

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 Appropriations Subcommittee on Agriculture, Environment, and General Government

BILL: CS/SB 1646

INTRODUCER: Agriculture Committee and Senator Albritton

SUBJECT: Department of Agriculture and Consumer Services

DATE: April 8, 2019

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------|----------------|------------|-----------------------------|
| 1. | <u>Akhavein</u> | <u>Becker</u> | <u>AG</u> | <u>Fav/CS</u> |
| 2. | <u>Blizzard</u> | <u>Betta</u> | <u>AEG</u> | <u>Recommend: Favorable</u> |
| 3. | _____ | _____ | <u>AP</u> | _____ |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1646 addresses issues related to agriculture and powers and duties of the Department of Agriculture and Consumer Services (department). Specifically, the bill:

- Clarifies the definition of a food establishment to be consistent with the current regulatory structure and eliminates unused defined terms, without modifying existing regulatory responsibilities of the department;
- Realigns ch. 502, F.S., with recent updates to the Grade A Pasteurized Milk Ordinance;
- Clarifies the preexisting distinction between wholesale and retail frozen dessert sellers;
- Eliminates a report that documents the number of gallons of frozen dessert produced by a dessert plant permit holder;
- Revises the authority of the department to conduct onsite inspections of facilities used to distribute milk and milk products and to collect samples of those products for testing;
- Removes prohibitions against certain testing for milkfat content and for repasteurizing milk;
- Postpones the sunset date for certain Pest Control Trust Fund expenditures;
- Makes revisions to the agriculture water conservation program and expands the types of cost-share projects that can be considered and funded;
- Establishes a waiver process by rule for school nutrition program sponsors;
- Defines “raw agricultural commodity fumigation” and clarifies the applicability of related licensure requirements;
- Enables the department to consider whether an entity performs raw agricultural commodity fumigation when making license classification decisions;

- Clarifies the submission deadline for food establishment license fees;
- Revises the Florida Forest Service’s training requirements and certifications for firefighters;
- Repeals the Healthy Food Financing Initiative on October 1, 2020; and
- Provides the option for horse owners to include a covenant on the sale of a horse, requiring any subsequent owner to call a contracted third party to pick up a horse that is ready to be retired rather than destroying the animal.

The department can absorb within existing resources the costs relating to rulemaking to implement the bill.

The effective date of the bill is July 1, 2019.

II. Present Situation:

Fumigants

A fumigant is a gas with pesticidal action. Fumigants are gases, or form gases, after application. In a high enough concentration, a fumigant can kill insects and other pests. Fumigants may be odorless, and usually cannot be seen. A wide range of pests infest soil and agricultural products. Insects, mites, nematodes, diseases, and rodents can all harm soil-grown crops and stored commodities. Insects are the most common pests of raw agricultural products but only a few cause serious damage. Fumigation is reserved for the most damaging insect pests and pest situations.¹

Pest control activities are statutorily regulated by the Structural Pest Control Act in ch. 482, F.S., and rules that pertain to pesticides are enacted under its granted authority. The definition of fumigant in ch. 482, F.S., is limited since a statutory definition of fumigation for agricultural activities does not exist.

Florida Food Safety and Food Defense Advisory Council

The Florida Food Safety and Food Defense Advisory Council creates an infrastructure for enhancing outreach, response, and information sharing of food safety issues at the state level. It also provides a dynamic forum for stakeholder collaboration regarding food safety issues protecting public health. Council members include representatives from academia, regulatory, industry, and consumer groups.²

Food Establishment Permits

To open a food establishment in Florida, you must obtain a food establishment permit from the department. Permitted retail food establishments include supermarkets, grocery stores, convenience stores, coffee shops, bakeries, retail meat markets, retail seafood markets, juice and smoothie bars, ice/water vending machines, food salvage stores, businesses selling prepackaged

¹ “General Fumigation,” *University of Alabama Division of Agriculture Research & Extension*, accessed at <https://www.uaex.edu/farm-ranch/pest-management/docs/training-manuals/AG1161.pdf> (Last visited March 22, 2019).

² See <https://www.freshfromflorida.com/About/Advisory-Councils-and-Committees/Florida-Food-Safety-and-Food-Defense-Advisory-Council> (Last visited March 22, 2019).

foods, and certain mobile food units selling only prepackaged foods or non-potentially hazardous food items. Wholesale food establishments include bottled water plants, food processing plants, and food storage warehouses.³ Section 500.12, F.S., contains food permit requirements for food establishments and allows the department to charge a late fee. If the applicant misses the annual December 31 deadline and fails to remit payment during January of the next year, the applicant may be charged a late fee not exceeding \$100.

Healthy Food Financing Initiative

The 2016 Legislature directed the department to establish the Healthy Food Financing Initiative to provide financial assistance for the development or expansion of grocery retail outlets operating in underserved and low-income communities. The department is to implement and monitor the program through public-private partnerships. It must also report annually to the President of the Senate and the Speaker of the House of Representatives on the projects funded, geographic distribution of projects, program costs, and program outcomes.⁴

Milk, Milk Products and Frozen Desserts

The Grade A Pasteurized Milk Ordinance is a collection of rules assembled by the federal Food and Drug Administration that prescribes a baseline for products sold across the United States. The ordinance has been adopted by department rule. Recent revisions require the definitions in the Florida Statutes to be updated, along with the types of facilities listed in the powers and duties section to realign them with the ordinance. The products and facility types listed in s. 502.14, F.S., are not currently inclusive of all products or entities covered by the ordinance and therefore they are not under the department's existing regulatory authority.

Each frozen dessert plant, whether located in the state or outside the state, that manufactures frozen desserts or other products, and sells them in this state, must have a permit to operate. This bill requires wholesale entities to register for an operating permit because retailers must conform to other food safety regulations. The department uses many other mechanisms to ensure that the dairy supply and frozen desserts using dairy are safely produced. Currently, s. 502.053, F.S., requires frozen dessert plants that manufacture and/or wholesale these products to submit monthly, quarterly, semiannual and annual reports documenting the number of gallons of frozen dessert sold. The changes to this section will only require wholesaling entities to register for this license. Retailers must conform to other food safety regulations. The required reports are not consistently utilized to materially impact the regulatory process. The department uses many other mechanisms to ensure that the dairy supply and frozen desserts using dairy are safely produced.

Individuals and entities that wish to test for milkfat content are required to be permitted by the department but are not charged a fee. These milkfat testing results are not used or retained by the department and milkfat content does not affect food safety. Commercial entities commonly test milkfat to ensure that the products they receive from suppliers conform to contractual standards.

³ See <https://www.freshfromflorida.com/Business-Services/Food-Establishment-Inspections/Food-Establishment-Permit> (Last visited March 22, 2019).

⁴ Section 500.81, F.S.

The Grade A Pasteurization Ordinance requires Grade A products to be pasteurized at the final point of packaging, even if a supplier previously pasteurized them. Because of the current supply chain structure, dairy products are frequently repasteurized to comply with the ordinance requirements. Currently, it is unlawful to repasteurize in Florida.

Florida Pest Control Trust Fund

Section 570.44, F.S., authorizes the department to administer pesticide registration, regulate agricultural pesticide use, and regulate feed, seed, and fertilizer production. Section 570.441(4), F.S., allows revenues from the Pest Control Trust Fund to be used to carry out these duties. This provision will sunset on June 30, 2019. If this subsection expires, the uses of the trust fund will be limited to the provisions in ch. 482, F.S., which includes the licensing of pest control businesses, examinations for operators' certificates, and the education of the pest control industry.

Agricultural Water Conservation and Agricultural Water Supply Planning

In 2013, the Legislature directed the department to establish an agricultural water conservation program that includes a cost-share program consisting of federal, state, regional, and local agencies for irrigation system retrofits and the application of mobile irrigation laboratory evaluations for water conservation and nutrient reduction.

Forest Protection

The Florida Forest Service has the primary responsibility for prevention, detection, and the suppression of wildfires wherever they may occur. It must provide firefighting crews and develop a training curriculum for forestry firefighters. The training curriculum must contain the basic volunteer structural fire training course approved by the Florida State Fire College of the Division of State Fire Marshal (DSFM) and a minimum of 250 hours of wildfire training.

Pursuant to s. 590.02(1)(e), F.S., the DSFM must establish a structural firefighting training program of not less than 206 hours. Individuals who satisfy the DSFM's training requirement, pass the exam, and complete 250 hours of wildfire training will receive a Forestry Certificate of compliance.

School Food and Other Nutrition Programs

The school food and nutrition service programs that the department has responsibility over include, but are not limited to, the National School Lunch Program, the Special Milk Program, the School Breakfast Program, the Summer Food Service Program, the Fresh Fruit and Vegetable Program, and any other program that relates to school nutrition.⁵ Programs are conducted by sponsors under a current agreement with the department.⁶

Pursuant to s. 120.542, F.S., agencies are authorized to waive rules when the person subject to the rule demonstrates that the requirement has been achieved by other means and when the

⁵ s. 595.402(3), F.S.

⁶ s. 595.402(6), F.S.

application of a rule creates a substantial hardship or violates principles of fairness. Section 12(1) of the Richard B. Russell National School Lunch Act, 42 U.S.C. 1760(l), authorizes state administering agencies to request exemptions to specific School Lunch Program requirements if a program participant demonstrates a hardship and the request does not conflict with the U.S.C. requirements that cannot be waived.

Horse Care Covenants

Many horses, particularly in the racing and hunter jumper fields, are simply destroyed after they can no longer compete, because it costs thousands of dollars per year for continued care. Some horses are placed in less age-dependent disciplines, and some are sold to farms or families whose children want a horse to ride. Not all horses can be placed, and the American Society for the Prevention of Cruelty to Animals calculates that over 100,000 American horses are sent across the borders for slaughter each year.⁷ Currently, common law only allows covenants to travel with real property. Because a horse is “chattel,” a covenant does not travel with a horse.⁸

III. Effect of Proposed Changes:

Section 1 amends s. 487.021, F.S., to add and define the term “raw agricultural commodities fumigation,” which will clarify application regulations to the pest control and the agricultural commodity industries.

Section 2 amends s. 487.0435, F.S., to authorize the department to consider whether a fumigant can be used solely for raw agricultural commodities, as defined in s. 487.021, F.S., when making classification decisions. The amendment conforms this section to the change proposed in s. 487.021, F.S.

Section 3 amends s. 500.03, F.S., to revise and update definitions of the Florida Food Safety Act. It removes the unused definitions for “convenience store,” “food outlet,” “food service establishment,” and “retail food store.” It revises the definition of “food establishment” and updates the statute’s reference to the definition of bottled water contained in the Code of Federal Regulations. The meaning of the defined terms are clarified to assist the regulated community.

Section 4 amends s. 500.033, F.S., to revise the membership of the Florida Food Safety and Food Defense Advisory Council.

Section 5 amends s. 500.12, F.S., to conform this section to changes made in the bill. It also revises the date by which a late fee is imposed for nonpayment of a food permit fee.

Section 6 amends s. 500.121, F.S., to conform this section to the definitional changes made in the bill.

Section 7 amends s. 500.147, F.S., to conform this section to changes made in the bill.

⁷ See “What Happens to Retired Racehorses?,” accessed at <https://www.care2.com/causes/what-happens-to-retired-racehorses.html> (Last visited March 19, 2019).

⁸ “Any article of tangible property other than land, buildings, and other things annexed to land,” Webster’s Encyclopedic Unabridged Dictionary.

Section 8 repeals s. 500.81, F.S., relating to the Healthy Food Financing Initiative on October 1, 2020.

Section 9 amends s. 502.012, F.S., to realign the definitions in this section with the updated Grade A Pasteurized Milk Ordinance that was adopted by the department by rule. It adds definitions for the terms “bulk milk hauler and sampler,” “reconstituted milk or milk products” or “recombined milk or milk products,” “retail,” “ultra-pasteurization,” and “wholesale.”

Section 10 amends s. 502.014, F.S., to revise the department’s authority to conduct onsite inspections of facilities used to produce, process, and distribute milk and milk products and to collect samples of such for testing.

Section 11 amends s. 502.053, F.S., to clarify which business entities need frozen dessert plant licenses. It also eliminates the volume report documenting the number of gallons of frozen dessert or frozen dessert mix sold or manufactured by the permit holder that must be made monthly, quarterly, semiannually, or annually, as required by the department.

Section 12 amends s. 502.181, F.S., to eliminate the requirement that a person engaging in testing for milkfat content must first obtain a permit from the department. It also repeals the prohibition against repasteurizing milk. These changes allow Florida entities to conform to the Grade A Pasteurization Ordinance.

Section 13 amends s. 570.441, F.S., to extend the expiration dates for the use of funds from the Pest Control Trust Fund to carry out the duties of the Division of Agricultural Environmental Services.

Section 14 amends s. 570.93, F.S., to revise the agricultural water conservation program to enable cost-share funds to continue to be used for irrigation system retrofits and mobile irrigation lab evaluations. The revisions also permit the funds to be expended on additional water conservation activities pursuant to s. 403.067(7)(c), F.S.

Section 15 amends s. 590.02, F.S., to require the Florida Forest Service to restructure its training course to better meet its wildland firefighters’ specific training needs. The curriculum must include at least 40 hours of structural firefighter training and at least 40 hours of emergency medical training. The minimum number of wildfire training hours will go from 250 to 376.

Section 16 amends s. 595.404, F.S., to authorize the department to adopt and implement an exemption, variance, and waiver process, by rule, for school nutrition program sponsors.

Section 17 amends s. 633.406, F.S., to conform provisions of this section to changes made in the bill on wildland firefighter training.

Section 18 amends s. 633.408, F.S., to require the department to establish a structural fire training program of at least 40 hours instead of not less than 206 hours, to be consistent with the changes to s. 590.02, F.S., made by the bill.

Section 19 creates s. 828.261, F.S., to authorize a contract for the sale of a horse to include a covenant for the continuing care of the horse upon its retirement, for an actuarially appropriate charge. An owner will not be required to include such covenant, and a purchaser will not be required to purchase a horse that includes such a covenant. This section does not create any covenants that annex to or travel with any other chattel.

Section 20 provides that this act shall take effect July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The department can absorb within existing resources the costs of rulemaking to implement the bill.⁹

⁹ Department of Agriculture and Consumer Services, *Senate Bill 1646 Bill Analysis* (March 5, 2019), on file with the Appropriations Subcommittee on Agriculture, Environment, and General Government.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends the following sections of the Florida Statutes: 487.021, 487.0435, 500.03, 500.033, 500.12, 500.121, 500.147, 500.81, 502.012, 502.014, 502.053, 502.181, 570.441, 570.93, 590.02, 595.404, 633.406, and 633.408.

This bill creates section 828.261 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 Agriculture Committee on March 25, 2019:

The committee substitute:

- Makes a technical correction to the definition of “bottled water;”
- Extends the repeal date for the Healthy Food Financing Initiative until October 1, 2020; and
- Authorizes contracts for the sale of horses to include a covenant for continuing care of the horse.

B. Amendments:

None.