

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 2066

SPONSOR: Agriculture and Consumer Services Committee and Senator Thomas

SUBJECT: Agriculture and Consumer Services

DATE: March 24, 1999 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Akhavein</u>	<u>Poole</u>	<u>AG</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>FP</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill addresses the following administrative duties of the Department of Agriculture and Consumer Services (department):

- Revises requirements for the registration of antifreeze sold in the state.
- Clarifies information required on an antifreeze label, establishes product liability, and redefines the penalties for violations.
- Repeals obsolete provisions governing duties of the Division of Standards.
- Deletes a requirement that the weights and measures program be fully funded out of the General Inspection Trust Fund.
- Authorizes the Division of Fruit and Vegetables to certify and supervise certain inspectors.
- Enables the department to ensure that products listed as “Fresh from Florida” are in fact grown in Florida.
- Revises legal fence requirements.
- Clarifies that property held in trust by a fair association and property of the Florida State Fair Authority are exempt from special assessments.
- Revises requirements for the department in issuing permits to conduct a public fair or exposition.
- Revises application requirements for persons who operate amusement rides.
- Revises safety standards for amusement rides.
- Prohibits bungy catapulting and reverse bungy jumping.
- Creates the Pest Exclusion Advisory Committee within the department. Requires the committee to review the state’s pest-exclusion, detection, and eradication programs and make recommendations to the Governor and Legislature by January 1, 2001.
- Provides that a person shall not be held culpable for the death of any registered breed horses or cattle which result from weather conditions or other acts of God.

This bill amends sections 501.913, 501.916, 501.919, 501.922, 570.191, 570.48, 571.24, 571.27, 571.29, 588.011, 589.081, 593.1141, 616.05, 616.07, 616.08, 616.13, 616.15, 616.242, 616.260, 823.14, and 828.125, Florida Statutes.

This bill creates section 571.30, Florida Statutes.

This bill repeals sections 531.54, 570.46(5), and 570.952(5), Florida Statutes.

II. Present Situation:

Antifreeze Act

This act is administered by the Division of Standards of the Department of Agriculture and Consumer Services (department). Each brand of antifreeze to be distributed in Florida must be registered with the department prior to distribution. The person whose name appears on the label must make application to the department on specific forms no later than July 1 of each year. The department is authorized to suspend or revoke the registration of any person who violates or fails to comply with the provisions of this act. In addition, the department may levy a fine not to exceed \$5,000 per violation.

Current statutory language concerning registration of antifreeze brands does not match current business practices for the production and distribution of antifreeze. The overly restrictive language constricts contractual agreements between manufacturers, packagers, and distributors. Distributors (the company whose name appears on the label) often include in their agreements with manufacturers or packagers the requirement to register the product in all states that the product will be marketed. This serves as an assurance to the distributor that the minimum quality standards of each state will be met by the manufacturer or packager, and that the distributor will not be held liable for consequences beyond its control. The department requires the distributor to register its brand thus obviating the contractual protection it has established with the manufacturer or packager. Therefore, the distributors often incur additional costs to market antifreeze in Florida that are not incurred in marketing in other states.

Currently, if a consumer is defrauded by an antifreeze product, the department has no recourse but to take action against the original registrant, which is not always the person responsible for defrauding the consumer. Since the enforcement and penalties in ss. 501.919 and 501.922, F.S., specifically target the registrant, the department may be prevented from taking action against violators who are not registrants.

Weights and Measures Act

Section 531.54, F.S., requires the weights and measures program to be fully funded out of the General Inspection Trust Fund.

Agricultural Emergency Eradication Trust Fund

The Agricultural Emergency Eradication Trust Fund was created by the Legislature in 1998 to provide funds when the Commissioner of Agriculture declares an agricultural emergency. Agricultural emergency is currently defined to mean an animal or plant disease, insect infestation, or plant or pest endangering or threatening the horticultural, aquacultural, and agricultural interests in this state.

Florida Agricultural Promotional Campaign

The Florida Agricultural Promotional Campaign is an identification and promotional program designed to boost the image of Florida agriculture by increasing the public's awareness of the state's agricultural industry and its importance to the state. It enables consumers to easily identify and purchase Florida-grown and produced agricultural products at retail and food service outlets throughout the state. The campaign features four logos which are used to identify Florida-produced agricultural commodities and distinguish them from others. These logos are orange, yellow, green and blue, and depict a sun over land and water. The "Fresh from Florida" logo is used with fresh fruits and vegetables, eggs, poultry, fresh meats and foliage. Processed and stored products such as sugar, rice, orange juice, pasta and honey, bear the "from Florida" logo. The "Fresh from Florida" seafood logo depicts a fish in the sunburst, and is used on fresh seafood and aquaculture products. The "from Florida USA" logo is used to identify Florida products in the global marketplace.

The department sometimes encounters individuals who are selling foreign products or products from other states that are labeled as "Fresh from Florida." It currently has no authority to ensure consumers that produce or products bearing one of the Florida Agricultural Promotional Campaign logos are actually produced in Florida.

Withlacoochee and Goethe State Forests

For the purpose of distribution of gross receipts, the statutes currently list, by name, each county containing a portion of the Withlacoochee and Goethe State Forests. More generic language would ensure that any county that these forests expand into would get its fair share of gross receipts.

Public Fairs and Expositions

Presently, temporary amusement ride owners not affiliated with a fair association, but operating within five miles of and within 30 days before or during any public fair or exposition, are taxed \$1,000 per day. When a temporary amusement ride owner applies for a permit from the department to hold a fair, other fair associations in the area are not required to be notified.

Amusement Rides

Amusement ride owners are required to provide the department with a copy of the manufacturer's current recommended operating instructions, as well as any other written information in the owner's possession regarding the safety, operation, or maintenance of an amusement ride. Owners are allowed to submit an Affidavit of Nondestructive Testing (NDT) no earlier than 60 days prior to filing an application for an annual permit. As long as the old permit, NDT, and insurance do not expire, inspection and permitting can be delayed for up to one year. Patron advisory signs are only required to be posted when required by the manufacturer.

In 1998, the legislature substantially revised the safety standards for amusement rides. It specifically prohibited certain bungee operations, but did not include bungee catapulting or reverse bungee jumping.

The department is required to establish, by rule, fees to cover 100 percent of all costs and expenditures associated with the Bureau of Fair Rides Inspection. All fees are deposited into the General Inspection Trust Fund.

III. Effect of Proposed Changes:

Section 1. Amends s. 501.913, F.S., to establish the registrant of each brand of antifreeze as the party responsible for the quality and quantity of the product sold, offered, or exposed for sale in this state. Allows the manufacturer, the packager, or the person whose name appears on the label to register with the department.

Section 2. Amends s. 501.916, F.S., to clarify information that must be included on antifreeze labels.

Section 3. Amends s. 501.919, F.S., to clarify that the department is not required to report minor violations of ss. 501.91-501.923, F.S., when it believes that the public interest will be better served by issuing a suitable notice of warning in writing to the violator.

Section 4. Amends s. 501.922, F.S., to expand the enforcement authority of the department from registrants to anyone who violates ss. 501.91-501.923, F.S, for the imposition of penalties. Allows the department to:

- Impose an administrative fine of not more than \$1,000 per violation for a first-time offender.
- Impose an administrative fine of not more then \$5,000 per violation for a second-time or repeat offender.
- Revoke or suspend any registration for a period not to exceed one year.
- Suspend all registrations if a registrant fails to pay a fine within 30 days after imposition until the fine is paid.

Section 5. Repeals s. 531.54, F.S., to remove a requirement that the weights and measures program be fully funded from the General Inspection Trust Fund.

Section 6. Amends s. 570.191, F.S., to clarify the definition of “agricultural emergency.”

Section 7. Repeals subsection (5) of s. 570.46, F.S., to remove a reference to the Consumer Products Testing Laboratory which was dissolved in 1998.

Section 8. Amends s. 570.48, F.S., to authorize the Division of Fruit and Vegetables to certify and license inspectors.

Section 9. Repeals subsection (5) of s. 570.952, F.S., to remove a duplicative reference to a quorum.

Section 10. Amends s. 571.24, F.S., to authorize the department to ensure that only Florida agricultural or agricultural based products are marketed under the “Fresh from Florida” or “from Florida” logos.

Section 11. Amends s. 571.27, F.S., to require the department to promulgate rules for entering into contracts for services directly related to the Florida Agricultural Promotional Campaign.

Section 12. Amends s. 571.29, F.S., to prohibit a person to use, reproduce or distribute the “Fresh from Florida” or “from Florida” logos or other logos of the Florida Agricultural Promotional Campaign on any agricultural or agricultural-based products which are not Florida products. Creates administrative remedies. Authorizes the department to issue a warning letter, a fine of not more than \$1,000 per violation for a first time offender, and a fine of up to \$5,000 per violation for willful repeat offenders.

Section 13. Creates s. 571.30, F.S., to provide for injunction remedies for the department to use against individuals who use the “Fresh from Florida” logo when selling products other than Florida products.

Section 14. Amends s. 588.011, F.S., to revise legal fence requirements.

Section 15. Amends s. 589.081, F.S., to substitute generic language for individual county names to ensure that as the Withlacoochee and Goethe State Forests grow, each county will get its share of the gross receipts.

Section 16. Amends s. 593.1141, F.S., to make technical changes. Corrects references to the new Farm Service Agency which was formed with the reorganization of the United States Department of Agriculture. The Farm Service Agency was formerly known as the Agricultural Stabilization and Conservation Service.

Section 17. Amends s. 616.05, F.S., to require that proposed amendments to a fair association’s charter be noticed in the same manner as the original charter.

Section 18. Amends s. 616.07, F.S., to provide that property held in trust by a fair association is exempt from special assessments.

Section 19. Amends s. 616.08, F.S., to clarify provisions authorizing a fair association to sell, mortgage, lease, or convey property for the purpose of public fairs and expositions.

Section 20. Amends s. 616.13, F.S., to revise certain restrictions on temporary amusement rides with respect to location of operation. Prohibits a business that has temporary amusement rides to locate within a 5-mile radius of any public fair or exposition being operated by a fair association, except with the written consent of the affected fair association. Deletes a license tax imposed on such rides.

Section 21. Amends s. 616.15, F.S., to require a fair association to send a copy of its permit application to each fair association located within 50 miles of the site of the proposed fair or exposition at the same time it sends an application to the department. Directs the department to determine whether any proposed fair or exposition will compete with another public fair or exposition within 50 miles with respect to name, dates of operation, or market. Authorizes the department to deny, withhold, or withdraw a permit from a fair association if it determines that the fair association will compete with another association. Requires the department to give preference to established fair associations when issuing permits.

Section 22. Amends s. 616.242, F.S., to revise safety standards for amusement rides. Requires an owner to request inspection and permitting of an amusement ride within 60 days after an application is filed with the department. Requires the department to inspect and permit the amusement ride within 60 days after the date the affidavit of compliance is executed. Deletes a requirement that amusement ride owners must submit the manufacturer's current recommended operating instructions and other documents with an application for an annual permit. Directs the owner to provide this information upon request of the department, at no cost to the department. Provides that the department may establish fees by rule to cover the costs and expenditures associated with the Bureau of Fair Rides Inspection, including all direct costs and all indirect costs. Requires permanent facilities to file an affidavit of its annual inspection with the department, on a form prescribed by rule of the department. Requires signs to be prominently displayed at the patron entrance of each amusement ride which advise or warn patrons of age restrictions, size restrictions, health restrictions, weight limitations, and any other special consideration or use restrictions required or recommended for the amusement ride by the manufacturer. Prohibits bungee catapaulting or reverse bungee jumping.

Section 23. Amends s. 616.260, F.S., to provide that the Florida State Fair Authority is exempt from special assessments.

Section 24. Voids special assessments imposed upon a fair association or state fair before the effective date of this act if not paid by the effective date of this act.

Section 25. Amends s. 823.14, F.S., to clarify the definition of the term "farm product" for purposes of the Florida Right to Farm Act.

Section 26. Creates the Pest Exclusion Advisory Committee within the department. Provides for membership. Provides for governance of the committee. Requires the committee to review and evaluate the state's existing and future pest-exclusion, detection, and eradication programs. Provides criteria for evaluation. Requires the advisory committee to issue a report to the Commissioner of Agriculture, the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2001.

Section 27. Amends s. 828.125, F.S., to revise provisions relating to the killing or aggravated abuse of registered breed horses or cattle. Provides that a person shall not be held culpable for any deaths which result from weather conditions or other acts of God.

Section 28. Provides that this act shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Antifreeze Registration

This bill will provide indirect benefits which will include increased latitude in the structure of contracts between distributors and manufacturers and packagers.

Amusement Rides

The bill requires amusement ride owners to place signs at each amusement ride to advise and warn patrons of any special considerations or use restrictions recommended by the manufacturer. The department permits approximately 1,800 amusement rides each year in the state. Based on its observations, the department estimates only 50 percent of the permitted amusement rides will require signage. It is estimated that an appropriate sign would cost no more than \$50 each.

The estimated cost of this bill to the industry would be approximately \$45,000 (900 signs x \$50) in the first year. Signs would need periodic replacement, but costs to the industry for replacement during any fiscal year should not exceed the cost of the initial year.

Warning signs posted at patron entrances to amusement rides will allow patrons to make informed decisions on rides they should and should not be using. This should lessen the potential for injury.

C. Government Sector Impact:

The Department of Agriculture has indicated that there will be a small, indeterminate amount of expense associated with the reimbursement of travel and per diem for the Pest Exclusion Advisory Council.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
