a county. The licenses can also be issued when a county initially changes from a county which does not permit the sale of intoxicating liquor to one that does permit their sale. The quota license is the only alcoholic beverage license that is limited in number; all other types of alcoholic beverage licenses are available without limitation.

### **On-Premises or Off-Premises Consumption-Malt Beverages**

Section 564.02, F.S., distinguishes between places of business where a vendor is licensed to only sell malt beverages for on-premises consumption<sup>12</sup> and places of business where such on-premises consumption is permitted.<sup>13</sup> According to the department, vendors licensed to sell malt

---

<sup>4</sup> Erik D. Price, *Time to Untie the House? Revisiting the Historical Justifications of Washington's Three-Tier System Challenged by Costco v. Washington State Liquor Control Board*, a copy can be found at: [http://www.lanepowell.com/wp-content/uploads/2009/04/pricce\\_001.pdf](http://www.lanepowell.com/wp-content/uploads/2009/04/pricce_001.pdf) (Last visited February 28, 2013).

<sup>5</sup> Section 563.01, F.S., defines the terms “beer” and “malt beverage” to mean all brewed beverages containing malt.

<sup>6</sup> See s. 561.221(2), F.S., which permits the limited manufacture of beer by vendors (brew pubs).

<sup>7</sup> See s. 562.16, F.S., which permits the possession of less than one gallon of untaxed alcoholic beverages when purchased by the possessor out-of-state in accordance with the laws of the state where purchased and brought into the state by the possessor.

<sup>8</sup> See s. 561.221(1), F.S.

<sup>9</sup> Section 561.14(3), F.S. However, see discussion regarding the exception for certified Florida Farm Wineries in s. 561.221, F.S.

<sup>10</sup> Section 561.14(3), F.S. Vendors may buy from vendors in a pool buying group if the initial purchase was by a single purchase by a pool buying agent.

<sup>11</sup> Section 561.14(5), F.S.

<sup>12</sup> See s. 565.02(1)(a), F.S.

<sup>13</sup> See ss. 565.02(1)(b)-(f) and 565.045, F.S.

beverages for on-premises consumption may sell alcoholic beverages for the customer to take it away from the licensed premises for consumption elsewhere. The license for a place of business where consumption on the premises is permitted does not prohibit the sale to a consumer for consumption away from the licensed premises. The license fee for consumption only off the licensed premises is 50 percent less than for a license in which on-premises consumption is permitted.<sup>14</sup>

According to alcoholic beverage industry representatives and a representative for the division, vendors with on-premises licenses routinely fill containers with a malt beverage and seal them for customers to take off-premises for later consumption. They note that current law does not prohibit this practice. The vendors typically seal the beverage container before the consumer leaves the premises so that the consumer will not violate any local ordinances that prohibit the carrying in public of open containers of alcoholic beverages or the state-law prohibition against the possession of open containers of alcoholic beverages in vehicles.<sup>15</sup> The beverage law does not define the term “sealed container.”

In 1995, the department repealed a rule which explicitly stated that an on-premises malt beverage licensee could sell malt beverages, for consumption off-premises, in “sealed containers” and could also sell wine and distilled spirits in the “original sealed containers as received from the distributor.”<sup>16</sup>

### **Malt Beverage Containers**

Section 563.06(6), F.S., requires that all malt beverages that are offered for sale by vendors must be packaged in individual containers containing no more than 32 ounces (one quart). However, malt beverages may be packaged in bulk or in kegs or in barrels or in any individual container containing one gallon or more of malt beverage regardless of individual container type.

Prior to 2001, s. 563.06(6), F.S., provided that malt beverages could be sold by vendors only in 8, 12, 16, or 32 ounce individual containers. Chapter 2001-78, L.O.F., amended that section to allow vendors to sell malt beverages in individual containers of “no more than 32 ounces. The current provision allowing containers of one gallon or more was unaffected by that amendment.

### **Growlers**

Some states permit vendors to sell malt beverages in containers known as “growlers,”<sup>17</sup> which typically are reusable containers of between 32 ounces and one gallon that the consumer can fill with the vendor’s malt beverage for consumption off the licensed premises. According to a representative for several malt beverage manufacturers and brew pubs, the national standard size for a growler is 64 ounces. Florida law does not permit the use of a 64 ounce growler.

---

<sup>14</sup> See s. 565.02(1)(a), F.S.

<sup>15</sup> Section 316.1936, F.S.

<sup>16</sup> Rule 7A-1.008, F.A.C., as amended on March 10, 1985. This rule was subsequently transferred to rule 61A-1.008, F.A.C., and then repealed on July 5th, 1995.

<sup>17</sup> The term “growlers” is derived from the late 1800s and early 1900s practice in which fresh beer was carried from the local pub to one’s home by means of a small-galvanized pail. When the beer sloshed around the pail, it created a rumbling sound as the carbon dioxide escaped through the lid. See “The Growler: Beer-to-Go!,” *Beer Advocate* (July 31, 2002). A copy of the article is available at: <http://beeradvocate.com/articles/384> (Last visited March 8, 2013).

**III. Effect of Proposed Changes:**

The bill amends s. 563.06(6), F.S., to authorize the sale of individual containers of malt beverages containing 64 ounces.

The effective date of the bill is July 1, 2013.

**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:**

License venders of alcoholic beverages could sell malt beverages in 64 ounce containers.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial 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 Latvala

20-00758C-13

20131344\_\_

1 A bill to be entitled

2 An act relating to malt beverages; amending s. 563.06,  
3 F.S.; authorizing an additional size for individual  
4 containers of malt beverages sold or offered for sale  
5 by vendors at retail; providing an effective date.  
6

7 Be It Enacted by the Legislature of the State of Florida:  
8

9 Section 1. Subsection (7) of section 563.06, Florida  
10 Statutes, is renumbered as subsection (8), and subsection (6) of  
11 that section is amended to read:

12 563.06 Malt beverages; imprint on individual container;  
13 size of containers; exemptions.-

14 (6) All malt beverages packaged in individual containers  
15 sold or offered for sale by vendors at retail in this state  
16 shall be in individual containers containing 64 ounces, or a  
17 lesser size containing no more than 32 ounces, of such malt  
18 beverages; ~~provided, however, that nothing contained in~~

19 (7) This section does not shall affect malt beverages  
20 packaged in bulk, ~~or~~ in kegs or ~~in~~ barrels, or in an any  
21 individual container containing 1 gallon or more of such malt  
22 beverage regardless of individual container type.

23 Section 2. This act shall take effect July 1, 2013.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Ethics and Elections, *Chair*  
Budget - Subcommittee on General Government  
Appropriations  
Budget - Subcommittee on Transportation, Tourism,  
and Economic Development Appropriations  
Community Affairs  
Environmental Preservation and Conservation  
Rules  
Judiciary  
Appropriations  
Select Committee on Gaming

**SENATOR JACK LATVALA**

20th District

March 5, 2013

The Honorable Senator Kelli Stargel, Chair  
Senate Committee on Regulated Industries  
330 Knott Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Dear Chair Stargel:

I respectfully request consideration of Senate Bill 1344 regarding Malt Beverages. I would greatly appreciate the opportunity to present this legislation to the Committee on Regulated Industries as soon as possible.

If you have any questions regarding this legislation, please contact me. Thank you in advance for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Jack Latvala".

Jack Latvala  
State Senator  
District 20

Cc: Patrick Imhof, Staff Director;  
Lynn Koon, Administrative Assistant

REPLY TO:

- 26133 U.S. Highway 19 North, Suite 201 Clearwater, FL 33763 (727) 793-2797
- 408 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**Don Gaetz**  
President of the Senate

**Garrett Richter**  
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 Regulated Industries

**BILL:** CS/SB 864

**INTRODUCER:** Regulated Industries Committee and Senator Thrasher

**SUBJECT:** Tied House Regulation

**DATE:** March 14, 2013      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	<b>Fav/CS</b>
2.			AFT	
3.			AP	
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

CS/SB 864 authorizes the division to impose administrative sanctions for any violation of the limitations on credits, coupons and other forms of assistance. Current law only authorizes the division to establish rules and require reports to enforce the limitation on credits and other forms of assistance to the vendor. The bill also extends the rulemaking and the sanctioning authority to violations related to coupons.

The bill also prohibits Beverage Law licensees from possessing or using, in physical or electronic format, any type of malt beverage coupon in this state. This prohibition also applies to cross-merchandizing coupons. The bill specifies the circumstances in which prohibition applies. Current law, which the bill repeals, only prohibits distributors from furnishing coupons to consumers that are redeemable by the vendor.

The effective date of the bill is July 1, 2013.

This bill substantially amends section 561.42, Florida Statutes.

## II. Present Situation:

In Florida, alcoholic beverages are regulated by the Beverage Law.<sup>1</sup> These provisions regulate the manufacture, distribution, and sale of wine, beer, and liquor via manufacturers, distributors, and vendors.<sup>2</sup> The Division of Alcoholic Beverage and Tobacco (division) within the Department of Business and Professional Regulation is the agency authorized to administer and enforce the Beverage Law.<sup>3</sup>

### Three Tier System

In the United States, the regulation of alcohol has traditionally been through what is termed the “three-tier system.” The system requires that the manufacture, distribution, and sale of alcoholic beverages be separated. Retailers must buy their products from distributors who in turn buy their products from the manufacturers. Manufacturers cannot sell directly to retailers or directly to consumers. The system is deeply rooted in the perceived evils of the “tied house” in which a bar is owned or operated by a manufacturer or the manufacturer exercises undue influence over the retail vendor.<sup>4</sup>

There are some exceptions to this regulatory system. The exceptions include allowing beer brew pubs to manufacture malt beverages and to sell them to consumers,<sup>5</sup> allowing individuals to bring small quantities of alcohol back from trips out-of-state,<sup>6</sup> and allowing in-state wineries to manufacture and sell directly to consumers.<sup>7</sup>

In a three-tier system, each license classification has clearly delineated functions. In Florida, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.<sup>8</sup> Vendors are limited to purchasing their alcoholic beverage inventory from licensed distributors, manufacturers, or bottlers.<sup>9</sup> Importers, whether resident or nonresident, are licensed to sell, or to cause to be sold, shipped, and invoiced, alcoholic beverages to licensed manufacturers or licensed distributors, and to no one else. An importer can have no direct or indirect affiliation with any vendor licensed in this state.<sup>10</sup>

### Tied House Evil

Section 561.42(1), F.S., prohibits a licensed manufacturer or distributor from assisting any

---

<sup>1</sup> The Beverage Law means chs. 561, 562, 563, 564, 565, 567, and 568, F.S. See s. 561.01(6), F.S.

<sup>2</sup> See s. 561.14, F.S.

<sup>3</sup> Section 561.02, F.S.

<sup>4</sup> Erik D. Price, *Time to Untie the House? Revisiting the Historical Justifications of Washington’s Three-Tier System Challenged by Costco v. Washington State Liquor Control Board*, a copy can be found at: [http://www.lanepowell.com/wp-content/uploads/2009/04/pricce\\_001.pdf](http://www.lanepowell.com/wp-content/uploads/2009/04/pricce_001.pdf) (Last visited February 28, 2013).

<sup>5</sup> See s. 561.221(2), F.S., which permits the limited manufacture of beer by vendors (brew pubs).

<sup>6</sup> See s. 562.16, F.S., which permits the possession of less than one gallon of untaxed alcoholic beverages when purchased by the possessor out-of-state in accordance with the laws of the state where purchased and brought into the state by the possessor.

<sup>7</sup> See s. 561.221, F.S.

<sup>8</sup> Section 561.14(3), F.S. However, see discussion regarding the exception for certified Florida Farm Wineries in s. 561.221, F.S.

<sup>9</sup> Section 561.14(3), F.S. Vendors may buy from vendors in a pool buying group if the initial purchase was by a single purchase by a pool buying agent.

<sup>10</sup> Section 561.14(5), F.S.

vendor by any gifts or loans of money or property of any description or by the giving of any rebates of any kind whatsoever. Specifically, s. 561.42(1), F.S., provides in part:

No licensed manufacturer or distributor of any of the beverages herein referred to shall have any financial interest, directly or indirectly, in the establishment or business of any vendor licensed under the Beverage Law; nor shall such licensed manufacturer or distributor assist any vendor by any gifts or loans of money or property of any description or by the giving of any rebates of any kind whatsoever. No licensed vendor shall accept, directly or indirectly, any gift or loan of money or property of any description or any rebates from any such licensed manufacturer or distributor; provided, however, that this does not apply to any bottles, barrels, or other containers necessary for the legitimate transportation of such beverages or to advertising materials and does not apply to the extension of credit, for liquors sold, made strictly in compliance with the provisions of this section. (Emphasis supplied.)

Section 561.42(8), F.S., authorizes the division to establish rules and require reports to enforce limitation on credits and other forms of assistance. This rulemaking authority does not extend to cash deposits on beer sales, as provided in s. 563.08, F.S.

Section 561.42, F.S., defines the types of items or services that may be provided to vendors. For example, s. 561.42(10), F.S., prohibits by manufacturers, distributors, importers, primary American sources of supply,<sup>11</sup> or brand owners or registrants, or their brokers, sales agents or sales persons, from directly or indirectly giving, lending, renting, selling, or in any other manner furnishing to a vendor any outside sign, printed, painted, electric, or otherwise.

Section 561.42(12)(e), F.S., prohibits distributors of beer from furnishing coupons to consumers that are redeemable by vendors.

Manufacturers and importers are not prohibited from furnishing coupons to consumers that are redeemable by vendors. According to proponents of the bill, manufacturers and importers provide the coupons to the vendor who then furnishes the coupons to the consumer. Proponents of the bill have expressed the concern that such coupons are subject to fraud because vendors may redeem the coupons with the manufacturer or importer without having provided the intended discount or other benefit of the coupon to the consumer.

The division's current administrative rules for the subject of tied house evil do not address the use of coupons.<sup>12</sup> According to the department and several industry representatives, the division

---

<sup>11</sup> Section 564.045(1), F.S., defines the term "primary American source of supply" as the: manufacturer, vintner, winery, or bottler, or their legally authorized exclusive agent, who, if the product cannot be secured directly from the manufacturer by an American distributor, is the source closest to the manufacturer in the channel of commerce from whom the product can be secured by an American distributor, or who, if the product can be secured directly from the manufacturer by an American distributor, is the manufacturer. It shall also include any applicant who directly purchases vinous beverages from a manufacturer, vintner, winery, or bottler who represents that there is no primary American source of supply for the brand and such applicant must petition the division for approval of licensure.

<sup>12</sup> See ch. 61A-1, F.A.C.

has unsuccessfully attempted over several years to formulate and adopt rules to address the use of coupons by vendors, manufacturers, distributors, and importers.

### **III. Effect of Proposed Changes:**

The bill amends s. 561.42(8), F.S., to authorize the division to impose administrative sanctions for any violation of the limitations on credits, coupons and other forms of assistance to the vendor. Current law only authorizes the division to establish rules and require reports to enforce the limitation on credits and other forms of assistance to the vendor. The bill also extends the rulemaking and the sanctioning authority to violations related to coupons.

The bill also amends s. 561.42(8), F.S., to delete the prohibition against rules relating to cash deposits on beer sales, as provided in s. 563.08, F.S.

The bill deletes s. 561.42(12)(e), F.S., which prohibits beer distributors from furnishing coupons to consumers that are redeemable by vendor.

The bill creates s. 561.42(13), F.S., to prohibit Beverage Law licensees from possessing or using, in physical or electronic format, any type of malt beverage or cross-merchandizing coupons in this state. This prohibition also applies where:

- Coupons are produced, sponsored, or furnished, directly or indirectly, by an alcoholic beverage manufacturer, distributor, importer, brand owner, brand registrant, broker, sales agent, or sales person thereof; and
- Coupons are or purport to be redeemable by a vendor or other person who sells malt beverages to consumers in this state.

The effective date of the bill is July 1, 2013.

### **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:**

Consumers of beer could not be furnished with coupons by manufacturers, distributors, and importers of beer to then be redeemed by an alcoholic beverage vendor. However, the consumer could receive the same coupon from the vendor.

**C. Government Sector Impact:**

According to the department, its prior efforts to adopt rules to address the use of coupon have resulted in rule challenges and years of litigation between the department and the beer industry. The department advises that it would incur an indeterminate cost saving because further litigation regarding the issue would be eliminated by prohibiting the use of coupons.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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

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

**Committee Substitute by Regulated Industries Committee on March 14, 2013:**

The committee substitute (CS) amends s. 561.42(8), F.S., to authorize the division to impose administrative sanctions for any violation of the limitations on credits, coupons and other forms of assistance to the vendor.

The CS also amends s. 561.42(8), F.S., to delete the prohibition against rules relating to cash deposits on beer sales, as provided in s. 563.08, F.S.

The CS deletes s. 561.42(12)(e), F.S., which prohibits beer distributors from furnishing coupon to manufacturers and importers of beer from furnishing coupons to consumers that are coupons redeemable by vendor to consumers. Instead, the bill creates s. 561.42(13), F.S., to prohibit Beverage Law licensees from possessing or using, in physical or electronic format, any type of malt beverage or cross-merchandizing coupons in this state. The CS also specifies the circumstances in which prohibition applies.

**B. Amendments:**

None.



482782

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/14/2013	.	
	.	
	.	
	.	

---

---

The Committee on Regulated Industries (Thrasher) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Subsections (8) and (12) of section 561.42,  
Florida Statutes, are amended to read:

561.42 Tied house evil; financial aid and assistance to  
vendor by manufacturer, distributor, importer, primary American  
source of supply, brand owner or registrant, or any broker,  
sales agent, or sales person thereof, prohibited; procedure for  
enforcement; exception.-



482782

13 (8) The division may establish rules and require reports to  
14 enforce and impose administrative sanctions for any violation of  
15 the herein-established limitation upon credits, coupons, and  
16 other forms of assistance in this section. ~~Nothing herein shall~~  
17 ~~be taken to affect the provisions of s. 563.08, but shall govern~~  
18 ~~all other sales of intoxicating liquors.~~

19 (12) A ~~Any~~ manufacturer, distributor, importer, primary  
20 American source of supply, or brand owner or registrant, or a  
21 ~~any~~ broker, sales agent, or sales person thereof, may give,  
22 lend, furnish, or sell to a vendor who sells the products of  
23 such manufacturer, distributor, importer, primary American  
24 source of supply, or brand owner or registrant any of the  
25 following: neon or electric signs, window painting and  
26 decalcomanias, posters, placards, and other advertising material  
27 herein authorized to be used or displayed by the vendor in the  
28 interior of his or her licensed premises.

29 (13) A licensee under the Beverage Law may not possess or  
30 use, in physical or electronic format, any type of malt beverage  
31 coupon, or malt beverage cross-merchandising coupon, in this  
32 state, where:

33 (a) The coupon is produced, sponsored, or furnished,  
34 directly or indirectly, by an alcoholic beverage manufacturer,  
35 distributor, importer, brand owner, brand registrant, broker,  
36 sales agent, or sales person thereof; and

37 (b) The coupon is or purports to be redeemable by a vendor  
38 or other person who sells malt beverages to consumers in this  
39 state.

40 (14) The division shall adopt ~~make~~ reasonable rules  
41 governing promotional displays and advertising, ~~which rules may~~



482782

42 ~~shall~~ not conflict with or be more stringent than the federal  
43 regulations pertaining to such promotional displays and  
44 advertising furnished to vendors by distributors, manufacturers,  
45 importers, primary American sources of supply, or brand owners  
46 or registrants, or a ~~any~~ broker, sales agent, or sales person  
47 thereof; provided, however, that:

48 (a) If a manufacturer, distributor, importer, brand owner,  
49 or brand registrant of malt beverage, or a ~~any~~ broker, sales  
50 agent, or sales person thereof, provides a vendor with  
51 expendable retailer advertising specialties such as trays,  
52 coasters, mats, menu cards, napkins, cups, glasses,  
53 thermometers, and the like, such items shall be sold at a price  
54 not less than the actual cost to the industry member who  
55 initially purchased them, without limitation in total dollar  
56 value of such items sold to a vendor.

57 (b) Without limitation in total dollar value of such items  
58 provided to a vendor, a manufacturer, distributor, importer,  
59 brand owner, or brand registrant of malt beverage, or a ~~any~~  
60 broker, sales agent, or sales person thereof, may rent, loan  
61 without charge for an indefinite duration, or sell durable  
62 retailer advertising specialties such as clocks, pool table  
63 lights, and the like, which bear advertising matter.

64 (c) If a manufacturer, distributor, importer, brand owner,  
65 or brand registrant of malt beverage, or a ~~any~~ broker, sales  
66 agent, or sales person thereof, provides a vendor with consumer  
67 advertising specialties such as ashtrays, T-shirts, bottle  
68 openers, shopping bags, and the like, such items shall be sold  
69 at a price not less than the actual cost to the industry member  
70 who initially purchased them, but may be sold without limitation



482782

71 in total value of such items sold to a vendor.

72 (d) A manufacturer, distributor, importer, brand owner, or  
73 brand registrant of malt beverage, or a ~~any~~ broker, sales agent,  
74 or sales person thereof, may provide consumer advertising  
75 specialties described in paragraph (c) to consumers on any  
76 vendor's licensed premises.

77 ~~(e) Coupons redeemable by vendors shall not be furnished by~~  
78 ~~distributors of beer to consumers.~~

79 (e) ~~(f)~~ Manufacturers, distributors, importers, brand  
80 owners, or brand registrants of beer, and a ~~any~~ broker, sales  
81 agent, or sales person thereof, may ~~shall~~ not conduct any  
82 sampling activities that include tasting of their product at a  
83 vendor's premises licensed for off-premises sales only.

84 (f) ~~(g)~~ Manufacturers, distributors, importers, brand  
85 owners, or brand registrants of beer, and a ~~any~~ broker, sales  
86 agent, or sales person thereof, may ~~shall~~ not engage in  
87 cooperative advertising with vendors.

88 (g) ~~(h)~~ Distributors of beer may sell to vendors draft  
89 equipment and tapping accessories at a price not less than the  
90 cost to the industry member who initially purchased them, except  
91 there is no required charge, and a distributor may exchange ~~any~~  
92 parts that ~~which~~ are not compatible with a competitor's system  
93 and are necessary to dispense the distributor's brands. A  
94 distributor of beer may furnish to a vendor at no charge  
95 replacement parts of nominal intrinsic value, including, but not  
96 limited to, washers, gaskets, tail pieces, hoses, hose  
97 connections, clamps, plungers, and tap markers.

98 Section 2. This act shall take effect July 1, 2013.

99



482782

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

101 And the title is amended as follows:

102       Delete everything before the enacting clause

103 and insert:

104                       A bill to be entitled

105       An act relating to tied house regulation; amending s.

106       561.42, F.S.; authorizing the Division of Alcoholic

107       Beverages and Tobacco of the Department of Business

108       and Professional Regulation to impose administrative

109       sanctions for certain violations relating to coupons

110       redeemable by vendors; providing an exception;

111       prohibiting licensees under the Beverage Law from

112       possessing or using certain coupons involving malt

113       beverages; conforming provisions; providing an

114       effective date.

By Senator Thrasher

6-00661A-13

2013864\_\_

1                   A bill to be entitled  
 2       An act relating to coupons furnished by manufacturers,  
 3       distributors, or importers of beer; amending s.  
 4       561.42, F.S.; prohibiting manufacturers or importers  
 5       of beer from furnishing coupons redeemable by vendors;  
 6       providing an effective date.  
 7  
 8   Be It Enacted by the Legislature of the State of Florida:  
 9  
 10       Section 1. Paragraph (e) of subsection (12) of section  
 11       561.42, Florida Statutes, is amended to read:  
 12       561.42 Tied house evil; financial aid and assistance to  
 13       vendor by manufacturer, distributor, importer, primary American  
 14       source of supply, brand owner or registrant, or any broker,  
 15       sales agent, or sales person thereof, prohibited; procedure for  
 16       enforcement; exception.—  
 17       (12) Any manufacturer, distributor, importer, primary  
 18       American source of supply, or brand owner or registrant, or any  
 19       broker, sales agent, or sales person thereof, may give, lend,  
 20       furnish, or sell to a vendor who sells the products of such  
 21       manufacturer, distributor, importer, primary American source of  
 22       supply, or brand owner or registrant any of the following: neon  
 23       or electric signs, window painting and decalcomanias, posters,  
 24       placards, and other advertising material herein authorized to be  
 25       used or displayed by the vendor in the interior of his or her  
 26       licensed premises. The division shall make reasonable rules  
 27       governing promotional displays and advertising, which rules  
 28       shall not conflict with or be more stringent than the federal  
 29       regulations pertaining to such promotional displays and

Page 1 of 2

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

6-00661A-13

2013864\_\_

30       advertising furnished to vendors by distributors, manufacturers,  
 31       importers, primary American sources of supply, or brand owners  
 32       or registrants, or any broker, sales agent, or sales person  
 33       thereof; provided, however, that:  
 34       (e) Coupons redeemable by vendors ~~may shall~~ not be  
 35       furnished to consumers by manufacturers, importers, or  
 36       distributors of beer ~~to consumers~~.  
 37       Section 2. This act shall take effect July 1, 2013.

Page 2 of 2

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



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**SENATOR JOHN THRASHER**  
6th District

**COMMITTEES:**

Rules, *Chair*  
Appropriations  
Appropriations Subcommittee on Education  
Appropriations Subcommittee on Health  
and Human Services  
Community Affairs  
Ethics and Elections  
Gaming  
Judiciary  
Regulated Industries

**JOINT COMMITTEE:**

Joint Legislative Budget Commission

March 12, 2013

**To:** Senator Kelli Stargel, Chair  
Senate Committee on Regulated Industries

**Fm:** Senator John Thrasher

**Re:** Senate Bill 864; Coupons distributed by manufacturers

---

Please agenda my Senate Bill 864 for a hearing by the Regulated Industries Committee at your earliest convenience.

Thank you for your favorable consideration.

REPLY TO:

- 113 Nature Walk Parkway, Suite 106, St. Augustine, Florida 32092 (904) 287-4222 FAX: 1-888-263-3475
- 400 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5006

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**DON GAETZ**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/14/2013  
Meeting Date

Topic ON THE BILL AS AMENDED

Bill Number SB 864  
(if applicable)

Name JOSE GONZALEZ

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title STATE AFFAIRS DIRECTOR

Address 907 LASSWADE DRIVE

Phone 850-294-4057

TALLAHASSEE, FL 32312  
Street City State Zip

E-mail JOSE.GONZALEZ@ANHEUSER-BUSCH.COM

Speaking:  For  Against  Information

Representing ANHEUSER-BUSCH

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 Regulated Industries

BILL: CS/SB 842

INTRODUCER: Regulated Industries Committee and Senator Stargel

SUBJECT: Premises Inspections

DATE: March 14, 2013      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	Imhof	RI	Fav/CS
2.			AGG	
3.			AP	
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

CS/SB 842 amends s. 509.032, F.S., relating to Premises Inspections. The bill authorizes the Division of Hotels and Restaurants of the Department of Business and Professional Regulation (division) to inspect all licensed public lodging establishments and public food service establishments at least biannually (two times per year), except for certain apartments that may be inspected only once per year. The bill requires that the division adopt a risk-based inspection frequency by rule for each licensed public food service establishment (food service establishment) to require at least one but not more than four routine inspections during a year.

The bill states that the rule may include guidelines that consider a food service establishment's inspection and compliance history, the type of food and food preparation methods, and the type of service being provided. The bill requires that the division annually reassess the inspection frequency of all food service establishments.

The bill provides a July 1, 2014 effective date.

This bill amends section 509.032, Florida Statutes.

## II. Present Situation:

Section 509.032(2), F.S., requires the Division of Hotels and Restaurants (division) of the Department of Business and Professional Regulation (department) to inspect all licensed public lodging establishments and all licensed public food service establishments at least biannually (twice per year), except for certain apartments that may be inspected only once per year. The division must also inspect any licensed establishment as the division determines is necessary to protect the health, safety, and welfare of the public, and establish a system to determine inspection frequency.<sup>1</sup>

A public food service establishment is defined as any building, vehicle, place, or structure, or any room or division in a building, vehicle, place, or structure where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption.<sup>2</sup> According to the department, there are more than 37,000 public lodging establishments and more than 47,000 public food service establishments in the state.<sup>3</sup>

The division amended Rule 61C-1.002 (8)(d), Florida Administrative Code effective January 1, 2013 (inspection rule) regarding its system to determine inspection frequency for licensed establishments.<sup>4</sup> The inspection rule currently requires that public lodging establishments and public food service establishments be inspected a minimum of three times annually, with fewer mandatory inspections required for rooming houses, apartments, vending machines and vendors at temporary food service events.<sup>5</sup>

According to the department, 98% of food service establishments received the minimum required two routine inspections during fiscal year 2011-2012, while 27% (nearly 13,000) received more than two inspections related to investigations of complaints or callback inspections to confirm correction of violations.<sup>6</sup> All of the division's inspectors are cross-trained to perform inspections for public lodging establishments and food service establishments.<sup>7</sup>

## III. Effect of Proposed Changes:

The bill creates a distinction between inspections of licensed public lodging establishments and licensed public food service establishments. The bill maintains the current requirement that the division inspect each public lodging establishment at least biannually (twice per year), except for certain apartments that may be inspected only once per year. The bill changes the inspection frequency by rule for food service establishments, by requiring that the division adopt a risk-based inspection frequency for each licensed public food service establishment (food service establishment) to require at least one but not more than four routine inspections during a year for each food service establishment.

---

<sup>1</sup>Section 509.032(2), F.S.

<sup>2</sup>Section 509.013(5)(a), F.S.

<sup>3</sup>See *2013 Legislative Analysis for SB 842*, Office of Legislative Affairs, Florida Department of Business and Professional Regulation, February 20, 2013.

<sup>4</sup>See Rule 61C-1.002(8)(d), F.A.C.

<sup>5</sup>*Id.*

<sup>6</sup>*Supra* at n.3, at p. 2.

<sup>7</sup>*Id.*

The bill states that guidelines may be established that consider a food service establishment's inspection and compliance history, the type of food and food preparation methods, and the type of service being provided. The bill requires that the division annually reassess the inspection frequency of all food service establishments.

The bill provides a July 1, 2014 effective date.

#### **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:

The bill may increase the inspection burden on a food service establishment operating with a high risk to the public's health, safety, and welfare, based on its inspection and compliance history, the type of food and food preparation methods, and the type of service being provided. Conversely, the bill may reduce the inspection frequency for a food service establishment with a lower risk to the public's health, safety, and welfare, based on those same factors.

C. Government Sector Impact:

The inspection resources of the division will be sufficient to accomplish the revision in inspection frequency, as the division will be able to realign its workload to better use its existing resources.<sup>8</sup>

#### **VI. Technical Deficiencies:**

The title of the bill must be corrected to conform with the body of the bill. A title amendment has been drafted to correct this issue.

---

<sup>8</sup>*Supra* at n. 3, at p. 3.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

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

**CS by Regulated Industries on March 14, 2013:**

The committee substitute amends the title of the bill to conform the bill to its House companion (CS/HB 795).

- B. **Amendments:**

None.

---

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

---



881230

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/14/2013	.	
	.	
	.	
	.	

---

---

The Committee on Regulated Industries (Thrasher) recommended the following:

**Senate Amendment**

In title, delete lines 5 - 6  
and insert:  
Professional Regulation to adopt rules for a

By Senator Stargel

15-00834A-13

2013842\_\_

A bill to be entitled

An act relating to premises inspections; amending s. 509.032, F.S.; requiring the Division of Hotels and Restaurants of the Department of Business and Professional Regulation to inspect public lodgings annually; requiring the division to adopt rules for a risk-based inspection frequency for licensed public food service establishments; providing criteria; conforming terminology; providing an effective date.

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

Section 1. Paragraph (a) of subsection (2) of section 509.032, Florida Statutes, is amended to read:

509.032 Duties.—

(2) INSPECTION OF PREMISES.—

(a) The division has ~~responsibility and jurisdiction and is responsible~~ for all inspections required by this chapter. The division is responsible ~~has responsibility~~ for quality assurance. The division shall inspect each licensed public lodging establishment shall be inspected at least biannually, except for transient and nontransient apartments, which shall be inspected at least annually. Each establishment licensed by the division, and shall be inspected at such other times as the division determines is necessary to ensure the public's health, safety, and welfare. The division shall by no later than July 1, 2014, adopt by rule a risk-based establish a system to determine inspection frequency for each licensed public food service establishment. The rule must require at least one, but not more

Page 1 of 2

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

15-00834A-13

2013842\_\_

than four, routine inspections that must be performed annually, and may include guidelines that consider the inspection and compliance history of a public food service establishment, the type of food and food preparation, and the type of service. The division shall annually reassess the inspection frequency of all licensed public food service establishments. Public lodging units classified as vacation rentals are not subject to this requirement but shall be made available to the division upon request. If, during the inspection of a public lodging establishment classified for renting to transient or nontransient tenants, an inspector identifies vulnerable adults who appear to be victims of neglect, as defined in s. 415.102, or, in the case of a building that is not equipped with automatic sprinkler systems, tenants or clients who may be unable to self-preserve in an emergency, the division shall convene meetings with the following agencies as appropriate to the individual situation: the Department of Health, the Department of Elderly Affairs, the area agency on aging, the local fire marshal, the landlord and affected tenants and clients, and other relevant organizations, to develop a plan that which improves the prospects for safety of affected residents and, if necessary, identifies alternative living arrangements such as facilities licensed under part II of chapter 400 or under chapter 429.

Section 2. This act shall take effect July 1, 2014.

Page 2 of 2

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/14/2013  
Meeting Date

Topic ON THE BILL AS AMENDED

Bill Number SB 864  
*(if applicable)*

Name JOSE GONZALEZ

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title STATE AFFAIRS DIRECTOR

Address 907 LASSWADE DRIVE

Phone 850-294-4057

TALLAHASSEE, FL 32312  
City State Zip

E-mail JOSE.GONZALEZ@ANHEUSER-BUSCH.COM

Speaking:  For  Against  Information

Representing ANHEUSER-BUSCH

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

Tallahassee, Florida 32399-1100

### COMMITTEES:

Gaming, *Vice Chair*  
Agriculture  
Appropriations Subcommittee on Education  
Appropriations Subcommittee on Finance and Tax  
Education  
Military Affairs, Space, and Domestic Security  
Regulated Industries

### SENATOR MARIA LORTS SACHS

*Democratic Leader Pro Tempore*  
34th District

March 12, 2013

The Honorable Don Gaetz  
President of the Senate  
420 Senate Office Building  
404 S. Monroe Street  
Tallahassee, FL 32399-1100

Dear President Gaetz,

Because I am presenting SB 884 to the Committee on Transportation on Thursday, March 14, 2013, I will not be able to attend the Committee on Regulated Industries meeting at the same date and time.

Pursuant to the Rules of the Senate the committee chair will be contacted regarding my absence. Thank you.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Maria Sachs".

Senator Maria Sachs  
District 34

#### REPLY TO:

- 955 NW 17th Avenue, Suite E, Delray, Florida 33445 (561) 279-1427
- 216 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5034

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**DON GAETZ**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

