

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

COMMERCE AND TOURISM
Senator Detert, Chair
Senator Thompson, Vice Chair

MEETING DATE: Monday, March 16, 2015
TIME: 2:00 —3:30 p.m.
PLACE: *Toni Jennings Committee Room, 110 Senate Office Building*

MEMBERS: Senator Detert, Chair; Senator Thompson, Vice Chair; Senators Bean, Latvala, Richter, and Ring

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 186 Regulated Industries / Latvala (Similar H 301, Compare CS/H 107)	Malt Beverages; Revising the exception for the licensing of malt beverage manufacturers as vendors; authorizing malt beverage tastings upon certain licensed premises; authorizing the sale of malt beverages packaged in individual containers of certain sizes if they are filled at the point of sale by certain licenseholders; requiring each container to be imprinted or labeled with certain information and have an unbroken seal or be incapable of being immediately consumed, etc. RI 02/04/2015 Temporarily Postponed RI 02/18/2015 Fav/CS CM 03/16/2015 Favorable FP	Favorable Yeas 6 Nays 0
2	CS/SB 600 Banking and Insurance / Richter (Similar CS/H 189)	Insurance Guaranty Associations; Revising the definition of the term "asset" to include Florida Insurance Guaranty Association assessments, under certain conditions, for purposes of determining the financial condition of an insurer; transferring a provision relating to the obligation of the Florida Life and Health Insurance Guaranty Association to pay valid claims under certain circumstances, etc. BI 02/17/2015 Fav/CS CM 03/16/2015 Fav/CS FP	Fav/CS Yeas 6 Nays 0
3	CS/SB 678 Banking and Insurance / Diaz de la Portilla (Similar H 677)	Reciprocal Insurers; Authorizing domestic reciprocal insurers to return a portion of unassigned funds to their subscribers; providing limitations, etc. BI 03/04/2015 Fav/CS CM 03/16/2015 Favorable RC	Favorable Yeas 6 Nays 0

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Commerce and Tourism

Monday, March 16, 2015, 2:00 —3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 980 Soto (Similar H 529)	Defense Contracting; Establishing the Defense Works in Florida Incentive; authorizing a Florida prime contractor to apply to the Department of Economic Opportunity to certify that it may reduce its computation of adjusted federal income by a specified amount; revising the definition of the term "adjusted federal income" to provide for a reduction in taxable income equal to a specified amount of qualified subcontract awards certified by the Department of Economic Opportunity, etc. CM 03/16/2015 Fav/CS FT AP	Fav/CS Yeas 6 Nays 0
5	SB 1444 Richter (Similar CS/H 995, Compare H 997, Link S 1446)	Consumer Licensing; Requiring that the initial license application for private investigative, private security, and repossession services include payment of fingerprint processing and fingerprint retention fees; directing the Department of Law Enforcement to retain fingerprints submitted for private investigative, private security, and repossession service licenses, to enter such fingerprints into the statewide automated biometric identification system and the national retained print arrest notification program, and to report any arrest record information to the Department of Agriculture and Consumer Services; requiring notice of the suspension or revocation of a concealed weapon or firearm license or the suspension of the processing of an application for such license to be given by personal delivery, first-class mail, or e-mail; authorizing certain tax collector offices, upon approval and confirmation of license issuance by the Department of Agriculture and Consumer Services, to print and deliver concealed weapon or firearm licenses, etc. CM 03/16/2015 Fav/CS AGG AP	Fav/CS Yeas 6 Nays 0

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Commerce and Tourism

Monday, March 16, 2015, 2:00 —3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
6	SB 1446 Richter (Similar H 997, Compare CS/H 995, Link S 1444)	Public Records/Department of Agriculture and Consumer Services; Providing an exemption from public records requirements for information received by the Department of Agriculture and Consumer Services from another state or federal agency and which is otherwise confidential or exempt pursuant to the laws of the other state or federal law; providing an exemption from public records requirements for information received or developed by the department as part of an investigation with another state or federal agency; providing for future legislative review and repeal; providing a statement of public necessity, etc. CM 03/16/2015 Favorable GO RC	Favorable Yeas 6 Nays 0

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 186

INTRODUCER: Regulated Industries Committee; and Senator Latvala and others

SUBJECT: Malt Beverages

DATE: March 13, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	Fav/CS
2.	<u>Siples</u>	<u>McKay</u>	<u>CM</u>	Favorable
3.	_____	_____	<u>FP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 186 revises the requirements for qualifying as a vendor-licensed brewer. The bill authorizes the Division of Alcoholic Beverages and Tobacco within the Department of Business and Professional Regulation to issue vendor's licenses to a manufacturer of malt beverages for the sale of alcoholic beverages on property consisting of a single complex that includes a brewery. It deletes the requirement that the licensed property must include "other structures which promote the brewery and the tourist industry of the state" in order to be eligible to be a vendor-licensed brewer. It also deletes the requirement that the property may be divided by no more than one public street or highway.

The bill limits the amount of malt beverages that can be transferred between breweries owned by the same brewer to 100 percent of the yearly production of the receiving brewery. The bill provides that all malt beverages and other alcoholic beverages that are not manufactured at a brewery owned by the brewer must be obtained through a distributor, an importer, a sales agent, or a broker. The bill also prohibits vendor-licensed brewers from making deliveries.

The bill deletes the prohibition against malt beverage tastings at locations licensed for off-premises sales only. It permits malt beverage tastings on the licensed premises of any vendor authorized to sell alcoholic beverages by the drink for consumption on the premises. A vendor authorized to sell alcoholic beverages only in sealed containers for consumption off the premises may have malt beverage tastings if: the premises has at least 10,000 square feet of interior space or the premises is a package store with a quota license that is licensed for off-premises sales

only. The malt beverage tastings must be limited to and directed to members of the general public of the age of legal consumption. The bill clarifies that vendors may conduct malt beverage tastings on their licensed premises with beverages from their own inventory.

The bill permits the filling and refilling of 32, 64, and 128 ounce malt beverage containers (known as “growlers”) at the point of sale. Current law does not permit the 64 ounce malt beverage container. The 32, 64, or 128 ounce malt beverage container may be filled at the point of sale by a vendor-licensed brewer, a vendor who holds a quota alcoholic beverage license for the sale of beer, wine, and liquor only in sealed containers for consumption off the premises, and a vendor licensed to sell for consumption on the licensed premises, unless such license restricts the consumption of malt beverages to the premises only.

The bill requires that the growler must identify or be imprinted or labeled with information specifying the manufacturer, the brand of the malt beverage, and the anticipated percentage of alcohol by volume. The container must also have an unbroken seal or be incapable of being immediately consumed.

The bill provides that a violation of its provisions is a first degree misdemeanor, and authorizes the Division of Alcoholic Beverage and Tobacco within the Department of Business and Professional Regulation to impose a fine of up to \$250 per violation.

II. Present Situation:

In Florida, alcoholic beverages are regulated by the Beverage Law,¹ which regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors.² The Division of Alcoholic Beverages and Tobacco (division) within the Department of Business and Professional Regulation (department) administers and enforces the Beverage Law.³

Three Tier System

In the United States, the regulation of alcohol, since the repeal of Prohibition, 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 (vendors) 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.⁴

In the three-tier system, each license classification has clearly delineated functions. For example, in Florida, distributors are licensed to sell and distribute alcoholic beverages at wholesale to

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

² See s. 561.14, F.S.

³ Section 561.02, F.S.

⁴ 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 (last visited Mar. 10, 2015).

persons who are licensed to sell alcoholic beverages at retail.⁵ Only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.⁶ Vendors are limited to purchasing their alcoholic beverage inventory from licensed distributors, manufacturers, or bottlers.⁷ Licensed manufacturers, distributors, and registered exporters are prohibited from being licensed as vendors.⁸ In addition to being prohibited from having an interest in a vendor, manufacturers are also prohibited from distributing directly to a vendor other than to a vendor licensed under s. 561.221(2), F.S.⁹ However, a manufacturer of wine may be licensed as a distributor.¹⁰

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,¹¹ allowing individuals to bring small quantities of alcohol back from trips out-of-state,¹² and allowing in-state wineries to manufacture and sell directly to consumers.¹³

Exception for Vendor-licensed Malt Beverage Manufacturers

There are two license options that permit malt beverage manufacturers to sell malt beverages directly to consumers. Section 561.221(2), F.S., permits a manufacturer of malt beverages to be licensed as a vendor, even if the manufacturer is also licensed as a distributor. To qualify for a vendor license, the manufacturer's property must consist of a single complex that includes a brewery and other structures that promote the brewery and the tourism industry of the state. The property may be divided by no more than one public street or highway. This type of license does not limit the amount of malt beverages that may be manufactured. It also does not limit the type of vendor license that the manufacturer may obtain, e.g., a license to sell beer, wine and liquor, and licenses that permit package sales of other alcoholic beverages.

Section 561.221(3), F.S., permits a vendor to also be licensed as a manufacturer of malt beverages if the vendor is engaged in brewing malt beverages at a single location in an amount that does not exceed 10,000 kegs per year.¹⁴ The malt beverages must be sold to consumers for consumption on the vendor's licensed premises or on contiguous licensed premises owned by the vendor. These vendors are known in the industry as "brew pubs."

⁵ Section 561.14(2), F.S.

⁶ Section 561.14(3), F.S. However, see discussion regarding the exceptions provided in s. 561.221, F.S.

⁷ 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.

⁸ Section 561.22, F.S.

⁹ Section 563.022(14), F.S.

¹⁰ Section 561.221(1)(a), F.S.

¹¹ See s. 561.221(2), F.S., which permits the limited manufacture of beer by vendors (brew pubs).

¹² 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.

¹³ See s. 561.221, F.S.

¹⁴ Section 561.221(3)(a)1., F.S., defines the term "keg" as 15.5 gallons.

Vendor Licenses

Section 561.20, F.S., limits the number of alcoholic beverage licenses that permit the sale of liquor¹⁵ along with beer and wine that may be issued per county. The number of licenses is limited 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 liquors to one that does permit their sale. The quota license is the only type of alcoholic beverage license that is limited in number.

Section 565.02(1)(a)-(f), F.S., prescribes the license taxes for vendors who are permitted to sell any alcoholic beverages, including beer, wine and distilled spirits, regardless of alcoholic content.

On-Premises or Off-Premises Consumption Alcoholic Beverage Licenses

Section 563.02, F.S., distinguishes between places of business where a vendor is licensed to only sell malt beverages for off-premises consumption¹⁶ and places of business where on-premises consumption is permitted.¹⁷ According to the department, vendors licensed to sell malt beverages for on-premises consumption can also sell alcoholic beverages in sealed containers for the customer to take away from the licensed premises for off-premises consumption. Vendors licensed to sell malt beverages for consumption “only” on the licensed premises are not permitted to sell alcoholic beverages for off-premises consumption.¹⁸ The license fee for a license that does not permit the sale of alcoholic beverages in sealed containers for off-premises consumption is 50 percent less than the license fee for a license that permits the sale of sealed containers for off-premises consumption.¹⁹

Vendors licensed under s. 564.02(1)(a), F.S., to sell malt beverages, wine, and fortified wine may only sell the beverages for consumption off the premises. Similarly, vendors licensed under s. 565.02(1)(a), F.S., to sell any alcoholic beverages (which includes liquor), may only sell the beverages in sealed containers for consumption off the premises. The license fees for these vendors are 50 percent and 75 percent of the license fee, respectively, compared to the fee for a license that permits the sale of sealed containers for consumption on and off the premises.

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

¹⁵ Section 565.01, F.S., defines liquor as “[t]he words “liquor,” “distilled spirits,” “spirituous liquors,” “spirituous beverages,” or “distilled spirituous liquors” mean that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced.”

¹⁶ See s. 563.02(1)(a), F.S.

¹⁷ See s. 563.02(1)(b)-(f), F.S.

¹⁸ For example, the brew pub exemption under s. 561.221(3), F.S., permits sales for consumption only on the premises, but not sales for consumption off the premises.

¹⁹ See s. 563.02(1)(a), F.S.

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.²⁰ 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.”²¹

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, kegs, barrels, or in any individual container containing one gallon or more of a 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.”²² The current provision that allows containers of one gallon or more was unaffected by that amendment.

Section 563.06 (7), F.S., provides that any person, firm, or corporation, its agents, officers or employees, violating any of the provisions of s. 563.06, F.S., is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, F.S.²³ It also provides that the license, if any, shall be subject to revocation or suspension by the division.

Growlers

Some states permit vendors to sell malt beverages in containers known as “growlers,”²⁴ 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 vendors who manufacture malt beverages, the national standard size

²⁰ Section 316.1936, F.S.

²¹ 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 5, 1995.

²² See also *Review of the Malt Beverage Container Size Restrictions*, Interim Report No. 2000-65, Florida Senate Committee on Regulated Industries, September 1999, available at http://archive.flsenate.gov/data/Publications/2000/Senate/reports/interim_reports/pdf/00-65ri.pdf (last visited Mar. 10, 2015).

²³ Section 775.082, F.S., provides that the penalty for a misdemeanor of the first degree is punishable by a term of imprisonment not exceeding 1 year. Section 775.083, F.S., provides that the penalty for a misdemeanor of the first degree is punishable by a fine not to exceed \$1,000.

²⁴ 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), available at <http://beeradvocate.com/articles/384> (last visited Mar. 10, 2015).

for a growler is 64 ounces. Florida law does not permit the use of a 64-ounce growler, i.e., 64-ounce malt beverage containers.

Deliveries by Vendors

Section 561.57(1), F.S., permits all vendors to deliver products sold at the licensed place to an off-site location. Telephone or mail orders received at a vendor's licensed place of business are construed as a sale actually made at the vendor's licensed place of business. However, deliveries made by a vendor away from his or her place of business may only be made in vehicles which are owned or leased by the licensee. By acceptance of an alcoholic beverage licensee, the vendor is presumed to agree to the inspection of such without a search warrant for the purpose of ascertaining that all provisions of the alcoholic beverage laws are complied with.²⁵

Tied House Evil Prohibitions

Section 561.42(1), F.S., prohibits a licensed manufacturer or distributor from assisting 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. 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 manufacturers, distributors, importers, primary American sources of supply,²⁶ or brand owners or registrants, or their brokers, sales agents or sales persons,

²⁵ Section 561.57(2), F.S.

²⁶ 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.

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.

Alcoholic Beverage Tastings

Section 561.42(14)(e), F.S., prohibits sampling activities that include the tasting of beer at a vendor's premises that is licensed for off-premises sales only. This prohibition applies to manufacturers, distributors, importers, brand owners or brand registrants of beer, and their sales agents or sales persons.

Section 564.08, F.S., permits licensed wine distributors and vendors to conduct wine tastings at any licensed premises authorized to sell wine or spirituous beverages by package or for consumption on premises without violating s. 561.42, F.S., provided that the conduct of the wine tasting is limited to and directed toward the general public of the age of legal consumption.

Section 565.17, F.S., permits licensed distributors of spirituous beverages and vendors to conduct spirituous beverage tastings at any licensed premises authorized to sell spirituous beverages by package or for consumption on premises without violating s. 561.42, F.S., provided that the conduct of the spirituous beverage tasting is limited to and directed toward the general public of the age of legal consumption.

III. Effect of Proposed Changes:

Vendor-Licensed Brewers

Section 1 amends s. 561.221(2), F.S., to revise the requirements for qualifying as a vendor-licensed brewer. The bill clarifies that the exemption for vendor-licensed brewers in s. 561.221(2), F.S., is notwithstanding the prohibitions in ss. 561.22 and 561.42, F.S., or any other provision in the Beverage Law.

The bill authorizes the division to issue vendor's licenses to a manufacturer of malt beverages for the sale of alcoholic beverages on property consisting of a single complex that includes a brewery. The bill deletes the requirement that a brewery must include "other structures which promote the brewery and the tourist industry of the state" in order to be eligible to be a vendor-licensed brewer. It also deletes the requirement that the property may be divided by no more than one public street or highway.

The bill amends s. 561.221(2), F.S., to limit the amount of malt beverages that can be transferred in a manufacturer-to-manufacturer transfer, as provided in s. 563.022(14)(d), F.S., to 100 percent of the yearly production of the receiving brewery. The bill also provides that all malt beverages and other alcoholic beverages that are not manufactured at a brewery owned by the brewer must be obtained through a distributor, an importer, sales agent, or broker. This requirement is the same as current law.²⁷

The bill also prohibits vendor-licensed brewers from making deliveries under s. 561.57(1), F.S.

²⁷ See 561.14(3), F.S.

Malt Beverage Tastings

Section 2 amends s. 561.42(14)(e), F.S., to repeal the prohibition against malt beverage tastings at locations licensed for off-premises sales only. The bill permits a manufacturer, distributor, importer, or contracted third-party agent thereof, to conduct malt beverage tastings to be held on:

- The licensed premises of any vendor authorized to sell alcoholic beverages by the drink for consumption on premises; or
- The licensed premises of any vendor authorized to sell alcoholic beverages only in sealed containers for consumption off premises if:
 - The licensed premises has at least 10,000 square feet of interior floor space exclusive of storage space; or
 - The licensed premises is a package store licensed under s. 565.02(1)(a), F.S.

The malt beverages tastings must be limited to and directed to members of the general public of the age of legal consumption.

The bill provides that s. 561.42(14)(e), F.S., does not preclude a vendor, including a vendor or manufacturer licensed under s. 561.221(2) or (3), F.S., from conducting a malt beverage tasting on its licensed premises with beverages from their own inventory.

Growler Sales

Section 3 creates s. 563.0614, F.S., to provide for the filling and refilling of growlers, including 32, 64, and 128 ounce growlers, by specified vendors.

Section 563.0614(1), F.S., permits malt beverages to be packaged in individual containers of 32 ounces, 64 ounces, or 128 ounces if the container is filled at the point of sale by any of following licensees:

- Vendor- licensed brewers licensed pursuant to s. 561.221(2), F.S.;
- Vendors holding a quota license under ss. 561.20(1) and 565.02(1)(a), F.S., i.e., vendors licensed to sell alcoholic beverages only in sealed containers for consumption off the premises; and
- A vendor holding a license under s. 563.02(1)(b)-(f), s. 564.02(1)(b)-(f), or s. 565.02(1)(b)-(f), F.S., which authorize consumption of malt beverages on the premises, unless such license restricts the consumption of malt beverages to the premises only.

Vendors licensed to sell beverages only for off premises consumption would not be authorized to sell growlers.

Section 563.0614(4), F.S., requires that the growler must identify or be imprinted or labeled with information specifying:

- The manufacturer;
- The brand of the malt beverage; and
- The anticipated percentage of alcohol by volume.

The bill also requires that the container have an unbroken seal or be incapable of being immediately consumed.

The bill provides that a violation of the provisions in s. 563.0614, F.S., is a first degree misdemeanor.²⁸ It also authorizes the division to impose a fine of up to \$250 for a violation.

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:

Authorized vendors may experience an increase in sales due to the ability to sell malt beverages in a 64-ounce container.

C. Government Sector Impact:

According to the Department of Business and Professional Regulation (department), the bill requires minimal increase in the department's workload which can be absorbed within existing resources.²⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

²⁸ *Supra* at n. 23.

²⁹ Department of Business and Professional Regulation, *Legislative Bill Analysis, Senate Bill 186* (Jan. 8, 2015) (on file with the Senate Committee on Commerce and Tourism).

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 561.221 and 561.42.

This bill creates section 563.0614 of the Florida Statutes:

IX. Additional Information:

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

CS by Regulated Industries Committee on February 18, 2015:

The committee substitute (CS) is substantively different from SB 186 as follows:

The CS amends s. 561.221(2), F.S., to provide that the division may issue a vendor's license to a manufacturer of malt beverages for the sale of alcoholic beverages on property consisting of a single complex that includes a brewery. It deletes the requirements that property must include "other structures which promote the brewery and the tourist industry of the state" and the requirement that the property may be divided by no more than one public street or highway.

The CS also amends s. 561.221(2), F.S., to limit the amount of malt beverages that can be transferred in a manufacturer-to-manufacturer transfer, as provided in s. 563.022(14)(d), F.S., to 100 percent of the yearly production of the receiving brewery. The CS provides that all malt beverages and other alcoholic beverages that are not manufactured at a brewery owned by the brewer must be obtained through a distributor, an importer, sales agent, or broker. The CS also prohibits vendor-licensed brewers from making deliveries under s. 561.57(1), F.S.

The CS amends s. 561.42(14)(e), F.S., to repeal the prohibition against malt beverage tastings at locations licensed for off-premises sales only. It permits malt beverage tastings at locations licensed for on-premises consumption and off-premises consumption. It provides that a vendor authorized to sell alcoholic beverages only in sealed containers for consumption off the premises may have malt beverage tastings if the premises has at least 10,000 square feet of interior space or the premises is a package store with a quota license that is licensed for off-premises sales only. The malt beverages tastings must be limited to and directed to members of the general public of the age of legal consumption. The CS bill clarifies that vendors may conduct malt beverage tastings on their licensed premises with beverages from their own inventory.

The CS amends s. 563.0614(2), F.S., to require the labeling of the anticipated percentage of alcohol by volume.

- 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 the Committee on Regulated Industries; and Senators Latvala,
Gibson, and Clemens

580-01696-15

2015186c1

A bill to be entitled

An act relating to malt beverages; amending s.

561.221, F.S.; revising the exception for the

licensing of malt beverage manufacturers as vendors;

providing restrictions on the sale of malt beverages;

prohibiting the delivery of certain malt beverages;

amending s. 561.42, F.S.; authorizing malt beverage

tastings upon certain licensed premises; creating s.

563.0614, F.S.; authorizing the sale of malt beverages

packaged in individual containers of certain sizes if

they are filled at the point of sale by certain

licenseholders; requiring each container to be

imprinted or labeled with certain information and have

an unbroken seal or be incapable of being immediately

consumed; providing penalties; providing an effective

date.

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

Section 1. Subsection (2) of section 561.221, Florida
Statutes, is amended to read:

561.221 Licensing of manufacturers and distributors as
vendors and of vendors as manufacturers; conditions and
limitations.—

(2) (a) Notwithstanding s. 561.22, s. 561.42, or any other
provision of the Beverage Law, the division is authorized to
issue vendor's licenses to a manufacturer of malt beverages,
even if such manufacturer is also licensed as a distributor, for

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

580-01696-15

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the sale of alcoholic beverages on property consisting of a
single complex, which property shall include a brewery ~~and such
other structures which promote the brewery and the tourist
industry of the state. However, such property may be divided by
no more than one public street or highway.~~ Notwithstanding any
other provision of the Beverage Law, a manufacturer holding
multiple manufacturing licenses may transfer malt beverages to a
licensed facility, as provided in s. 563.022(14) (d), in an
amount up to the yearly production amount at the receiving
facility. Malt beverages and other alcoholic beverages
manufactured by another licensed manufacturer, including any
malt beverages that are owned in whole or in part by the
manufacturer but are brewed by another manufacturer, must be
obtained through a licensed distributor that is not also a
licensed manufacturer, a licensed broker or sales agent, or a
licensed importer. A manufacturer possessing a vendor's license
under this subsection is not permitted to make deliveries under
s. 561.57(1).

Section 2. Paragraph (e) of subsection (14) of section
561.42, Florida Statutes, is 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.—

(14) The division shall adopt reasonable rules governing
promotional displays and advertising, which rules shall not
conflict with or be more stringent than the federal regulations
pertaining to such promotional displays and advertising

Page 2 of 5

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

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59 furnished to vendors by distributors, manufacturers, importers,
60 primary American sources of supply, or brand owners or
61 registrants, or any broker, sales agent, or sales person
62 thereof; however:

63 (e) A manufacturer, distributor, or importer of malt
64 beverages, or any contracted third-party agent thereof, may
65 ~~Manufacturers, distributors, importers, brand owners, or brand~~
66 ~~registrants of beer, and any broker, sales agent, or sales~~
67 ~~person thereof, shall not~~ conduct any sampling activities that
68 include the tasting of malt beverage products on: their product
69 at a vendor's premises licensed for off-premises sales only.

70 1. The licensed premises of any vendor authorized to sell
71 alcoholic beverages by the drink for consumption on premises; or

72 2. The licensed premises of any vendor authorized to sell
73 alcoholic beverages only in sealed containers for consumption
74 off premises if:

75 a. The licensed premises is at an establishment having at
76 least 10,000 square feet of interior floor space exclusive of
77 storage space not open to the general public; or

78 b. The licensed premises is a package store licensed under
79 s. 565.02(1)(a) selling their product at a vendor's premises
80 licensed for off-premises sales only.

81
82 A malt beverage tasting conducted under this paragraph must be
83 limited to and directed toward the general public of the age of
84 legal consumption. This paragraph does not preclude a vendor,
85 including a vendor or manufacturer licensed pursuant to s.
86 561.221(2) or (3), from conducting a malt beverage tasting on
87 its licensed premises using malt beverages from its own

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88 inventory.

89 Section 3. Section 563.0614, Florida Statutes, is created
90 to read:

91 563.0614 Malt beverage container sizes.—

92 (1) Notwithstanding any other provision of the Beverage
93 Law, a malt beverage may be packaged in an individual container
94 of 32, 64, or 128 ounces if it is filled at the point of sale by
95 any of the following:

96 (a) A licensed manufacturer of malt beverages which holds a
97 vendor's license under s. 561.221(2).

98 (b) A vendor holding a quota license that authorizes the
99 sale of malt beverages under ss. 561.20(1) and 565.02(1)(a).

100 (c) A vendor holding a license under s. 563.02(1)(b)-(f),
101 s. 564.02(1)(b)-(f), or s. 565.02(1)(b)-(f), unless such license
102 restricts the sale of malt beverages to consumption on the
103 premises only.

104 (2) The container must identify or be imprinted or labeled
105 with information specifying the manufacturer, the brand of the
106 malt beverage, the anticipated percentage of alcohol by volume,
107 and must have an unbroken seal or be incapable of being
108 immediately consumed.

109 (3) A person, firm, or corporation, including its agents,
110 officers, or employees, which violates subsection (1) commits a
111 misdemeanor of the first degree, punishable as provided in s.
112 775.082 or s. 775.083, and the license held by the person, firm,
113 or corporation, if any, is subject to revocation or suspension
114 by the division. A person, firm, or corporation, including its
115 agents, officers, or employees, which violates subsection (2)
116 may be subject to a fine by the division of up to \$250.

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2015186c1

117

Section 4. This act shall take effect July 1, 2015.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on
Transportation, Tourism, and Economic
Development, *Chair*
Appropriations
Commerce and Tourism
Governmental Oversight and Accountability
Regulated Industries
Rules

RECEIVED

FEB 19 2015

COMMERCE

SENATOR JACK LATVALA

20th District

February 18, 2015

The Honorable Nancy C. Detert
Chair, Commerce and Tourism Committee
416 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

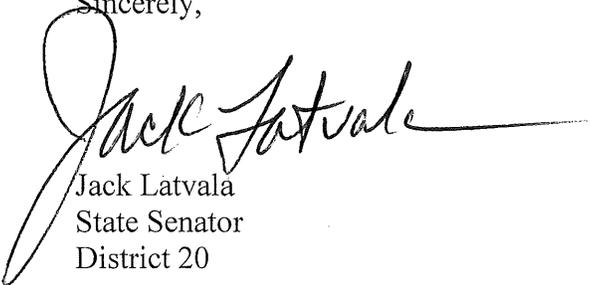
Dear Chair Detert:

I respectfully request your positive consideration of PCS/SB 186 regarding Malt Beverages. I would greatly appreciate the opportunity to present this legislation to the Committee on Commerce and Tourism as soon as possible. The bill was referred favorably from Regulated Industries on February 18th.

This bill would update Florida's alcohol beverage laws by legalizing the industry size standard for craft beer growlers and other revisions the committee thought necessary.

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

Sincerely,



Jack Latvala
State Senator
District 20

Cc: Todd McKay, Staff Director; Patty Blackburn, Administrative Assistant

REPLY TO:

- 26133 U.S. Highway 19 North, Suite 201, Clearwater, Florida 33763 (727) 793-2797 FAX: (727) 793-2799
- 408 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

Senate's Website: www.flsenate.gov

ANDY GARDINER
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)

March 16, 2015
Meeting Date

186
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name John Giotis

Job Title Headmaster, School of the Immaculate

Address 851 Bayway Blvd Yacht House 103
Street
Clearwater Beach, FLA
City State Zip

Phone 908-642-9958

Email JK6225@hotmail.com

Speaking: For Against Information

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

Representing Florida Council for Safe Communities

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.

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THE FLORIDA SENATE

APPEARANCE RECORD

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

7/16/2015
Meeting Date

CSB 186
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Mitchell Rubin

Job Title Executive Director

Address 215 S Monroe St #340

Phone 850-224-2337

Street

Tallahassee, FL 32301

City

State

Zip

Email MRubin2505@aol.com

Speaking: For Against Information

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

Representing Florida Beer Wholesalers Assn

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.

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3-16

Meeting Date

SB186

Bill Number (if applicable)

Topic Beer

Amendment Barcode (if applicable)

Name Eric Criss

Job Title President

Address 110 S. Monroe
Street

Phone 491 3903

Tally FL 32301
City State Zip

Email eric@florida-beer.org

Speaking: For Against Information

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

Representing Beer Industry of Florida

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.

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THE FLORIDA SENATE
APPEARANCE RECORD

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

March 16, 2015
Meeting Date

186
Bill Number (if applicable)

Topic Malt beverages

Amendment Barcode (if applicable)

Name Josh Aubuchon

Job Title Exec. Dir. / Gen. Counsel

Address 315 S. Calhoun St., Suite 600
Street

Phone 224-7000

Tallahassee
City

FL
State

32301
Zip

Email _____

Speaking: For Against Information

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

Representing Florida Brewers Guild

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.

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3/16/2015
Meeting Date

186
Bill Number (if applicable)

Topic WALT DEVERAGES

Amendment Barcode (if applicable)

Name GENE MCGEE

Job Title _____

Address 215 S. MOORE STREET
Street

Phone _____

TALLAHASSEE FL 32301
City State Zip

Email _____

Speaking: For Against Information

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

Representing AUHEUSEL - 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.

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3-16-15
Meeting Date

186
Bill Number (if applicable)

Topic Malt Beverages

Amendment Barcode (if applicable)

Name Natake King

Job Title V.P.

Address 235 W Brandon Blvd 640

Phone 813 924-8218

Brandon FL 33511
City State Zip

Email natake@nksaconsultingllc.com

Speaking: For Against Information

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

Representing Pepin Distributing

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.

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3/16/15

Meeting Date

186

Bill Number (if applicable)

Topic Malt Beverages

Amendment Barcode (if applicable)

Name Tim Nungesser (Nun-Guess-er)

Job Title Legislative Director / NFIB

Address 110 E. Jefferson St.

Phone 850-445-5367

Street

Tallahassee

FL

32301

City

State

Zip

Email tim.nungesser@nfib.org

Speaking: For Against Information

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

Representing National Federation of Independent Business

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.

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3/16/15
Meeting Date

186
Bill Number (if applicable)

Topic Malt Beverages

Amendment Barcode (if applicable)

Name JOE MOBLEY

Job Title Lobbyist - The Fiorentino Group

Address 200 W. College, #310

Phone 850-222-1959

Tallahassee FL 32301
City State Zip

Email _____

Speaking: For Against Information

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

Representing Intuition Ale Works

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.

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3/16/2015

Meeting Date

SB 186

Bill Number (if applicable)

Topic Malt Beverages

Amendment Barcode (if applicable)

Name Melissa Fause

Job Title Policy Analyst

Address 200 W. College Ave, Ste 113

Phone 850-408-1218

Street

Tallahassee

FL

32301

City

State

Zip

Email mfause@afphq.org

Speaking: For Against Information

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

Representing Americans for Prosperity

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/16/15

Meeting Date

186

Bill Number (if applicable)

Topic Growlers

Amendment Barcode (if applicable)

Name Amber Kelly

Job Title Director

Address PO Box 89757

Phone 844-433-3872

Street

Tampa

City

FL

State

33689

Zip

Email amber@fdfamerica.org

Speaking: For Against Information

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

Representing Foundation for Defense of Families

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

3/16/2015

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

SB 186

Meeting Date

Bill Number (if applicable)

Topic Tastings / Malt Beverages

Amendment Barcode (if applicable)

Name SUSAN PITMAN

Job Title BOARD Member

Address 4620 Annapahoe Ave

Phone 904-388-8453

Street Jax FL 32210

Email susanspitman@gmail.com

Speaking: [] For [] Against [] Information

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

Representing Florida Coalition Alliance Prevention safety + Health

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

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

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/CS/SB 600

INTRODUCER: Commerce and Tourism Committee; Banking and Insurance Committee; and Senator Richter

SUBJECT: Insurance Guaranty Associations

DATE: March 16, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
3.	_____	_____	<u>FP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/CS/SB 600 clarifies the statutory accounting treatment of assessments levied by the Florida Insurance Guaranty Association (FIGA) and codifies the Office of Insurance Regulation's interpretation. FIGA provides a mechanism for payment of covered claims of an insolvent property and casualty insurer. After an insurer enters insolvency, the FIGA may levy regular assessments and emergency assessments. The bill provides that such assessments are generally admissible assets for purposes of determining the financial condition of an insurer.

The bill also clarifies that Florida Life and Health Insurance Guaranty Association (FLAHIGA) must review policies, contracts, and claims of both *foreign and* domestic insurer-members.

II. Present Situation:

Insurance Guaranty Associations—Background

Chapter 631, F.S., "Insurer Insolvency and Guaranty Payments," governs receivership for Florida insurance companies.¹ Federal law specifies that insurance companies may not file for

¹ The Bankruptcy Code expressly forbids a domestic insurance company from filing for or becoming the subject of a federal bankruptcy proceeding. 11 U.S.C. §109(b)(2). The exclusion of insurers from federal bankruptcy practices is consistent with

bankruptcy. Instead, Florida insurance companies are “rehabilitated” or “liquidated” by the Florida Department of Financial Services’ (DFS) Division of Rehabilitation and Liquidation.²

Florida has five insurance guaranty associations, which protect policyholders of liquidated insurers from financial losses and delays in claim payment and settlement.³ A guaranty association steps into the shoes of an insolvent insurer to settle claims and refund unearned premiums⁴ for policyholders. Active insurers are legally required to participate in guaranty associations.

Florida Insurance Guaranty Association (FIGA)

Part II of ch. 631, F.S., governs FIGA, a nonprofit corporation. Property and casualty insurance companies doing business in Florida are required to be members of FIGA. FIGA assumes the claims of insolvent property and casualty insurers and pays the claims of the companies’ policyholders, which includes claims on residential and commercial property insurance, automobile insurance, and liability insurance.

FIGA will cover claims up to \$300,000, but special limits apply to damages to structure and contents on homeowners, condominiums, and homeowners’ association claims. For damages to structure and contents on homeowners’ claims, FIGA covers an additional \$200,000, for a total of \$500,000. For condominium and homeowners’ association claims, FIGA covers the lesser of policy limits or \$100,000 multiplied by the number of units in the association.

FIGA Funding and Assessments

In order to pay claims and maintain the operations of an insolvent insurer, FIGA has several potential funding sources. FIGA’s primary funding is from the asset liquidation of insolvent insurance companies domiciled in Florida. FIGA also obtains funds from asset liquidation of insolvent insurers domiciled in other states, but having claims in Florida.

If an insolvent insurer’s assets are insufficient to pay all of its claims, FIGA may levy two types of assessments against Florida member property and casualty insurance companies. Under s. 631.57(3)(a), F.S., FIGA is authorized to levy a regular assessment for up to 2 percent of an insurer’s net written premium. The second assessment is an additional 2 percent emergency assessment authorized under s. 631.57(3)(e), F.S., levied only to pay the claims covered by an

federal policy, generally allowing states to regulate the business of insurance. See 15 U.S.C. §§1011-1012 (McCarran-Ferguson Act).

² Insolvent insurers are generally liquidated, whereas insurers with unsound financial conditions or other characteristics are rehabilitated. The goal of liquidation is to dissolve the insurer. See s. 631.051, F.S., for the grounds for rehabilitation and s. 631.061, F.S., for grounds for liquidation.

³ The Florida Life and Health Insurance Guaranty Association generally is responsible for claims settlement and premium refunds for insolvent health and life insurers. The Florida Insurance Guaranty Association pays claims for insolvent insurers for most remaining lines of insurance, including residential and commercial property, auto insurance, and liability insurance, among others. The Florida Health Maintenance Organization Consumer Assistance Plan offers assistance to members of insolvent health maintenance organizations, and the Florida Workers’ Compensation Insurance Guaranty Association is directed to protect policyholders of insolvent workers’ compensation insurers. The Florida Self-Insurers Guaranty Association protects policyholders of insolvent individual self-insured employers for workers’ compensation claims.

⁴ An “unearned premium” is the portion of a paid-in-advance premium that is owed back to the policyholder because she did not receive the benefit of the full term of the policy for which she paid.

insurer rendered insolvent by the effects of a hurricane. At FIGA's discretion, emergency assessments are payable in 12 monthly installments or in a single payment. FIGA has not levied an emergency assessment since 2006, and last levied a regular assessment in November, 2012.

Insurers pay the assessments upfront and recoup the assessment from policyholders upon policy issuance or renewal. The procedure used by FIGA to levy both regular and emergency assessments on member insurance companies and the procedure used by member insurance companies to recoup the assessment from policyholders are provided in s. 631.57(3), F.S. The procedures are generally the same for regular and emergency assessments:

1. FIGA determines an assessment is necessary to pay claims or administration costs, or to pay costs related to bonds issued by FIGA.
2. FIGA certifies the need for an assessment to the Office of Insurance Regulation (OIR).
3. The OIR reviews the certification, and if sufficient, issues an order to all FIGA-member insurance to pay their FIGA assessment.
4. Insurance companies must pay regular assessments within 30 days of the levy. Insurers may pay emergency assessments either in one payment at the end of that month, or spread over 12 months, at FIGA's option.
5. For both assessments, an insurance company may begin to recoup the assessment from its policyholders at the policy issuance or renewal only once it pays the assessment in full.⁵

If an insurer recuperates more than it paid in its FIGA assessment, the excess must be remitted to either FIGA or the insurer's policyholders. If the excess amount does not exceed 15 percent of the total assessment paid, it is remitted to FIGA to reduce future assessments. If the excess amount exceeds 15 percent of the total FIGA assessment, the excess must be returned to policyholders.

Accounting for Assessments

Most insurers authorized to do business in the U.S. are required by state regulators to prepare financial statements in accordance with statutory accounting principles (SAP), which differs from generally acceptable accounting principles (GAAP). GAAP attempts to match revenues to expenses, and is therefore useful to investors and other users of financial reporting (such as banks, credit rating agencies, and the U.S. Securities & Exchange Commission). SAP evaluates liquidity and the ability to pay claims in the future in accordance with the concepts of consistency and conservatism. The OIR requires insurers to file annual SAP statements and independently audited financial reports.⁶

Under both GAAP and SAP, an insurer recognizes a liability when a FIGA assessment is imposed (which reduces the insurer's surplus and net worth). However, the accounting methods calculate the timing of the asset accrual (based on payment of the recoupment) differently:

- GAAP does not qualify the assessment recoverable from future premium writings as an asset. This reduces an insurance company's retained earnings and equity in the period of an

⁵ See Frequently Asked Questions at FLAHIGA's website: <http://www.flahiga.org/faqprint.cfm> (last viewed on March 11, 2015).

⁶ Section 624.424, F.S.

assessment levy. However, the equity reduction is eliminated the following year as the assessments are recouped.

- SAP recognizes as an asset the assessment amount likely to be recovered from future premium surcharges. This offsets or eliminates the negative effect on statutory surplus, subject to certain conditions.⁷ However, SAP does not permit an asset to be recognized if the assessment is to be recovered from future rate structures, and limits asset reduction for accrued assessment liabilities to the extent that the amount to be recovered is from in-force premiums only.

The OIR requires that assessments levied before policy surcharges are collected result in a receivable, which must be recognized as an admissible asset⁸ under SAP, to the extent the receivable is likely to be realized.⁹

Florida Life and Health Insurance Guaranty Association (FLAHIGA)

Part III of ch. 631, F.S., governs the powers and duties of FLAHIGA. All insurance companies¹⁰ authorized to write life and health insurance or annuities in Florida are required to be a FLAHIGA member. In the event a member insurer is insolvent and ordered to be liquidated by a court, FLAHIGA protects Florida residents who have life and health insurance policies and certain annuities with the insolvent insurer.

Generally, direct individual or direct group life and health insurance policies, as well as individual and allocated annuity contracts¹¹ issued by FLAHIGA's member insurers are covered.¹² A policy must meet coverage requirements, and FLAHIGA's payments are capped for any one person as follows:

- Life Insurance Death Benefit: \$300,000 per insured life.
- Life Insurance Cash Surrender: \$100,000 per insured life.
- Health Insurance Claims: \$300,000 per insured life.
- Annuity Cash Surrender: \$250,000 for deferred annuity contracts per contract owner.
- Annuity in Benefit: \$300,000 per contract owner.¹³

When a FLAHIGA-member insurer is found insolvent and ordered liquidated, a receiver takes over the insurer under court supervision and processes the assets and liabilities through liquidation. Upon liquidation, FLAHIGA automatically becomes liable for the policy obligations the liquidated insurer owed to its Florida policyholders. FLAHIGA services the policies, collects premiums and pays claims under the policies. FLAHIGA's rights under the policies are those that

⁷ Statements of Statutory Accounting Principles, No. 35R, Guaranty Fund and Other Assessments (SSAP 35R); *see also* Thomas Howell Ferguson P.A., *Accounting for Guaranty Fund Assessments Memorandum*, December 3, 2013.

⁸ As defined in the National Association of Insurance Commissioners' Statement of Statutory Accounting Principles No. 4.

⁹ Office of Insurance Regulation, Supplemental Memorandum to Information Memorandum OIR-06-023M (Dec. 1, 2006). <http://www.flor.com/siteDocuments/SupplementalMemo.pdf> (last accessed March 11, 2015).

¹⁰ Section 631.713(3), F.S.

¹¹ Allocated annuity contracts are directly issued to and owned by individuals or annuities that directly guarantee benefits to individuals by the insurer.

¹² FLAHIGA covers only policyholders and certificate holders that were Florida residents on the date that a member insurer is declared insolvent and liquidated with some exceptions.

¹³ *See* Frequently Asked Questions at FLAHIGA's website: <http://www.flahiga.org/faqprint.cfm> (last accessed March 11, 2015).

applied to the insurer prior to liquidation. FLAHIGA may cancel the policy if the insurer could have done so, but normally FLAHIGA continues the policies until the association can transfer (or substitute) the policies to another insurer with approval by the OIR.

In 2011, legislation¹⁴ specified that FLAHIGA's immunity from bad faith lawsuits did not affect the FLAHIGA's obligation to pay valid insurance policy or contract claims if warranted after its independent de novo review of the policies, contracts, and claims presented to it, whether domestic or foreign. However, current law only specifies that FLAHIGA's obligation applies after a domestic (in-state) rehabilitation or liquidation, but is silent as to FLAHIGA's obligations after a *foreign* rehabilitation or liquidation.

III. Effect of Proposed Changes:

The bill provides that the definition of "asset" for the purpose of determining an insurer's financial condition includes FIGA assessments that are levied (before policy surcharges are collected) result in a receivable, which is recognized as an admissible asset under SAP, to the extent the receivable is likely to be realized. This codifies the current practice of the OIR, and eliminates the negative effect on statutory surplus of guaranty fund assessments. The bill further provides that an asset must be established and recorded separately from the liability. The insurer must reduce the amount recorded as an asset if it cannot fully recoup the assessment amount because of a reduction in writings or withdrawal from the market.

For emergency assessments paid after policy surcharges are collected pursuant to the monthly installment method, the recognition of assets is based on the actual premium written offset by the obligation to FIGA. The bill does not appear to address assessments that are recouped through future premium rate structures, and therefore those assessments are still be subject to SSAP 35R¹⁵ and likely are non-admitted assets.¹⁶

The bill transfers the 2011 exception from immunity from FLAHIGA's powers and duties statute, s. 631.717, F.S., to s. 631.737, F.S., which pertains to FLAHIGA's duty to review claims involving covered policies, and clarifies that this duty is not limited solely to policies, contracts, and claims following domestic rehabilitations and liquidations, but also includes foreign rehabilitations and liquidations.

The bill takes effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹⁴ Ch. 2011-226, Laws of Fla.

¹⁵ National Association of Insurance Commissioners, *Statements on Statutory Accounting Principles, No. 35R, Guaranty Fund and Other Assessments (SSAP 35R)*.

¹⁶ Office of Insurance Regulation, *Senate Bill 600 Fiscal Analysis* (January 27, 2015) (on file with the Senate Committee on Commerce and Tourism).

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 will clarify statutory accounting treatment for the recognition of FIGA assessments as admissible assets by codifying the OIR's interpretation.

The bill also clarifies FLAHIGA's obligations to pay after a *foreign* rehabilitation or liquidation.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 625.012, 631.717, and 631.737.

IX. Additional Information:

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

CS by Commerce and Tourism on March 16, 2015:

The CS provides technical changes, removing an unnecessary reenactment clause.

CS by Banking and Insurance on February 17, 2015:

The CS provides technical, clarifying changes.

- B. **Amendments:**

None.



831994

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/16/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 72 - 77.

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

And the title is amended as follows:

Delete lines 11 - 14

and insert:

circumstances; providing an effective date.

By the Committee on Banking and Insurance; and Senator Richter

597-01653-15

2015600c1

A bill to be entitled

An act relating to insurance guaranty associations; amending s. 625.012, F.S.; revising the definition of the term "asset" to include Florida Insurance Guaranty Association assessments, under certain conditions, for purposes of determining the financial condition of an insurer; amending ss. 631.717 and 631.737, F.S.; transferring a provision relating to the obligation of the Florida Life and Health Insurance Guaranty Association to pay valid claims under certain circumstances; reenacting ss. 624.316(1)(a), 625.031, 625.305(1), 627.828(3)(b), and 629.401(6)(a), F.S., to incorporate the amendments made to s. 625.012, F.S., in references thereto; providing an effective date.

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

Section 1. Subsections (15) and (16) of section 625.012, Florida Statutes, are redesignated as subsections (16) and (17), respectively, and a new subsection (15) is added to that section, to read:

625.012 "Assets" defined.—In any determination of the financial condition of an insurer, there shall be allowed as "assets" only such assets as are owned by the insurer and which consist of:

(15) (a) Assessments levied under s. 631.57(3)(a) and (e) which are paid before policy surcharges are collected and result in a receivable for policy surcharges to be collected in the future. This amount, to the extent it is likely that it will be

Page 1 of 3

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

597-01653-15

2015600c1

realized, meets the definition of an admissible asset as specified in the National Association of Insurance Commissioners' Statement of Statutory Accounting Principles No. 4. The asset shall be established and recorded separately from the liability regardless of whether it is based on a retrospective or prospective premium-based assessment. If an insurer is unable to fully recoup the amount of the assessment because of a reduction in writings or withdrawal from the market, the amount recorded as an asset shall be reduced to the amount reasonably expected to be recouped.

(b) Assessments levied as monthly installments under s. 631.57(3)(e)1.c. which are paid after policy surcharges are collected so that the recognition of assets is based on actual premium written offset by the obligation to the Florida Insurance Guaranty Association.

Section 2. Subsection (11) of section 631.717, Florida Statutes, is amended to read:

631.717 Powers and duties of the association.—

~~(11) The association is shall not be liable for any civil action under s. 624.155 arising from any acts alleged to have been committed by a member insurer before prior to its liquidation. This subsection does not affect the association's obligation to pay valid insurance policy or contract claims if warranted after its independent de novo review of the policies, contracts, and claims presented to it, whether domestic or foreign, after a Florida domestic rehabilitation or a liquidation.~~

Section 3. Section 631.737, Florida Statutes, is amended to read:

Page 2 of 3

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

597-01653-15

2015600c1

59 631.737 Rescission and review generally.—The association
60 shall review claims and matters regarding covered policies based
61 upon the record available to it on and after the date of
62 liquidation. Notwithstanding any other provision of this part,
63 in order to allow for orderly claims administration by the
64 association, entry of a liquidation order by a court of
65 competent jurisdiction ~~tolls shall be deemed to toll~~ for 1 year
66 any rescission or noncontestable period allowed by the contract,
67 the policy, or by law. The association's obligation is to pay
68 any valid insurance policy or contract claims, if warranted,
69 after its independent de novo review of the policies, contracts,
70 and claims presented to it, whether domestic or foreign,
71 following a rehabilitation or a liquidation.

72 Section 4. Paragraph (a) of subsection (1) of s. 624.316,
73 s. 625.031, subsection (1) of s. 625.305, paragraph (b) of
74 subsection (3) of s. 627.828, and paragraph (a) of subsection
75 (6) of s. 629.401, Florida Statutes, are reenacted for the
76 purpose of incorporating the amendments made by this act to s.
77 625.012, Florida Statutes, in references thereto.

78 Section 5. This act shall take effect July 1, 2015.



The Florida Senate

Committee Agenda Request

To: Senator Nancy C. Detert, Chair
Committee on Commerce and Tourism

Mr. Todd McKay, Staff Director
Ms. Patty Blackburn, Committee Administrative Assistant

Subject: Committee Agenda Request

Date: February 19, 2015

I respectfully request that **CS/Senate Bill #600**, relating to Insurance Guaranty Associations, be placed on the:

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

A handwritten signature in blue ink, appearing to read "Garrett Richter".

Senator Garrett Richter
Florida Senate, District 23

THE FLORIDA SENATE

APPEARANCE RECORD

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

March 16

Meeting Date

SB 600

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Tim Meenan

Job Title _____

Address 325 W. College Ave
Street
Tallahassee FL
City State Zip

Phone (850) 425-4008

Email Tim@MeenanLawFirm.com

Speaking: For Against Information

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

Representing Tower Hill Insurance Group

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 678

INTRODUCER: Banking and Insurance Committee and Senator Diaz de la Portilla

SUBJECT: Reciprocal Insurers

DATE: March 13, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Siples</u>	<u>McKay</u>	<u>CM</u>	<u>Favorable</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 678 creates an additional process for a domestic reciprocal insurer to distribute unassigned funds, such as unused premiums, savings, and credits, to policyholders. The process created by the bill differs from current law primarily by not requiring the reciprocal insurer to create subscriber accounts to make distributions to policyholders. Distributions using this method may not exceed 50 percent of the insurer's net income from the previous calendar year, and may be up to 10 percent of the insurer's surplus.

II. Present Situation:

A reciprocal insurance company is an unincorporated group of subscribers who exchange risk, with each member serving as both the insurer and insured.¹ The subscribers operate through an attorney in fact to provide reciprocal insurance among themselves.² Reciprocal insurers may transact any line of insurance other than life or title.³ Reciprocal insurers are not common and primarily write motor vehicle insurance.⁴ Two of the larger reciprocal insurance companies are

¹ Robert W. Klein, *A Regulator's Introduction to the Insurance Industry*, 5-4 (National Association of Insurance Commissioners 1999), available at http://www.naic.org/documents/prod_serv_marketreg_rii_zb.pdf (last visited Mar. 9, 2015).

² Section 629.021, F.S.

³ Section 629.041(1), F.S.

⁴ See *supra* note 1, at 61.

Farmers Insurance and United Services Automobile Association (USAA). In Florida, authorized reciprocal insurers are governed by the provisions of ch. 629, F.S.

A domestic reciprocal insurer may be organized by 25 or more persons domiciled in Florida, provided the reciprocal insurer is formed in accordance with the requirements of ch. 629, F.S., and is approved by the Office of Insurance Regulation.⁵ The reciprocal insurer must have a subscribers' advisory committee with powers set forth in the subscribers' agreement. These powers must include supervising the finances of the insurer, supervising the insurer's operations to assure conformity with the subscribers' agreement and power of attorney, and procuring the audit of the accounts and records of the insurer and the attorney in fact.⁶

Section 629.271, F.S., governs the distribution of savings from reciprocal insurers to their subscribers. Reciprocal insurers may distribute to subscribers unused premiums, savings, or credits accruing to their subscriber savings accounts. Distributions may not unfairly discriminate between classes of risks, or policies, or between subscribers but may vary as to classes of subscribers based upon the experience of such subscriber classes.

The Internal Revenue Code provides that a reciprocal insurer may claim a deduction from taxable income for amounts that are added to subscriber savings accounts.⁷ For an insurer to claim the deduction, the amounts in subscriber savings accounts must be immediately payable to the subscriber at the end of the taxable year if the subscriber ends his or her account. The credit to the subscriber account is considered a paid or declared dividend to the subscriber.

III. Effect of Proposed Changes:

Section 1 amends s. 629.271, F.S., to create an additional process for a domestic reciprocal insurer to distribute unassigned funds, such as unused premiums, savings, and credits, to policyholders. The process created by the bill differs from current law primarily by not requiring the reciprocal insurer to create subscriber accounts to make distributions to policyholders. Only domestic reciprocal insurers may use the distribution process created by the bill.

The new policyholder distribution process created by the bill instead creates limits on the total amount of distributions if subscriber accounts are not used, and provides that such distributions are subject to written approval from the Office of Insurance Regulation. The distribution may not exceed 50 percent of the insurer's net income from the previous calendar year and may be up to 10 percent of the insurer's surplus.⁸ As under current law for distributions using subscriber accounts, these distributions may not unfairly discriminate between classes of risks, policies, or subscribers, but may vary as to the classes of subscribers based on the experience of such classes.

Section 2 provides that the effective date of the bill is July 1, 2015.

⁵ See s. 629.081, F.S.

⁶ Section 629.201, F.S.

⁷ 26 U.S.C. 832(f).

⁸ Section 629.071, F.S., requires reciprocal insurers to maintain a surplus fund of at least \$250,000.

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:

A domestic reciprocal insurer may save administrative costs by using the distribution method created by this bill rather than establishing and maintaining subscriber savings accounts. The method created by this bill will create savings for those domestic reciprocal insurers for whom the federal tax deduction for monies placed in a subscriber savings accounts is exceeded by the administrative savings of using the procedure created by this bill.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 629.271 of the Florida Statutes.

IX. Additional Information:

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

CS by Banking and Insurance on March 4, 2015:

The CS provides that only domestic reciprocal insurers may use the subscriber distribution method created by the bill.

- B. **Amendments:**

None.

By the Committee on Banking and Insurance; and Senator Diaz de la Portilla

597-01932-15

2015678c1

1 A bill to be entitled
2 An act relating to reciprocal insurers; amending s.
3 629.271, F.S.; authorizing domestic reciprocal
4 insurers to return a portion of unassigned funds to
5 their subscribers; providing limitations; providing an
6 effective date.
7
8 Be It Enacted by the Legislature of the State of Florida:
9
10 Section 1. Section 629.271, Florida Statutes, is amended to
11 read:
12 629.271 Distribution of savings.—
13 (1) A reciprocal insurer may ~~from time to time~~ return to
14 its subscribers any unused premiums, savings, or credits
15 accruing to their accounts. ~~Any~~ Such distribution may ~~shall~~ not
16 unfairly discriminate between classes of risks, or policies, or
17 between subscribers, but ~~such distribution~~ may vary as to
18 classes of subscribers based on ~~upon~~ the experience of the ~~such~~
19 classes.
20 (2) In addition to the option provided in subsection (1), a
21 domestic reciprocal insurer may, upon the prior written approval
22 of the office, pay to its subscribers a portion of unassigned
23 funds of up to 10 percent of surplus with such distribution
24 limited to 50 percent of net income from the previous calendar
25 year. Such distribution may not unfairly discriminate between
26 classes of risks or policies, or between subscribers, but may
27 vary as to classes of subscribers based on the experience of
28 such classes.
29 Section 2. This act shall take effect July 1, 2015.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Judiciary, *Chair*
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Community Affairs
Finance and Tax
Regulated Industries
Rules

SENATOR MIGUEL DIAZ de la PORTILLA

40th District

March 6, 2015

The Honorable Nancy Detert
Chair
Commerce and Tourism

Via Email

Dear Chair Detert:

CS/SB 678 has passed successfully out of Banking and Insurance and the next reference is Commerce and Tourism.

I respectfully request that you agenda the bill at your next opportunity. Thank you for your consideration.

Sincerely,

Miguel Diaz de la Portilla
Senator, District 40

Cc: Mr. Todd McKay, Staff Director; Ms. Patty Blackburn, Committee Administrative Assistant

REPLY TO:

- 2100 Coral Way, Suite 505, Miami, Florida 33145 (305) 643-7200
- 406 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5040

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Judiciary, *Chair*
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Community Affairs
Finance and Tax
Regulated Industries
Rules

SENATOR MIGUEL DIAZ de la PORTILLA

40th District

March 16, 2015

The Honorable Nancy Detert
Chair
Commerce and Tourism

Via Email

Dear Chair Detert:

I will not be in Tallahassee on Monday due to a professional commitment in Miami.

I respectfully ask that my assistant, Pat Gosney, be permitted to present CS/SB 678 before the Commerce and Tourism Committee on Monday, March 16.

Thank you for your consideration.

Sincerely,

Miguel Diaz de la Portilla
State Senator, District 40

Cc: Mr. Todd McKay, Staff Director; Ms. Patty Blackburn, Committee Administrative Assistant

REPLY TO:

- 2100 Coral Way, Suite 505, Miami, Florida 33145 (305) 643-7200
- 406 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5040

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Judiciary, *Chair*
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Community Affairs
Finance and Tax
Regulated Industries
Rules

SENATOR MIGUEL DIAZ de la PORTILLA

40th District

March 12, 2015

The Honorable Nancy Detert
Chair
Commerce and Tourism

Via Delivery

Dear Chair Detert:

I will be in the Finance and Taxation Committee on Monday between 2 and 3:30 pm. I serve on that committee and I am also presenting a bill there.

I respectfully ask that my assistant, Pat Gosney, present CS/SB 678 before the Commerce and Tourism Committee on Monday, since they meet during the same time period.

Thank you for your consideration.

Sincerely,

Miguel Diaz de la Portilla
State Senator, District 40

REPLY TO:

- 2100 Coral Way, Suite 505, Miami, Florida 33145 (305) 643-7200
- 406 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5040

Senate's Website: www.flsenate.gov

ANDY GARDINER
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)

3-16-15

Meeting Date

678

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Sean Stafford

Job Title _____

Address 115 E - Park Avenue

Phone 727-5000

Street

Tall FL

City

State

Zip

Email _____

Speaking: For Against Information

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

Representing Star & Shield Insurance Group

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 980

INTRODUCER: Commerce and Tourism Committee and Senator Soto

SUBJECT: Defense Contracting

DATE: March 16, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Siples	McKay	CM	Fav/CS
2.			FT	
3.			AP	

I. Summary:

CS/SB 980 creates an incentive that allows a defense industry contractor to reduce the income used in the calculation of its Florida corporate tax liability by an amount equal to 4 percent of a subcontract worth more than \$250,000 that is awarded to a Florida small business subcontractor.

II. Present Situation:

Florida's Defense Industry

Florida is home to three of ten unified combatant commands and hosts two of only four Navy deep-water ports in the country with adjacent airfields, the military's only space launch facility on the east coast, the Marine Corps' only maritime prepositioning facility, and one of only three Navy Fleet Readiness Centers. The state also hosts several critical research, development, testing and evaluation centers. In addition, the Joint Gulf Range Complex connects test and training ranges that extend from Key West to Northwest Florida and across the eastern Gulf of Mexico, and encompasses 180,000 square miles of Department of Defense-controlled airspace.¹

Defense spending in Florida was directly or indirectly responsible for \$73.4 billion, or 9.4 percent, of gross state product in 2011.² In 2011, Florida businesses generated \$13.6 billion in U.S. Department of Defense (DoD) contract awards, ranking the state 5th in the nation.³ Total defense spending also accounts for more than 758,000 jobs around the state.⁴

¹ Enterprise Florida, Inc. (EFI), *Florida Defense Factbook*, January 2013, available at <http://www.enterpriseflorida.com/wp-content/uploads/Factbook-20133.pdf> (last visited Mar. 6, 2015).

² EFI, *Florida Defense Industry Economic Impact Analysis*, January 2013, available at <http://www.enterpriseflorida.com/wp-content/uploads/Haas-Study-20131.pdf> (last visited Mar. 6, 2015).

³ EFI, *Defense and Homeland Security*, available at <http://www.enterpriseflorida.com/wp-content/uploads/brief-defense-homeland-security-florida.pdf> (last visited Mar. 6, 2015).

⁴ EFI, *Florida Defense Factbook*. Direct employment includes 61,189 military personnel, 24,705 civilian personnel, and 12,449 National Guard personnel.

According to the federal government, 61,597 contracts have been awarded to prime contractors by the DoD and the National Aeronautics and Space Administration for work done in the State of Florida for federal fiscal years 2014 and 2015.⁵ Combined, these contracts have a total value of approximately \$11.8 billion. There have almost 2,600 subcontracts awarded through those 61,597 contracts, valued at more than \$1.8 billion.⁶

Federal Contracting Overview

The typical federal procurement process involves an agency identifying the goods and services it needs, determining the most appropriate method for purchasing those items, and carrying out an acquisition process. Under most procurement processes, an agency posts a solicitation on the Federal Business Opportunities website. Interested businesses prepare their offers in response to the solicitation, and agency personnel evaluate the offers. To be eligible to compete for government contracts, a business must obtain a Data Universal Numbering System number and register with the System for Award Management. Many agencies provide assistance and services to potential and existing federal contractors.

Businesses may also serve as subcontractors for other businesses (known as prime contractors) that have been awarded federal contracts. Most federal agencies typically release information on their websites listing prime contractors that have been awarded federal contracts. Other agencies, including the General Services Administration, Department of Homeland Security, and Small Business Administration provide more specific information regarding subcontracting opportunities with prime contractors on their websites.⁷

Corporate Income Tax in Florida

Florida imposes a 5.5 percent income tax on corporations doing business in Florida.⁸ The tax is generally referred to as the “corporate income tax” and is imposed on a taxpayer’s “net income.”⁹ Net income is determined by using the following process:

- Determine the taxpayer’s taxable income on its federal return;
- Make certain statutory adjustments (additions and subtractions);
- Determine Florida’s portion of the taxpayer’s total income (apportionment); and
- Subtract Florida’s statutory exemption, which is currently equal to \$50,000.

A taxpayer’s corporate income tax liability is determined by multiplying the taxpayer’s net income by the applicable tax rate, which is normally 5.5 percent.¹⁰

⁵ United States Office of Management and Budget, USASpending.gov (information may be obtained by using search criteria for Department of Defense and National Aerospace and Space Administration, prime contracts, performed in Florida, and by fiscal years 2014 and 2015), available at <http://usaspending.gov/> (last visited Mar. 6, 2015).

⁶ United States Office of Management and Budget, USASpending.gov (information may be obtained by using search criteria for Department of Defense, subaward contracts, performed in Florida, and by fiscal years 2014 and 2015), available at <http://usaspending.gov/> (last visited Mar. 6, 2015).

⁷ L. Elaine Halchin, Congressional Research Service, *Overview of the Federal Procurement Process and Resources*, September 11, 2012, available at <https://www.fas.org/sgp/crs/misc/RS22536.pdf> (last visited Mar. 6, 2015).

⁸ Section 220.11, F.S.

⁹ See s. 220.12, F.S.

¹⁰ The tax rate can be 3.3 percent in some limited situations due to the Alternative Minimum Tax.

Florida provides several incentives that will reduce the amount of corporate income tax owed.¹¹ Generally, these incentives are granted in the form of tax credits, which are applied after the taxpayer's corporate income tax liability is determined through the process outlined above. In some instances, Florida grants incentives in the form of alternative apportionment methods.¹²

III. Effect of Proposed Changes:

Section 1 creates s. 288.1046, F.S., the Defense Works in Florida Incentive. The incentive allows certain contractors to reduce their adjusted federal taxable income by an amount equal to 4 percent of the value of subcontracts awarded to certain subcontractors. The subtraction will be taken at the stage in the calculation where the taxpayer makes certain statutory adjustments to the income determined from the federal tax return.

Requirements to Qualify for the Defense Works in Florida Incentive

Prime Contractor. The bill requires that the prime contractor be a business entity operating in Florida that is awarded a contract directly from the federal government.

Only contracts that include qualified defense work qualify for the 4 percent subtraction. Qualified defense work is defined as a contract involving manufacturing, engineering, construction, distribution, research, development, or other activities related to equipment, supplies, technology, or other goods or services that directly or indirectly support the United States Armed Forces or that can be reasonably determined to support national security, including space-related activities.

Subcontractor. The bill requires the subcontractor to have its primary place of business in Florida, have 250 employees or fewer at the time the subcontract is awarded, and have no subsidiary or affiliate relationship to the prime contractor.

Subcontract. The 4 percent subtraction is only available for subcontracts worth more than \$250,000 and that include "qualified defense work," but excludes subcontracts executed before July 1, 2015.

Claiming the Defense Work in Florida Incentive

The bill provides that the prime contractor may claim the 4 percent subtraction by applying to the Department of Economic Opportunity (DEO). The prime contractor may claim more than one qualified subcontract; however, each subcontract requires a separate application. The bill authorizes the DEO to establish processes for application approval, appeal, and accountability, as necessary. The DEO is also authorized to consult with Enterprise Florida, Inc., and the Florida Defense Support Task Force.

¹¹ See generally ss. 220.153 – 220.196, F.S.

¹² See s. 220.153, F.S.

Within 10 days of certification, the DEO must provide a letter of certification to the applicant and a copy of the letter to the Department of Revenue. For multi-year contracts, the DEO must certify the full amount of the award in the calendar year the contract was awarded and the Florida prime contractor may claim the incentive in the taxable year in which the payment is made to the Florida small business subcontractor.

The bill allows the prime contractor to claim the 4 percent subtraction in the taxable years in which payments are made to the subcontractor.

Limitations on Certifications by the DEO

The bill limits each prime contractor to \$250 million in aggregate awards.

The maximum amount of certifications the DEO may certify in a calendar year for all contractors is \$2.5 billion in aggregate awards.

Section 2 amends s. 220.13(b)(1), F.S., to include the 4 percent subtraction as an allowable subtraction in the computation of adjusted federal income used in the calculation of Florida corporate tax liability.

Section 3 provides an effective date of July 1, 2015.

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:

The Revenue Estimating Conference has determined that HB 529, which is substantively similar to SB 980, will reduce General Revenue Fund receipts by \$5.5 million in Fiscal Year 2015-2016 and future years.¹³

¹³ Revenue Estimating Conference Impact Conference Results from February 18, 2015, on House Bill 529, *available at* <http://edr.state.fl.us/content/conferences/revenueimpact/archives/2015/pdf/impact0220.pdf> (last visited Mar. 9, 2015).

B. Private Sector Impact:

The bill may have a positive fiscal impact on defense industry prime contractors that will be able to reduce corporate tax liability and may encourage Florida prime contractors to award subcontracts to small businesses within Florida.

C. Government Sector Impact:

The Department of Revenue indicates that there will be an insignificant fiscal impact.¹⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill grants rulemaking authority to the DEO and the Department of Revenue to administer the provisions of the bill.

VIII. Statutes Affected:

This bill substantially amends section 220.13 of the Florida Statutes.

This bill creates section 288.1046 of the Florida Statutes.

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

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

CS by Commerce and Tourism on March 16, 2015:

Clarifies that in the computation of the adjusted federal income for Florida corporate tax purposes, the subtraction of the 4 percent of a certified qualified subcontract award is to be divided by the apportionment factor.

B. Amendments:

None.

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

¹⁴ Florida Department of Revenue, *2015 Legislative Bill Analysis, Senate Bill 980*, (Mar. 2, 2015) (on file with the Senate Commerce and Tourism Committee).



362696

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/16/2015	.	
	.	
	.	
	.	

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

Senate Amendment

Delete line 54
and insert:
subcontract award, divided by the apportionment factor as
defined in s. 220.15, if such prime contractor:

By Senator Soto

14-01350-15

2015980__

1 A bill to be entitled
 2 An act relating to defense contracting; creating s.
 3 288.1046, F.S.; establishing the Defense Works in
 4 Florida Incentive; providing definitions; authorizing
 5 a Florida prime contractor to apply to the Department
 6 of Economic Opportunity to certify that it may reduce
 7 its computation of adjusted federal income by a
 8 specified amount; providing application requirements
 9 and procedures; providing caps for the aggregate
 10 amount of qualified subcontract awards that may be
 11 certified per calendar year; authorizing the
 12 Department of Economic Opportunity and the Department
 13 of Revenue to adopt rules; amending s. 220.13, F.S.;
 14 revising the definition of the term "adjusted federal
 15 income" to provide for a reduction in taxable income
 16 equal to a specified amount of qualified subcontract
 17 awards certified by the Department of Economic
 18 Opportunity; providing an effective date.

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

20 Section 1. Section 288.1046, Florida Statutes, is created
 21 to read:

22 288.1046 Defense Works in Florida Incentive.-

23 (1) As used in this section, the term:

24 (a) "Florida prime contractor" means a business entity
 25 operating in the state that is awarded a prime contract.

26 (b) "Florida small business subcontractor" means a business
 27 entity that:

28 Page 1 of 6

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30 1. Maintains its primary place of business in the state;
 31 2. Has 250 or fewer employees at the time a qualified
 32 subcontract award is made;
 33 3. Is awarded a subcontract from a Florida prime
 34 contractor; and
 35 4. Has no subsidiary or affiliate business relationship to
 36 the prime contractor making the award.
 37 (c) "Prime contract" means a contract that is awarded
 38 directly from the Federal Government.
 39 (d) "Qualified defense work" means a prime contract awarded
 40 for manufacturing, engineering, construction, distribution,
 41 research, development, or other activities related to equipment,
 42 supplies, technology, or other goods or services that directly
 43 or indirectly support the United States Armed Forces or that can
 44 be reasonably determined to support national security, including
 45 space-related activities.
 46 (e) "Qualified subcontract award" means qualified defense
 47 work, in part or in whole, subcontracted from a Florida prime
 48 contractor to a Florida small business subcontractor, which is
 49 executed in the state and valued at more than \$250,000. The term
 50 does not include subcontracts executed before July 1, 2015.
 51 (2) A Florida prime contractor may apply to the department
 52 to certify that it may reduce its computation of adjusted
 53 federal income under s. 220.13 by 4 percent of the qualified
 54 subcontract award if such prime contractor:
 55 (a) Is subject to chapter 220;
 56 (b) Is awarded qualified defense work; and
 57 (c) Makes a qualified subcontract award.
 58 (3) A Florida prime contractor may reduce its adjusted

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59 federal income under subsection (2) only for taxable years
 60 beginning on or after January 1, 2016, and must apply separately
 61 to the department for each qualified subcontract award and
 62 provide the department required documentation, including, but
 63 not limited to, the award application and copies of contracts,
 64 tax records, or employment records.

65 (4) The department may establish application, approval,
 66 appeal, and accountability processes as necessary. The
 67 department may consult with Enterprise Florida, Inc., and the
 68 Florida Defense Support Task Force as necessary to administer
 69 this section.

70 (a) Within 10 days after certifying a qualified subcontract
 71 award, the department shall provide:

72 1. A letter certifying the award to the applicant; and
 73 2. A copy of the letter certifying the award to the
 74 Department of Revenue.

75 (b) The department may certify, for each Florida prime
 76 contractor applicant per calendar year, up to \$250 million in
 77 aggregate qualified subcontract awards.

78 (c) The department may certify in total, per calendar year,
 79 up to \$2.5 billion in aggregate qualified subcontract awards.

80 (d) For a multiyear qualified subcontract award, the
 81 department shall certify the full amount of the award under
 82 paragraphs (b) and (c) in the calendar year in which it was
 83 awarded.

84 (e) The Florida prime contractor may reduce its adjusted
 85 federal income under subsection (2) in the taxable years in
 86 which payments are made to the Florida small business
 87 subcontractor.

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88 (5) The department and the Department of Revenue may adopt
 89 rules to administer this section.

90 Section 2. Paragraph (b) of subsection (1) of section
 91 220.13, Florida Statutes, is amended to read:
 92 220.13 "Adjusted federal income" defined.—
 93 (1) The term "adjusted federal income" means an amount
 94 equal to the taxpayer's taxable income as defined in subsection
 95 (2), or such taxable income of more than one taxpayer as
 96 provided in s. 220.131, for the taxable year, adjusted as
 97 follows:

98 (b) Subtractions.—

99 1. There shall be subtracted from such taxable income:

100 a. The net operating loss deduction allowable for federal
 101 income tax purposes under s. 172 of the Internal Revenue Code
 102 for the taxable year, except that any net operating loss that is
 103 transferred pursuant to s. 220.194(6) may not be deducted by the
 104 seller,

105 b. The net capital loss allowable for federal income tax
 106 purposes under s. 1212 of the Internal Revenue Code for the
 107 taxable year,

108 c. The excess charitable contribution deduction allowable
 109 for federal income tax purposes under s. 170(d)(2) of the
 110 Internal Revenue Code for the taxable year, and

111 d. The excess contributions deductions allowable for
 112 federal income tax purposes under s. 404 of the Internal Revenue
 113 Code for the taxable year.

114

115 However, a net operating loss and a capital loss shall never be
 116 carried back as a deduction to a prior taxable year, but all

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117 deductions attributable to such losses shall be deemed net
 118 operating loss carryovers and capital loss carryovers,
 119 respectively, and treated in the same manner, to the same
 120 extent, and for the same time periods as are prescribed for such
 121 carryovers in ss. 172 and 1212, respectively, of the Internal
 122 Revenue Code.

123 2. There shall be subtracted from such taxable income any
 124 amount to the extent included therein the following:

125 a. Dividends treated as received from sources without the
 126 United States, as determined under s. 862 of the Internal
 127 Revenue Code.

128 b. All amounts included in taxable income under s. 78 or s.
 129 951 of the Internal Revenue Code.

130

131 However, as to any amount subtracted under this subparagraph,
 132 there shall be added to such taxable income all expenses
 133 deducted on the taxpayer's return for the taxable year which are
 134 attributable, directly or indirectly, to such subtracted amount.
 135 Further, no amount shall be subtracted with respect to dividends
 136 paid or deemed paid by a Domestic International Sales
 137 Corporation.

138 3. In computing "adjusted federal income" for taxable years
 139 beginning after December 31, 1976, there shall be allowed as a
 140 deduction the amount of wages and salaries paid or incurred
 141 within this state for the taxable year for which no deduction is
 142 allowed pursuant to s. 280C(a) of the Internal Revenue Code
 143 (relating to credit for employment of certain new employees).

144 4. There shall be subtracted from such taxable income any
 145 amount of nonbusiness income included therein.

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146 5. There shall be subtracted any amount of taxes of foreign
 147 countries allowable as credits for taxable years beginning on or
 148 after September 1, 1985, under s. 901 of the Internal Revenue
 149 Code to any corporation which derived less than 20 percent of
 150 its gross income or loss for its taxable year ended in 1984 from
 151 sources within the United States, as described in s.
 152 861(a)(2)(A) of the Internal Revenue Code, not including credits
 153 allowed under ss. 902 and 960 of the Internal Revenue Code,
 154 withholding taxes on dividends within the meaning of sub-
 155 subparagraph 2.a., and withholding taxes on royalties, interest,
 156 technical service fees, and capital gains.

157 6. There shall be subtracted from such taxable income 4
 158 percent of the amount of the qualified subcontract award
 159 certified by the Department of Economic Opportunity and paid to
 160 the subcontractor pursuant to s. 288.1046, divided by the
 161 apportionment factor as defined in s. 220.15.

162 ~~7.6.~~ Notwithstanding any other provision of this code,
 163 except with respect to amounts subtracted pursuant to
 164 subparagraphs 1. and 3., any increment of any apportionment
 165 factor which is directly related to an increment of gross
 166 receipts or income which is deducted, subtracted, or otherwise
 167 excluded in determining adjusted federal income shall be
 168 excluded from both the numerator and denominator of such
 169 apportionment factor. Further, all valuations made for
 170 apportionment factor purposes shall be made on a basis
 171 consistent with the taxpayer's method of accounting for federal
 172 income tax purposes.

173 Section 3. This act shall take effect July 1, 2015.

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Rules, *Vice Chair*
Appropriations Subcommittee on Criminal and
Civil Justice
Environmental Preservation and Conservation
Finance and Tax
Judiciary

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR DARREN SOTO

Democratic Caucus Rules Chair
14th District

March 4, 2015

The Honorable Nancy C. Detert
Committee on Commerce and Tourism
310 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chair Detert,

I respectfully request that Senate Bill 980, Defense Contracting, be placed on the agenda as soon as possible. Senate Bill 980 establishes the Defense Works in Florida Incentive. This bill authorizes Florida prime contractors to reduce its adjusted federal income after applying to the Department of Economic Opportunity. Contractors must be awarded qualified defense work and make a qualified subcontract award. Senate Bill 980 aims to create Florida jobs by awarding prime contracts to Florida defense businesses.

Thank you for your consideration. Should you have any questions or concerns, please feel free to contact me at 850-487-5014.

Sincerely,

A handwritten signature in cursive script that reads "Darren M. Soto".

Darren M. Soto
State Senator, District 14

Cc: Todd McKay, Staff Director
Patty Blackburn, Committee Administrative Assistant

REPLY TO:

- Kissimmee City Hall, 101 North Church Street, Suite 305, Kissimmee, Florida 34741 (407) 846-5187 FAX: (407) 846-5188
- 220 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

Senate's Website: www.flsenate.gov

ANDY GARDINER
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)

980

Meeting Date _____

Bill Number (if applicable) _____

Topic Defense Contracting

Amendment Barcode (if applicable) _____

Name LOUIS ROTUNDO

Job Title _____

Address 302 Pinestraw Circle

Phone _____

Street

Altamonte Springs FL

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing FLA. Defense Contractors Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

*Bill already passed
before card
turned in SB 980*
Bill Number (if applicable)

3/16/15

Meeting Date

Topic Defense Contracting

Amendment Barcode (if applicable)

Name Brittney Burch

Job Title Policy Director

Address _____

Street

Phone 521-1279

Tall.

FL

32301

Email bburch@flchamber.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Chamber of Commerce

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 1444

INTRODUCER: Commerce and Tourism Committee and Senator Richter

SUBJECT: Consumer Licensing

DATE: March 16, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	Fav/CS
2.			AGG	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1444 modifies several areas regulated by the Department of Agriculture and Consumer Services, including:

- Implementing license fee waivers for veterans, their spouses, and their businesses;
- Updating the criminal background check processes for applicants and licensees under ch. 493, F.S., regulating private investigation, private security, and repossession services;
- Transferring the enforcement of Commercial Weight-Loss Practices Act to the Department of Health;
- Allowing amusement ride operators to provide their own inspection form, and exempting specific rides from inspection requirements;
- Implementing a live-fire requirement for concealed weapon licensure;
- Streamlining renewal of concealed weapons licenses;
- Allowing notice of service to firearm or concealed weapon license holders by mail or e-mail;
- Allowing qualified tax collectors to print and deliver renewal firearm or concealed weapons licenses; and
- Reducing application fees for firearm and concealed weapon licenses.

II. Present Situation:

The Department of Agriculture and Consumer Services (“department” or “DACCS”) safeguards the public from unsafe or defective products and deceptive business practices. The Division of

Consumer Services within the DACS regulates specific business activities, including commercial weight loss practices, telephone solicitations, pawnshops, health studios, sellers of travel, and telemarketing.¹ The Division of Licensing within the DACS is responsible for investigating and issuing licenses to conduct private security, private investigative, and recovery services pursuant to ch. 493, F.S. The Division of Licensing also issues concealed weapon or firearm licenses pursuant to s. 790.06, F.S.²

Florida has more than 1.6 million veteran residents³ and 176,727 veteran-owned businesses.⁴ The Department of Management Services has issued 384 service disabled veteran-owned business certifications.⁵ As of July 1, 2014, both the Department of Business and Professional Regulation and the Department of Health implemented initial licensing fee waivers for veterans and their spouses.⁶

III. Effect of Proposed Changes:

Licensing Fee Waivers

The bill waives first-time licensing application fees for an honorably discharged veteran of the United States Armed Forces, his or her spouse, or a business entity in which he or she has a majority ownership stake on the following classes of licenses:

License	Current Initial Licensing Fee
Land Surveyor & Mapper	\$180 - \$255
Health Studio	\$300
Commercial Telephone Seller	\$1,500
Telemarketing Salesperson	\$50
Movers & Moving Broker	\$300
Liquefied Petroleum Gas Related License	\$100 - \$525
Pawnbroker	\$300
Motor Vehicle Repair Shop	\$50 - \$300
Sellers of Travel	\$300-\$2,500

In addition, to qualify for the fee waiver, the veteran, his or her spouse, or his or her business must submit an application for licensure within 60 months after the date of the veteran’s

¹ See <http://www.freshfromflorida.com/Divisions-Offices/Consumer-Services>, last accessed March 11, 2015.

² See <http://www.freshfromflorida.com/Divisions-Offices/Licensing>, last accessed March 11, 2015.

³ Florida Department of Veterans’ Affairs, *Fast Facts*, http://floridavets.org/?page_id=50 (last accessed March 12, 2015).

⁴ Small Business Administration, *Office of Advocacy, Veteran-owned Businesses and their Owners—Data from the Census Bureau’s Survey of Business Owners*, (March 2012). Available at <https://www.sba.gov/sites/default/files/393tot.pdf> (last accessed March 12, 2015).

⁵ As of March 12, 2015. Florida Department of Management Services, *Certified Vendor Directory*, available at https://osd.dms.myflorida.com/directories/results?directory%5Bcommodity_code%5D=&directory%5Bcommodity_description%5D=&directory%5Bcounty%5D=&directory%5Bdesignation%5D=Service+Disabled+Veteran&directory%5Bvendor_name%5D= (last accessed March 12, 2015).

⁶ Florida Department of Business and Professional Regulation, *Military and Veteran Spouses*, available at <http://www.myfloridalicense.com/dbpr/MilitarySpouse.html> (last accessed March 12, 2015); see also, Florida Department of Health, *Veterans*, available at <http://www.floridahealth.gov/licensing-and-regulation/armed-forces/veterans/index.html> (last accessed March 12, 2015).

discharge from the United States Armed Forces and provide a copy of his or her discharge paperwork; a valid marriage license where applicable; and proof of ownership interest where applicable.

Section 1 amends s. 472.015, F.S. (surveyors and mappers), **Section 8** amends s. 501.015, F.S. (health studios), **Sections 11 and 12** amend ss. 501.605 and 501.607, F.S. (telemarketing), **Section 13** amends s. 507.03, F.S. (intrastate movers), **Section 14** amends s. 527.02, F.S. (liquefied petroleum gasoline), **Section 15** amends s. 539.001, F.S. (pawnbrokers), **Section 16** amends s. 559.904, F.S. (motor vehicle repair), and **Section 17** amends s. 559.928, F.S. (sellers of travel).

Fingerprint Retention and Processing

Private investigators, private security officers, and repossession services officers are regulated by the department pursuant to ch. 493, F.S. The DACS has 156,266 currently valid licenses issued pursuant to ch. 493, F.S.⁷ Currently, applicants for licensure under ch. 493, F.S., must submit a full set of their fingerprints for a background check conducted by the Florida Department of Law Enforcement (FDLE).⁸ Once the initial background check has been performed by the FDLE, the now-licensees' fingerprints are discarded. This makes the department's duty to conduct ongoing investigations into its licensees' criminal activity⁹ more difficult because it must perform a name-based search of arrest records and then perform further checks to ensure accurate identification.¹⁰

Section 4 updates the department's background check processes by requiring the department to enroll applicants' fingerprints in the FDLE's Applicant Fingerprint Retention and Notification Program (AFRNP),¹¹ and in the Federal Bureau of Investigation's (FBI) Next Generation Identification (NGI) project, when the program is fully active.¹² This enables the FDLE to conduct ongoing, fingerprint-based, state and national background checks on the department's ch. 493, F.S., licensees. The bill additionally requires the FDLE to report any arrest record it discovers to the department. In turn, the department must notify the licensee's employing agency of the arrest record.

In accordance with the changes made by section 4, **Section 2** requires initial applicants for licensure under ch. 493, F.S., to submit:

⁷ Florida Department of Agriculture and Consumer Services, Division of Licensing, *Number of Licensees by Type*, (February 28, 2015). Available at http://www.freshfromflorida.com/content/download/7471/118627/Number_of_Licensees_By_Type.pdf (last accessed March 12, 2015).

⁸ Section 493.6105(3)(j), F.S.

⁹ Section 493.6118(1), F.S.

¹⁰ Florida Department of Agriculture and Consumer Services, *Legislative Bill Analysis for HB 997* (March 3, 2015).

¹¹ Section 943.05, F.S. See also Florida Department of Law Enforcement, *Criminal History Record Checks/ Background Checks Fact Sheet* (February 1, 2015). Available at <http://www.fdle.state.fl.us/Content/Criminal-History/FAQ.aspx> (last accessed March 11, 2015).

¹² The FBI's NGI project is in development, but has not yet been implemented. The program will allow applicant's fingerprints to be retained by the FBI and searched against incoming arrest fingerprints nationwide in a manner similar to the AFRNP in Florida. Florida Department of Agriculture and Consumer Services, *Legislative Bill Analysis for HB 997* (March 3, 2015).

- A full set of their fingerprints;
- A one-time fingerprint processing fee;
- An annual fingerprint retention fee to cover the cost of the FDLE's AFRNP;¹³ and
- A one-time enrollment fee for enrollment of the fingerprints in the FBI's NGI project.

Additionally, applicants for renewal of their ch. 493, F.S., license are required by **Section 5** of the bill to submit:

- A full set of their fingerprints, if the applicant held a valid license issued under ch. 493, F.S., before January 1, 201⁶; and
- A one-time fingerprint processing fee;
- A renewal fee; and
- An annual fingerprint retention fee to cover the cost of the FDLE'S AFRNP.

In 2012, the U.S. Department of Justice removed the requirement that a permanent legal resident alien prove his or her residence in the state for 90 days to be able to purchase or own a firearm.¹⁴ **Section 3** conforms s. 493.6106, F.S., specific to applicants for licensure under ch. 493, F.S., to this change.

Sections 6 and 7 correct statutory cross-references.

Commercial Weight-Loss Clinics

Currently, the department enforces the "Commercial Weight-Loss Practices Act (act)."¹⁵ This act requires weight-loss providers to give consumers a Weight Loss Consumer Bill of Rights, disclose information about the provider and program, and provide itemized statements. However, dietetics, nutrition practices, and other weight-loss professions are regulated by the Department of Health.¹⁶ **Sections 9 and 10** transfer enforcement of the Commercial Weight-Loss Practices Act to the Department of Health.

Amusement Ride Safety Standards

Florida has approximately 245 amusement parks and 190 traveling amusement companies that are subject to inspection by the department.¹⁷ These parks include carnivals, water parks, go-kart courses, and bungee-jumping parks.¹⁸ A temporary amusement ride must be inspected by the department each time it is moved or set up in a new location; permanent rides are inspected

¹³ Under the bill, the DACS must set the retention and enrollment fees by rule. The DACS states the annual retention fee will be \$6.00, and that the FBI enrollment fee will be \$13.00. Florida Department of Agriculture and Consumer Services, *Legislative Bill Analysis for HB 997* (March 3, 2015).

¹⁴ See U.S. Department of Justice, *Questions and Answers – Revised ATF F4473*, (April, 2012), available at <http://www.atf.gov/files/regulations-rulings/rulings/atf-ruling-2010-6.pdf> (last accessed March 11, 2015).

¹⁵ Sections 501.057 – 501.0583, F.S.

¹⁶ See chapter 468, part X, F.S.

¹⁷ Florida Department of Agriculture and Consumer Services, *Fair Rides Inspection*. Available at <http://www.freshfromflorida.com/Divisions-Offices/Consumer-Services/Business-Services/Fair-Rides> (last accessed March 12, 2015).

¹⁸ *Id.*

semi-annually.¹⁹ Additionally, parks subject to the department's regulations must show proof of sufficient employee training and insurance.

Section 18 exempts the following venues from s. 616.242, F.S.'s, amusement rides permitting, inspection, and insurance requirements:

- A water-related amusement ride operated as an incidental amenity to the core business of a lodging and food service establishment or membership campground that does not offer a day rate.
- An amusement ride operated as an incidental amenity to the primary business of a membership-only facility that does not offer a day rate.
- A permanent facility that is not open to the general public, and that is operated by a nonprofit corporation registered under ch. 496, F.S.

These exemptions are targeted at generally smaller water attractions or rides at hotels or campsites, private country clubs or playgrounds, and facilities run by, e.g. the YMCA (two non-profit facilities currently qualify for this exemption).²⁰

The bill also allows owners or managers of amusement rides to request to use alternate inspections and employee training forms than those prescribed by departmental rules, if the alternate form includes at least the information required by the prescribed form.

Concealed Weapon and Firearm Licensing

Under current law, certain concealed weapons or firearms pre-licensing course instructors must maintain records certifying that they observed their student safely handle and discharge a firearm. **Section 19** of this bill clarifies s. 790.06, F.S., to require that the instructor maintain records certifying that *while he or she was physically present*, the instructor observed the student safely handle and *actually* discharge ("live fire") a firearm *using a firearm and ammunition as defined in s. 790.001, F.S.* This ensures that the instruction occurs in person rather than by video conference.

Subject to this section, application fees for concealed weapon and firearm licensure will be reduced from \$70 to \$60 for initial applicants, and from \$60 to \$50 for renewal applicants.

Additionally, the bill provides for notice of the suspension or revocation of a concealed weapon or firearm license by either the first-class mailing to the licensee's last known mailing address furnished to the department, or by e-mail, if an e-mail address was furnished to the department. For purposes of this section, the notice is considered complete at the time the e-mail is sent, or after 20 days from the department's deposit of the letter providing notice into the mail.

Currently, section 790.06(11), F.S., requires a licensee who seeks to renew his or her firearm or concealed weapon license to submit a *notarized* affidavit stating that the licensee remains qualified for the license. **Section 19** of the bill amends s. 790.06(11), F.S., to require an affidavit *submitted under oath and under penalty of perjury* instead.

¹⁹ *Id.*

²⁰ Conversation with staff of the Department of Agriculture and Consumer Services, on March 6, 2015.

As of July 1, 2014, tax collectors who entered into a memorandum of understanding with the department, may collect initial and renewal applications for firearms and concealed weapons permits. **Section 20** expands the qualified tax collectors' capabilities to include the printing and delivery of a concealed weapon or firearm license to an individual who renews his or her license at the tax collector's office. Tax collectors may collect fees for such services.

Section 11 requires the owner, operator, officer, director, partner, or manager of a telephone solicitor business (commercial telephone seller) to provide a physical location of its telephone solicitor business on its application for licensure with the DACS, where previously a mail drop address could be provided.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Procedural Due Process and Notice Requirements, Generally

The Due Process Clauses of the Fifth and Fourteenth Amendments contemplate fair process. "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objection."²¹ Three factors must be weighed to determine the degree to which due process protections apply:

- The private interest that will be affected;
- The risk of erroneous deprivation of such interest through the procedures used; and
- The Government's interest, including fiscal and administrative burdens of additional process.²²

The department seeks to preserve the public records exemption of personal identifying information of an individual who applied for or received a firearm or concealed weapon license by substituting direct mail or e-mail for the publication of such information in

²¹ *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

²² *Mathews v. Eldridge*, 424 U.S. 319 (1976); *Hadley v. Dept. of Admin.*, 411 So.2d 184 (Fla. 1982).

general circulation newspapers as a method of notice.²³ Courts have not ruled directly on whether replacing notice by publication with notice by first class mail without proof of knowledge of receipt is sufficient procedural due process.²⁴

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Veterans, their spouses, and majority-owned veteran businesses will qualify for initial specific license fee waivers. Specific businesses will be exempt from amusement ride inspections and the costs associated therewith. Individuals seeking a first-time concealed weapon or firearm license will be subject to a \$60 application fee, reduced from \$70; renewal license fees will be \$50, reduced from \$60.

C. Government Sector Impact:

The department expects a reduction in revenue generated from military veterans and their spouses who take advantage of the fee waiver provisions of this bill in the following amounts:

	(FY 15-16)	(FY 16-17)	(FY 17-18)
	Amount	Amount	Amount
Military Veteran Fee Waiver	(\$49,350)	(\$49,350)	(\$49,350)

Fingerprint Retention

The department expects to generate the following from new fees related to Fingerprint Retention programs:

	(FY 15-16)	(FY 16-17)	(FY 17-18)
	Amount	Amount	Amount
Federal Bureau of Investigation (FBI) Funds	\$1,552,000	\$1,552,000	\$442,000
FDLE Operating Trust Fund	<u>\$1,040,000</u>	<u>\$1,040,000</u>	<u>\$684,000</u>
Subtotal:	<u>\$2,592,000</u>	<u>\$2,592,000</u>	<u>\$1,126,000</u>

These fees will be collected by the department and deposited in the Division of Licensing Trust Fund where they will then be disbursed to the FBI or the FDLE for the administration of their fingerprint retention programs.

²³ See s. 790.0601, F.S.; Florida Department of Agriculture and Consumer Services, *Legislative Bill Analysis for HB 997* (March 3, 2015).

²⁴ *Anderson v. State*, 87 So. 3d 774, 776 (Fla. 2012).

Safety Standards for Amusement Rides

The department expects the following reduced revenue from fees that will no longer be collected from organizations made exempt from regulation under this bill.

	(FY 15-16)	(FY 16-17)	(FY 17-18)
	Amount	Amount	Amount
Safety Standards for Amusement Rides	(\$2,280)	(\$2,280)	(\$2,280)

The department will also see a reduction in the collection of initial and renewal application fees for firearm and concealed weapon licenses.

VI. Technical Deficiencies:

None.

VII. Related Issues:

It is unclear whether section 5 of the bill requires licensees who seek to renew a ch. 493, F.S., license held prior to January 1, 2016, to submit an enrollment fee for the FBI’s NGI project in addition to the retention fee to cover the cost of retention of the licensee’s fingerprints by the FDLE’s ARNFS.

For clarification, “surviving spouses” could be added as eligible for the military veteran fee waiver.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 472.015, 493.6105, 493.6106, 493.6108, 493.6113, 493.6115, 493.6118, 501.015, 501.0581, 501.0583, 501.605, 501.607, 507.03, 527.02, 539.001, 559.904, 559.928, 616.242, 790.06, 790.0625.

IX. Additional Information:

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

CS by Commerce and Tourism on March 16, 2015:

Reduces initial application fees for concealed weapon and firearm licenses from \$70 to \$60, and renewal fees from \$60 to \$50.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/16/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with directory and title amendments)

Between lines 762 and 763
insert:

(5) The applicant shall submit to the Department of Agriculture and Consumer Services or an approved tax collector pursuant to s. 790.0625:

(b) A nonrefundable license fee of up to \$60 ~~\$70~~ if he or she has not previously been issued a statewide license or of up to \$50 ~~\$60~~ for renewal of a statewide license. The cost of



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11 processing fingerprints as required in paragraph (c) shall be
12 borne by the applicant. However, an individual holding an active
13 certification from the Criminal Justice Standards and Training
14 Commission as a law enforcement officer, correctional officer,
15 or correctional probation officer as defined in s. 943.10(1),
16 (2), (3), (6), (7), (8), or (9) is exempt from the licensing
17 requirements of this section. If such individual wishes to
18 receive a concealed weapon ~~weapons~~ or firearm ~~firearms~~ license,
19 he or she is exempt from the background investigation and all
20 background investigation fees, but must pay the current license
21 fees regularly required to be paid by nonexempt applicants.
22 Further, a law enforcement officer, a correctional officer, or a
23 correctional probation officer as defined in s. 943.10(1), (2),
24 or (3) is exempt from the required fees and background
25 investigation for ~~a period of~~ 1 year after his or her
26 retirement.

27
28 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

29 And the directory clause is amended as follows:

30 Delete line 714

31 and insert:

32 Section 19. Paragraph (h) of subsection (2), paragraph (b)
33 of subsection (5), subsection

34
35 ===== T I T L E A M E N D M E N T =====

36 And the title is amended as follows:

37 Delete line 95

38 and insert:

39 physical presence; revising the initial and renewal



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40
41

fees for a concealed weapon or firearm license;
requiring notice of the suspension

By Senator Richter

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1 A bill to be entitled
 2 An act relating to consumer licensing; amending s.
 3 472.015, F.S.; waiving the initial land surveying and
 4 mapping license fee for certain veterans of the United
 5 States Armed Forces, the spouses of such veterans, or
 6 a business entity that has a majority ownership held
 7 by such a veteran or spouse; amending s. 493.6105,
 8 F.S.; requiring that the initial license application
 9 for private investigative, private security, and
 10 repossession services include payment of fingerprint
 11 processing and fingerprint retention fees; amending s.
 12 493.6106, F.S.; deleting a requirement for additional
 13 documentation establishing state residency for private
 14 investigative, private security, and repossession
 15 service licenses; amending s. 493.6108, F.S.;
 16 directing the Department of Law Enforcement to retain
 17 fingerprints submitted for private investigative,
 18 private security, and repossession service licenses,
 19 to enter such fingerprints into the statewide
 20 automated biometric identification system and the
 21 national retained print arrest notification program,
 22 and to report any arrest record information to the
 23 Department of Agriculture and Consumer Services;
 24 directing the Department of Agriculture and Consumer
 25 Services to provide information about an arrest within
 26 the state to the agency that employs the licensee;
 27 amending s. 493.6113, F.S.; requiring a person holding
 28 a private investigative, private security, or
 29 repossession service license issued before a certain

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30 date to submit upon first renewal of the license a
 31 full set of fingerprints and a fingerprint processing
 32 fee to cover the cost of entering the fingerprints in
 33 the statewide automated biometric identification
 34 system; amending ss. 493.6115 and 493.6118, F.S.;
 35 conforming cross-references; amending s. 501.015,
 36 F.S.; waiving the initial health studio registration
 37 fee for certain veterans of the United States Armed
 38 Forces, the spouses of such veterans, or a business
 39 entity that has a majority ownership held by such a
 40 veteran or spouse; amending s. 501.0581, F.S.;
 41 transferring enforcement authority of the Florida
 42 Commercial Weight-Loss Practices Act from the
 43 Department of Agriculture and Consumer Services to the
 44 Department of Health; amending s. 501.0583, F.S.;
 45 transferring enforcement authority of penalties for
 46 selling, delivering, bartering, furnishing, or giving
 47 weight-loss pills to persons under the age of 18 from
 48 the Department of Agriculture and Consumer Services to
 49 the Department of Health; amending s. 501.605, F.S.;
 50 prohibiting the use of a mail drop as a street address
 51 for the principal location of a commercial telephone
 52 seller; amending s. 501.607, F.S.; waiving the initial
 53 salesperson license fees for certain veterans of the
 54 United States Armed Forces, the spouses of such
 55 veterans, or a business entity that has a majority
 56 ownership held by such a veteran or spouse; amending
 57 s. 507.03, F.S.; waiving the initial registration fee
 58 for an intrastate movers license for certain veterans

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59 of the United States Armed Forces, the spouses of such
 60 veterans, or a business entity that has a majority
 61 ownership held by such a veteran or spouse; amending
 62 s. 527.02, F.S.; waiving the original liquefied
 63 petroleum gas dealer license fee for certain veterans
 64 of the United States Armed Forces, the spouses of such
 65 veterans, or a business entity that has a majority
 66 ownership held by such a veteran or spouse; amending
 67 s. 539.001, F.S.; waiving the initial pawnbroker
 68 license fee for certain veterans of the United States
 69 Armed Forces, the spouses of such veterans, or a
 70 business entity that has a majority ownership held by
 71 such a veteran or spouse; amending s. 559.904, F.S.;
 72 waiving the initial motor vehicle repair shop
 73 registration fee for certain veterans of the United
 74 States Armed Forces, the spouses of such veterans, or
 75 a business entity that has a majority ownership held
 76 by such a veteran or spouse; amending s. 559.928,
 77 F.S.; waiving the initial seller of travel
 78 registration fee for certain veterans of the United
 79 States Armed Forces, the spouses of such veterans, or
 80 a business entity that has a majority ownership held
 81 by such a veteran or spouse; amending s. 616.242,
 82 F.S.; deleting an obsolete provision allowing fair
 83 owners to post a bond rather than carry a certificate
 84 of insurance; exempting water-related amusement rides
 85 operated by lodging and food service establishments
 86 and membership campgrounds, amusement rides at
 87 private, membership-only facilities, and nonprofit

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88 permanent facilities from certain safety standards;
 89 authorizing owners or managers of amusement rides to
 90 use alternate forms to record employee training and
 91 ride inspections; amending s. 790.06, F.S.; requiring
 92 firearm course instructors to maintain records
 93 attesting to the use of live fire with specified
 94 firearms and ammunition by students in his or her
 95 physical presence; requiring notice of the suspension
 96 or revocation of a concealed weapon or firearm license
 97 or the suspension of the processing of an application
 98 for such license to be given by personal delivery,
 99 first-class mail, or e-mail; requiring concealed
 100 weapon or firearm license renewals to include an
 101 affidavit submitted under oath and under penalty of
 102 perjury; amending s. 790.0625, F.S.; authorizing
 103 certain tax collector offices, upon approval and
 104 confirmation of license issuance by the Department of
 105 Agriculture and Consumer Services, to print and
 106 deliver concealed weapon or firearm licenses;
 107 providing an effective date.

108
 109 Be It Enacted by the Legislature of the State of Florida:

110
 111 Section 1. Subsection (3) of section 472.015, Florida
 112 Statutes, is amended to read:

113 472.015 Licensure.—

114 (3) (a) Before the issuance of any license, the department
 115 may charge an initial license fee as determined by rule of the
 116 board. Upon receipt of the appropriate license fee, except as

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117 provided in subsection (6), the department shall issue a license
 118 to any person certified by the board, or its designee, as having
 119 met the applicable requirements imposed by law or rule. However,
 120 an applicant who is not otherwise qualified for licensure is not
 121 entitled to licensure solely based on a passing score on a
 122 required examination.

123 (b) The department shall waive the initial license fee for
 124 an honorably discharged veteran of the United States Armed
 125 Forces, the spouse of such a veteran, or a business entity that
 126 has a majority ownership held by such a veteran or spouse if the
 127 department receives an application, in a format prescribed by
 128 the department, within 60 months after the date of the veteran's
 129 discharge from any branch of the United States Armed Forces. To
 130 qualify for the waiver, a veteran must provide to the department
 131 a copy of his or her DD Form 214 or NGB Form 22; the spouse of a
 132 veteran must provide to the department a copy of the veteran's
 133 DD Form 214 or NGB Form 22 and a copy of a valid marriage
 134 license or certificate verifying that he or she was lawfully
 135 married to the veteran at the time of discharge; or a business
 136 entity must provide to the department proof that a veteran or
 137 the spouse of a veteran holds a majority ownership in the
 138 business, a copy of the veteran's DD Form 214 or NGB Form 22,
 139 and, if applicable, a copy of a valid marriage license or
 140 certificate verifying that the spouse of the veteran was
 141 lawfully married to the veteran at the time of discharge.

142 Section 2. Paragraph (j) of subsection (3) of section
 143 493.6105, Florida Statutes, is amended to read:

144 493.6105 Initial application for license.—

145 (3) The application must contain the following information

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146 concerning the individual signing the application:

147 (j) A full set of fingerprints, a fingerprint processing
 148 fee, and a fingerprint retention fee to cover the cost of
 149 retaining the fingerprints in the statewide automated biometric
 150 identification system pursuant to s. 493.6108(2) (a) and the cost
 151 of enrolling the fingerprints in the national retained print
 152 arrest notification program when the program is operational and
 153 the Department of Law Enforcement begins participation. The
 154 fingerprint processing and retention fees shall ~~to~~ be
 155 established by rule of the department based upon costs
 156 determined by state and federal agency charges and department
 157 processing costs. An applicant who has, within the immediately
 158 preceding 6 months, submitted such fingerprints and ~~fees fee~~ for
 159 licensing purposes under this chapter and who still holds a
 160 valid license is not required to submit another set of
 161 fingerprints or another fingerprint processing fee. An applicant
 162 who holds multiple licenses issued under this chapter is
 163 required to pay only a single fingerprint retention fee.

164 Section 3. Paragraph (f) of subsection (1) of section
 165 493.6106, Florida Statutes, is amended to read:

166 493.6106 License requirements; posting.—

167 (1) Each individual licensed by the department must:

168 (f) Be a citizen or permanent legal resident alien of the
 169 United States or have appropriate authorization issued by the
 170 United States Citizenship and Immigration Services of the United
 171 States Department of Homeland Security.

172 1. An applicant for a Class "C," Class "CC," Class "D,"
 173 Class "DI," Class "E," Class "EE," Class "M," Class "MA," Class
 174 "MB," Class "MR," or Class "RI" license who is not a United

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175 States citizen must submit proof of current employment
 176 authorization issued by the United States Citizenship and
 177 Immigration Services or proof that she or he is deemed a
 178 permanent legal resident alien by the United States Citizenship
 179 and Immigration Services.

180 2. An applicant for a Class "G" or Class "K" license who is
 181 not a United States citizen must submit proof that she or he is
 182 deemed a permanent legal resident alien by the United States
 183 Citizenship and Immigration Services, ~~together with additional~~
 184 ~~documentation establishing that she or he has resided in the~~
 185 ~~state of residence shown on the application for at least 90~~
 186 ~~consecutive days before the date that the application is~~
 187 ~~submitted.~~

188 3. An applicant for an agency or school license who is not
 189 a United States citizen or permanent legal resident alien must
 190 submit documentation issued by the United States Citizenship and
 191 Immigration Services stating that she or he is lawfully in the
 192 United States and is authorized to own and operate the type of
 193 agency or school for which she or he is applying. An employment
 194 authorization card issued by the United States Citizenship and
 195 Immigration Services is not sufficient documentation.

196 Section 4. Subsections (2) and (3) of section 493.6108,
 197 Florida Statutes, are renumbered as subsections (3) and (4),
 198 respectively, and a new subsection (2) is added to that section,
 199 to read:

200 493.6108 Investigation of applicants by Department of
 201 Agriculture and Consumer Services.—

202 (2) (a) The Department of Law Enforcement shall retain and
 203 enter into the statewide automated biometric identification

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204 system authorized under s. 943.05 all fingerprints submitted to
 205 the department pursuant to this chapter. The Department of Law
 206 Enforcement shall enroll such fingerprints in the national
 207 retained print arrest notification program when the program is
 208 operational and the Department of Law Enforcement begins
 209 participation. Thereafter, the fingerprints shall be available
 210 for arrest notifications required by paragraph (b) and all
 211 purposes and uses authorized for arrest fingerprints entered
 212 into the statewide automated biometric identification system.

213 (b) The Department of Law Enforcement shall search all
 214 arrest fingerprints against fingerprints retained pursuant to
 215 paragraph (a) and report any arrest record identified by the
 216 Department of Law Enforcement or the Federal Bureau of
 217 Investigation to the department. If the department receives
 218 information about an arrest within the state of a person who
 219 holds a valid license issued under this chapter for a crime that
 220 could potentially disqualify the person from holding such a
 221 license, the department shall provide the arrest information to
 222 the agency that employs the licensee.

223 Section 5. Subsection (3) of section 493.6113, Florida
 224 Statutes, is amended to read:

225 493.6113 Renewal application for licensure.—

226 (3) (a) Each licensee is responsible for renewing his or her
 227 license on or before its expiration by filing with the
 228 department an application for renewal accompanied by payment of
 229 the renewal fee and the fingerprint retention fee to cover the
 230 cost of ongoing retention in the statewide automated biometric
 231 identification system ~~prescribed license fee.~~

232 (b) In addition to the fees specified in paragraph (a), a

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233 person holding a valid license issued under this chapter before
 234 January 1, 2016, must submit upon first renewal of the license a
 235 full set of fingerprints and a fingerprint processing fee to
 236 cover the cost of entering the fingerprints into the statewide
 237 automated biometric identification system pursuant to s.
 238 493.6108(2)(a). Subsequent renewals may be completed without
 239 submission of a set of fingerprints.

240 (c)(a) Each Class "B" licensee shall additionally submit on
 241 a form prescribed by the department a certification of insurance
 242 that evidences that the licensee maintains coverage as required
 243 under s. 493.6110.

244 (d)(b) Each Class "G" licensee shall additionally submit
 245 proof that he or she has received during each year of the
 246 license period a minimum of 4 hours of firearms recertification
 247 training taught by a Class "K" licensee and has complied with
 248 such other health and training requirements that the department
 249 shall adopt by rule. Proof of completion of firearms
 250 recertification training shall be submitted to the department
 251 upon completion of the training. If the licensee fails to
 252 complete the required 4 hours of annual training during the
 253 first year of the 2-year term of the license, the license shall
 254 be automatically suspended. The licensee must complete the
 255 minimum number of hours of range and classroom training required
 256 at the time of initial licensure and submit proof of completion
 257 of such training to the department before the license may be
 258 reinstated. If the licensee fails to complete the required 4
 259 hours of annual training during the second year of the 2-year
 260 term of the license, the licensee must complete the minimum
 261 number of hours of range and classroom training required at the

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262 time of initial licensure and submit proof of completion of such
 263 training to the department before the license may be renewed.

264 The department may waive the firearms training requirement if:

265 1. The applicant provides proof that he or she is currently
 266 certified as a law enforcement officer or correctional officer
 267 under the Criminal Justice Standards and Training Commission and
 268 has completed law enforcement firearms requalification training
 269 annually during the previous 2 years of the licensure period;

270 2. The applicant provides proof that he or she is currently
 271 certified as a federal law enforcement officer and has received
 272 law enforcement firearms training administered by a federal law
 273 enforcement agency annually during the previous 2 years of the
 274 licensure period; or

275 3. The applicant submits a valid firearm certificate among
 276 those specified in s. 493.6105(6)(a) and provides proof of
 277 having completed requalification training during the previous 2
 278 years of the licensure period.

279 (e)(e) Each Class "DS" or Class "RS" licensee shall
 280 additionally submit the current curriculum, examination, and
 281 list of instructors.

282 (f)(d) Each Class "K" licensee shall additionally submit
 283 one of the certificates specified under s. 493.6105(6) as proof
 284 that he or she remains certified to provide firearms
 285 instruction.

286 Section 6. Subsection (6) of section 493.6115, Florida
 287 Statutes, is amended to read:

288 493.6115 Weapons and firearms.—

289 (6) In addition to any other firearm approved by the
 290 department, a licensee who has been issued a Class "G" license

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 291 may carry a .38 caliber revolver; or a .380 caliber or 9
 292 millimeter semiautomatic pistol; or a .357 caliber revolver with
 293 .38 caliber ammunition only; or a .40 caliber handgun; or a .45
 294 ACP handgun while performing duties authorized under this
 295 chapter. A licensee may not carry more than two firearms upon
 296 her or his person when performing her or his duties. A licensee
 297 may only carry a firearm of the specific type and caliber with
 298 which she or he is qualified pursuant to the firearms training
 299 referenced in subsection (8) or s. 493.6113(3)(d)
 300 ~~493.6113(3)(b)~~.

301 Section 7. Paragraph (u) of subsection (1) of section
 302 493.6118, Florida Statutes, is amended to read:

303 493.6118 Grounds for disciplinary action.—

304 (1) The following constitute grounds for which disciplinary
 305 action specified in subsection (2) may be taken by the
 306 department against any licensee, agency, or applicant regulated
 307 by this chapter, or any unlicensed person engaged in activities
 308 regulated under this chapter.

309 (u) For a Class "G" licensee, failing to timely complete
 310 recertification training as required in s. 493.6113(3)(d)
 311 ~~493.6113(3)(b)~~.

312 Section 8. Subsection (2) of section 501.015, Florida
 313 Statutes, is amended to read:

314 501.015 Health studios; registration requirements and
 315 fees.—Each health studio shall:

316 (2) Remit an annual registration fee of \$300 to the
 317 department at the time of registration for each of the health
 318 studio's business locations. The department shall waive the
 319 initial registration fee for an honorably discharged veteran of

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 320 the United States Armed Forces, the spouse of such a veteran, or
 321 a business entity that has a majority ownership held by such a
 322 veteran or spouse if the department receives an application, in
 323 a format prescribed by the department, within 60 months after
 324 the date of the veteran's discharge from any branch of the
 325 United States Armed Forces. To qualify for the waiver, a veteran
 326 must provide to the department a copy of his or her DD Form 214
 327 or NGB Form 22; the spouse of a veteran must provide to the
 328 department a copy of the veteran's DD Form 214 or NGB Form 22
 329 and a copy of a valid marriage license or certificate verifying
 330 that he or she was lawfully married to the veteran at the time
 331 of discharge; or a business entity must provide to the
 332 department proof that a veteran or the spouse of a veteran holds
 333 a majority ownership in the business, a copy of the veteran's DD
 334 Form 214 or NGB Form 22, and, if applicable, a copy of a valid
 335 marriage license or certificate verifying that the spouse of the
 336 veteran was lawfully married to the veteran at the time of
 337 discharge.

338 Section 9. Subsections (1) and (2) of section 501.0581,
 339 Florida Statutes, are amended to read:

340 501.0581 Commercial Weight-Loss Practices Act; civil
 341 remedies.—

342 (1) The Department of ~~Health Agriculture and Consumer~~
 343 ~~Services~~ may bring a civil action in circuit court for temporary
 344 or permanent injunctive relief to enforce ~~the provisions of~~ this
 345 act and may seek other appropriate civil relief, including a
 346 civil penalty not to exceed \$5,000 for each violation, for
 347 restitution and damages for injured customers, court costs, and
 348 reasonable attorney ~~attorney's~~ fees.

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349 (2) The Department of ~~Health Agriculture and Consumer~~
 350 ~~Services~~ may terminate any investigation or action upon
 351 agreement by the offender to pay a stipulated civil penalty,
 352 make restitution or pay damages to customers, or satisfy any
 353 other relief authorized herein and requested by the department.

354 Section 10. Subsection (3) of section 501.0583, Florida
 355 Statutes, is amended to read:

356 501.0583 Selling, delivering, bartering, furnishing, or
 357 giving weight-loss pills to persons under age 18; penalties;
 358 defense.—

359 (3) A first violation of subsection (2) or this subsection
 360 is punishable by a fine of \$100. A second violation of
 361 subsection (2) or this subsection is punishable by a fine of
 362 \$250. A third violation of subsection (2) or this subsection is
 363 punishable by a fine of \$500. A fourth or subsequent violation
 364 of subsection (2) or this subsection is punishable by a fine as
 365 determined by the Department of ~~Health Agriculture and Consumer~~
 366 ~~Services~~, not to exceed \$1,000.

367 Section 11. Paragraph (j) of subsection (2) and paragraph
 368 (b) of subsection (5) of section 501.605, Florida Statutes, are
 369 amended to read:

370 501.605 Licensure of commercial telephone sellers.—

371 (2) An applicant for a license as a commercial telephone
 372 seller must submit to the department, in such form as it
 373 prescribes, a written application for the license. The
 374 application must set forth the following information:

375 (j) The complete street address of each location,
 376 designating the principal location, from which the applicant
 377 will be doing business. The street address may not be ~~if any~~

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378 ~~location is a mail drop, this shall be disclosed as such.~~

379
 380 The application shall be accompanied by a copy of any: Script,
 381 outline, or presentation the applicant will require or suggest a
 382 salesperson to use when soliciting, or, if no such document is
 383 used, a statement to that effect; sales information or
 384 literature to be provided by the applicant to a salesperson; and
 385 sales information or literature to be provided by the applicant
 386 to a purchaser in connection with any solicitation.

387 (5) An application filed pursuant to this part must be
 388 verified and accompanied by:

389 (b) A fee for licensing in the amount of \$1,500. The fee
 390 shall be deposited into the General Inspection Trust Fund. The
 391 department shall waive the initial licensing fee for an
 392 honorably discharged veteran of the United States Armed Forces,
 393 the spouse of such a veteran, or a business entity that has a
 394 majority ownership held by such a veteran or spouse if the
 395 department receives an application, in a format prescribed by
 396 the department, within 60 months after the date of the veteran's
 397 discharge from any branch of the United States Armed Forces. To
 398 qualify for the waiver, a veteran must provide to the department
 399 a copy of his or her DD Form 214 or NGB Form 22; the spouse of a
 400 veteran must provide to the department a copy of the veteran's
 401 DD Form 214 or NGB Form 22 and a copy of a valid marriage
 402 license or certificate verifying that he or she was lawfully
 403 married to the veteran at the time of discharge; or a business
 404 entity must provide to the department proof that a veteran or
 405 the spouse of a veteran holds a majority ownership in the
 406 business, a copy of the veteran's DD Form 214 or NGB Form 22,

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407 and, if applicable, a copy of a valid marriage license or
 408 certificate verifying that the spouse of the veteran was
 409 lawfully married to the veteran at the time of discharge.

410 Section 12. Paragraph (b) of subsection (2) of section
 411 501.607, Florida Statutes, is amended to read:

412 501.607 Licensure of salespersons.—

413 (2) An application filed pursuant to this section must be
 414 verified and be accompanied by:

415 (b) A fee for licensing in the amount of \$50 per
 416 salesperson. The fee shall be deposited into the General
 417 Inspection Trust Fund. The fee for licensing may be paid after
 418 the application is filed, but must be paid within 14 days after
 419 the applicant begins work as a salesperson. The department shall
 420 waive the initial licensing fee for an honorably discharged
 421 veteran of the United States Armed Forces, the spouse of a
 422 veteran, or a business entity that has a majority ownership held
 423 by such a veteran or spouse if the department receives an
 424 application, in a format prescribed by the department, within 60
 425 months after the date of the veteran's discharge from any branch
 426 of the United States Armed Forces. To qualify for the waiver, a
 427 veteran must provide to the department a copy of his or her DD
 428 Form 214 or NGB Form 22; the spouse of a veteran must provide to
 429 the department a copy of the veteran's DD Form 214 or NGB Form
 430 22 and a copy of a valid marriage license or certificate
 431 verifying that he or she was lawfully married to the veteran at
 432 the time of discharge; or a business entity must provide to the
 433 department proof that a veteran or the spouse of a veteran holds
 434 a majority ownership in the business, a copy of the veteran's DD
 435 Form 214 or NGB Form 22, and, if applicable, a copy of a valid

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436 marriage license or certificate verifying that the spouse of the
 437 veteran was lawfully married to the veteran at the time of
 438 discharge.

439 Section 13. Subsection (3) of section 507.03, Florida
 440 Statutes, is amended to read:

441 507.03 Registration.—

442 (3) (a) Registration fees shall be calculated at the rate of
 443 \$300 per year per mover or moving broker. All amounts collected
 444 shall be deposited by the Chief Financial Officer to the credit
 445 of the General Inspection Trust Fund of the department for the
 446 sole purpose of administration of this chapter.

447 (b) The department shall waive the initial registration fee
 448 for an honorably discharged veteran of the United States Armed
 449 Forces, the spouse of such a veteran, or a business entity that
 450 has a majority ownership held by such a veteran or spouse if the
 451 department receives an application, in a format prescribed by
 452 the department, within 60 months after the date of the veteran's
 453 discharge from any branch of the United States Armed Forces. To
 454 qualify for the waiver, a veteran must provide to the department
 455 a copy of his or her DD Form 214 or NGB Form 22; the spouse of a
 456 veteran must provide to the department a copy of the veteran's
 457 DD Form 214 or NGB Form 22 and a copy of a valid marriage
 458 license or certificate verifying that he or she was lawfully
 459 married to the veteran at the time of discharge; or a business
 460 entity must provide to the department proof that a veteran or
 461 the spouse of a veteran holds a majority ownership in the
 462 business, a copy of the veteran's DD Form 214 or NGB Form 22,
 463 and, if applicable, a copy of a valid marriage license or
 464 certificate verifying that the spouse of the veteran was

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465 lawfully married to the veteran at the time of discharge.
 466 Section 14. Subsection (3) of section 527.02, Florida
 467 Statutes, is amended to read:
 468 527.02 License; penalty; fees.—
 469 (3) (a) ~~An any~~ applicant for an original license who submits
 470 an ~~whose~~ application ~~is submitted~~ during the last 6 months of
 471 the license year may have the original license fee reduced by
 472 one-half for the 6-month period. This provision applies ~~shall~~
 473 ~~apply~~ only to those companies applying for an original license
 474 and may ~~shall~~ not be applied to licensees who held a license
 475 during the previous license year and failed to renew the
 476 license. The department may refuse to issue an initial license
 477 to an ~~any~~ applicant who is under investigation in any
 478 jurisdiction for an action that would constitute a violation of
 479 this chapter until such time as the investigation is complete.
 480 (b) The department shall waive the original license fee for
 481 an honorably discharged veteran of the United States Armed
 482 Forces, the spouse of such a veteran, or a business entity that
 483 has a majority ownership held by such a veteran or spouse if the
 484 department receives an application, in a format prescribed by
 485 the department, within 60 months after the date of the veteran's
 486 discharge from any branch of the United States Armed Forces. To
 487 qualify for the waiver, a veteran must provide to the department
 488 a copy of his or her DD Form 214 or NGB Form 22; the spouse of a
 489 veteran must provide to the department a copy of the veteran's
 490 DD Form 214 or NGB Form 22 and a copy of a valid marriage
 491 license or certificate verifying that he or she was lawfully
 492 married to the veteran at the time of discharge; or a business
 493 entity must provide to the department proof that a veteran or

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494 the spouse of a veteran holds a majority ownership in the
 495 business, a copy of the veteran's DD Form 214 or NGB Form 22,
 496 and, if applicable, a copy of a valid marriage license or
 497 certificate verifying that the spouse of the veteran was
 498 lawfully married to the veteran at the time of discharge.
 499 Section 15. Paragraph (c) of subsection (3) of section
 500 539.001, Florida Statutes, is amended to read:
 501 539.001 The Florida Pawnbroking Act.—
 502 (3) LICENSE REQUIRED.—
 503 (c) Each license is valid for a period of 1 year unless it
 504 is earlier relinquished, suspended, or revoked. Each license
 505 shall be renewed annually, and each licensee shall, initially
 506 and annually thereafter, pay to the agency a license fee of \$300
 507 for each license held. The agency shall waive the initial
 508 license fee for an honorably discharged veteran of the United
 509 States Armed Forces, the spouse of such a veteran, or a business
 510 entity that has a majority ownership held by such a veteran or
 511 spouse if the agency receives an application, in a format
 512 prescribed by the agency, within 60 months after the date of the
 513 veteran's discharge from any branch of the United States Armed
 514 Forces. To qualify for the waiver, a veteran must provide to the
 515 department a copy of his or her DD Form 214 or NGB Form 22; the
 516 spouse of a veteran must provide to the agency a copy of the
 517 veteran's DD Form 214 or NGB Form 22 and a copy of a valid
 518 marriage license or certificate verifying that he or she was
 519 lawfully married to the veteran at the time of discharge; or a
 520 business entity must provide to the agency proof that a veteran
 521 or the spouse of a veteran holds a majority ownership in the
 522 business, a copy of the veteran's DD Form 214 or NGB Form 22,

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523 and, if applicable, a copy of a valid marriage license or
 524 certificate verifying that the spouse of the veteran was
 525 lawfully married to the veteran at the time of discharge.
 526 Section 16. Subsection (3) of section 559.904, Florida
 527 Statutes, is amended to read:
 528 559.904 Motor vehicle repair shop registration;
 529 application; exemption.—
 530 (3) (a) Each application for registration must be
 531 accompanied by a registration fee calculated on a per-year basis
 532 as follows:
 533 1. ~~(a)~~ If the place of business has 1 to 5 employees: \$50.
 534 2. ~~(b)~~ If the place of business has 6 to 10 employees: \$150.
 535 3. ~~(c)~~ If the place of business has 11 or more employees:
 536 \$300.
 537 (b) The department shall waive the initial registration fee
 538 for an honorably discharged veteran of the United States Armed
 539 Forces, the spouse of such a veteran, or a business entity that
 540 has a majority ownership held by such a veteran or spouse if the
 541 department receives an application, in a format prescribed by
 542 the department, within 60 months after the date of the veteran's
 543 discharge from any branch of the United States Armed Forces. To
 544 qualify for the waiver, a veteran must provide to the department
 545 a copy of his or her DD Form 214 or NGB Form 22; the spouse of a
 546 veteran must provide to the department a copy of the veteran's
 547 DD Form 214 or NGB Form 22 and a copy of a valid marriage
 548 license or certificate verifying that he or she was lawfully
 549 married to the veteran at the time of discharge; or a business
 550 entity must provide to the department proof that a veteran or
 551 the spouse of a veteran holds a majority ownership in the

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552 business, a copy of the veteran's DD Form 214 or NGB Form 22,
 553 and, if applicable, a copy of a valid marriage license or
 554 certificate verifying that the spouse of the veteran was
 555 lawfully married to the veteran at the time of discharge.
 556 Section 17. Paragraph (c) is added to subsection (2) of
 557 section 559.928, Florida Statutes, to read:
 558 559.928 Registration.—
 559 (2)
 560 (c) The department shall waive the initial registration fee
 561 for an honorably discharged veteran of the United States Armed
 562 Forces, the spouse of such a veteran, or a business entity that
 563 has a majority ownership held by such a veteran or spouse if the
 564 department receives an application, in a format prescribed by
 565 the department, within 60 months after the date of the veteran's
 566 discharge from any branch of the United States Armed Forces. To
 567 qualify for the waiver, a veteran must provide to the department
 568 a copy of his or her DD Form 214 or NGB Form 22; the spouse of a
 569 veteran must provide to the department a copy of the veteran's
 570 DD Form 214 or NGB Form 22 and a copy of a valid marriage
 571 license or certificate verifying that he or she was lawfully
 572 married to the veteran at the time of discharge; or the business
 573 entity must provide to the department proof that a veteran or
 574 the spouse of a veteran holds a majority ownership in the
 575 business, a copy of the veteran's DD Form 214 or NGB Form 22,
 576 and, if applicable, a copy of a valid marriage license or
 577 certificate verifying that the spouse of the veteran was
 578 lawfully married to the veteran at the time of discharge.
 579 Section 18. Paragraph (b) of subsection (5), paragraph (a)
 580 of subsection (10), and subsections (15) and (16) of section

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581 616.242, Florida Statutes, are amended to read:
 582 616.242 Safety standards for amusement rides.—
 583 (5) ANNUAL PERMIT.—
 584 (b) To apply for an annual permit, an owner must submit to
 585 the department a written application on a form prescribed by
 586 rule of the department, which must include the following:
 587 1. The legal name, address, and primary place of business
 588 of the owner.
 589 2. A description, manufacturer's name, serial number, model
 590 number and, if previously assigned, the United States Amusement
 591 Identification Number of the amusement ride.
 592 3. A valid certificate of insurance ~~or bond~~ for each
 593 amusement ride.
 594 4. An affidavit of compliance that the amusement ride was
 595 inspected in person by the affiant and that the amusement ride
 596 is in general conformance with the requirements of this section
 597 and all applicable rules adopted by the department. The
 598 affidavit must be executed by a professional engineer or a
 599 qualified inspector at least no earlier than 60 days before, but
 600 not later than, the date ~~of the filing of~~ the application is
 601 filed with the department. The owner shall request inspection
 602 and permitting of the amusement ride within 60 days ~~after~~ of the
 603 date ~~of filing~~ the application is filed with the department. The
 604 department shall inspect and permit the amusement ride within 60
 605 days after the date filing the application is filed with the
 606 department.
 607 5. If required by subsection (6), an affidavit of
 608 nondestructive testing dated and executed at least no earlier
 609 than 60 days before ~~prior to~~, but not later than, the date ~~of~~

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610 ~~the filing of~~ the application is filed with the department. The
 611 owner shall request inspection and permitting of the amusement
 612 ride within 60 days ~~after~~ of the date ~~of filing~~ the application
 613 is filed with the department. The department shall inspect and
 614 permit the amusement ride within 60 days after the date filing
 615 the application is filed with the department.
 616 6. A request for inspection.
 617 7. Upon request, the owner shall, at no cost to the
 618 department, provide the department a copy of the manufacturer's
 619 current recommended operating instructions in the possession of
 620 the owner, the owner's operating fact sheet, and any written
 621 bulletins in the possession of the owner concerning the safety,
 622 operation, or maintenance of the amusement ride.
 623 (10) EXEMPTIONS.—
 624 (a) This section does not apply to:
 625 1. Permanent facilities that employ at least 1,000 full-
 626 time employees and that maintain full-time, in-house safety
 627 inspectors. Furthermore, the permanent facilities must file an
 628 affidavit of the annual inspection with the department, on a
 629 form prescribed by rule of the department. Additionally, the
 630 Department of Agriculture and Consumer Services may consult
 631 annually with the permanent facilities regarding industry safety
 632 programs.
 633 2. Any playground operated by a school, local government,
 634 or business licensed under chapter 509, if the playground is an
 635 incidental amenity and the operating entity is not primarily
 636 engaged in providing amusement, pleasure, thrills, or
 637 excitement.
 638 3. Museums or other institutions principally devoted to the

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639 exhibition of products of agriculture, industry, education,
640 science, religion, or the arts.

641 4. Conventions or trade shows for the sale or exhibit of
642 amusement rides if there are a minimum of 15 amusement rides on
643 display or exhibition, and if any operation of such amusement
644 rides is limited to the registered attendees of the convention
645 or trade show.

646 5. Skating rinks, arcades, ~~laser lazer~~ or paint ball war
647 games, bowling alleys, miniature golf courses, mechanical bulls,
648 inflatable rides, trampolines, ball crawls, exercise equipment,
649 jet skis, paddle boats, airboats, helicopters, airplanes,
650 parasails, hot air or helium balloons whether tethered or
651 untethered, theatres, batting cages, stationary spring-mounted
652 fixtures, rider-propelled merry-go-rounds, games, side shows,
653 live animal rides, or live animal shows.

654 6. Go-karts operated in competitive sporting events if
655 participation is not open to the public.

656 7. Nonmotorized playground equipment that is not required
657 to have a manager.

658 8. Coin-actuated amusement rides designed to be operated by
659 depositing coins, tokens, credit cards, debit cards, bills, or
660 other cash money and which are not required to have a manager,
661 and which have a capacity of six persons or less.

662 9. Facilities described in s. 549.09(1)(a) when such
663 facilities are operating cars, trucks, or motorcycles only.

664 10. Battery-powered cars or other vehicles that are
665 designed to be operated by children 7 years of age or under and
666 that cannot exceed a speed of 4 miles per hour.

667 11. Mechanically driven vehicles that pull train cars,

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668 carts, wagons, or other similar vehicles, that are not confined
669 to a metal track or confined to an area but are steered by an
670 operator and do not exceed a speed of 4 miles per hour.

671 12. A water-related amusement ride operated by a business
672 licensed under chapter 509 if the water-related amusement ride
673 is an incidental amenity and the operating business is not
674 primarily engaged in providing amusement, pleasure, thrills, or
675 excitement and does not offer day rates.

676 13. An amusement ride at a private, membership-only
677 facility if the amusement ride is an incidental amenity and the
678 facility is not open to the general public, is not primarily
679 engaged in providing amusement, pleasure, thrills, or
680 excitement, and does not offer day rates.

681 14. A nonprofit permanent facility registered under chapter
682 496 which is not open to the general public.

683 (15) INSPECTION BY OWNER OR MANAGER. ~~Before~~ Prior to
684 opening on each day of operation and ~~before~~ prior to any
685 inspection by the department, the owner or manager of an
686 amusement ride must inspect and test the amusement ride to
687 ensure compliance with all requirements of this section. Each
688 inspection must be recorded on a form prescribed by rule of the
689 department and signed by the person who conducted the
690 inspection. In lieu of the form prescribed by rule of the
691 department, the owner or manager may request approval of an
692 alternate form if the alternate form includes, at a minimum, the
693 information required on the form prescribed by rule of the
694 department. Inspection records of the last 14 daily inspections
695 must be kept on site by the owner or manager and made
696 immediately available to the department upon request.

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697 (16) TRAINING OF EMPLOYEES.—The owner or manager of an any
 698 amusement ride shall maintain a record of employee training for
 699 each employee authorized to operate, assemble, disassemble,
 700 transport, or conduct maintenance on an amusement ride, on a
 701 form prescribed by rule of the department. In lieu of the form
 702 prescribed by rule of the department, the owner or manager may
 703 request approval of an alternate form if the alternate form
 704 includes, at a minimum, the information required on the form
 705 prescribed by rule of the department. The training record must
 706 be kept on site by the owner or manager and made immediately
 707 available to the department upon request. Training may not be
 708 conducted when an amusement ride is open to the public unless
 709 the training is conducted under the supervision of an employee
 710 who is trained in the operation of that ride. The owner or
 711 manager shall certify that each employee is trained, as required
 712 by this section and any rules adopted thereunder, on the
 713 amusement ride for which the employee is responsible.

714 Section 19. Paragraph (h) of subsection (2), subsection
 715 (10), and paragraph (a) of subsection (11) of section 790.06,
 716 Florida Statutes, are amended to read:

717 790.06 License to carry concealed weapon or firearm.—

718 (2) The Department of Agriculture and Consumer Services
 719 shall issue a license if the applicant:

720 (h) Demonstrates competence with a firearm by any one of
 721 the following:

722 1. Completion of any hunter education or hunter safety
 723 course approved by the Fish and Wildlife Conservation Commission
 724 or a similar agency of another state;

725 2. Completion of any National Rifle Association firearms

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726 safety or training course;

727 3. Completion of any firearms safety or training course or
 728 class available to the general public offered by a law
 729 enforcement, junior college, college, or private or public
 730 institution or organization or firearms training school,
 731 utilizing instructors certified by the National Rifle
 732 Association, Criminal Justice Standards and Training Commission,
 733 or the Department of Agriculture and Consumer Services;

734 4. Completion of any law enforcement firearms safety or
 735 training course or class offered for security guards,
 736 investigators, special deputies, or any division or subdivision
 737 of law enforcement or security enforcement;

738 5. Presents evidence of equivalent experience with a
 739 firearm through participation in organized shooting competition
 740 or military service;

741 6. Is licensed or has been licensed to carry a firearm in
 742 this state or a county or municipality of this state, unless
 743 such license has been revoked for cause; or

744 7. Completion of any firearms training or safety course or
 745 class conducted by a state-certified or National Rifle
 746 Association certified firearms instructor;

747
 748 A photocopy of a certificate of completion of any of the courses
 749 or classes; ~~or~~ an affidavit from the instructor, school, club,
 750 organization, or group that conducted or taught such said course
 751 or class attesting to the completion of the course or class by
 752 the applicant; or a copy of any document that which shows
 753 completion of the course or class or evidences participation in
 754 firearms competition shall constitute evidence of qualification

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755 under this paragraph. ~~At any~~ person who conducts a course
 756 pursuant to subparagraph 2., subparagraph 3., or subparagraph
 757 7., or who, as an instructor, attests to the completion of such
 758 courses, must maintain records certifying that he or she
 759 observed the student safely handle and discharge the firearm in
 760 his or her physical presence and that the discharge of the
 761 firearm included live fire using a firearm and ammunition as
 762 defined in s. 790.001;

763 (10) A license issued under this section shall be suspended
 764 or revoked pursuant to chapter 120 if the licensee:

765 (a) Is found to be ineligible under the criteria set forth
 766 in subsection (2);

767 (b) Develops or sustains a physical infirmity which
 768 prevents the safe handling of a weapon or firearm;

769 (c) Is convicted of a felony which would make the licensee
 770 ineligible to possess a firearm pursuant to s. 790.23;

771 (d) Is found guilty of a crime under the provisions of
 772 chapter 893, or similar laws of any other state, relating to
 773 controlled substances;

774 (e) Is committed as a substance abuser under chapter 397,
 775 or is deemed a habitual offender under s. 856.011(3), or similar
 776 laws of any other state;

777 (f) Is convicted of a second violation of s. 316.193, or a
 778 similar law of another state, within 3 years ~~after~~ of a first
 779 ~~previous~~ conviction of such section, or similar law of another
 780 state, even though the first violation may have occurred before
 781 ~~prior to~~ the date on which the application was submitted;

782 (g) Is adjudicated an incapacitated person under s.
 783 744.331, or similar laws of any other state; or

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784 (h) Is committed to a mental institution under chapter 394,
 785 or similar laws of any other state.

786
 787 Notwithstanding s. 120.60(5), notice of the suspension or
 788 revocation of a concealed weapon or firearm license or the
 789 suspension of the processing of an application for such license
 790 shall be given by personal delivery to the licensee, by first-
 791 class mail in an envelope, postage prepaid, addressed to the
 792 licensee at his or her last known mailing address furnished to
 793 the department, or by e-mail if the licensee has provided an e-
 794 mail address to the department. Such mailing or sending of e-
 795 mail by the department constitutes notification, and any failure
 796 by the person to receive the mailed or e-mailed notice does not
 797 stay the effective date or term of the suspension or revocation.
 798 The giving of notice by mail is complete upon expiration of 20
 799 days after deposit in the United States mail. Proof of the
 800 giving of notice shall be made by entry in the records of the
 801 department that such notice was given. The entry is admissible
 802 in the courts of this state and constitutes sufficient proof
 803 that such notice was given.

804 (11) (a) At least ~~No less than~~ 90 days before the expiration
 805 date of the license, the Department of Agriculture and Consumer
 806 Services shall mail to each licensee a written notice of the
 807 expiration and a renewal form prescribed by the Department of
 808 Agriculture and Consumer Services. The licensee must renew his
 809 or her license on or before the expiration date by filing with
 810 the Department of Agriculture and Consumer Services the renewal
 811 form containing an a-notarized affidavit submitted under oath
 812 and under penalty of perjury stating that the licensee remains

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813 qualified pursuant to the criteria specified in subsections (2)
 814 and (3), a color photograph as specified in paragraph (5) (e),
 815 and the required renewal fee. Out-of-state residents must also
 816 submit a complete set of fingerprints and fingerprint processing
 817 fee. The license shall be renewed upon receipt of the completed
 818 renewal form, color photograph, appropriate payment of fees,
 819 and, if applicable, fingerprints. Additionally, a licensee who
 820 fails to file a renewal application on or before its expiration
 821 date must renew his or her license by paying a late fee of \$15.
 822 A license may not be renewed 180 days or more after its
 823 expiration date, and such a license is deemed to be permanently
 824 expired. A person whose license has been permanently expired may
 825 reapply for licensure; however, an application for licensure and
 826 fees under subsection (5) must be submitted, and a background
 827 investigation shall be conducted pursuant to this section. A
 828 person who knowingly files false information under this
 829 subsection is subject to criminal prosecution under s. 837.06.

830 Section 20. Subsection (8) is added to section 790.0625,
 831 Florida Statutes, to read:

832 790.0625 Appointment of tax collectors to accept
 833 applications for a concealed weapon or firearm license; fees;
 834 penalties.-

835 (8) Upon receipt of a completed renewal application, a new
 836 color photograph, and appropriate payment of fees, a tax
 837 collector authorized to accept renewal applications for
 838 concealed weapon or firearm licenses under this section may,
 839 upon approval and confirmation of license issuance by the
 840 department, print and deliver a concealed weapon or firearm
 841 license to a licensee renewing his or her license at the tax

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842 collector's office.

843 Section 21. This act shall take effect July 1, 2015.

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The Florida Senate

Committee Agenda Request

To: Senator Nancy C. Detert, Chair
Committee on Commerce and Tourism

Mr. Todd McKay, Staff Director
Ms. Patty Blackburn, Committee Administrative Assistant

Subject: Committee Agenda Request

Date: March 4, 2015

I respectfully request that **Senate Bill #1444**, relating to Consumer Licensing, be placed on the:

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

A handwritten signature in blue ink, appearing to read "Garrett Richter", written over a horizontal line.

Senator Garrett Richter
Florida Senate, District 23

APPEARANCE RECORD

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

3/16/15

SB1444
Bill Number (if applicable)

Meeting Date

Amendment Barcode (if applicable)

Topic Consumer Licensing

Name Timothy Qualls

Job Title Executive Director - Florida Tax Collectors Association

Address 216 S. Monroe St

Phone 222-7206

Street

Tally

FL

32301

Email TQualls@YULAW.NET

City

State

Zip

Speaking: For Against Information

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

Representing Florida Tax Collectors Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/14/15
Meeting Date

SB 1444
Bill Number (if applicable)

Topic Consumer Licensing

Amendment Barcode (if applicable)

Name Jonathan Rees

Job Title Deputy Director, Legislative Affairs

Address 400 S. Monroe St.
Street

Phone (850) 617-7700

Tallahassee FL 32329
City State Zip

Email Jonathan.Rees@floridafarm.com
florida.com

Speaking: For Against Information

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

Representing Florida Department of Agriculture and Consumer Services

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 1446

INTRODUCER: Senator Richter

SUBJECT: Public Records/Department of Agriculture and Consumer Services

DATE: March 13, 2015

REVISED: _____

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

I. Summary:

SB 1446 enacts an exemption from the public records access requirements of Art. I, s. 24(a) of the State Constitution and s. 119.07(1), F.S., for:

- Criminal or civil intelligence, investigative information, or any other information received from another state or federal regulatory, administrative, or criminal justice agency which is confidential or exempt pursuant to the laws of that state or federal law held by the Department of Agriculture and Consumer Services (department); and
- Information received or developed by the department and another state or federal regulatory, administrative, or criminal justice agency as part of a joint or multiagency examination or investigation.

This exemption would not apply to information obtained or developed by the department that would otherwise be available for public inspection if the department performed an independent investigation.

The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a public necessity statement as required by the Florida Constitution.

II. Present Situation:

Public Records and Open Meetings Requirements

The Florida Constitution provides that the public has the right to access government records and meetings. The public may inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on

their behalf.¹ The public also has a right to be afforded notice and access to meetings of any collegial public body of the executive branch of state government or of any local government.² The Legislature's meetings must also be open and noticed to the public, unless there is an exception provided by the constitution.³

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records and meetings. The Public Records Act⁴ guarantees every person's right to inspect and copy any state or local government public record.⁵ The Sunshine Law⁶ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken to be noticed and open to the public.⁷

The Legislature may create an exemption to public records or open meetings requirements.⁸ An exemption must specifically state the public necessity justifying the exemption⁹ and must be tailored to accomplish the stated purpose of the law.¹⁰

Open Government Sunset Review Act

The Open Government Sunset Review Act ("OGSR Act") prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹¹ The OGSR Act provides that an exemption automatically repeals on October 2nd of the fifth year

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(b).

³ FLA. CONST., art. I, s. 24(b).

⁴ Chapter 119, F.S.

⁵ Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992). The Legislature's records are public pursuant to s. 11.0431, F.S.

⁶ Section 286.011, F.S.

⁷ Section 286.011(1)-(2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in the Florida Constitution. Article III, s. 4(e) of the Florida Constitution provides that legislative committee meetings must be open and noticed to the public. In addition, prearranged gatherings, between more than two members of the Legislature, or between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon or to take formal legislative action, must be reasonably open to the public.

⁸ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential* and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR Act does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.

after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹²

The OGSR Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹³ An exemption serves an identifiable purpose if it meets one of the following criteria:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁴
- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;¹⁵ or
- It protects trade or business secrets.¹⁶

In addition, the Legislature must find that the identifiable public purpose is compelling enough to override Florida's open government public policy and that the purpose of the exemption cannot be accomplished without the exemption.¹⁷

The OGSR Act also requires specified questions to be considered during the review process.¹⁸ In examining an exemption, the OGSR Act asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.¹⁹ If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²⁰

The Department of Agriculture and Consumer Services

The Department of Agriculture and Consumer Services ("department" or "DACS") safeguards the public from unsafe or defective products and deceptive business practices. The Division of Consumer Services within the DACS regulates specific business activities, including commercial

¹² Section 119.15(3), F.S.

¹³ Section 119.15(6)(b), F.S.

¹⁴ Section 119.15(6)(b)1., F.S.

¹⁵ Section 119.15(6)(b)2., F.S.

¹⁶ Section 119.15(6)(b)3., F.S.

¹⁷ Section 119.15(6)(b), F.S.

¹⁸ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

¹⁹ FLA. CONST., art. I, s. 24(c).

²⁰ Section 119.15(7), F.S.

weight loss practices, telephone solicitations, pawnshops, health studios, sellers of travel, and telemarketing.²¹

The department investigates and regulates several professions in Florida. Most recently the department's oversight and regulation of charitable organizations was significantly expanded to include oversight of charitable organizations and sponsors, professional fundraising consultants, and professional solicitors.²²

Florida's public record laws currently make any information obtained by the department in administrative and civil investigations of charitable organizations open to the public. According to the department, this presents a hurdle to partnering with other state and federal agencies, such as the Federal Trade Commission (FTC) or Internal Revenue Service (IRS), because the department cannot maintain the same level of privacy adopted and required by those federal and other state agencies.²³ As a result, the department's investigations are hindered because it is often unable to gather pertinent information from, enter into confidentiality agreements with, or participate in multi-jurisdiction task forces with other state and federal agencies.

The FTC operates a Consumer Sentinel database that is protected from public record disclosure. Information from this database can only be provided to a state agency that agrees not to disseminate the information.²⁴ This database contains information on subjects relating to:

- Identity Theft,
- Do-Not-Call Registry Violations,
- Computers, the Internet, and Online Auctions,
- Telemarketing Scams,
- Advance-fee loans and credit scams,
- Immigration services,
- Sweepstakes, Lotteries, and Prizes,
- Business Opportunities and Work-at-home Schemes,
- Health and Weight Loss Products, and
- Debt Collection, Credit Reports, and Financial Matters.

Additionally, the IRS has expressed a willingness to share information on a case-by-case basis, should the department be able to prevent disclosure of the information beyond the department.²⁵ The IRS has access to tax filing information that might be valuable to the department when investigating whether an organization is compliant with Florida law.

III. Effect of Proposed Changes:

The bill, which is contingent upon passage of SB 1444, creates a public record exemption for:

²¹ See <http://www.freshfromflorida.com/Divisions-Offices/Consumer-Services>, last accessed March 11, 2015.

²² See chapter 2014-122, L.O.F.

²³ Florida Department of Agriculture and Consumer Services, *HB 995 Agency Analysis*, (March 3, 2015) (on file with the Senate Committee on Commerce and Tourism).

²⁴ *Id.*

²⁵ *Id.*

- Criminal or civil intelligence or investigative information from another state or federal regulatory, administrative, or criminal justice agency which is already deemed confidential and exempt; and
- Information received or developed in a joint or multi-agency investigation from another state or federal regulatory, administrative, or criminal justice agency; information may be obtained in accordance with the conditions imposed by the joint multi-agency agreement.

The exemption will not apply to information obtained or developed by the department which would otherwise be available for public inspection if the department obtained the information by its independent investigation. The change will strengthen relations between the department and other local, state, and federal agencies that will be able to share confidential and exempt information on investigations with the department.

The bill's exemption will expire on October 2, 2020, pursuant to the OGSR Act, unless saved by the Legislature through reenactment.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Section 24(c), Art. I of the Florida Constitution requires a two-thirds vote of the members present and voting for passage of a newly created or expanded public-records or public-meetings exemption. Therefore, this bill requires a two-thirds vote for passage.

Public Necessity Statement

Section 24(c), Art. I of the Florida Constitution requires a public necessity statement for a newly created or expanded public-records or public-meetings exemption. Therefore, this bill includes a public necessity statement.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Aggrieved members of the public may see a quicker resolution, including payment of restitution, to their complaints against fraudulent and unlicensed activity by “charitable organizations.”

C. Government Sector Impact:

The bill may make the department’s investigations of charitable organizations’ activities more efficient, and thus less costly.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 570.077, F.S.

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

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

None.

B. Amendments:

None.

By Senator Richter

23-01727-15

20151446__

A bill to be entitled

An act relating to public records; creating s.

570.077, F.S.; providing an exemption from public

records requirements for information received by the

Department of Agriculture and Consumer Services from

another state or federal agency and which is otherwise

confidential or exempt pursuant to the laws of the

other state or federal law; providing an exemption

from public records requirements for information

received or developed by the department as part of an

investigation with another state or federal agency;

providing applicability; providing for future

legislative review and repeal; providing a statement

of public necessity; providing a contingent effective

date.

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

Section 1. Section 570.077, Florida Statutes, is created to read:

570.077 Confidentiality of intelligence and investigative information.-

(1) The following information held by the Department of Agriculture and Consumer Services before, on, or after July 1, 2015, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a) Criminal and civil intelligence, investigative information, and any other information received from another state or federal regulatory, administrative, or criminal justice

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agency which is confidential or exempt pursuant to the laws of the other state or federal law.

(b) Information that is received or developed by the department as part of a joint or multiagency examination or investigation with another state or federal regulatory, administrative, or criminal justice agency. The department may obtain and use the information in accordance with the conditions imposed by the joint or multiagency agreement.

(2) Subsection (1) does not apply to information received or developed by the department which would otherwise be available for public inspection if the department had conducted an independent examination or investigation under Florida law.

(3) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. (1) The Legislature finds that it is a public necessity that criminal and civil intelligence, investigative information, and any other information held by the Department of Agriculture and Consumer Services before, on, or after July 1, 2015, which is received from another state or federal regulatory, administrative, or criminal justice agency and which is confidential or exempt pursuant to the laws of the other state or federal law be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Without the exemption, the department will be unable to obtain information that could assist it in pursuing violations of law under its jurisdiction. With this exemption, the department should increase efficiency of investigations by

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59 saving time in developing investigative leads, witness data, and
60 victim data.

61 (2) The Legislature finds that it is a public necessity
62 that information held by the Department of Agriculture and
63 Consumer Services which is received or developed by the
64 department as part of a joint or multiagency examination or
65 investigation with another state or federal regulatory,
66 administrative, or criminal justice agency be made confidential
67 and exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
68 Article I of the State Constitution. The exemption is necessary
69 to enable the department to participate in joint or multiagency
70 investigations and examinations. Without the exemption, the
71 department would continue to be excluded from information due to
72 the inability to maintain investigative confidentiality. Without
73 the sharing and coordination of information, governmental
74 agencies may be required to conduct duplicative independent
75 investigations or examinations in order to meet their regulatory
76 responsibilities. With this exemption, the department will
77 strengthen relationships with other local, state, and federal
78 agencies, allowing them to become more efficient by sharing
79 critical intelligence and investigative data.

80 Section 3. This act shall take effect on the same date that
81 SB ____ or similar legislation takes effect, if such legislation
82 is adopted in the same legislative session or an extension
83 thereof and becomes a law.



The Florida Senate

Committee Agenda Request

To: Senator Nancy C. Detert, Chair
Committee on Commerce and Tourism

Mr. Todd McKay, Staff Director
Ms. Patty Blackburn, Committee Administrative Assistant

Subject: Committee Agenda Request

Date: March 4, 2015

I respectfully request that **Senate Bill #1446**, relating to Public Records/Department of Agriculture and Consumer Services, be placed on the:

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

A handwritten signature in blue ink, reading "Garrett Richter", written over a horizontal line.

Senator Garrett Richter
Florida Senate, District 23

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/16/15
Meeting Date

SB 1446
Bill Number (if applicable)

Topic Public Records Exemption

Amendment Barcode (if applicable)

Name Jonathan Rees

Job Title Deputy Director, Legislative Affairs

Address 400 S. Monroe St.

Phone (850) 617-7700

Street

Tallahassee

City

State

Zip

Email Jonathan.Rees@freshfromflorida.com

Speaking: For Against Information

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

Representing Florida Department of Agriculture and Consumer Services

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.

