

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

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

MEETING DATE: Monday, March 2, 2015
TIME: 1:00 —4:00 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	SB 526 Grimsley (Identical H 523, Compare H 513)	Notaries Public; Revising the methods available for verifying documents; providing an exception to the requirement that a signer personally appear before a notary public at the time of notarization; defining the term "reliable electronic means"; authorizing specified officers to administer oaths by reliable electronic means when engaged in the performance of official duties, etc. CM 02/16/2015 Temporarily Postponed CM 03/02/2015 Fav/CS CJ RC	Fav/CS Yeas 4 Nays 1
2	CS/SB 202 Banking and Insurance / Bradley (Similar CS/H 273, Compare CS/H 165, CS/S 258, S 1210)	Insurer Notifications; Authorizing a policyholder of personal lines insurance to elect delivery of policy documents by electronic means; revising the requirements applicable to insurers when providing a notice of change in policy terms for a renewal policy to include the requirement that the notice be an advance notice and to allow such notice to be sent separately from the notice of renewal premium within a specified timeframe; prohibiting the use of such notice to add optional coverage that increases the policy's premium unless the policyholder approves the optional coverage, etc. BI 02/03/2015 Fav/CS CM 03/02/2015 Fav/CS	Fav/CS Yeas 5 Nays 0
3	CS/SB 394 Regulated Industries / Brandes (Similar CS/CS/H 277)	Public Lodging Establishments; Requiring specified public lodging establishments to waive certain policies for individuals who present a valid Common Access Card; prohibiting duplication of Common Access Cards, etc. RI 02/18/2015 Fav/CS CM 03/02/2015 Favorable MS	Favorable Yeas 5 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Commerce and Tourism

Monday, March 2, 2015, 1:00 —4:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 554 Simmons (Similar CS/H 531)	Limited Liability Companies; Specifying that persons who are not members of a limited liability company are not deemed to have notice of a provision of the company's articles of organization which limits a person's authority to transfer real property held in the company's name unless such limitation appears in an affidavit, certificate, or other instrument that is recorded in a specified manner; removing the prohibition that an operating agreement may not vary the power of a person to dissociate under certain circumstances, etc. CM 03/02/2015 Fav/CS JU RC	Fav/CS Yeas 5 Nays 0
5	SB 604 Flores (Similar H 271)	Consumer Protection; Citing this act as the "True Origin of Digital Goods Act"; requiring owners and operators of specified websites and online services to disclose certain information; providing for injunctive relief, etc. CM 03/02/2015 Fav/CS JU AP	Fav/CS Yeas 5 Nays 0
6	SB 618 Grimsley (Similar H 813)	Secondary Metals Recyclers; Transferring administration of part II of chapter 538, F.S., relating to secondary metals recyclers, from the Department of Revenue to the Department of Agriculture and Consumer Services; authorizing specified persons to inspect regulated metals property and records; prohibiting secondary metals recyclers from purchasing regulated metals property, restricted regulated metals property, or ferrous metals between certain hours or on Sundays; prohibiting the purchase of specified restricted regulated metals property without obtaining certain proof of the seller's ownership of, or authority to sell, the regulated metals property, etc. CM 03/02/2015 Favorable AGG AP	Favorable Yeas 5 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 526

INTRODUCER: Commerce and Tourism Committee and Senator Grimsley

SUBJECT: Notaries Public

DATE: March 3, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	Fav/CS
2.			CJ	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 526 allows a law enforcement officer engaged in the performance of official duties to remotely administer an oath either through reliable electronic means, or in the physical presence of a person who swears to an affidavit. Currently, a law enforcement officer may only administer an oath in the physical presence of an affiant.

Additionally, the bill allows law enforcement officers to verify documents pursuant to ss. 92.50 and 92.525, F.S.

II. Present Situation:

Notaries public, governed by ch. 117, F.S., have two distinct roles: to administer oaths, and to acknowledge or verify documents.¹ Law enforcement officers, correctional officers, correctional probation officers, traffic accident investigation officers, and traffic infraction enforcement officers engaged in the performance of their official duties may administer oaths in the same manner as a notary public, but do not have authority to verify documents under current law.²

¹ Sections 117.03-.04, F.S.

² Section 117.10, F.S.

Administration of Oaths

In 1983, the Legislature allowed that “all law enforcement and correctional officers as defined in s. 943.10, F.S., may administer oaths, to witnesses, in connection with the taking of a sworn statement during a criminal investigation...”³ Application of this law was limited by a 1983 Florida Attorney General Opinion, which opined that a law enforcement officer’s power to administer oaths was exclusive to sworn statements given by witnesses during informal investigations, and that specifically, an officer was “not empowered to take sworn statements of another officer or witness for the sole purpose of using that document to establish probable cause or serve as a complaint for direct submission to a court.”⁴

The following year, the Legislature created s. 117.10, F.S., which clearly granted law enforcement officers the power to serve as a notary for the purpose of certifying or attesting to documents in connection with the performance of their official duties.⁵

Section 117.10, F.S., was subsequently amended to include correctional probation officers, traffic accident investigation officers, and traffic infraction enforcement officers. The direct reference to notaries was removed, so the statute now states that law enforcement officers are “authorized to administer oaths when engaged in the performance of official duties.”⁶

Law enforcement officers administer oaths to verify signatures on official documents, such as probable cause affidavits, reports, or sworn complaints.⁷

Sections 668.50 and 117.021, F.S., allow electronic signatures on notarized documents. However, an oath administered by a notary or law enforcement officer must still be administered in person. Therefore, a law enforcement officer affiant may electronically sign his affidavit, but only after he physically meets with a fellow law enforcement officer to swear or affirm the oath required.

Verification of Documents

A verified document has been signed or executed by a person who must state under oath (or affirmation) that the facts or matters made therein are true, or other words to that effect.⁸

A document can be verified in two ways:

- Administration of an oath or affirmation by an officer of the state authorized under s. 92.50, F.S., to administer oaths. Officers currently authorized are judges, clerks or deputy clerks of court, or any notary public; or

³ Ch. 83-147, Laws of Florida; Section 925.095, F.S. (1983).

⁴ Fla. AGO 83-85, in response to a request for clarification of s. 925.095, F.S. (1983) from the Havana, Florida, Chief of Police.

⁵ Chapter 84-87, L.O.F., which also repealed s. 925.095, F.S. (1983).

⁶ Section 117.10, F.S.

⁷ Section 117.10, F.S.

⁸ Section 92.525(4)(c), F.S.

- Signing a written declaration, which states “Under penalty of perjury, I declare that I have read the foregoing [document] and that the facts stated in it are true.”⁹ Where a verification of a belief is permitted, the phrase “to the best of my knowledge and belief” may be added to the declaration.

Perjury

A person who knowingly makes a false statement under oath regarding any material matter commits perjury, a first degree misdemeanor.¹⁰

A person who knowingly makes a false declaration for the purpose verifying a document under s. 92.525(2), F.S., is subject to prosecution for perjury by false written declaration, a third degree felony.¹¹

III. Effect of Proposed Changes:

Under this bill, law enforcement officers, correctional officers, correctional probation officers, traffic accident investigation officers, and traffic infraction enforcement officers acting in the scope of their authority will be able to remotely administer oaths pursuant to s. 117.10, F.S. This allows law enforcement officers to administer an oath for work purposes either in the presence of the affiant, or by electronic transmittal of the document from the affiant through means compliant with criminal justice information systems security measures,¹² defined in s. 117.10(1), F.S. For example, the criminal justice information systems security measures requires that all users must uniquely identify themselves before they can perform any actions on the system.¹³

The bill allows law enforcement officers, correctional officers, correctional probation officers, traffic accident investigation officers, and traffic infraction enforcement officers, while engaged in the performance of official duties, to verify documents pursuant to s. 92.525, F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

⁹ Section 92.525(2), F.S.

¹⁰ Section 837.012, F.S.

¹¹ Section 92.525(3), F.S.

¹² The criminal justice information systems (CJIS) security policy is published by the FBI, administered in Florida by the FDLE, and applied to local law enforcement agencies. Phone interview with Charles Schaeffer, February 10, 2015. See also, U.S. Department of Justice, Criminal Justice Information Services Security Policy (August 4, 2014). Retrieved February 10, 2015 from <http://www.fbi.gov/about-us/cjis/cjis-security-policy-resource-center>.

¹³ U.S. Department of Justice, Criminal Justice Information Services Security Policy at 34 (August 4, 2014). Retrieved March 3, 2015 from <http://www.fbi.gov/about-us/cjis/cjis-security-policy-resource-center>.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Law enforcement agencies may, but are not required to, incur some costs associated with either implementing new technological systems or updating current systems to become compliant with the criminal justice information system security measures. Some of these costs may be mitigated by a reduced need for excess hours and other costs associated with the current method of officer administration of oaths and document verification.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Because a certain class of individuals may administer and swear oaths without the physical presence of another party, enforcement of perjury laws may become more burdensome. The prosecution in perjury cases may have extra hurdles to overcome to prove that the defendant was the person who submitted the false statement under oath. The electronic data evincing the unique identifier and password that an officer must enter each time he or she electronically administers or swears an oath may be useful to the prosecution in such cases, but is not without evidentiary hurdles.

VIII. Statutes Affected:

This bill substantially amends sections 92.525 and 117.10 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 Commerce and Tourism on March 2, 2015:

Clarifies that enumerated officers may administer oaths electronically and deletes redundant language in section two of the committee substitute.

B. Amendments:

None.

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



709170

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/02/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 25 - 45

and insert:

an officer authorized under s. 92.50 to administer oaths;

or

(b) Under oath or affirmation taken or administered by an officer authorized under s. 117.10 to administer oaths; or

(c) By the signing of the written declaration prescribed in



709170

10 subsection (2).

11

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

13 And the title is amended as follows:

14 Delete lines 4 - 7

15 and insert:

16 verifying documents; amending s. 117.10, F.S.;

By Senator Grimsley

21-00715-15

2015526__

1 A bill to be entitled
 2 An act relating to notaries public; amending s.
 3 92.525, F.S.; revising the methods available for
 4 verifying documents; amending s. 117.05, F.S.;
 5 providing an exception to the requirement that a
 6 signer personally appear before a notary public at the
 7 time of notarization; amending s. 117.10, F.S.;
 8 defining the term "reliable electronic means";
 9 authorizing specified officers to administer oaths by
 10 reliable electronic means when engaged in the
 11 performance of official duties; providing an effective
 12 date.
 13
 14 Be It Enacted by the Legislature of the State of Florida:
 15
 16 Section 1. Subsection (1) of section 92.525, Florida
 17 Statutes, is amended to read:
 18 92.525 Verification of documents; perjury by false written
 19 declaration, penalty.-
 20 (1) ~~If when it is~~ authorized or required by law, by rule of
 21 an administrative agency, or by rule or order of court that a
 22 document be verified by a person, the verification may be
 23 accomplished in the following manner:
 24 (a) Under oath or affirmation taken or administered before
 25 an officer authorized under s. 92.50 or s. 117.10 to administer
 26 oaths; or
 27 (b) By the signing of the written declaration prescribed in
 28 subsection (2).
 29 Section 2. Paragraph (c) of subsection (4) of section

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

21-00715-15

2015526__

30 117.05, Florida Statutes, is amended to read:
 31 117.05 Use of notary commission; unlawful use; notary fee;
 32 seal; duties; employer liability; name change; advertising;
 33 photocopies; penalties.-
 34 (4) When notarizing a signature, a notary public shall
 35 complete a jurat or notarial certificate in substantially the
 36 same form as those found in subsection (13). The jurat or
 37 certificate of acknowledgment shall contain the following
 38 elements:
 39 (c) That the signer personally appeared before the notary
 40 public at the time of the notarization. This paragraph does not
 41 apply to the administration of an oath by a law enforcement
 42 officer, correctional officer, correctional probation officer,
 43 traffic accident investigation officer, or traffic infraction
 44 enforcement officer through reliable electronic means as
 45 authorized by s. 117.10.
 46 Section 3. Section 117.10, Florida Statutes, is amended to
 47 read:
 48 117.10 Law enforcement and correctional officers;
 49 administration of oaths.-
 50 (1) For purposes of this section, the term "reliable
 51 electronic means" means the signing and transmission of a
 52 document through means compliant with criminal justice
 53 information system security measures. Such signing and
 54 transmission must be made by an affiant to an officer authorized
 55 to administer oaths under subsection (2) under circumstances
 56 that indicate that the document was submitted by the affiant.
 57 (2) Law enforcement officers, correctional officers, and
 58 correctional probation officers, as defined in s. 943.10, and

Page 2 of 3

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21-00715-15

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59 traffic accident investigation officers and traffic infraction
60 enforcement officers, as described in s. 316.640, are authorized
61 to administer oaths by reliable electronic means or in the
62 physical presence of an affiant when engaged in the performance
63 of official duties. Sections 117.01, 117.04, 117.045, 117.05,
64 and 117.103 do not apply to ~~the provisions of~~ this section. An
65 officer may not notarize his or her own signature.

66 (3) An oath administered pursuant to this section is an
67 acceptable method of verification as provided under s. 92.525.

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Communications, Energy, and Public Utilities, *Chair*
Agriculture
Appropriations
Appropriations Subcommittee on Health
and Human Services
Health Policy
Transportation

JOINT COMMITTEES:

Joint Administrative Procedures Committee
Joint Legislative Budget Commission

SENATOR DENISE GRIMSLEY

Deputy Majority Leader
21st District

March 2, 2015

The Honorable Nancy Detert, Chair
Senate Committee on Commerce and Tourism
Room 310 Knott Building
402 S. Monroe Street
Tallahassee, FL 32399-1300

Dear Chair Detert:

I have two bills on your agenda today, Senate Bill 526, relating to Notaries Public and Senate Bill 618 relating to Secondary Metal Recyclers. I've asked my staff to present these bills since I have an Agriculture Committee meeting, and as the Senate President's designate I will be attending the Statewide Council on Human Trafficking meeting. Staff presenting will be Marty Mielke and Anne Bell, respectively.

Thank you for hearing my bills.

Sincerely,

A handwritten signature in cursive script that reads "Denise Grimsley".

Denise Grimsley
Senator, District 21

DG/mm

REPLY TO:

- 205 South Commerce Avenue, Suite A, Sebring, Florida 33870 (863) 386-6016
- 212 East Stuart Avenue, Lake Wales, Florida 33853 (863) 679-4847
- 306 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5021

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)

Meeting Date

Bill Number (if applicable)

526

Topic Notaries Public

Amendment Barcode (if applicable)

Name Matt Dinegan

Job Title Asst. Executive Director

Address 2617 Mahan Drive

Phone 850-877-2165

Street Tallahassee City FL State 32308 Zip

Email mdinegan@flsheriffs.org

Speaking: For Against Information

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

Representing Florida Sheriffs 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)

Meeting Date 3/2/15

Bill Number (if applicable) 526

Topic Notaries Public

Amendment Barcode (if applicable) _____

Name Lorelei Bowden Jacobs

Job Title Manager

Address 2008 E 8th Avenue

Phone 813 363-0375

Street Tampa City FL State FL Zip 33605

Email LBowden@HCSO.tampa

Speaking: For Against Information

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

Representing Hillsborough County Sheriff's Office

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/CS/SB 202

INTRODUCER: Commerce and Tourism Committee, Banking and Insurance Committee, and Senator Bradley

SUBJECT: Insurer Notifications

DATE: March 2, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Siples</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 202 allows an insurer to deliver a personal lines insurance policy by electronic transmission to meet statutory requirements for delivery, if the policyholder affirmatively elects electronic delivery in lieu of delivery by U.S. mail.

The bill also allows a Notice of Change in Policy Terms to be sent separately from the Notice of Renewal Premium. Insurers must also provide a sample copy of the Notice of Change in Policy Terms to the insured's insurance agent before, or at the same time, the notice is provided to the insured.

The bill additionally defines "optional coverage." The bill prohibits the use of the Notice of Change in Policy Terms if the new terms add optional coverage that increases the premium, unless the policyholder affirmatively approves of the addition of the optional coverage.

II. Present Situation:

Delivery of Insurance Policies

Part II of s. 627, F.S., generally applies to all insurance contracts except for those covering reinsurance, wet marine and transportation insurance, title insurance, and credit life or credit disability insurance. Under this part, every insurance policy must be mailed, delivered, or

electronically transmitted to the insured (policyholder) within 60 days after the insurance takes effect.¹

The Federal Electronic Signatures in Global and National Commerce Act (E-SIGN)

The Electronic Signatures in Global and National Commerce Act (E-SIGN) applies to electronic transactions involving interstate commerce.² Congress specifically intended for the provisions of E-SIGN to apply to insurance.³ E-SIGN provides that a contract formed using an electronic signature or an electronic record will not be denied legal effect solely because it is in an electronic form. However, E-SIGN requires certain consumer disclosures and the consumer's affirmative consent to the use of electronic records before such electronic records or transactions may be given legal effect. Under E-SIGN, if a state or federal statute requires information to be provided or made available to a consumer in writing, the use of an electronic record will satisfy the statute's requirement of writing if the consumer affirmatively consents to use of an electronic record. The consumer must also be provided with a clear and conspicuous statement notifying the consumer of the right to have the electronic information made available in a paper format and of the right of the consumer to withdraw consent to the use of electronic records, among other notifications.⁴ The affirmative consent and notification requirements of E-SIGN may apply to the delivery of insurance policies in this state, because Florida law currently requires insurance policies to be delivered to the policyholder by mail or other delivery means.

Florida's Uniform Electronic Transaction Act (UETA)

Florida's Uniform Electronic Transaction Act (UETA), similar to the federal E-SIGN law, governs electronic records and electronic signatures relating to a transaction.⁵ UETA provides that a statutory requirement that a record be delivered in writing is satisfied by the provision of such record in an electronic format if the parties have agreed to conduct a transaction by electronic means. UETA would apply to insurance documents.

Notice of Change in Policy Terms

If an insurer makes a change in policy terms, the insurer must, upon the renewal of that policy, give the named insured written notice of the change.⁶ The notice of change in policy must be enclosed with the written notice of renewal premium required by ss. 627.4133, F.S., and 627.728, F.S., and entitled, "Notice of Change in Policy Terms." Upon receipt of a premium payment by the insurer, the change in terms is deemed to have been accepted by the insured. Generally, 45 days advance written notice of the renewal premium is required for workers'

¹ Section 627.421(1), F.S.

² Pub. L. No. 106-229, s. 101, 114 stat. 464 (2000). Many of the provisions of E-SIGN took effect October 1, 2000.

³ *Id.* at s. 101(i).

⁴ *Id.* at s. 101(c)(1).

⁵ Section 668.50, F.S. UETA does not apply to: (1) law governing the creation and execution of wills, codicils, or testamentary trusts; (2) the Uniform Commercial Code other than s. 671.107, and ch. 672 and 680, F.S., relating to waiver of claim after breach, sales governed by the Uniform Commercial Code, and leases governed by the Uniform Commercial Code, respectively; and (3) the Uniform Computer Information Transactions Act.

⁶ Section 627.43141, F.S. A change in policy terms includes any modification, addition, or deletion of any term, coverage, duty, or condition from the previous policy but does not include correction of typographical or scrivener's errors, or changes required by legislative mandate.

compensation and employer's liability insurance, property, and casualty insurance.⁷ An insurer must not fail to renew a private passenger motor vehicle insurance policy unless it provides at least 45 days written notice of its intention not to renew and the reason for the non-renewal.⁸

III. Effect of Proposed Changes:

Section 1 amends s. 627.421, F.S., to allow insurers to deliver personal lines insurance⁹ policies by electronic means in lieu of delivery by mail, if the policyholder affirmatively elects electronic delivery. The bill does not likely implicate E-SIGN or UETA since it requires the affirmative consent of the policyholder before the electronic delivery of personal lines insurance policy documents. Under E-SIGN, the insured must also be provided a notice of the insured's right to receive the policy by mail rather than by electronic transmission. The insurer must also provide a paper copy of the policy by mail if the insured requests, electronically or in writing, that he or she withdraws consent to delivery of the policy by electronic means.

Section 2 amends s. 627.43141, F.S., to allow the Notice of Change in Policy Terms to be sent separately from the Notice of Renewal Premium. If a separate notice is used, it must comply with the nonrenewal mailing time requirement for that particular line of business. Insurers must also provide a sample copy of the Notice of Change in Policy Terms to the insured's insurance agent before or at the same time the notice is given to the insured. Additionally, "optional coverage" is defined as the addition of new insurance not previously approved by the policyholder that does not include any changes to the base policy or the deductible or insurance limits. An insurer may not use the Notice of Change in Policy Terms to add optional coverage that increases the policyholder's premium, unless the policyholder affirmatively approves of the addition of the optional coverage.

Section 3 provides that this act shall take effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁷ Does not include mortgage guaranty, surety, or marine insurance. *See* s. 627.4133(1)(a), F.S.

⁸ Section 627.728, F.S.

⁹ Personal lines insurance refers to property and casualty insurance sold to individuals and families for noncommercial purposes. *See* s. 626.015(15), F.S.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

By delivering documents electronically, insurers may save costs associated with the printing and mailing of insurance policies to policyholders. The exact amount of savings cannot be calculated as it is unknown how many policyholders will choose to receive their policy documents electronically rather than by U.S. mail.

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: 627.421 and 627.43141.

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 2, 2015:

The CS deletes the reenactment of ss. 624.488, 627.4102, and 628.6016, F.S.

CS by Banking and Insurance on February 3, 2015:

The CS defines optional coverage in s. 627.43141, F.S. A Notice of Change in Policy Terms containing optional coverage that increases the policyholder's premium may only be used if the policyholder affirmatively indicates to the insurer or agent the policyholder approves of adding the optional coverage.

B. Amendments:

None.

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



551394

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/02/2015	.	
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The Committee on Commerce and Tourism (Ring) recommended the following:

Senate Amendment (with title amendment)

Delete lines 87 - 94.

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

And the title is amended as follows:

Delete lines 18 - 22

and insert:

providing an

By the Committee on Banking and Insurance; and Senator Bradley

597-01468-15

2015202c1

1 A bill to be entitled
 2 An act relating to insurer notifications; amending s.
 3 627.421, F.S.; authorizing a policyholder of personal
 4 lines insurance to elect delivery of policy documents
 5 by electronic means; amending s. 627.43141, F.S.;
 6 defining the term "optional coverage"; revising the
 7 requirements applicable to insurers when providing a
 8 notice of change in policy terms for a renewal policy
 9 to include the requirement that the notice be an
 10 advance notice and to allow such notice to be sent
 11 separately from the notice of renewal premium within a
 12 specified timeframe; requiring the insurer to provide
 13 a sample copy of the notice of change in policy terms
 14 to the insurance agent at a specified time;
 15 prohibiting the use of such notice to add optional
 16 coverage that increases the policy's premium unless
 17 the policyholder approves the optional coverage;
 18 reenacting ss. 624.488(4) and 628.6016(4), F.S., to
 19 incorporate the amendments made to s. 627.421, F.S.,
 20 in references thereto; reenacting s. 627.4102(3),
 21 F.S., to incorporate the amendments made to s.
 22 627.43141, F.S., in a reference thereto; providing an
 23 effective date.
 24

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

26
 27 Section 1. Subsection (1) of section 627.421, Florida
 28 Statutes, is amended to read:
 29 627.421 Delivery of policy.—

Page 1 of 4

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

597-01468-15

2015202c1

30 (1) Subject to the insurer's requirement as to payment of
 31 premium, every policy shall be mailed, delivered, or
 32 electronically transmitted to the insured or to the person
 33 entitled thereto ~~within not later than~~ 60 days after the
 34 effectuation of coverage. Notwithstanding any other provision of
 35 law, an insurer may allow a policyholder of personal lines
 36 insurance to affirmatively elect delivery of the policy
 37 documents, including, but not limited to, policies,
 38 endorsements, notices, or documents, by electronic means in lieu
 39 of delivery by mail. Electronic transmission of a policy for
 40 commercial risks, including, but not limited to, workers'
 41 compensation and employers' liability, commercial automobile
 42 liability, commercial automobile physical damage, commercial
 43 lines residential property, commercial nonresidential property,
 44 farmowners insurance, and the types of commercial lines risks
 45 specified set forth in s. 627.062(3)(d), constitutes shall
 46 constitute delivery to the insured or to the person entitled to
 47 delivery, unless the insured or the person entitled to delivery
 48 communicates to the insurer in writing or electronically that he
 49 or she does not agree to delivery by electronic means.
 50 Electronic transmission must shall include a notice to the
 51 insured or to the person entitled to delivery of a policy of his
 52 or her right to receive the policy via United States mail rather
 53 than via electronic transmission. A paper copy of the policy
 54 shall be provided to the insured or to the person entitled to
 55 delivery at his or her request.

56 Section 2. Present paragraphs (b) and (c) of subsection (1)
 57 of section 627.43141, Florida Statutes, are redesignated as
 58 paragraphs (c) and (d), respectively, a new paragraph (b) is

Page 2 of 4

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

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59 added to that subsection, subsection (2) of that section is
60 amended, present subsections (3) through (6) of that section are
61 redesignated as subsections (4) through (7), respectively, and a
62 new subsection (3) is added to that section, to read:

63 627.43141 Notice of change in policy terms.-

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

65 (b) "Optional coverage" means the addition of new insurance
66 coverage that has not previously been requested or approved by
67 the policyholder but that does not include any change to the
68 base policy or a deductible or an insurance limit.

69 (2) A renewal policy may contain a change in policy terms.
70 If a ~~renewal policy does contain~~ such change occurs, the insurer
71 shall must give the named insured advance written notice of the
72 change, which may must be enclosed ~~along~~ with the written notice
73 of renewal premium required under by ss. 627.4133 and 627.728 or
74 sent separately within the timeframe required under the Florida
75 Insurance Code for the provision of a notice of nonrenewal to
76 the named insured for that line of insurance. The insurer must
77 also provide a sample copy of the notice to the named insured's
78 insurance agent before or at the same time that notice is
79 provided to the named insured. Such notice shall be entitled
80 "Notice of Change in Policy Terms."

81 (3) A renewal policy that includes the addition of optional
82 coverage that increases the premium to a policyholder may not
83 use the "Notice of Change in Policy Terms" under this section to
84 add the optional coverage to the policy unless the policyholder
85 affirmatively indicates to the insurer or agent that the
86 policyholder approves the addition of the optional coverage.

87 Section 3. Subsection (4) of s. 624.488 and subsection (4)

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88 of s. 628.6016, Florida Statutes, are reenacted for the purpose
89 of incorporating the amendments made by this act to s. 627.421,
90 Florida Statutes, in references thereto.

91 Section 4. Subsection (3) of s. 627.4102, Florida Statutes,
92 is reenacted for the purpose of incorporating the amendments
93 made by this act to s. 627.43141, Florida Statutes, in a
94 reference thereto.

95 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

Subject: Committee Agenda Request

Date: February 6, 2015

I respectfully request that **Senate Bill # 202**, relating to Insurer Notifications, be placed on the:

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

A handwritten signature in black ink, appearing to read "Rob Bradley", written over a horizontal line.

Senator Rob Bradley
Florida Senate, District 7

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 394

INTRODUCER: Regulated Industries Committee and Senator Brandes

SUBJECT: Public Lodging Establishments

DATE: February 27, 2015

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 394 requires that public lodging establishments classified as a hotel, motel, or bed and breakfast inn waive any policy that restricts accommodations to individuals based on age for active duty members of the United States Armed Forces, the United States Reserve Forces, the National Guard, and the Coast Guard upon the presentation of a Common Access Card. The bill also prohibits public lodging establishments from duplicating Common Access Cards.

II. Present Situation:

Public Lodging Establishments

The Division of Hotels and Restaurants (division) within the Department of Business and Professional Regulation (department) is the state agency charged with enforcing the provisions of ch. 509, F.S., “and all other applicable laws and rules relating to the inspection or regulation of public lodging establishments and public food service establishments for the purpose of safeguarding the public health, safety, and welfare.”¹

“Public lodging establishment” is defined to include both transient public lodging establishments and nontransient public lodging establishments.² The principal differences between transient and nontransient public lodging establishments are the number of times that the establishments are

¹ Section 509.032(1), F.S.

² Section 509.013(4)(a), F.S.

rented in a calendar year and the length of the rentals. Section 509.013(4)(b), F.S., exempts dormitories, hospital and medical establishments, residential units, migrant labor camps, and establishments inspected by the Department of Health from the definition of “public lodging establishment.”

A public lodging establishment can be classified as a hotel, motel, nontransient apartment, transient apartment, bed and breakfast inn, timeshare project, or vacation rental.³

Section 509.242(1)(a), F.S., defines a “hotel” as follows:

any public lodging establishment containing sleeping room accommodations for 25 or more guests and providing the services generally provided by a hotel and recognized as a hotel in the community in which it is situated or by the industry.

Section 509.242(1)(b), F.S., defines “motel” as follows:

any public lodging establishment which offers rental units with an exit to the outside of each rental unit, daily or weekly rates, offstreet parking for each unit, a central office on the property with specified hours of operation, a bathroom or connecting bathroom for each rental unit, and at least six rental units, and which is recognized as a motel in the community in which it is situated or by the industry.

Section 509.242(1)(f), F.S., defines a “bed and breakfast inn” as follows:

a family home structure, with no more than 15 sleeping rooms, which has been modified to serve as a transient public lodging establishment, which provides the accommodation and meal services generally offered by a bed and breakfast inn, and which is recognized as a bed and breakfast inn in the community in which it is situated or by the hospitality industry.

At the end of FY 2013-2014, there were 38,472 licensed public lodging establishments, divided as follows:⁴

- Hotels – 1,720 licenses;
- Motels – 2,691 licenses;
- Nontransient apartments – 17,501 licenses;
- Transient apartments – 960 licenses;
- Bed and Breakfasts – 260 licenses;
- Vacation Rentals, Condominiums – 3,904 licenses; and
- Vacation Rentals, Dwellings – 11,436 licenses.

³ Section 509.242(1), F.S.

⁴ Annual Report, Fiscal Year 2013-2014, Division of Hotels and Restaurants, Department of Business and Professional Regulation. A copy is available at http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2013_14.pdf (last visited February 25, 2015).

Right to Refuse Accommodations

Public lodging establishments are private enterprises and may refuse accommodations to any person who is objectionable or undesirable to the operator, so long as the refusal is not “based upon race, creed, color, sex, physical disability, or national origin.”⁵ Public lodging establishments are also allowed to “establish reasonable rules and regulations for the management of the establishment,” which become part of “a special contract between the operator and each guest or employee using the services or facilities of the operator.”⁶

A small sampling of hotels in Florida reveals that some public lodging establishments advertise age requirement policies. While employed by the military, or when traveling for military and personal purposes, some persons have been denied accommodations at public lodging establishments because of their age.⁷

United States Armed Forces

The United States Armed Forces consist of the United States Army, Navy, Air Force, Marine Corps, and Coast Guard.⁸ Each branch of the armed forces has different enlistment requirements; however, each branch requires that a person must be at least 17 years old to join.⁹ The National Guard also requires that an applicant be at least 17 years old to join.¹⁰

Members of the armed forces are issued a Common Access Card by the U.S. Department of Defense. The card is “the standard identification for active duty uniformed service personnel, Selected Reserve, DoD civilian employees, and eligible contractor personnel.”¹¹ This is the main card used to enable physical access to buildings and controlled spaces.¹²

Florida has 21 military installations,¹³ and as of August 2013, there were over 65,000 active duty military personnel stationed in Florida.¹⁴

III. Effect of Proposed Changes:

The bill creates s. 509.095, F.S., to require that public lodging establishments classified as a hotel, motel, or bed and breakfast inn waive any policy that restricts accommodations to individuals based on age for active duty members of the United States Armed Forces, the United

⁵ Section 509.092, F.S.

⁶ Section 509.101(1), F.S.

⁷ See McCarthy, Regan, “Bill to Bend Hotel Age Requirement for Military Members,” *WFSU* (Jan. 28, 2015). A copy of the article is available at: <http://news.wfsu.org/post/bill-bend-hotel-age-requirements-military-members> (last visited February 25, 2015).

⁸ 5 U.S. Code § 2101, 10 U.S. Code § 101(a)(4), and s. 250.01(4), F.S.

⁹ See <http://www.military.com/join-armed-forces/join-the-military-basic-eligibility.html?comp=7000023452387&rank=1> (last visited February 25, 2015).

¹⁰ See <http://www.nationalguard.com/eligibility> (last visited February 25, 2015).

¹¹ See <http://www.cac.mil/common-access-card/> (last visited February 25, 2015).

¹² *Id.*

¹³ See <https://militarybases.com/florida/> (last visited February 25, 2015).

¹⁴ See <http://www.governing.com/gov-data/military-civilian-active-duty-employee-workforce-numbers-by-state.html>.

States Reserve Forces, the National Guard, and the Coast Guard. The bill prevents public lodging establishments from denying such persons accommodations based upon their age once a Common Access Card is presented.

The bill further prohibits a public lodging establishment from duplicating a Common Access Card.

The bill only applies to a public lodging establishment classified as a hotel, motel, or bed and breakfast inn as defined in s. 509.242, F.S.

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:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None

C. Government Sector Impact:

The Division of Hotels and Restaurants anticipates an indeterminate increase in complaints received and inspections required to investigate such complaints.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 250.01(4), F.S., 5 U.S.C. § 2102, and 10 U.S.C. § 101(a)(4) define “armed forces” to include the Coast Guard along with the Army, Navy, Air Force, and Marine Corps. It is therefore unnecessary to list the Coast Guard separately from United States Armed Forces.

VIII. Statutes Affected:

This bill creates section 509.095 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 on February 18, 2015:

The committee substitute (CS) requires the presentation of a “common access card” instead of a “military identification card.” The CS refers to active duty members of the United States Armed Services, the United States Reserve Forces, the National Guard, and the Coast Guard. The CS prohibits duplication of Common Access Cards that are presented pursuant to s. 509.095, F.S.

- B. **Amendments:**

None.

By the Committee on Regulated Industries; and Senator Brandes

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A bill to be entitled

An act relating to public lodging establishments;
creating s. 509.095, F.S.; requiring specified public
lodging establishments to waive certain policies for
individuals who present a valid Common Access Card;
prohibiting duplication of Common Access Cards;
providing an effective date.

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

Section 1. Section 509.095, Florida Statutes, is created to
read:

509.095 Accommodations at public lodging establishments for
individuals with a valid Common Access Card.-Upon the
presentation of a valid Common Access Card by an individual who
is currently on active duty as a member of the United States
Armed Forces, the United States Reserve Forces, the National
Guard, or the Coast Guard, and is seeking to obtain
accommodations at a hotel, motel, or bed and breakfast inn, as
defined in s. 509.242, such hotel, motel, or bed and breakfast
inn shall waive any minimum age policy that it may have which
restricts accommodations to individuals based on age.
Duplication of Common Access Cards presented pursuant to this
section is prohibited.

Section 2. 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

Subject: Committee Agenda Request

Date: February 19, 2015

I respectfully request that **Senate Bill #394**, relating to **Public Lodging Establishments**, be placed on the:

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

A handwritten signature in black ink, appearing to read "Jeff Brandes", written over a horizontal line.

Senator Jeff Brandes
Florida Senate, District 22

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-2-15

Meeting Date

Topic Military Ed-Lodging Establishments

Bill Number SB 394

(if applicable)

Name RICHARD TURNER

Amendment Barcode

(if applicable)

Job Title V.P. GOVERNMENT RELATIONS

Address 230 S. ADAMS ST

Phone 224, 2250

Street TALLAHASSEE FL 32301
City State Zip

E-mail rturner@fria.org

Speaking: For Against Information

Representing FLORIDA RESTAURANT LODGING ASSOC

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
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 554

INTRODUCER: Commerce and Tourism Committee and Senator Simmons

SUBJECT: Limited Liability Companies

DATE: March 2, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Siples	McKay	CM	Fav/CS
2.			JU	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 554 makes changes related to the Revised Limited Liability Company Act. The bill requires a company to provide notice to third parties regarding a person's lack of authority to transfer property by filing notice of such limitation in the public records of the office that processes those transfers. Additionally, the bill allows a company to take action that requires the vote or consent of the members to be taken without a meeting, if it meets certain conditions. The bill requires a company to respond to a member's request for information within 10 days. The bill repeals language that directed companies to regard the language in a company's articles of incorporation as if it was the company's operating agreement. The bill repeals a provision that prohibits a company's operating agreement from varying the power of a person to dissociate from the company. The bill repeals a provision that provides an exception to the limitation of the remedies in an appraisal event if the event is an interested transaction. The bill also deletes or revises references to the Florida Limited Liability Company Act, which was repealed effective January 1, 2015, and provides a retroactive effective date of January 1, 2015, for those provisions related to the repeal.

II. Present Situation:

Limited Liability Companies

A Limited Liability Company (LLC) is a creature of statute created to address the gap in existing business organizations – specifically the gap between a corporation and a partnership. On the one

hand, a corporation is highly complex and requires payment of state corporate income taxes, making it less ideal for a small business. On the other hand, a partnership is simpler but carries the risk of full joint and severable liability for each member. The LLC provides its members with the limited liability of a corporation and the tax benefits and management structure of a partnership.¹

Florida Limited Liability Companies

To transact business as a limited liability company in Florida, a company must sign and file its Articles of Organization² with the Florida Department of State, and pay the appropriate fee.³ A company must file an annual report with the Department of State to maintain its ability to transact business in this state.⁴

Florida Revised Limited Liability Company Act

In 2013, the Florida Legislature enacted a comprehensive law, the Florida Revised Limited Liability Act (revised act),⁵ to replace the predecessor act, the Florida Limited Liability Act,⁶ to address the formation and operation of LLCs. The revised act is substantially based on the Revised Uniform Limited Liability Company Act,⁷ as amended in 2011, but also incorporates provisions that are unique to Florida.⁸ The revised act provides that its provisions would apply to an LLC created on or after January 1, 2014, and companies in existence prior to January 1, 2014, were given until January 1, 2015, to comply with the provisions of the revised act.⁹ The legislation repealed the predecessor law, the Florida Limited Liability Act, effective January 1, 2015.¹⁰

¹ McGinty, A. Edward, *Olmstead – A Lever from Member’s Creditor to Full Multi-member LLC Membership?* 85 FLA. BAR J., 39, 42 (Mar. 2011), available at <http://www.floridabar.org/DIVCOM/JN/JNJournal01.nsf/Author/6E1AD1891CA9E76D85257845004FD5E6> (last visited Feb. 17, 2015).

² Section 605.0201, F.S. The articles of organization must state the name of the LLC, the street and mailing address of the company’s principal office, and the registered name, address, and written acceptance. The articles of organization may include a declaration that it is a member-managed company and the names and addresses of one or more of the managers, and a description of the authority or limit of authority of a specific person in the company, among other things.

³ For a list of fees associated with the formation and maintenance of an LLC in this state, see <http://www.sunbiz.org/feellc.html> (last visited Feb. 25, 2015).

⁴ Section 605.0212, F.S. The annual report must include the name of the LLC, the street address of the LLC, the date of organization, the federal employer identification number, the name and address of the person having authority to manage the LLC, and any information required by the Department of State. The annual report is due by May 1 of each year.

⁵ Chapter 2013-180, Laws of Fla.

⁶ Chapter 608, F.S.

⁷ The Revised Uniform Limited Liability Act was drafted by the National Conference of Commissioners on Uniform State Laws in 2006 and revised in 2011. A full version of the document may be found at: http://www.uniformlaws.org/shared/docs/limited%20liability%20company/ullca_final_06rev.pdf (last visited Feb. 25, 2015).

⁸ The Florida Bar Revised LLC Act Drafting Committee, *White Paper: The Proposed Florida Revised Limited Liability Company Act* (March 18, 2013) (on file with the Senate Committee on Commerce and Tourism).

⁹ Section 605.1108, F.S.

¹⁰ Chapter 2013-180, s. 5, Laws of Fla.

III. Effect of Proposed Changes:

Section 1 amends s. 605.0103(4), F.S., to require an LLC that limits the authority of a person to transfer real property in the name of the LLC in its articles of organization to record an affidavit, certificate, or other instrument of such limitation in the office for recording transfers of such real property. Under current law, the only notice required is the statement of such limitation in the LLC's articles of organization.

Section 2 amends s. 605.0105(3), F.S., to allow an LLC's operating agreement to vary the power of a person to dissociate. Current law prohibits an LLC from modifying or limiting a member's power to dissociate.¹¹

Section 3 amends s. 605.04073, F.S., to provide that an action requiring the vote or consent of members may be taken or approved without a meeting provided the action is approved by the minimum number of votes that would be necessary to take action at a meeting, and a record of such action is made.

Section 4 amends s. 605.0410, F.S., relating to member demand of records. The bill requires a member-managed LLC that has received a demand for information to respond within 10 days of the demand with either the information the company will provide in response to the demand and the manner in which it will be provided or the reason(s) the LLC will not provide the information.

Section 5 amends s. 605.1072, F.S., to delete a provision that provided an exception to the limitations of remedies that an LLC could pursue regarding the legality of an appraisal event involving an interested transaction. This repeal makes the limitation of remedies comparable to the limitations for other business entities.¹²

Section 6 amends s. 605.1108(3), F.S., to delete a provision that directed a member-managed LLC formed under ch. 608, F.S., to regard the language provided in the company's articles of organization as if that language were in the operating agreement.

Section 7 repeals ch. 608, F.S. Chapter 608, F.S., also known as the Florida Limited Liability Company Act, was repealed by the Legislature in 2013,¹³ and replaced by the Revised Limited Liability Company Act. Since ch. 608, F.S., was not repealed by a "current session" of the Legislature, it may be omitted from the 2015 Florida Statutes only through a bill duly enacted by the current Legislature.¹⁴ Therefore, the bill repeals ch. 608, F.S.

¹¹ Section 605.0601, F.S., generally governs a person's power to dissociate as a member of a limited liability company. A member may dissociate at any time, rightfully or wrongfully, by withdrawing by express will. A person who dissociates loses the right to participate in the LLC's management and incurs the liability to the LLC and remaining members for any damages caused by wrongful dissociation.

¹² See s. 607.1302(3), F.S.

¹³ Chapter 2013-180, Laws of Fla.

¹⁴ See ss. 11.242(5)(b) and (i), F.S.

Section 16 amends s. 605.0102, F.S., to amend the definition of “majority-in-interest,” to provide that the determination of what constitutes an action taken by a “majority-in-interest” is based on the percentage interest in the LLC’s profits owned by all the members of the LLC.

Section 19 amends s. 605.04091, F.S., to clarify that a member does not violate his or her duty of loyalty in interested transactions if the conflict of interest transaction satisfies the requirements under s. 605.04092, F.S.¹⁵

Sections 8-15, 17-18, and 20-27 amend ss. 15.16, 48.062, 213.758, 220.02, 220.03, 220.13, 310.181, 440.02, 605.0401, 605.04074, 606.06, 607.1108, 607.1109, 607.11101, 621.12, 636.204, 655.0201, 658.2953, 694.16, and 1002.395, F.S., respectively, to revise cross-references and make technical changes associated with the repeal of the Florida Limited Liability Company Act on January 1, 2015. The provisions related to the repeal of the Florida Limited Liability Company Act and the enactment of the Revised Limited Liability Company Act have a retroactive effective date of January 1, 2015.

Section 28 provides an effective date of July 1, 2015, for the substantive provisions. For provisions related to the repeal of the Florida Limited Liability Company Act, the provisions have a retroactive effective date of January 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:

None.

B. Private Sector Impact:

None.

¹⁵ Generally, s. 605.04092, F.S. requires an interested transaction to be “fair to the limited liability company,” meaning that it must be beneficial to the LLC and its members, taking into account whether its fair in terms of the member’s or manager’s dealings with the LLC in connection with the transaction, and if it is comparable to what might have been obtained in an arm’s length transaction.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill provides a retroactive effective date of January 1, 2015, for those provisions related to the repeal of the Florida Limited Liability Company Act. Retroactive application of a statute is generally unconstitutional if the statute impairs vested rights, creates new obligations, or imposes new penalties.¹⁶

To determine whether a statute should be retroactively applied, courts apply two interrelated inquiries. First, courts determine whether there is clear evidence of legislative intent to apply the statute retrospectively. If so, then courts determine whether retroactive application is constitutionally permissible.¹⁷ The first prong of the test appears to clearly be met by those sections of the bill that contain an explicit statement of retroactivity.

The second prong looks to see if a vested right is impaired. To be vested, a right must be more than a mere expectation based on an anticipation of the continuance of an existing law.¹⁸ It must be an immediate, fixed right of present or future enjoyment.¹⁹ “Remedial statutes or statutes relating to remedies or modes of procedure, which do not create new or take away vested rights, but only operate in furtherance of the remedy or confirmation of rights already existing, do not come within the legal conception of a retrospective law, or the general rule against retrospective operation of statutes.”²⁰

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 605.0103, 605.0105, 605.04073, 605.0410, 605.1072, 605.1108, 15.16, 48.062, 213.758, 220.02, 220.03, 220.13, 310.181, 440.02, 605.0102, 605.0401, 605.04074, 605.04091, 605.1025, 606.06, 607.1108, 607.1109, 607.11101, 621.12, 636.204, 655.0201, 658.2953, 694.16, and 1002.395.

The bill repeals ch. 608 of the Florida Statutes.

¹⁶ *R.A.M. of South Florida, Inc. v. WCI Communities, Inc.*, 869 So.2d 1210, 1216 (Fla. 2nd DCA 2004).

¹⁷ *Metropolitan Dade County v. Chase Federal Housing Corp.*, 737 So.2d 494, 499 (Fla. 1999).

¹⁸ *R.A.M.* at 1218.

¹⁹ *Florida Hosp. Waterman, Inc. v. Buster*, 948 So.2d 478, 490 (Fla. 2008).

²⁰ *City of Lakeland v. Catinella*, 129 So.2d 133 (Fla. 1961).

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 2, 2015:

- Repeals a provision that provides an exception to the limitation of the remedies in appraisal events if the appraisal event is an interested transaction.
- Repeals ch. 608, F.S., the Limited Liability Company Act.
- Makes retroactive the effective date to January 1, 2015, those provisions that correct technical errors and cross-references associated with the repeal of the Florida Limited Liability Company Act and enactment of the Florida Revised Limited Liability Company Act in 2013.
- Adds additional cross-references that needed to be updated.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/02/2015	.	
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The Committee on Commerce and Tourism (Richter) recommended the following:

Senate Amendment (with title amendment)

Delete lines 102 - 552

and insert:

Section 4. Subsection (2), paragraph (a) of subsection (3), and subsection (4) of section 605.0410, Florida Statutes, are amended to read:

605.0410 Records to be kept; rights of member, manager, and person dissociated to information.—

(2) In a member-managed limited liability company, the



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11 following rules apply:

12 (a) Upon reasonable notice, a member may inspect and copy
13 during regular business hours, at a reasonable location
14 specified by the company:

- 15 1. The records described in subsection (1); and
16 2. Each other record maintained by the company regarding
17 the company's activities, affairs, financial condition, and
18 other circumstances, to the extent the information is material
19 to the member's rights and duties under the operating agreement
20 or this chapter.

21 (b) The company shall furnish to each member:

22 1. Without demand, any information concerning the company's
23 activities, affairs, financial condition, and other
24 circumstances that the company knows and is material to the
25 proper exercise of the member's rights and duties under the
26 operating agreement or this chapter, except to the extent the
27 company can establish that it reasonably believes the member
28 already knows the information; and

29 2. On demand, other information concerning the company's
30 activities, affairs, financial condition, and other
31 circumstances, except to the extent the demand or information
32 demanded is unreasonable or otherwise improper under the
33 circumstances.

34 (c) Within 10 days after receiving a demand pursuant to
35 subparagraph (b)2., the company shall provide to the member who
36 made the demand a record of:

37 1. The information that the company will provide in
38 response to the demand and when and where the company will
39 provide such information.



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40 2. For any demanded information that the company is not
41 providing, the reasons that the company will not provide the
42 information.

43 (d)(e) The duty to furnish information under this
44 subsection also applies to each member to the extent the member
45 knows any of the information described in this subsection.

46 (3) In a manager-managed limited liability company, the
47 following rules apply:

48 (a) The informational rights stated in subsection (2) and
49 the duty stated in paragraph (2)(d)(2)(e) apply to the managers
50 and not to the members.

51 (4) Subject to subsection (10)(9), on 10 days' demand made
52 in a record received by a limited liability company, a person
53 dissociated as a member may have access to information to which
54 the person was entitled while a member if:

55 (a) The information pertains to the period during which the
56 person was a member;

57 (b) The person seeks the information in good faith; and

58 (c) The person satisfies the requirements imposed on a
59 member by paragraph (3)(b).

60 Section 5. Paragraph (c) of subsection (2) of section
61 605.1072, Florida Statutes, is amended to read:

62 605.1072 Other remedies limited.—

63 (2) Subsection (1) does not apply to an appraisal event
64 that:

65 ~~(c) Is an interested transaction, unless it has been~~
66 ~~approved in the same manner as is provided in s. 605.04092 or is~~
67 ~~fair to the limited liability company as defined in s.~~
68 ~~605.04092(1)(c).~~



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69 Section 6. Subsection (3) of section 605.1108, Florida
70 Statutes, is amended to read:

71 605.1108 Application to limited liability company formed
72 under the Florida Limited Liability Company Act.—

73 (3) For the purpose of applying this chapter to a limited
74 liability company formed before January 1, 2014, under the
75 Florida Limited Liability Company Act, former ss. 608.401-
76 608.705,÷

77 ~~(a) The company's articles of organization are deemed to be~~
78 ~~the company's articles of organization under this chapter; and~~

79 ~~(b) For the purpose of applying s. 605.0102(39), the~~
80 ~~language in the company's articles of organization designating~~
81 ~~the company's management structure operates as if that language~~
82 ~~were in the operating agreement.~~

83 Section 7. Effective upon this act becoming a law, chapter
84 608, Florida Statutes, consisting of sections 608.401, 608.402,
85 608.403, 608.404, 608.405, 608.406, 608.407, 608.408, 608.4081,
86 608.4082, 608.409, 608.4101, 608.411, 608.4115, 608.415,
87 608.416, 608.4211, 608.422, 608.4225, 608.4226, 608.4227,
88 608.4228, 608.4229, 608.423, 608.4231, 608.4232, 608.4235,
89 608.4236, 608.4237, 608.4238, 608.425, 608.426, 608.4261,
90 608.427, 608.428, 608.431, 608.432, 608.433, 608.434, 608.4351,
91 608.4352, 608.4353, 608.4354, 608.4355, 608.4356, 608.4357,
92 608.43575, 608.4358, 608.43585, 608.4359, 608.43595, 608.438,
93 608.4381, 608.4382, 608.4383, 608.439, 608.4401, 608.4402,
94 608.4403, 608.4404, 608.441, 608.4411, 608.4421, 608.4431,
95 608.444, 608.445, 608.446, 608.447, 608.448, 608.4481, 608.4482,
96 608.4483, 608.449, 608.4491, 608.4492, 608.4493, 608.4511,
97 608.452, 608.455, 608.461, 608.462, 608.463, 608.471, 608.501,



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98 608.502, 608.503, 608.504, 608.505, 608.506, 608.507, 608.508,
99 608.509, 608.5101, 608.511, 608.512, 608.513, 608.5135, 608.514,
100 608.601, 608.701, 608.702, 608.703, 608.704, and 608.705, is
101 repealed.

102 Section 8. Effective upon this act becoming a law and
103 operating retroactively to January 1, 2015, subsection (3) of
104 section 15.16, Florida Statutes, is amended to read:

105 15.16 Reproduction of records; admissibility in evidence;
106 electronic receipt and transmission of records; certification;
107 acknowledgment.—

108 (3) The Department of State may cause to be received
109 electronically any records that are required to be filed with it
110 pursuant to chapter 55, chapter 117, chapter 118, chapter 495,
111 chapter 605, chapter 606, chapter 607, ~~chapter 608~~, chapter 610,
112 chapter 617, chapter 620, chapter 621, chapter 679, chapter 713,
113 or chapter 865, through facsimile or other electronic transfers,
114 for the purpose of filing such records. The originals of all
115 such electronically transmitted records must be executed in the
116 manner provided in paragraph (5)(b). The receipt of such
117 electronic transfer constitutes delivery to the department as
118 required by law. The department may use electronic transmissions
119 for purposes of notice in the administration of chapters 55,
120 117, 118, 495, 605, 606, 607, ~~608~~, 610, 617, 620, 621, 679, and
121 713 and s. 865.09. The Department of State may collect e-mail
122 addresses for purposes of notice and communication in the
123 performance of its duties and may require filers and registrants
124 to furnish such e-mail addresses when presenting documents for
125 filing.

126 Section 9. Effective upon this act becoming a law and



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127 operating retroactively to January 1, 2015, subsections (1) and
128 (2) of section 48.062, Florida Statutes, are amended to read:

129 48.062 Service on a limited liability company.—

130 (1) Process against a limited liability company, domestic
131 or foreign, may be served on the registered agent designated by
132 the limited liability company under chapter 605 ~~or chapter 608~~.
133 A person attempting to serve process pursuant to this subsection
134 may serve the process on any employee of the registered agent
135 during the first attempt at service even if the registered agent
136 is a natural person and is temporarily absent from his or her
137 office.

138 (2) If service cannot be made on a registered agent of the
139 limited liability company because of failure to comply with
140 chapter 605 ~~or chapter 608~~ or because the limited liability
141 company does not have a registered agent, or if its registered
142 agent cannot with reasonable diligence be served, process
143 against the limited liability company, domestic or foreign, may
144 be served:

145 (a) On a member of a member-managed limited liability
146 company;

147 (b) On a manager of a manager-managed limited liability
148 company; or

149 (c) If a member or manager is not available during regular
150 business hours to accept service on behalf of the limited
151 liability company, he, she, or it may designate an employee of
152 the limited liability company to accept such service. After one
153 attempt to serve a member, manager, or designated employee has
154 been made, process may be served on the person in charge of the
155 limited liability company during regular business hours.



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156 Section 10. Effective upon this act becoming a law and
157 operating retroactively to January 1, 2015, paragraph (c) of
158 subsection (1) of section 213.758, Florida Statutes, is amended
159 to read:

160 213.758 Transfer of tax liabilities.—

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

162 (c) "Insider" means:

163 1. Any person included within the meaning of insider as
164 used in s. 726.102; or

165 2. A manager of, ~~a managing member of,~~ or a person who
166 controls a transferor that is, a limited liability company, or a
167 relative as defined in s. 726.102 of any such persons.

168 Section 11. Effective upon this act becoming a law and
169 operating retroactively to January 1, 2015, subsection (1) of
170 section 220.02, Florida Statutes, is amended to read:

171 220.02 Legislative intent.—

172 (1) It is the intent of the Legislature in enacting this
173 code to impose a tax upon all corporations, organizations,
174 associations, and other artificial entities which derive from
175 this state or from any other jurisdiction permanent and inherent
176 attributes not inherent in or available to natural persons, such
177 as perpetual life, transferable ownership represented by shares
178 or certificates, and limited liability for all owners. It is
179 intended that any limited liability company that is classified
180 as a partnership for federal income tax purposes and is defined
181 in and organized pursuant to ~~formed under~~ chapter 605 ~~608~~ or
182 qualified to do business in this state as a foreign limited
183 liability company not be subject to the tax imposed by this
184 code. It is the intent of the Legislature to subject such



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185 corporations and other entities to taxation hereunder for the
186 privilege of conducting business, deriving income, or existing
187 within this state. This code is not intended to tax, and shall
188 not be construed so as to tax, any natural person who engages in
189 a trade, business, or profession in this state under his or her
190 own or any fictitious name, whether individually as a
191 proprietorship or in partnership with others, or as a member or
192 a manager of a limited liability company classified as a
193 partnership for federal income tax purposes; any estate of a
194 decedent or incompetent; or any testamentary trust. However, a
195 corporation or other taxable entity which is or which becomes
196 partners with one or more natural persons shall not, merely by
197 reason of being a partner, exclude from its net income subject
198 to tax its respective share of partnership net income. This
199 statement of intent shall be given preeminent consideration in
200 any construction or interpretation of this code in order to
201 avoid any conflict between this code and the mandate in s. 5,
202 Art. VII of the State Constitution that no income tax be levied
203 upon natural persons who are residents and citizens of this
204 state.

205 Section 12. Effective upon this act becoming a law and
206 operating retroactively to January 1, 2015, paragraph (e) of
207 subsection (1) of section 220.03, Florida Statutes, is amended
208 to read:

209 220.03 Definitions.—

210 (1) SPECIFIC TERMS.—When used in this code, and when not
211 otherwise distinctly expressed or manifestly incompatible with
212 the intent thereof, the following terms shall have the following
213 meanings:



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214 (e) "Corporation" includes all domestic corporations;
215 foreign corporations qualified to do business in this state or
216 actually doing business in this state; joint-stock companies;
217 limited liability companies, under chapter 605 ~~608~~; common-law
218 declarations of trust, under chapter 609; corporations not for
219 profit, under chapter 617; agricultural cooperative marketing
220 associations, under chapter 618; professional service
221 corporations, under chapter 621; foreign unincorporated
222 associations, under chapter 622; private school corporations,
223 under chapter 623; foreign corporations not for profit which are
224 carrying on their activities in this state; and all other
225 organizations, associations, legal entities, and artificial
226 persons which are created by or pursuant to the statutes of this
227 state, the United States, or any other state, territory,
228 possession, or jurisdiction. The term "corporation" does not
229 include proprietorships, even if using a fictitious name;
230 partnerships of any type, as such; limited liability companies
231 that are taxable as partnerships for federal income tax
232 purposes; state or public fairs or expositions, under chapter
233 616; estates of decedents or incompetents; testamentary trusts;
234 or private trusts.

235 Section 13. Effective upon this act becoming a law and
236 operating retroactively to January 1, 2015, paragraph (j) of
237 subsection (2) of section 220.13, Florida Statutes, is amended
238 to read:

239 220.13 "Adjusted federal income" defined.—

240 (2) For purposes of this section, a taxpayer's taxable
241 income for the taxable year means taxable income as defined in
242 s. 63 of the Internal Revenue Code and properly reportable for



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243 federal income tax purposes for the taxable year, but subject to
244 the limitations set forth in paragraph (1)(b) with respect to
245 the deductions provided by ss. 172 (relating to net operating
246 losses), 170(d)(2) (relating to excess charitable
247 contributions), 404(a)(1)(D) (relating to excess pension trust
248 contributions), 404(a)(3)(A) and (B) (to the extent relating to
249 excess stock bonus and profit-sharing trust contributions), and
250 1212 (relating to capital losses) of the Internal Revenue Code,
251 except that, subject to the same limitations, the term:

252 (j) "Taxable income," in the case of a limited liability
253 company, other than a limited liability company classified as a
254 partnership for federal income tax purposes, as defined in and
255 organized pursuant to chapter 605 ~~608~~ or qualified to do
256 business in this state as a foreign limited liability company or
257 other than a similar limited liability company classified as a
258 partnership for federal income tax purposes and created as an
259 artificial entity pursuant to the statutes of the United States
260 or any other state, territory, possession, or jurisdiction, if
261 such limited liability company or similar entity is taxable as a
262 corporation for federal income tax purposes, means taxable
263 income determined as if such limited liability company were
264 required to file or had filed a federal corporate income tax
265 return under the Internal Revenue Code;

266 Section 14. Effective upon this act becoming a law and
267 operating retroactively to January 1, 2015, section 310.181,
268 Florida Statutes, is amended to read:

269 310.181 Corporate powers.—All the rights, powers, and
270 liabilities conferred or imposed by the laws of Florida relating
271 to corporations for profit organized under part I of chapter 607



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272 or under former chapter 608 before January 1, 1976, or to
273 corporations organized under chapter 621 apply to corporations
274 organized pursuant to s. 310.171.

275 Section 15. Effective upon this act becoming a law and
276 operating retroactively to January 1, 2015, subsection (9) of
277 section 440.02, Florida Statutes, is amended to read:

278 440.02 Definitions.—When used in this chapter, unless the
279 context clearly requires otherwise, the following terms shall
280 have the following meanings:

281 (9) "Corporate officer" or "officer of a corporation" means
282 any person who fills an office provided for in the corporate
283 charter or articles of incorporation filed with the Division of
284 Corporations of the Department of State or as authorized or
285 required under part I of chapter 607. The term "officer of a
286 corporation" includes a member owning at least 10 percent of a
287 limited liability company as defined in and organized pursuant
288 to ~~created and approved under~~ chapter 605 608.

289 Section 16. Subsection (37) of section 605.0102, Florida
290 Statutes, is amended to read:

291 605.0102 Definitions.—As used in this chapter, the term:

292 (37) "Majority-in-interest" means those members who hold
293 more than 50 percent of the then-current percentage or other
294 interest in the profits of the limited liability company owned
295 by all of its members ~~and who have the right to vote~~; however,
296 as used in ss. 605.1001-605.1072, the term means:

297 (a) In the case of a limited liability company with only
298 one class or series of members, the holders of more than 50
299 percent of the then-current percentage or other interest in the
300 profits of the company owned by all of its members who have the



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301 right to approve the a merger, interest exchange, or conversion,
302 as applicable, under the organic law or the organic rules of the
303 company; and

304 (b) In the case of a limited liability company having more
305 than one class or series of members, the holders in each class
306 or series of more than 50 percent of the then-current percentage
307 or other interest in the profits of the company owned by all of
308 the members of that class or series who have the right to
309 approve a merger, interest exchange, or conversion, as
310 applicable, under the organic law or the organic rules of the
311 company, unless the company's organic rules provide for the
312 approval of the transaction in a different manner.

313 Section 17. Effective upon this act becoming a law and
314 operating retroactively to January 1, 2015, subsection (3) of
315 section 605.0401, Florida Statutes, is amended to read:

316 605.0401 Becoming a member.—

317 (3) After formation of a limited liability company, a
318 person becomes a member:

319 (a) As provided in the operating agreement;

320 (b) As the result of a merger, interest exchange,
321 conversion, or domestication under ss. 605.1001-605.1072, as
322 applicable;

323 (c) With the consent of all the members; or

324 (d) As provided in s. 605.0701(3).

325 Section 18. Effective upon this act becoming a law and
326 operating retroactively to January 1, 2015, paragraph (a) of
327 subsection (1) of section 605.04074, Florida Statutes, is
328 amended to read:

329 605.04074 Agency rights of members and managers.—



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330 (1) In a member-managed limited liability company, the
331 following rules apply:

332 (a) Except as provided in subsection (3), each member is an
333 agent of the limited liability company for the purpose of its
334 activities and affairs, and an act of a member, including
335 signing an agreement or instrument of transfer in the name of
336 the company for apparently carrying on in the ordinary course of
337 the company's activities and affairs or activities and affairs
338 of the kind carried on by the company, binds the company unless
339 the member had no authority to act for the company in the
340 particular matter and the person with whom the member was
341 dealing knew or had notice that the member lacked authority.

342 Section 19. Effective upon this act becoming a law and
343 operating retroactively to January 1, 2015, paragraph (b) of
344 subsection (2) of section 605.04091, Florida Statutes, is
345 amended to read:

346 605.04091 Standards of conduct for members and managers.—

347 (2) The duty of loyalty is limited to:

348 (b) Refraining from dealing with the company in the conduct
349 or winding up of the company's activities and affairs as, or on
350 behalf of, a person having an interest adverse to the company,
351 except to the extent that a transaction satisfies the
352 requirements of s. 605.04092 ~~this section~~; and

353 Section 20. Subsection (3) of section 605.0712, Florida
354 Statutes, is amended to read:

355 605.0712 Other claims against a dissolved limited liability
356 company.—

357 (3) A claim that is not barred by this section, ~~s.~~
358 ~~608.0711~~, or another statute limiting actions, may be enforced:



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359 (a) Against a dissolved limited liability company, to the
360 extent of its undistributed assets; and

361 (b) Except as otherwise provided in s. 605.0713, if assets
362 of the limited liability company have been distributed after
363 dissolution, against a member or transferee to the extent of
364 that person's proportionate share of the claim or of the
365 company's assets distributed to the member or transferee after
366 dissolution, whichever is less, but a person's total liability
367 for all claims under this subsection may not exceed the total
368 amount of assets distributed to the person after dissolution.

369 Section 21. Subsection (2) of section 605.0805, Florida
370 Statutes, is amended to read:

371 605.0805 Proceeds and expenses.—

372 (2) If a derivative action ~~under s. 608.0802~~ is successful
373 in whole or in part, the court may award the plaintiff
374 reasonable expenses, including reasonable attorney fees and
375 costs, from the recovery of the limited liability company.

376 Section 22. Effective upon this act becoming a law and
377 operating retroactively to January 1, 2015 subsection (2) of
378 section 606.06, Florida Statutes, is amended to read:

379 606.06 Uniform business report.—The department may use the
380 uniform business report:

381 (2) As a substitute for any annual report or renewal filing
382 required by chapters 495, 605, 607, ~~608~~, 609, 617, 620, 621, and
383 865.

384 Section 23. Effective upon this act becoming a law and
385 operating retroactively to January 1, 2015, paragraph (c) of
386 subsection (2) of section 607.1108, Florida Statutes, is amended
387 to read:



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388 607.1108 Merger of domestic corporation and other business
389 entity.—

390 (2) Pursuant to a plan of merger complying and approved in
391 accordance with this section, one or more domestic corporations
392 may merge with or into one or more other business entities
393 formed, organized, or incorporated under the laws of this state
394 or any other state, the United States, foreign country, or other
395 foreign jurisdiction, if:

396 (c) Each domestic limited liability company that is a party
397 to the merger complies with the applicable provisions of chapter
398 605 ~~608~~.

399 Section 24. Effective upon this act becoming a law and
400 operating retroactively to January 1, 2015, paragraph (d) of
401 subsection (1) of section 607.1109, Florida Statutes, is amended
402 to read:

403 607.1109 Articles of merger.—

404 (1) After a plan of merger is approved by each domestic
405 corporation and other business entity that is a party to the
406 merger, the surviving entity shall deliver to the Department of
407 State for filing articles of merger, which shall be executed by
408 each domestic corporation as required by s. 607.0120 and by each
409 other business entity as required by applicable law, and which
410 shall set forth:

411 (d) A statement that the plan of merger was approved by
412 each domestic limited liability company that is a party to the
413 merger in accordance with the applicable provisions of chapter
414 605 ~~608~~.

415 Section 25. Effective upon this act becoming a law and
416 operating retroactively to January 1, 2015, subsection (7) of



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417 section 607.11101, Florida Statutes, is amended to read:

418 607.11101 Effect of merger of domestic corporation and
419 other business entity.—When a merger becomes effective:

420 (7) The shares, partnership interests, interests,
421 obligations, or other securities, and the rights to acquire
422 shares, partnership interests, interests, obligations, or other
423 securities, of each domestic corporation and other business
424 entity that is a party to the merger shall be converted into
425 shares, partnership interests, interests, obligations, or other
426 securities, or rights to such securities, of the surviving
427 entity or any other domestic corporation or other business
428 entity or, in whole or in part, into cash or other property as
429 provided in the plan of merger, and the former holders of
430 shares, partnership interests, interests, obligations, or other
431 securities, or rights to such securities, shall be entitled only
432 to the rights provided in the plan of merger and to their
433 appraisal rights, if any, under s. 605.1006, ss. 605.1061-
434 605.1072, ss. 607.1301-607.1333, ~~ss. 608.4351-608.4359~~, ss.
435 620.2114-620.2124, or other applicable law.

436 Section 26. Effective upon this act becoming a law and
437 operating retroactively to January 1, 2015, paragraph (b) of
438 subsection (2) of section 621.12, Florida Statutes, is amended
439 to read:

440 621.12 Identification with individual shareholders or
441 individual members.—

442 (2) The name shall also contain:

443 (b)1. In the case of a professional corporation, the words
444 “professional association” or the abbreviation “P.A.”; or

445 2. In the case of a professional limited liability company



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446 formed before January 1, 2014, the words "professional limited
447 company" or "professional limited liability company," the
448 abbreviation "P.L." or "P.L.L.C." or the designation "PL" or
449 "PLLC," in lieu of the words "limited company" or "limited
450 liability company," or the abbreviation "L.C." or "L.L.C." or
451 the designation "LC" or "LLC" as otherwise required under s.
452 605.0112 or former s. 608.406.

453 3. In the case of a professional limited liability company
454 formed on or after January 1, 2014, the words "professional
455 limited liability company," the abbreviation "P.L.L.C." or the
456 designation "PLLC," in lieu of the words "limited liability
457 company," or the abbreviation "L.L.C." or the designation "LLC"
458 as otherwise required under s. 605.0112.

459 Section 27. Effective upon this act becoming a law and
460 operating retroactively to January 1, 2015, subsection (1) of
461 section 636.204, Florida Statutes, is amended to read:

462 636.204 License required.—

463 (1) Before doing business in this state as a discount
464 medical plan organization, an entity must be a corporation, a
465 limited liability company, or a limited partnership,
466 incorporated, organized, formed, or registered under the laws of
467 this state or authorized to transact business in this state in
468 accordance with chapter 605, part I of chapter 607, ~~chapter 608~~,
469 chapter 617, chapter 620, or chapter 865, and must be licensed
470 by the office as a discount medical plan organization or be
471 licensed by the office pursuant to chapter 624, part I of this
472 chapter, or chapter 641.

473 Section 28. Effective upon this act becoming a law and
474 operating retroactively to January 1, 2015, subsection (1) of



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475 section 655.0201, Florida Statutes, is amended to read:
476 655.0201 Service of process, notice, or demand on financial
477 institutions.—

478 (1) Process against any financial institution authorized by
479 federal or state law to transact business in this state may be
480 served in accordance with chapter 48, chapter 49, chapter 605,
481 or part I of chapter 607, ~~or chapter 608,~~ as appropriate.

482 Section 29. Effective upon this act becoming a law and
483 operating retroactively to January 1, 2015, paragraph (c) of
484 subsection (11) of section 658.2953, Florida Statutes, is
485 amended to read:

486 658.2953 Interstate branching.—

487 (11) DE NOVO INTERSTATE BRANCHING BY STATE BANKS.—

488 (c) An out-of-state bank may establish and maintain a de
489 novo branch or acquire a branch in this state upon compliance
490 with chapter 605 or part I of chapter 607 ~~or chapter 608~~
491 relating to doing business in this state as a foreign business
492 entity, including maintaining a registered agent for service of
493 process and other legal notice pursuant to s. 655.0201.

494 Section 30. Effective upon this act becoming a law and
495 operating retroactively to January 1, 2015, section 694.16,
496 Florida Statutes, is amended to read:

497 694.16 Conveyances by merger or conversion of business
498 entities.—As to any merger or conversion of business entities
499 prior to June 15, 2000, the title to all real estate, or any
500 interest therein, owned by a business entity that was a party to
501 a merger or a conversion is vested in the surviving entity
502 without reversion or impairment, notwithstanding the requirement
503 of a deed which was previously required by s. 607.11101, former



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504 s. 608.4383, former s. 620.204, former s. 620.8904, or former s.
505 620.8906.

506 Section 31. Effective upon this act becoming a law and
507 operating retroactively to January 1, 2015, paragraph (f) of
508 subsection (2) of section 1002.395, Florida Statutes, is amended
509 to read:

510 1002.395 Florida Tax Credit Scholarship Program.—

511 (2) DEFINITIONS.—As used in this section, the term:

512 (f) "Eligible nonprofit scholarship-funding organization"

513 means a state university; or an independent college or
514 university that is eligible to participate in the William L.
515 Boyd, IV, Florida Resident Access Grant Program, located and
516 chartered in this state, is not for profit, and is accredited by
517 the Commission on Colleges of the Southern Association of
518 Colleges and Schools; or is a charitable organization that:

519 1. Is exempt from federal income tax pursuant to s.
520 501(c)(3) of the Internal Revenue Code;

521 2. Is a Florida entity formed under chapter 605, chapter
522 607, ~~chapter 608~~, or chapter 617 and whose principal office is
523 located in the state; and

524 3. Complies with subsections (6) and (16).

525 Section 28. Except as otherwise expressly provided in this
526 act and except for this section, which shall take effect upon
527 this act becoming a law, this act shall take effect July 1,
528 2015.

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

531 And the title is amended as follows:

532 Delete lines 13 - 34



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533 and insert:
534 dissociate; amending s. 605.04073, F.S.; requiring
535 certain conditions for members of a limited liability
536 company, without a meeting, to take certain actions
537 requiring the vote or consent of the members; amending
538 s. 605.0410, F.S.; requiring a limited liability
539 company to provide a record of certain information
540 within a specified period to a member who makes a
541 demand; amending s. 605.1072, F.S.; deleting a
542 provision providing an exception to the limitation of
543 remedies for appraisal events under specified
544 circumstances; amending s. 605.1108, F.S.; deleting a
545 provision requiring that, for a limited liability
546 company formed before a specified date, certain
547 language in the company's articles of organization
548 operates as if it were in the operating agreement;
549 repealing chapter 608, F.S., relating to the Florida
550 Limited Liability Company Act; amending ss. 15.16,
551 48.062, 213.758, 220.02, 220.03, 220.13, 310.181,
552 440.02, 605.0401, 605.04074, 605.04091, 606.06,
553 607.1108, 607.1109, 607.11101, 621.12, 636.204,
554 655.0201, 658.2953, 694.16, and 1002.395, F.S.;
555 conforming provisions to the repeal of the Florida
556 Limited Liability Company Act; providing retroactive
557 applicability; amending ss. 605.0102, 605.0712, and
558 605.0805, F.S.; revising a definition; conforming
559 cross-references; providing effective dates.

By Senator Simmons

10-00376-15

2015554__

1 A bill to be entitled
 2 An act relating to limited liability companies;
 3 amending s. 605.0103, F.S.; specifying that persons
 4 who are not members of a limited liability company are
 5 not deemed to have notice of a provision of the
 6 company's articles of organization which limits a
 7 person's authority to transfer real property held in
 8 the company's name unless such limitation appears in
 9 an affidavit, certificate, or other instrument that is
 10 recorded in a specified manner; amending s. 605.0105,
 11 F.S.; removing the prohibition that an operating
 12 agreement may not vary the power of a person to
 13 dissociate under certain circumstances; amending s.
 14 605.04073, F.S.; providing that an action requiring
 15 the vote or consent of members may be taken without a
 16 meeting if the action is approved in a record and if
 17 the number of votes cast is at least that required in
 18 a meeting; amending s. 605.0410, F.S.; requiring a
 19 limited liability company to provide a record of
 20 certain information within a specified period to a
 21 member who makes a demand; amending s. 605.1108, F.S.;
 22 deleting a provision requiring that, for a limited
 23 liability company formed before a specified date,
 24 certain language in the company's articles of
 25 organization operates as if it were in the operating
 26 agreement; amending ss. 15.16, 48.062, 213.758,
 27 220.02, 220.03, 220.13, 310.181, 440.02, 605.0102,
 28 605.0401, 605.04074, 605.04091, 605.1025, 606.06,
 29 607.1108, 607.1109, 607.11101, 636.204, 655.0201,

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30 658.2953, 694.16, and 1002.395, F.S.; conforming
 31 cross-references to the repeal of the Florida Limited
 32 Liability Company Act, revising definitions, and
 33 making editorial and conforming changes; providing an
 34 effective date.
 35
 36 Be It Enacted by the Legislature of the State of Florida:
 37
 38 Section 1. Subsection (4) of section 605.0103, Florida
 39 Statutes, is amended to read:
 40 605.0103 Knowledge and notice.-
 41 (4) A person who is not a member is deemed to:
 42 (a) Know of a limitation on authority to transfer real
 43 property as provided in s. 605.0302(7); and
 44 (b) Have notice of a limited liability company's:
 45 1. Dissolution, 90 days after the articles of dissolution
 46 filed under s. 605.0707 become effective;
 47 2. Termination, 90 days after a statement of termination
 48 filed under s. 605.0709(7) becomes effective;
 49 3. Participation in a merger, interest exchange,
 50 conversion, or domestication, 90 days after the articles of
 51 merger, articles of interest exchange, articles of conversion,
 52 or articles of domestication under s. 605.1025, s. 605.1035, s.
 53 605.1045, or s. 605.1055, respectively, become effective;
 54 4. Declaration in its articles of organization that it is
 55 manager-managed in accordance with s. 605.0201(3)(a); however,
 56 if such a declaration has been added or changed by an amendment
 57 or amendment and restatement of the articles of organization,
 58 notice of the addition or change may not become effective until

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59 90 days after the effective date of such amendment or amendment
60 and restatement; and

61 5. Grant of authority to or limitation imposed on the
62 authority of a person holding a position or having a specified
63 status in a company, or grant of authority to or limitation
64 imposed on the authority of a specific person, if the grant of
65 authority or limitation imposed on the authority is described in
66 the articles of organization in accordance with s.

67 605.0201(3)(d); however, if that description has been added or
68 changed by an amendment or an amendment and restatement of the
69 articles of organization, notice of the addition or change may
70 not become effective until 90 days after the effective date of
71 such amendment or amendment and restatement. A provision of the
72 articles of organization limiting the authority of a person to
73 transfer real property held in the name of the limited liability
74 company is not notice of such limitation to a person who is not
75 a member or manager of the company, unless the limitation
76 appears in an affidavit, certificate, or other instrument that
77 bears the name of the limited liability company and is recorded
78 in the office for recording transfers of such real property.

79 Section 2. Paragraph (i) of subsection (3) of section
80 605.0105, Florida Statutes, is amended to read:

81 605.0105 Operating agreement; scope, function, and
82 limitations.—

83 (3) An operating agreement may not do any of the following:

84 ~~(i) Vary the power of a person to dissociate under s.~~
85 ~~605.0601, except to require that the notice under s. 605.0602(1)~~
86 ~~be in a record.~~

87 Section 3. Subsection (4) of section 605.04073, Florida

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88 Statutes, is amended to read:

89 605.04073 Voting rights of members and managers.—

90 (4) An action requiring the vote or consent of members
91 under this chapter may be taken without a meeting if the action
92 is approved by the members with at least the minimum number of
93 votes that would be necessary to authorize or take the action at
94 a meeting of the members and made in a record.—~~and~~ A member may
95 appoint a proxy or other agent to vote or consent for the member
96 by signing an appointing record, personally or by the member's
97 agent. On an action taken by fewer than all of the members
98 without a meeting, notice of the action must be given to those
99 members who did not consent in writing to the action or who were
100 not entitled to vote on the action within 10 days after the
101 action was taken.

102 Section 4. Subsections (2), (3), and (4) of section
103 605.0410, Florida Statutes, are amended to read:

104 605.0410 Records to be kept; rights of member, manager, and
105 person dissociated to information.—

106 (2) In a member-managed limited liability company, the
107 following rules apply:

108 (a) Upon reasonable notice, a member may inspect and copy
109 during regular business hours, at a reasonable location
110 specified by the company:

111 1. The records described in subsection (1); and

112 2. Each other record maintained by the company regarding
113 the company's activities, affairs, financial condition, and
114 other circumstances, to the extent the information is material
115 to the member's rights and duties under the operating agreement
116 or this chapter.

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- 117 (b) The company shall furnish to each member:
 118 1. Without demand, any information concerning the company's
 119 activities, affairs, financial condition, and other
 120 circumstances that the company knows and is material to the
 121 proper exercise of the member's rights and duties under the
 122 operating agreement or this chapter, except to the extent the
 123 company can establish that it reasonably believes the member
 124 already knows the information; and
 125 2. On demand, other information concerning the company's
 126 activities, affairs, financial condition, and other
 127 circumstances, except to the extent the demand or information
 128 demanded is unreasonable or otherwise improper under the
 129 circumstances.
- 130 (c) Within 10 days after receiving a demand pursuant to
 131 subparagraph (b)2., the company shall, in a record, inform the
 132 member who made the demand of:
- 133 1. The information that the company will provide in
 134 response to the demand and when and where the company will
 135 provide the information; and
 136 2. The company's reasons for declining, if the company
 137 declines to provide any demanded information.
- 138 (d)(e) The duty to furnish information under this
 139 subsection also applies to each member to the extent the member
 140 knows any of the information described in this subsection.
- 141 (3) In a manager-managed limited liability company, the
 142 following rules apply:
- 143 (a) The informational rights stated in subsection (2) and
 144 the duty stated in paragraph (2)(d) ~~(2)(e)~~ apply to the managers
 145 and not to the members.

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- 146 (b) During regular business hours and at a reasonable
 147 location specified by the company, a member may inspect and
 148 copy:
 149 1. The records described in subsection (1); and
 150 2. Full information regarding the activities, affairs,
 151 financial condition, and other circumstances of the company as
 152 is just and reasonable if:
 153 a. The member seeks the information for a purpose
 154 reasonably related to the member's interest as a member; or
 155 b. The member makes a demand in a record received by the
 156 company, describing with reasonable particularity the
 157 information sought and the purpose for seeking the information,
 158 and if the information sought is directly connected to the
 159 member's purpose.
- 160 (c) Within 10 days after receiving a demand pursuant to
 161 sub-subparagraph (b)2.b. ~~subparagraph (2)(b)2.~~, the company
 162 shall, in a record, inform the member who made the demand of:
- 163 1. The information that the company will provide in
 164 response to the demand and when and where the company will
 165 provide the information; and
 166 2. The company's reasons for declining, if the company
 167 declines to provide any demanded information.
- 168 (d) If this chapter or an operating agreement provides for
 169 a member to give or withhold consent to a matter, before the
 170 consent is given or withheld, the company shall, without demand,
 171 provide the member with all information that is known to the
 172 company and is material to the member's decision.
- 173 (4) Subject to subsection (10) ~~(9)~~, on 10 days' demand made
 174 in a record received by a limited liability company, a person

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175 dissociated as a member may have access to information to which
176 the person was entitled while a member if:

177 (a) The information pertains to the period during which the
178 person was a member;

179 (b) The person seeks the information in good faith; and

180 (c) The person satisfies the requirements imposed on a
181 member by paragraph (3) (b).

182 Section 5. Subsection (3) of section 605.1108, Florida
183 Statutes, is amended to read:

184 605.1108 Application to limited liability company formed
185 under the Florida Limited Liability Company Act.—

186 (3) For the purpose of applying this chapter to a limited
187 liability company formed before January 1, 2014, under the
188 former Florida Limited Liability Company Act, ss. 608.401-
189 608.705,±

190 ~~(a)~~ the company's articles of organization are deemed to be
191 the company's articles of organization under this chapter; and

192 ~~(b) For the purpose of applying s. 605.0102(39), the~~
193 ~~language in the company's articles of organization designating~~
194 ~~the company's management structure operates as if that language~~
195 ~~were in the operating agreement.~~

196 Section 6. Subsection (3) of section 15.16, Florida
197 Statutes, is amended to read:

198 15.16 Reproduction of records; admissibility in evidence;
199 electronic receipt and transmission of records; certification;
200 acknowledgment.—

201 (3) The Department of State may cause to be received
202 electronically any records that are required to be filed with it
203 pursuant to chapter 55, chapter 117, chapter 118, chapter 495,

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204 chapter 605, chapter 606, chapter 607, ~~chapter 608~~, chapter 610,
205 chapter 617, chapter 620, chapter 621, chapter 679, chapter 713,
206 or chapter 865, through facsimile or other electronic transfers,
207 for the purpose of filing such records. The originals of all
208 such electronically transmitted records must be executed in the
209 manner provided in paragraph (5) (b). The receipt of such
210 electronic transfer constitutes delivery to the department as
211 required by law. The department may use electronic transmissions
212 for purposes of notice in the administration of chapters 55,
213 117, 118, 495, 605, 606, 607, ~~608~~, 610, 617, 620, 621, 679, and
214 713 and s. 865.09. The Department of State may collect e-mail
215 addresses for purposes of notice and communication in the
216 performance of its duties and may require filers and registrants
217 to furnish such e-mail addresses when presenting documents for
218 filing.

219 Section 7. Subsections (1) and (2) of section 48.062,
220 Florida Statutes, are amended to read:

221 48.062 Service on a limited liability company.—

222 (1) Process against a limited liability company, domestic
223 or foreign, may be served on the registered agent designated by
224 the limited liability company under chapter 605 ~~or chapter 608~~.
225 A person attempting to serve process pursuant to this subsection
226 may serve the process on any employee of the registered agent
227 during the first attempt at service even if the registered agent
228 is a natural person and is temporarily absent from his or her
229 office.

230 (2) If service cannot be made on a registered agent of the
231 limited liability company because of failure to comply with
232 chapter 605 ~~or chapter 608~~ or because the limited liability

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233 company does not have a registered agent, or if its registered
234 agent cannot with reasonable diligence be served, process
235 against the limited liability company, domestic or foreign, may
236 be served:

237 (a) On a member of a member-managed limited liability
238 company;

239 (b) On a manager of a manager-managed limited liability
240 company; or

241 (c) If a member or manager is not available during regular
242 business hours to accept service on behalf of the limited
243 liability company, he, she, or it may designate an employee of
244 the limited liability company to accept such service. After one
245 attempt to serve a member, manager, or designated employee has
246 been made, process may be served on the person in charge of the
247 limited liability company during regular business hours.

248 Section 8. Paragraph (c) of subsection (1) of section
249 213.758, Florida Statutes, is amended to read:

250 213.758 Transfer of tax liabilities.—

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

252 (c) "Insider" means:

253 1. Any person included within the meaning of insider as
254 used in s. 726.102; or

255 2. A manager of, ~~a managing member of,~~ or a person who
256 controls a transferor that is, a limited liability company, or a
257 relative as defined in s. 726.102 of any such persons.

258 Section 9. Subsection (1) of section 220.02, Florida
259 Statutes, is amended to read:

260 220.02 Legislative intent.—

261 (1) It is the intent of the Legislature in enacting this

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262 code to impose a tax upon all corporations, organizations,
263 associations, and other artificial entities which derive from
264 this state or from any other jurisdiction permanent and inherent
265 attributes not inherent in or available to natural persons, such
266 as perpetual life, transferable ownership represented by shares
267 or certificates, and limited liability for all owners. It is
268 intended that any limited liability company that is classified
269 as a partnership for federal income tax purposes and formed
270 under chapter 605 ~~608~~ or qualified to do business in this state
271 as a foreign limited liability company not be subject to the tax
272 imposed by this code. It is the intent of the Legislature to
273 subject such corporations and other entities to taxation
274 hereunder for the privilege of conducting business, deriving
275 income, or existing within this state. This code is not intended
276 to tax, and shall not be construed so as to tax, any natural
277 person who engages in a trade, business, or profession in this
278 state under his or her own or any fictitious name, whether
279 individually as a proprietorship or in partnership with others,
280 or as a member or a manager of a limited liability company
281 classified as a partnership for federal income tax purposes; any
282 estate of a decedent or incompetent; or any testamentary trust.
283 However, a corporation or other taxable entity which is or which
284 becomes partners with one or more natural persons shall not,
285 merely by reason of being a partner, exclude from its net income
286 subject to tax its respective share of partnership net income.
287 This statement of intent shall be given preeminent consideration
288 in any construction or interpretation of this code in order to
289 avoid any conflict between this code and the mandate in s. 5,
290 Art. VII of the State Constitution that no income tax be levied

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291 upon natural persons who are residents and citizens of this
 292 state.

293 Section 10. Paragraph (e) of subsection (1) of section
 294 220.03, Florida Statutes, is amended to read:

295 220.03 Definitions.—

296 (1) SPECIFIC TERMS.—When used in this code, and when not
 297 otherwise distinctly expressed or manifestly incompatible with
 298 the intent thereof, the following terms shall have the following
 299 meanings:

300 (e) "Corporation" includes all domestic corporations;
 301 foreign corporations qualified to do business in this state or
 302 actually doing business in this state; joint-stock companies;
 303 limited liability companies, under chapter 605 ~~608~~; common-law
 304 declarations of trust, under chapter 609; corporations not for
 305 profit, under chapter 617; agricultural cooperative marketing
 306 associations, under chapter 618; professional service
 307 corporations, under chapter 621; foreign unincorporated
 308 associations, under chapter 622; private school corporations,
 309 under chapter 623; foreign corporations not for profit which are
 310 carrying on their activities in this state; and all other
 311 organizations, associations, legal entities, and artificial
 312 persons which are created by or pursuant to the statutes of this
 313 state, the United States, or any other state, territory,
 314 possession, or jurisdiction. The term "corporation" does not
 315 include proprietorships, even if using a fictitious name;
 316 partnerships of any type, as such; limited liability companies
 317 that are taxable as partnerships for federal income tax
 318 purposes; state or public fairs or expositions, under chapter
 319 616; estates of decedents or incompetents; testamentary trusts;

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320 or private trusts.

321 Section 11. Paragraph (j) of subsection (2) of section
 322 220.13, Florida Statutes, is amended to read:

323 220.13 "Adjusted federal income" defined.—

324 (2) For purposes of this section, a taxpayer's taxable
 325 income for the taxable year means taxable income as defined in
 326 s. 63 of the Internal Revenue Code and properly reportable for
 327 federal income tax purposes for the taxable year, but subject to
 328 the limitations set forth in paragraph (1) (b) with respect to
 329 the deductions provided by ss. 172 (relating to net operating
 330 losses), 170(d) (2) (relating to excess charitable
 331 contributions), 404(a) (1) (D) (relating to excess pension trust
 332 contributions), 404(a) (3) (A) and (B) (to the extent relating to
 333 excess stock bonus and profit-sharing trust contributions), and
 334 1212 (relating to capital losses) of the Internal Revenue Code,
 335 except that, subject to the same limitations, the term:

336 (j) "Taxable income," in the case of a limited liability
 337 company, other than a limited liability company classified as a
 338 partnership for federal income tax purposes, as defined in and
 339 organized pursuant to chapter 605 or the former Florida Limited
 340 Liability Company Act, ss. 608.401-608.705, ~~chapter 608~~ or
 341 qualified to do business in this state as a foreign limited
 342 liability company or other than a similar limited liability
 343 company classified as a partnership for federal income tax
 344 purposes and created as an artificial entity pursuant to the
 345 statutes of the United States or any other state, territory,
 346 possession, or jurisdiction, if such limited liability company
 347 or similar entity is taxable as a corporation for federal income
 348 tax purposes, means taxable income determined as if such limited

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349 liability company were required to file or had filed a federal
350 corporate income tax return under the Internal Revenue Code;

351 Section 12. Section 310.181, Florida Statutes, is amended
352 to read:

353 310.181 Corporate powers.—All the rights, powers, and
354 liabilities conferred or imposed by the laws of Florida relating
355 to corporations for profit organized under part I of chapter 607
356 or under former chapter 608 before January 1, 1976, or to
357 corporations organized under chapter 621 apply to corporations
358 organized pursuant to s. 310.171.

359 Section 13. Subsection (9) of section 440.02, Florida
360 Statutes, is amended to read:

361 440.02 Definitions.—When used in this chapter, unless the
362 context clearly requires otherwise, the following terms shall
363 have the following meanings:

364 (9) "Corporate officer" or "officer of a corporation" means
365 any person who fills an office provided for in the corporate
366 charter or articles of incorporation filed with the Division of
367 Corporations of the Department of State or as authorized or
368 required under part I of chapter 607. The term "officer of a
369 corporation" includes a member owning at least 10 percent of a
370 limited liability company created and approved under chapter 605
371 ~~chapter 608~~.

372 Section 14. Subsection (37) of section 605.0102, Florida
373 Statutes, is amended to read:

374 605.0102 Definitions.—As used in this chapter, the term:

375 (37) "Majority-in-interest" means those members who hold
376 more than 50 percent of the then-current percentage or other
377 interest in the profits of the limited liability company owned

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378 ~~by all of its members and who have the right to vote~~; however,
379 as used in ss. 605.1001-605.1072, the term means:

380 (a) In the case of a limited liability company with only
381 one class or series of members, the holders of more than 50
382 percent of the then-current percentage or other interest in the
383 profits of the company owned by all of its members who have the
384 right to approve a merger, interest exchange, or conversion, as
385 applicable, under the organic law or the organic rules of the
386 company; and

387 (b) In the case of a limited liability company having more
388 than one class or series of members, the holders in each class
389 or series of more than 50 percent of the then-current percentage
390 or other interest in the profits of the company owned by all of
391 the members of that class or series who have the right to
392 approve a merger, interest exchange, or conversion, as
393 applicable, under the organic law or the organic rules of the
394 company, unless the company's organic rules provide for the
395 approval of the transaction in a different manner.

396 Section 15. Subsection (3) of section 605.0401, Florida
397 Statutes, is amended to read:

398 605.0401 Becoming a member.—

399 (3) After formation of a limited liability company, a
400 person becomes a member:

401 (a) As provided in the operating agreement;

402 (b) As the result of a merger, interest exchange,
403 conversion, or domestication under ss. 605.1001-605.1072, as
404 applicable;

405 (c) With the consent of all the members; or

406 (d) As provided in s. 605.0701(3).

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407 Section 16. Paragraph (a) of subsection (1) of section
408 605.04074, Florida Statutes, is amended to read:

409 605.04074 Agency rights of members and managers.—

410 (1) In a member-managed limited liability company, the
411 following rules apply:

412 (a) Except as provided in subsection (3), each member is an
413 agent of the limited liability company for the purpose of its
414 activities and affairs, ~~and~~ an act of a member, including
415 signing an agreement or instrument of transfer in the name of
416 the company for apparently carrying on in the ordinary course of
417 the company's activities and affairs or activities and affairs
418 of the kind carried on by the company, binds the company unless
419 the member had no authority to act for the company in the
420 particular matter and the person with whom the member was
421 dealing knew or had notice that the member lacked authority.

422 Section 17. Paragraph (b) of subsection (2) of section
423 605.04091, Florida Statutes, is amended to read:

424 605.04091 Standards of conduct for members and managers.—

425 (2) The duty of loyalty is limited to:

426 (b) Refraining from dealing with the company in the conduct
427 or winding up of the company's activities and affairs as, or on
428 behalf of, a person having an interest adverse to the company,
429 except to the extent that a transaction satisfies the
430 requirements of s. 605.04092 ~~this section~~; and

431 Section 18. Paragraph (f) of subsection (2) of section
432 605.1025, Florida Statutes, is amended to read:

433 605.1025 Articles of merger.—

434 (2) The articles of merger must contain the following:

435 (f) If the surviving entity is created by the merger and is

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436 a domestic limited liability partnership ~~or domestic limited~~
437 ~~liability limited partnership~~, its statement of qualification,
438 as an attachment.

439 Section 19. Subsection (2) of section 606.06, Florida
440 Statutes, is amended to read:

441 606.06 Uniform business report.—The department may use the
442 uniform business report:

443 (2) As a substitute for any annual report or renewal filing
444 required by chapters 495, 605, 607, ~~608~~, 609, 617, 620, 621, and
445 865.

446 Section 20. Paragraph (c) of subsection (2) of section
447 607.1108, Florida Statutes, is amended to read:

448 607.1108 Merger of domestic corporation and other business
449 entity.—

450 (2) Pursuant to a plan of merger complying and approved in
451 accordance with this section, one or more domestic corporations
452 may merge with or into one or more other business entities
453 formed, organized, or incorporated under the laws of this state
454 or any other state, the United States, foreign country, or other
455 foreign jurisdiction, if:

456 (c) Each domestic limited liability company that is a party
457 to the merger complies with the applicable provisions of chapter
458 605 ~~608~~.

459 Section 21. Paragraph (d) of subsection (1) of section
460 607.1109, Florida Statutes, is amended to read:

461 607.1109 Articles of merger.—

462 (1) After a plan of merger is approved by each domestic
463 corporation and other business entity that is a party to the
464 merger, the surviving entity shall deliver to the Department of

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465 State for filing articles of merger, which shall be executed by
 466 each domestic corporation as required by s. 607.0120 and by each
 467 other business entity as required by applicable law, and which
 468 shall set forth:

469 (d) A statement that the plan of merger was approved by
 470 each domestic limited liability company that is a party to the
 471 merger in accordance with the applicable provisions of chapter
 472 605 608.

473 Section 22. Subsection (7) of section 607.11101, Florida
 474 Statutes, is amended to read:

475 607.11101 Effect of merger of domestic corporation and
 476 other business entity.—When a merger becomes effective:

477 (7) The shares, partnership interests, interests,
 478 obligations, or other securities, and the rights to acquire
 479 shares, partnership interests, interests, obligations, or other
 480 securities, of each domestic corporation and other business
 481 entity that is a party to the merger shall be converted into
 482 shares, partnership interests, interests, obligations, or other
 483 securities, or rights to such securities, of the surviving
 484 entity or any other domestic corporation or other business
 485 entity or, in whole or in part, into cash or other property as
 486 provided in the plan of merger, and the former holders of
 487 shares, partnership interests, interests, obligations, or other
 488 securities, or rights to such securities, shall be entitled only
 489 to the rights provided in the plan of merger and to their
 490 appraisal rights, if any, under s. 605.1006, ss. 605.1061-
 491 605.1072, ss. 607.1301-607.1333, ~~ss. 608.4351-608.4355~~, ss.
 492 620.2114-620.2124, or other applicable law.

493 Section 23. Subsection (1) of section 636.204, Florida

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494 Statutes, is amended to read:

495 636.204 License required.—

496 (1) Before doing business in this state as a discount
 497 medical plan organization, an entity must be a corporation, a
 498 limited liability company, or a limited partnership,
 499 incorporated, organized, formed, or registered under the laws of
 500 this state or authorized to transact business in this state in
 501 accordance with chapter 605, part I of chapter 607, ~~chapter 608~~,
 502 chapter 617, chapter 620, or chapter 865, and must be licensed
 503 by the office as a discount medical plan organization or be
 504 licensed by the office pursuant to chapter 624, part I of this
 505 chapter, or chapter 641.

506 Section 24. Subsection (1) of section 655.0201, Florida
 507 Statutes, is amended to read:

508 655.0201 Service of process, notice, or demand on financial
 509 institutions.—

510 (1) Process against any financial institution authorized by
 511 federal or state law to transact business in this state may be
 512 served in accordance with chapter 48, chapter 49, chapter 605,
 513 or part I of chapter 607, ~~or chapter 608~~, as appropriate.

514 Section 25. Paragraph (c) of subsection (11) of section
 515 658.2953, Florida Statutes, is amended to read:

516 658.2953 Interstate branching.—

517 (11) DE NOVO INTERSTATE BRANCHING BY STATE BANKS.—

518 (c) An out-of-state bank may establish and maintain a de
 519 novo branch or acquire a branch in this state upon compliance
 520 with part I of chapter 607 or chapter 605 608 relating to doing
 521 business in this state as a foreign business entity, including
 522 maintaining a registered agent for service of process and other

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523 legal notice pursuant to s. 655.0201.

524 Section 26. Section 694.16, Florida Statutes, is amended to
525 read:

526 694.16 Conveyances by merger or conversion of business
527 entities.—As to any merger or conversion of business entities
528 prior to June 15, 2000, the title to all real estate, or any
529 interest therein, owned by a business entity that was a party to
530 a merger or a conversion is vested in the surviving entity
531 without reversion or impairment, notwithstanding the requirement
532 of a deed which was previously required by s. 607.11101, former
533 s. 608.4383, former s. 620.204, former s. 620.8904, or former s.
534 620.8906.

535 Section 27. Paragraph (f) of subsection (2) of section
536 1002.395, Florida Statutes, is amended to read:

537 1002.395 Florida Tax Credit Scholarship Program.—

538 (2) DEFINITIONS.—As used in this section, the term:

539 (f) "Eligible nonprofit scholarship-funding organization"
540 means a state university; or an independent college or
541 university that is eligible to participate in the William L.
542 Boyd, IV, Florida Resident Access Grant Program, located and
543 chartered in this state, is not for profit, and is accredited by
544 the Commission on Colleges of the Southern Association of
545 Colleges and Schools; or is a charitable organization that:

546 1. Is exempt from federal income tax pursuant to s.
547 501(c)(3) of the Internal Revenue Code;

548 2. Is a Florida entity formed under chapter 605, chapter
549 ~~607, chapter 608~~, or chapter 617 and whose principal office is
550 located in the state; and

551 3. Complies with subsections (6) and (16).

Page 19 of 20

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

10-00376-15

2015554__

552 Section 28. This act shall take effect July 1, 2015.

Page 20 of 20

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



The Florida Senate

Committee Agenda Request

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

Subject: Committee Agenda Request

Date: February 5, 2015

I respectfully request that **Senate Bill 554**, relating to Limited Liability Companies, be placed on the:

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

A handwritten signature in black ink, appearing to read "David Simmons".

Senator David Simmons
Florida Senate, District 10

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date 3/2/15

Bill Number (if applicable) 554

Topic Limited Liability Companies

Amendment Barcode (if applicable)

Name Greg Blake

Job Title Attorney

Address 215 S. Monroe Street, Suite 505

Phone 509-8022

Street Tallahassee City FL State 32301 Zip

Email greg.blake@netbwi.com

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

Representing Business Law Section of the Florida Bar

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 604

INTRODUCER: Commerce and Tourism Committee and Senator Flores

SUBJECT: Consumer Protection

DATE: March 3, 2015

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 604 creates the True Origin of Digital Goods Act, which creates an injunctive remedy for parties aggrieved by a website’s failure to clearly post its owner’s or operator’s identifying information. In order to be subject to this disclosure requirement, a website must knowingly electronically disseminate commercial recordings or audiovisual works to Florida consumers. The owner, assignee, authorized agent, or licensee of a commercial recording or audio visual work that is electronically disseminated by a violating website may enjoin the violating website to require compliance with the bill, and recover necessary expenses and reasonable attorney’s fees.

II. Present Situation:

Copyright Law

The United States Copyright Office defines “copyright”¹ as a form of protection provided to the authors of original works, including both published and unpublished literary, dramatic, musical, artistic, and certain other intellectual works.² A copyright exists from the moment the work is

¹ Copyright protection for an original work of authorship does not extend to an “idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described[...].” Moreover, an “original work” must possess a minimal degree of creativity. 18 Am. Jur. 2d *Copyright and Literary Property* § 21 (2015).

² *Circular 1: Copyright Basics*, available at <http://www.copyright.gov/circs/circ01.pdf>.

fixed in a permanent or stable form, such as a recording or copy.³ The copyright immediately becomes the author's property without further action by the author.⁴ However, to pursue and protect her rights under copyright law, the author must register her copyright with the copyright office.⁵

Article I, s. 8, cl. 8, of the United States Constitution grants Congress the power to create and regulate copyright law.⁶ However, no unified federal copyright law was created until the passage of 17 U.S.C. §301, which expressly preempted all state copyright law for music recordings copyrighted on or after February 15, 1972.^{7,8} As a result, Florida copyright law is limited to recordings fixed prior to February 15, 1972.⁹

To adapt to new questions related to copyrighted material and the internet, Congress passed the Digital Millennium Copyright Act ("DMCA"), which extended copyright protections to sound recordings commercially broadcasted on the internet.¹⁰ To prevent a chilling effect on internet speech, the DMCA also generally protects internet service providers ("ISPs") from civil liability for publishing infringing material on the sites they host.¹¹ In order to qualify for this safe harbor, an ISP may not:¹²

- Receive a financial benefit directly attributable to the infringing material;
- Be aware of the presence of infringing material, or of any "red flags" that indicate infringing material; or
- Fail to "act expeditiously" to remove or disable infringing material after notice of the existence of infringing material on its websites.

Enforcement of Copyright Laws

Enforcement of one's copyrights against an anonymous copyright infringer on the internet can be difficult. Websites that sell counterfeit goods are far [less] likely to have a U.S. phone or address listed than an authorized website that sells legitimate goods.¹³ Because ISPs generally fall under the DMCA's safe harbor, owners of infringed copyright material must seek out the actual infringing actor in order to enforce their copyrights. Under the DMCA, a copyright owner may

³ *Id.*

⁴ "No publication or registration or other action in the Copyright Office is required to secure a copyright." *Id.*

⁵ 17 U.S.C. § 411.

⁶ "To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." Art. I, § 8, cl. 8, U.S. Const.

⁷ 17 U.S.C. §301(a) "On and after January 1, 1978, all legal or equitable rights that are equivalent to any of the exclusive rights within the general scope of copyright as specified by section 106 in works of authorship that are fixed in a tangible medium of expression and come within the subject matter of copyright as specified by sections 102 and 103, whether created before or after that date and whether published or unpublished, are governed exclusively by this title. Thereafter, no person is entitled to any such right or equivalent right in any such work under the common law or statutes of any State."

⁸ Julee Milham, *The Practice of Music Law in Florida*, 2006.

⁹ §540.11 (2)(a), F.S.

¹⁰ 17 U.S.C. §512.

¹¹ 17 U.S.C. §512.

¹² 17 U.S.C. §512(c).

¹³ Jeremy Wilson and Roy Fenokff, *Distinguishing Counterfeit from Authorized Retailers in the Virtual Marketplace*, 39 International Criminal Justice Review, 24(1), 2014.

obtain the name and contact information of the copyright infringer by request to the ISP, where the copyright owner provides:¹⁴

- A signature of the person authorized to act on behalf of the copyright owner;
- Identification of the infringed copyrighted work;
- Identification of the material or activity that should be disabled in order to cure the infringement of copyrighted material;
- Contact information of the copyright owner or person authorized to act on her behalf;
- Statement by copyright owner or person authorized to act on her behalf that she has a good faith belief that the copyright infringement is not authorized by its copyright owner, or the law; and
- Statement made under penalty of perjury that the information is accurate, and that the complaining party is authorized to act on the copyright owner's behalf.

Upon receipt of the above information, an ISP must take down the identified infringing material in order to remain under the DMCA's safe harbor, and must also provide notice of the complaint to the individual copyright infringer.¹⁵ Some ISPs have had success in courts pursuant to their refusal to comply with these subpoenas.¹⁶

Alternately, copyright owners may pursue a "John Doe" case in order to enforce their rights under federal law. This process involves filing a suit in court against an unknown respondent, or "John Doe." Once the case has been initiated, the petitioner may use the subpoena power of the court to require the ISP to divulge the copyright infringer's contact information, at which point the actual name will be substituted for the "John Doe" in the case. Courts have mixed responses to this tactic.

State Copyright Law

In 2004, California passed the "True Name and Address" act, which makes the knowing electronic dissemination of a commercial recording or audiovisual work to more than 10 people without the disclosure of the disseminator's e-mail address a misdemeanor.¹⁷

Tennessee followed suit in July, 2014, with the passage of their True Origin of Goods Act.¹⁸ This law requires the owner or operator of a website dealing in electronic dissemination of commercial recordings or audiovisual works to clearly post her true and correct name, physical address, and telephone number. If the website's owner fails to disclose her address, she may be enjoined to enforce compliance, and fined for failure to do so.¹⁹ Tennessee requires these actions to be initiated and sustained by the Tennessee Attorney General's Office.²⁰

¹⁴ 17 U.S.C. §512(c) (3)a. i-iv.

¹⁵ 17 U.S.C. §512 (d)(3).

¹⁶ See Mikel Boeve, *Will Internet Service Providers Be Forced to Turn in Their Copyright Infringing Customers? The Power of the Digital Millennium Copyright Act's Subpoena Provision After In Re Charter Communications*, 29 Hamline L. Rev. 115, 118-19 (2006).

¹⁷ Cal. Penal Code §653aa.

¹⁸ Tenn. Code Ann. §47-18-5601 – 47-18-5606 (2014).

¹⁹ *Id.*

²⁰ *Id.*

III. Effect of Proposed Changes:

Section 1 creates the “True Origin of Digital Goods Act,” which requires owners or operators of websites that disseminate commercial recordings or audiovisual works to Florida consumers to clearly post on the website and make readily accessible to a consumer using or visiting the website the following information:

- The true and correct name of the operator or owner;
- The operator or owner’s physical address; and
- The operator or owner’s telephone number or e-mail address.

This bill does not protect copyrighted material, but rather governs “commercial recordings or audiovisual works,” which are defined broadly in the bill to include a recording or audiovisual work whose owner, assignee, authorized agent, or licensee has disseminated or intends to disseminate such work for sale, rental, or performance or exhibition to the public, regardless of whether the person seeks commercial advantage or private financial gain from the dissemination. This bill therefore appears to apply to websites that disseminate copyrighted material as well as any disseminated recording or audiovisual work, regardless of the disseminator’s intent to seek commercial advantage or financial gain from the work.

Section 1 also establishes a right to injunctive relief for owners, assignees, authorized agents, or licensees of a commercial recording or audio visual work whose work appears on a website that is in violation of the bill. Prior to initiating the civil action provided for in the bill, the aggrieved party must make reasonable efforts to put the violating website on notice that they may be in violation of this section, and that failure to cure the violation within 14 days may result in civil action. The prevailing party under this act may also obtain necessary expenses²¹ and reasonable attorney’s fees. These remedies are available as a supplement to other state and federal criminal and civil law provisions.

The injunction, once obtained, may be used to prove to the host ISP that the website violated state law, and therefore is in violation of the ISP’s terms of service agreement.²² The ISP generally revokes its contract with the website based on such violation.

The bill specifically exempts providers of interactive computer services, communication services, commercial mobile services, information services that provide transmission, storage, or caching of electronic communications or other related telecommunications service, and commercial mobile radio services.

Section 2 provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

²¹ While “necessary expenses” is not defined by this bill, s. 112.061(2)(g), F.S., defines the term as “the usual ordinary and incidental expenditures necessarily incurred by a traveler.”

²² ISPs’ Terms of Service Agreements frequently forbid the user website from engaging in illegal activity.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

For a court to exercise its jurisdiction over a corporation or individual (hereinafter “respondent”), there must be personal jurisdiction and subject matter jurisdiction. State courts have general jurisdiction, and therefore a claim made under a state statute meets the subject matter jurisdiction requirement.²³ Personal jurisdiction is a constitutional requirement that a respondent have minimum contacts with the state in which the court sits so that the court may exercise power over the respondent.²⁴ A non-resident respondent may have sufficient contacts with Florida if she commits acts expressly enumerated in Florida’s long-arm statute.²⁵ Alternately, the non-resident respondent may be subject to a Florida court’s personal jurisdiction because she has minimum contacts with the state that are otherwise unrelated to matter that brings her into court.²⁶ Examples of sufficient minimum contacts include frequent business travel to the state, owning a company with a Florida office branch, or subjecting herself to the court’s jurisdiction by presenting herself in the Florida court.²⁷ These jurisdictional requirements ensure that a respondent has sufficient notice and due process afforded to her under the Constitution before her rights are subjected to the Court.²⁸

Whether a non-resident internet company that electronically disseminates commercial recordings or audiovisual works into Florida has sufficient minimum contacts with the state is a fact-specific question that would likely need to be addressed on a case-by-case basis by a court.²⁹

Content-neutral regulations are legitimate if they advance important governmental interests that are not related to suppression of free speech, and do not substantially burden more speech than necessary to further those interests.³⁰ However, a law may be determined to be overbroad if a “substantial number of its applications are unconstitutional, judged in relation to the statute’s plainly legitimate sweep.”³¹

²³ *Caiazza v. American Royal Arts Corp.*, 73 So. 3d 245, 250 (Fla. 4th DCA 2011).

²⁴ *Id.*

²⁵ *Id.*; §48.193, F.S.

²⁶ *Caiazza v. American Royal Arts Corp.*, 73 So. 3d 245, 250 (Fla. 4th DCA 2011).

²⁷ *Id.*

²⁸ *Id.* at 250-251.

²⁹ *See Caiazza v. American Royal Arts Corp.*, 73 So. 3d 245, (Fla. 4th DCA 2011); *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119, 1124 (W.D. Pa. 1997).

³⁰ *Turner Broadcasting System, Inc. v. F.C.C.*, 520 U.S. 180,189 (U.S. 1997).

³¹ *U.S. v. Stevens*, 559 U.S. 460 (2010), quoting, *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 449, n. 6, (2008).

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Parties involved in the litigation provided for in the bill will incur costs related to bringing or defending the action.

C. Government Sector Impact:

Florida courts may see an increase in case filings under this law, which may result in extra costs.³²

VI. Technical Deficiencies:

None.

VII. Related Issues:

It is possible that a prevailing party to a s. 501.155(4)(a) action may never recover the fees and costs ordered by a court because of lack of personal jurisdiction over the offending party, which results in an inability to enforce the order.

VIII. Statutes Affected:

This bill creates s. 501.155, F.S.

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 2, 2015:

- Clarifies that an owner, assignee, authorized agent, or licensee of a commercial recording or audiovisual work may only pursue an injunction against a website that electronically disseminates his or her commercial recording or audiovisual work, versus any commercial recording or audiovisual work;
- Requires that a website must knowingly commit, or be likely to commit a violation of the committee substitute to be subject to the civil action provided for in the committee substitute;
- Provides that an aggrieved party must make reasonable efforts to place the violating website on notice of its alleged violation and allow 14 days for the violating website

³² State Courts Administrator, *SB 604 Agency Analysis* (March 2, 2015) (on file with the Senate Committee on Commerce & Tourism.)

to cure the violation before the aggrieved party may file for an injunction under the bill; and

- Defines the term, “website,” which excludes “channels” or homepages that are not operated by the top-level domain or website on which the channel or homepage appears. This ensures that the owner or operator of, e.g., YouTube itself, rather than users who post information to a channel on YouTube, will be subject to the civil action provided for in this committee substitute.

B. Amendments:

None.



192498

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/02/2015	.	
	.	
	.	
	.	

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

Senate Amendment

Between lines 57 and 58
insert:

(d) "Website" means a set of related web pages served from a single web domain. The term does not include a home page or channel page for the user account of a person who is not the owner or operator of the website upon which such user home page or channel page appears.



887890

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/02/2015	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 78 - 82
and insert:
commercial recording or audio visual work electronically
disseminated by a website or online service in violation of this
section may bring a private cause of action to obtain a
declaratory judgment that an act or practice violates this
section and enjoin any person who knowingly has violated, is
violating, or is otherwise likely to violate this section. As a



887890

11 condition precedent to filing a civil action under this section,
12 the aggrieved party must make reasonable efforts to place an
13 individual alleged to be in violation of this section on notice
14 that the individual may be in violation of this section and that
15 failure to cure within 14 days may result in a civil action
16 filed in a court of competent jurisdiction.

By Senator Flores

37-00313C-15

2015604__

A bill to be entitled

An act relating to consumer protection; creating s. 501.155, F.S.; providing a short title; providing applicability; providing definitions; requiring owners and operators of specified websites and online services to disclose certain information; providing for injunctive relief; providing an effective date.

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

Section 1. Section 501.155, Florida Statutes, is created to read:

501.155 Electronic dissemination of commercial recordings or audiovisual works; required disclosures; injunctive relief.-

(1) SHORT TITLE.-This section may be cited as the "True Origin of Digital Goods Act."

(2) APPLICABILITY.-This section is supplemental to those provisions of state and federal criminal and civil law which impose prohibitions or provide penalties, sanctions, or remedies against the same conduct prohibited by this section. This section does not:

(a) Bar any cause of action or preclude the imposition of sanctions or penalties that would otherwise be available under state or federal law.

(b) Impose liability on providers of an interactive computer service, communications service as defined in s. 202.11(1), commercial mobile service, or information service, including, but not limited to, an Internet access service provider and a hosting service provider, if they provide the

Page 1 of 4

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

37-00313C-15

2015604__

transmission, storage, or caching of electronic communications or messages of others or provide another related telecommunications service, commercial mobile radio service, or information service, for use of such services by another person in violation of this section. This exemption from liability is consistent with and in addition to any liability exemption provided under 47 U.S.C. s. 230.

(3) DEFINITIONS.-As used in this section, the term:

(a) "Commercial recording or audiovisual work" means a recording or audiovisual work whose owner, assignee, authorized agent, or licensee has disseminated or intends to disseminate such recording or audiovisual work for sale, for rental, or for performance or exhibition to the public, including under license, but does not include an excerpt consisting of less than substantially all of a recording or audiovisual work. A recording or audiovisual work may be commercial regardless of whether a person who electronically disseminates it seeks commercial advantage or private financial gain from the dissemination. The term does not include video games, depictions of video game play, or the streaming of video game activity.

(b) "Electronic dissemination" means initiating a transmission of, making available, or otherwise offering a commercial recording or audiovisual work for distribution through the Internet or other digital network, regardless of whether another person has previously electronically disseminated the same commercial recording or audiovisual work.

(c) "E-mail address" means an electronic mail address as defined in s. 668.602.

(4) DISCLOSURE OF INFORMATION.-

Page 2 of 4

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37-00313C-15

2015604__

59 (a) A person who owns or operates a website or online
 60 service dealing in substantial part in the electronic
 61 dissemination of commercial recordings or audiovisual works,
 62 directly or indirectly, and who electronically disseminates such
 63 works to consumers in this state shall clearly and conspicuously
 64 disclose his or her true and correct name, physical address, and
 65 telephone number or e-mail address on his or her website or
 66 online service in a location readily accessible to a consumer
 67 using or visiting the website or online service.

68 (b) The following locations are deemed readily accessible
 69 for purposes of this subsection:

- 70 1. A landing or home web page or screen;
- 71 2. An "about" or "about us" web page or screen;
- 72 3. A "contact" or "contact us" web page or screen;
- 73 4. An information web page or screen; or
- 74 5. Another place on the website or online service commonly
 75 used to display identifying information to consumers.

76 (5) INJUNCTIVE RELIEF.—

77 (a) An owner, assignee, authorized agent, or licensee of a
 78 commercial recording or audio visual work aggrieved by a
 79 violation of this section may bring a private cause of action to
 80 obtain a declaratory judgment that an act or practice violates
 81 this section and enjoin any person who has violated, is
 82 violating, or is otherwise likely to violate this section.

83 (b) Upon motion of the party instituting the action, the
 84 court may make appropriate orders to compel compliance with this
 85 section.

86 (c) The prevailing party in a cause under this section is
 87 entitled to recover necessary expenses and reasonable attorney

Page 3 of 4

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37-00313C-15

2015604__

88 fees.

89 Section 2. This act shall take effect July 1, 2015.

Page 4 of 4

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



The Florida Senate

Committee Agenda Request

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

Subject: Committee Agenda Request

Date: February 16, 2015

I respectfully request that **Senate Bill #604**, relating to Consumer Protection, be placed on the:

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

The house companion of SB 604 should be up for hearing in the first week of session.

Sincerely,

A handwritten signature in cursive script that reads "Anitere Flores".

Senator Anitere Flores
Florida Senate, District 37

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/2/15

Meeting Date

604

Bill Number (if applicable)

Topic SB 604

Amendment Barcode (if applicable)

SB 604

Name Carlos Linaves

Job Title Vice President - Anti Privacy Legal Affairs

Address 1025 F Street NW, 10th Floor

Phone (202) 775.0101

Street Washington D.C. 20004

Email clinave@ariaa.com

Speaking: For Against Information

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

Representing Recording Industry Association of America

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 618

INTRODUCER: Senator Grimsley

SUBJECT: Secondary Metals Recyclers

DATE: February 27, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	Favorable
2.			AGG	
3.			AP	

I. Summary:

SB 618 transfers regulatory authority over secondary metals recyclers from the Department of Revenue (DOR) to the Department of Agriculture and Consumer Services (DACS), and makes a number of regulatory changes to provide increased oversight of secondary metals recyclers.

Specifically, the bill:

- Increases the annual registration fee for a secondary metals recycler from \$6 per location to \$350 per location;
- Requires a secondary metals recycler to maintain workers' compensation insurance and general liability insurance;
- Dictates that DACS shall immediately suspend or deny the registration of a secondary metals recycler if it or its owner, officer, director, or trustee was convicted of certain felonies;
- Allows the DACS to suspend, revoke, or restrict a secondary metals recycler's registration if it or its owner, officer, director, or trustee was convicted of certain crimes or violated certain regulations in the previous 10 years;
- Expands the prohibited acts related to secondary metals recyclers which constitute third-degree felonies;
- Specifies that a person who knowingly provides false information and then receives payment from a secondary metals recycler in return for regulated metals commits a second- or third-degree felony, and makes it a second-degree felony if the payment received is for restricted regulated metals;
- Prohibits the purchase of regulated metals, restricted regulated metals, or ferrous metals on Sundays;
- Revises the restricted regulated metals for which the seller must show proper authorization to sell;
- Authorizes a DACS investigator to inspect a secondary metals recyclers' property and records;

- Authorizes the DACS to seek an inspection warrant if the DACS personnel who seek to verify registration are denied access to a registrant's place of business; and
- Authorizes the DACS to levy administrative penalties for certain violations of the secondary metals recycler regulations.

II. Present Situation:

Secondary metals recyclers are currently regulated by the DOR under Part II of ch. 538, F.S. A secondary metals recycler is a person or company engaged in the business of obtaining used ferrous¹ or nonferrous² metals or converting such metals into raw material products.³ Current law requires secondary metals recyclers to register with the DOR prior to engaging in business, provides for the inspection of regulated metals and records kept by the recycler, regulates methods of payment, and provides certain prohibitions and penalties.

The DACS is charged with protecting consumers from unsafe or defective products and deceptive business practices. The Division of Consumer Services (division) within the DACS regulates specific business activities, including commercial weight loss practices, telephone solicitations, dance studios, pawnshops, health studios, sellers of travel, and telemarketers. The division is also responsible for protecting consumers from unfair and unsafe business practices involving products, including petroleum products, brake fluid, antifreeze, lubricating oil, and weighing and measuring devices.

III. Effect of Proposed Changes:

Section 1 transfers by a type two transfer, the authority, responsibility, and funding for regulating secondary metals recyclers from the DOR to the DACS.⁴

Confidentiality

Current law makes confidential, except for official purposes, and exempt from section 119.07(1), F.S., the following information received or created by the DOR.⁵

- Tax Returns,
- Reports,
- Accounts,
- Declarations received by the department,
- Investigative reports and information, and
- Letters of technical advice.

Pursuant to a written agreement between the DOR and the division, the DOR is also specifically permitted to reveal names, addresses, and sales tax registration information to the division.⁶

¹ "Ferrous metals" are defined as those metals containing significant quantities of iron or steel. Section 538.18(3), F.S.

² "Nonferrous metals" are defined as those metals not containing significant quantities of iron or steel, including copper, brass, aluminum, lead, zinc, and nickel. Section 538.18(6), F.S.

³ Section 538.18(11), F.S.

⁴ Section 20.06(2), F.S., defines a type two transfer as the merger of an existing agency or department or a program, activity, or function thereof into another agency or department. Any program transferred by this transfer retains all its statutory powers, duties, and functions. Unless provided by law, the administrative rules of any agency or department involved in the transfer which are in effect immediately before the transfer remain in effect until specifically changed.

⁵ Section 213.053(1), (2), F.S.

⁶ Section 213.053(8), F.S.

Section 2 extends the DOR's authority to share information, to include all information relative to ch. 212, F.S.,⁷ and part II of ch. 538, F.S.⁸ pursuant to a written agreement with the DACS. This section also transfers from the DOR to the DACS the authority to disclose the status of a secondary metals recycler's certificate of registration, and the name of the certificate holder to law enforcement officers.⁹

Registration

Currently, s. 538.25, F.S., requires secondary metals recyclers to register with the DOR and to pay a \$6, per-annum, per-location fee. An applicant's request for registration with the DOR must include the applicant's recent photo identification card, the applicant's fingerprints, and the costs for processing the fingerprints.¹⁰ The DOR forwards the applicant's costs and fingerprints to the Florida Department of Law Enforcement (FDLE) for a criminal background check on the applicant. An applicant's request for registration may be denied by the DOR if, within the last 24 months:

- The applicant was convicted of or pled guilty or nolo contendere to a felony involving property or drugs;
- The applicant was convicted of or pled guilty or nolo contendere to any crime relating to registration as a secondary metals recycler;
- The applicant failed to pay sales tax within 30 days of receipt of written notice from the DOR of his failure to do so;
- The applicant violated provisions related to business inspections¹¹ or hold notices;¹²
- The applicant engaged in a pattern of failing to keep business records;¹³
- The applicant made a material false statement on the request for registration; or
- The applicant engaged in fraud in connection with the purchase or sale of regulated metals.

In addition, the DOR may currently impose a fine of up to \$10,000 for each knowing and intentional violation of the registration requirements.

Section 9 amends s. 538.25, F.S., to require a secondary metals recycler to register on an application form prescribed by the DACS. Registrants must submit their fingerprints and processing fees to an approved agency, entity, or vendor for state and national background checks. The FDLE must retain those fingerprints and enroll them in the Federal Bureau of Investigation's (FBI) national retained print arrest notification program upon participation in the program by the FDLE.

Upon a registrant's request for renewal as a secondary metals recycler, the DACS must request another fingerprint-based criminal history background report from the FDLE. The DACS must collect from the renewal registrant any fees related to the renewal fingerprinting process, which

⁷ Chapter 212, F.S., "Tax on Sales, Use, and Other Transactions."

⁸ Part II, ch. 538, F.S., "Secondary Metals Recyclers."

⁹ Section 213.053911, F.S.

¹⁰ Section 538.24, F.S.

¹¹ Section 538.20, F.S.

¹² Section 538.21, F.S.

¹³ Section 538.19, F.S.

the DACS shall forward to the FDLE. The DACS must notify the FDLE if a registrant is no longer registered as a secondary metals recycler with the DACS.

Upon receipt of the background check's results, the DACS must screen the results to determine if the applicant meets registration requirements. The registration requirements are generally the same as those stated above, but the DACS may now deny, suspend, revoke, or restrict a secondary metals recycler's registration if the secondary metals recycler, or its owner, officer, director or trustee, has been convicted of, or entered a plea of guilty or nolo contendere to, certain crimes and administrative violations within the last 10 years, versus the current 2-year waiting period.

A secondary metals recycler's registration shall be immediately suspended upon notice to the DACS that the applicant is convicted of a felony under ch. 812¹⁴ or ch. 817,¹⁵ F.S.

Secondary metals recyclers must also maintain workers' compensation insurance and general liability insurance under the bill.

The DACS may immediately suspend a recycler's registration or eligibility for registration based on its failure to provide proof of valid insurance to the DACS.

In addition to the right of certain DACS employees to inspect a secondary metals recycler's property and records (**Section 7**, below), section 9 of the bill authorizes all department personnel to enter a secondary metals recycler's place of business to verify that a valid registration is properly displayed. If the DACS employee is denied entry for this purpose, the DACS may seek an inspection warrant.¹⁶

The bill increases the annual registration fee for each secondary metals recycler's location from \$6 to \$350.

The fine of up to \$10,000 for each knowing and intentional violation of the registration requirements is repealed.¹⁷

Inspections

A law enforcement officer who properly identifies himself during usual business hours may inspect any purchased regulated metals property in the secondary metals recycler's possession, and all records required to be maintained by the recycler.^{18,19} A violation of this section constitutes a third-degree felony.²⁰ **Section 6** amends s. 538.20, F.S. to allow non-sworn trained regulatory investigators employed by the DACS, in addition to law enforcement officers, to

¹⁴ Ch. 812, F.S., relating to "Theft, Robbery and Related Crimes."

¹⁵ Ch. 817, F.S., relating to "Fraudulent Practices."

¹⁶ Section 933.20-933.30, F.S.

¹⁷ A secondary metals recycler who does not register still commits a third-degree felony, pursuant to s. 538.23(5), F.S., and may also be subject to additional administrative fines under s. 538.27, F.S., which is created in section 11 of this bill.

¹⁸ Section 538.20, F.S.

¹⁹ See, *Moore v. State*, 442 So. 2d 215 (Fla. 1983), allowing warrantless administrative searches of business property where the business could easily be involved in theft, and the inspection is restricted to normal business hours.

²⁰ Section 528.23(1)(a), F.S.

inspect secondary metals recyclers' required records, and regulated materials in the secondary metals recyclers' possession.

Violations

Section 538.19, F.S. dictates that a secondary metals recycler must maintain both a paper and electronic record of all purchases made. **Section 5** transfers authority to approve the form of these purchase records from the FDLE to the DACS. A secondary metals recyclers' repeated failures to maintain this documentation subjects her to a third degree felony under s. 538.23, F.S.

Section 7 clarifies that a secondary metals recycler may not dispose of property subject to a hold notice²¹ until the hold notice expires. A violation of this section constitutes a third-degree felony.²²

Currently, s. 538.23, F.S., makes it a third-degree felony for a secondary metals recycler to knowingly and intentionally violate s. 538.26(2), F.S., which prohibits a secondary metals recycler from purchasing regulated metals, restricted regulated metals, or ferrous metals from a seller when the items were not transported in a motor vehicle. Although s. 538.26, F.S. lists several prohibited acts, this is the only one punishable as a third-degree felony. The remaining acts prohibited under s. 538.26, F.S., are currently first-degree misdemeanors with a fine of up to \$10,000.²³

Section 538.23(3), F.S., also prohibits persons from knowingly providing false verification of ownership or providing false or altered identification and receiving payment from a secondary metals recycler in return for regulated materials. If the person receives less than \$300 as payment, he is guilty of a third-degree felony. If the payment is \$300 or more, it is a second-degree felony.²⁴

Section 8 amends 538.23(1)(a), F.S., to make any knowing and intentional violation of the prohibitions listed in s. 538.26, F.S., (see Prohibited Acts, below) by a secondary metals recycler a third-degree felony. The bill also makes the knowing provision of false information which results in payment or other consideration of less than \$300 for a regulated metals property from a secondary metals recycler a third-degree felony. If the individual receives more than \$300 it is a second-degree felony. In addition, the bill adds that a person commits a second-degree felony if the payment received is for restricted regulated metals.²⁵

²¹ A law enforcement officer may issue a hold notice on an item she has reasonable cause to believe has been stolen. See section 538.21, F.S.

²² Section 538.23(1)(a), F.S.

²³ Section 538.07, F.S. A first-degree misdemeanor is punishable by a term of imprisonment not to exceed 1 year. Section 775.082, F.S.

²⁴ A second-degree felony is punishable by up to 15 years in prison, or up to 30 years for a habitual offender, and a \$10,000 fine. Sections 775.082(3)(c), 775.083(1)(b), and 775.084(4)(a), F.S.

²⁵ "Restricted regulated metals" are defined in s. 538.18(10) and 538.26(5), F.S., as regulated metals such as manhole covers, electrical wiring, and railroad equipment.

Prohibited Acts

Currently, s. 538.26, F.S., contains a number of unlawful acts that a secondary metals recycler may not commit, including

- Purchasing regulated metals²⁶, restricted regulated metals²⁷, or ferrous metals before 7 a.m. or after 7 p.m.; and
- Purchasing restricted regulated metals without proper proof that the seller is authorized to sell them, including:
 - An electric light pole or other utility structure and its fixtures, wires, and hardware that are identifiable as connected to a utility structure;
 - A guard rail, street sign, traffic sign, or traffic signal and its fixtures and hardware;
 - A funeral marker or vase or historical marker;
 - Railroad equipment;
 - A stainless steel beer keg;
 - Two or more lead-acid batteries, in a single purchase or from the same individual during one day.

Section 10 amends s. 538.26, F.S., to prohibit the purchase of regulated metals property, restricted regulated metals property, or ferrous metals on Sunday. The bill amends the restriction of utility poles to instead restrict the purchase of *metal* electric light pole and its fixtures and hardware that is readily identifiable as connected to a *metal electric light* structure; it removes the utility structures' *wires* from this restriction. Additionally, the bill increases the number of lead-acid batteries that a secondary metals recycler may purchase without proof of ownership from two to three.

Section 11 authorizes the DACS to levy the following administrative penalties for violations of ss. 538.18, 538.236, or 538.26, F.S.:

- Issue a notice of noncompliance pursuant to s. 120.695, F.S.;
- Impose an administrative fine up to \$200 per violation, but not to exceed a total of \$5,000 per inspection; and
- Issue a cease and desist order.

Any administrative proceeding initiated under this section must be conducted in accordance with the Administrative Procedures Act.²⁸ Fines collected under this section must be deposited into the General Inspection Trust Fund.

Sections 3 and 4 amend ss. 319.30 and 538.18, F.S., respectively, to correct references to the DACS.

Section 12 grants the DACS rulemaking authority to implement this bill, and directs that such rules must include tiered penalties for violations of the bill.

Section 13 provides an effective date of July 1, 2015.

²⁶ Section 538.18(9), F.S.

²⁷ Section 538.18(10), F.S.

²⁸ Chapter 120, F.S.

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:

Secondary metals recyclers will be required to pay an increased annual registration fee of \$350 for each location versus the current \$6 fee per location. Secondary metals recyclers will also be required to maintain current and valid workers' compensation insurance and general liability coverage.

Secondary metals recyclers may incur greater costs due to fines levied by the DACS and any litigation related to criminal prosecutions by the Attorney General or State Attorney.

Additionally, some secondary metals recyclers may lose revenue from a loss of business on Sundays.

C. Government Sector Impact:

The DACS estimates \$316,264 in registration and fingerprinting revenue will be deposited into the General Inspection Trust Fund. For Fiscal Year 2015-2016, the DACS advises that it will require four positions and \$448,077 to implement the provisions of this bill.²⁹ The revenue in administrative penalties is undetermined by the DACS.

This bill has not been evaluated by the Revenue Estimating Conference.

REVENUES (General Inspection Trust Fund)	(FY 14-15)	(FY 15-16)	(FY 16-17)
Registration Fees	0	290,150	290,150
Fingerprinting Fees	0	26,114	

²⁹ DACS, Agency Analysis. The DACS revenue estimate is based on an estimated 829 registrants.

TOTAL	0	316,264	290,150
Expenditures (General Inspection Trust Fund)			
Salaries and Benefits	0	208,632	208,632
Expenses	0	47,676	27,101
Contracted Services	0	111,836	
Special Category-Human Resources	0	1,376	1,376
OCO	0	8,800	0
Acquisition of Motor Vehicles	0	69,757	0
Non-operating	0	30,456	30,581
TOTAL	0	478,553	267,690

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 213.053, 319.30, 538.18, 538.19, 538.20, 538.21, 538.23, 538.25, 538.26, 538.27, and 538.29.

This bill creates ss. 538.27 and 538.29, 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 Grimsley

21-00404-15

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1 A bill to be entitled
 2 An act relating to secondary metals recyclers;
 3 transferring administration of part II of chapter 538,
 4 F.S., relating to secondary metals recyclers, from the
 5 Department of Revenue to the Department of Agriculture
 6 and Consumer Services; providing for applicability
 7 with respect to pending actions, orders, and rules;
 8 amending s. 213.053, F.S.; authorizing the Department
 9 of Revenue to share certain confidential information
 10 with the Department of Agriculture and Consumer
 11 Services; amending ss. 319.30, 538.18, and 538.19,
 12 F.S.; conforming provisions to changes made by the
 13 act; amending s. 538.20, F.S.; authorizing specified
 14 persons to inspect regulated metals property and
 15 records; amending s. 538.21, F.S.; prohibiting a
 16 secondary metals recycler from disposing of certain
 17 property for a specified period; amending s. 538.23,
 18 F.S.; revising violations subject to criminal
 19 penalties; amending s. 538.25, F.S.; revising
 20 application requirements for registration as a
 21 secondary metals recycler; revising registration fees;
 22 requiring such fees to be transferred into the General
 23 Inspection Trust Fund; requiring applicants to submit
 24 fingerprints and pay a fee for fingerprint processing
 25 and retention; providing for the submission,
 26 retention, and use of collected fingerprints;
 27 requiring secondary metals recyclers to maintain
 28 specified insurance coverage; authorizing the
 29 department to suspend the registration or eligibility

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30 for registration of a secondary metal recycler that
 31 does not maintain the required coverage; requiring
 32 secondary metals recyclers to exhibit active
 33 registration certificates from the Department of
 34 Agriculture and Consumer Services before applying for
 35 or renewing a local business tax receipt; requiring
 36 secondary metals recyclers to allow department
 37 personnel to enter certain places of business for a
 38 specified purpose; authorizing the department to seek
 39 a warrant if such access is denied; revising penalties
 40 for noncompliance; requiring the department to suspend
 41 certain registrations or applications for registration
 42 under certain circumstances; amending s. 538.26, F.S.;
 43 prohibiting secondary metals recyclers from purchasing
 44 regulated metals property, restricted regulated metals
 45 property, or ferrous metals between certain hours or
 46 on Sundays; prohibiting the purchase of specified
 47 restricted regulated metals property without obtaining
 48 certain proof of the seller's ownership of, or
 49 authority to sell, the regulated metals property;
 50 revising the number of lead-acid batteries purchased
 51 in a single purchase by the same individual in a
 52 single day which makes a purchase subject to certain
 53 restrictions; creating s. 538.27, F.S.; providing
 54 penalties for noncompliance; creating s. 538.29, F.S.;
 55 authorizing the department to adopt rules; providing
 56 an effective date.

57
 58 Be It Enacted by the Legislature of the State of Florida:

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59
60 Section 1. (1) All powers, duties, functions, records,
61 personnel, property, pending issues, existing contracts,
62 administrative authority, administrative rules, and unexpended
63 balances of appropriations, allocations, and other funds of the
64 Department of Revenue relating to the administration of part II
65 of chapter 538, Florida Statutes, are transferred by a type two
66 transfer, pursuant to s. 20.06(2), Florida Statutes, to the
67 Department of Agriculture and Consumer Services.

68 (2) This section does not affect the validity of any
69 judicial or administrative action pending as of 11:59 p.m. on
70 the day before the effective date of this act to which the
71 Department of Revenue is at that time a party, and the
72 Department of Agriculture and Consumer Services shall be
73 substituted as a party in interest in any such action.

74 (3) All lawful orders issued by the Department of Revenue
75 relating to the administration of part II of chapter 538,
76 Florida Statutes, issued before the effective date of this act
77 shall remain in effect and be enforceable after the effective
78 date of this section unless thereafter modified in accordance
79 with law.

80 (4) The rules of the Department of Revenue relating to the
81 administration of part II of chapter 538, Florida Statutes,
82 which were in effect at 11:59 p.m. on the day before the
83 effective date of this act shall remain in effect and be
84 enforceable after the effective date of this section unless
85 thereafter modified in accordance with law.

86 Section 2. Paragraph (cc) is added to subsection (8) of
87 section 213.053, Florida Statutes, and subsection (11) of that

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88 section is amended, to read:

89 213.053 Confidentiality and information sharing.—

90 (8) Notwithstanding any other provision of this section,
91 the department may provide:

92 (cc) Information relative to chapter 212 and part II of
93 chapter 538 to the Department of Agriculture and Consumer
94 Services in the conduct of its official duties.

95
96 Disclosure of information under this subsection shall be
97 pursuant to a written agreement between the executive director
98 and the agency. Such agencies, governmental or nongovernmental,
99 shall be bound by the same requirements of confidentiality as
100 the Department of Revenue. Breach of confidentiality is a
101 misdemeanor of the first degree, punishable as provided by s.
102 775.082 or s. 775.083.

103 (11) Notwithstanding any other provision of this section,
104 with respect to a request for verification of a certificate of
105 registration issued pursuant to s. 212.18 to a specified dealer
106 or taxpayer or with respect to a request by a law enforcement
107 officer for verification of a certificate of registration issued
108 pursuant to s. 538.09 to a specified secondhand dealer ~~or~~
109 ~~pursuant to s. 538.25 to a specified secondary metals recycler,~~
110 the department may disclose whether the specified person holds a
111 valid certificate, ~~or~~ whether a specified certificate number is
112 valid, ~~or~~ whether a specified certificate number has been
113 canceled or is inactive or invalid, and the name of the holder
114 of the certificate. This subsection may ~~shall~~ not be construed
115 to create a duty to request verification of any certificate of
116 registration.

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117 Section 3. Paragraph (b) of subsection (1) of section
 118 319.30, Florida Statutes, is amended to read:
 119 319.30 Definitions; dismantling, destruction, change of
 120 identity of motor vehicle or mobile home; salvage.—
 121 (1) As used in this section, the term:
 122 (b) "Certificate of registration number" means the
 123 certificate of registration number issued by the Department of
 124 Agriculture and Consumer Services Revenue of the State of
 125 ~~Florida~~ pursuant to s. 538.25.
 126 Section 4. Subsections (2) and (11) of section 538.18,
 127 Florida Statutes, are amended to read:
 128 538.18 Definitions.—As used in this part, the term:
 129 (2) "Department" means the Department of Agriculture and
 130 Consumer Services Revenue.
 131 (11) "Secondary metals recycler" means any person that who:
 132 (a) Is engaged, from a fixed location, in the business of
 133 purchase transactions or gathering or obtaining ferrous or
 134 nonferrous metals that have served their original economic
 135 purpose or is in the business of performing the manufacturing
 136 process by which ferrous metals or nonferrous metals are
 137 converted into raw material products consisting of prepared
 138 grades and having an existing or potential economic value; or
 139 (b) Has facilities for performing the manufacturing process
 140 by which ferrous metals or nonferrous metals are converted into
 141 raw material products consisting of prepared grades and having
 142 an existing or potential economic value, other than by the
 143 exclusive use of hand tools, by methods including, without
 144 limitation, processing, sorting, cutting, classifying, cleaning,
 145 baling, wrapping, shredding, shearing, or changing the physical

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146 form or chemical content thereof.
 147 Section 5. Subsections (1), (2), and (3) of section 538.19,
 148 Florida Statutes, are amended to read:
 149 538.19 Records required; limitation of liability.—
 150 (1) A secondary metals recycler shall maintain a legible
 151 paper record of all purchase transactions to which such
 152 secondary metals recycler is a party. A secondary metals
 153 recycler shall also maintain a legible electronic record, in the
 154 English language, of all such purchase transactions. The
 155 appropriate law enforcement official may provide data
 156 specifications regarding the electronic record format, but such
 157 format must be approved by the department ~~of Law Enforcement~~. An
 158 electronic record of a purchase transaction shall be
 159 electronically transmitted to the appropriate law enforcement
 160 official no later than 10 a.m. of the business day following the
 161 date of the purchase transaction. The record transmitted to the
 162 appropriate law enforcement official must not contain the price
 163 paid for the items. A secondary metals recycler that who
 164 transmits such records electronically is not required to also
 165 deliver the original or paper copies of the transaction forms to
 166 the appropriate law enforcement official. However, such official
 167 may, for purposes of a criminal investigation, request the
 168 secondary metals recycler to make available the original
 169 transaction form that was electronically transmitted. This
 170 original transaction form must include the price paid for the
 171 items. The secondary metals recycler shall make the form
 172 available to the appropriate law enforcement official within 24
 173 hours after receipt of the request.
 174 (2) The following information must be maintained on the

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175 form approved by the department ~~of Law Enforcement~~ for each
 176 purchase transaction:

177 (a) The name and address of the secondary metals recycler.
 178 (b) The name, initials, or other identification of the
 179 individual entering the information on the ticket.
 180 (c) The date and time of the transaction.
 181 (d) The weight, quantity, or volume, and a description of
 182 the type of regulated metals property purchased in a purchase
 183 transaction.
 184 (e) The amount of consideration given in a purchase
 185 transaction for the regulated metals property.
 186 (f) A signed statement from the person delivering the
 187 regulated metals property stating that she or he is the rightful
 188 owner of, or is entitled to sell, the regulated metals property
 189 being sold. If the purchase involves a stainless steel beer keg,
 190 the seller must provide written documentation from the
 191 manufacturer that the seller is the owner of the stainless steel
 192 beer keg or is an employee or agent of the manufacturer.
 193 (g) The distinctive number from the personal identification
 194 card of the person delivering the regulated metals property to
 195 the secondary metals recycler.
 196 (h) A description of the person from whom the regulated
 197 metals property was acquired, including:
 198 1. Full name, current residential address, workplace, and
 199 home and work phone numbers.
 200 2. Height, weight, date of birth, race, gender, hair color,
 201 eye color, and any other identifying marks.
 202 3. The right thumbprint, free of smudges and smears.
 203 4. Vehicle description to include the make, model, and tag

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204 number of the vehicle and trailer of the person selling the
 205 regulated metals property.

206 5. Any other information required by the form approved by
 207 the department ~~of Law Enforcement~~.

208 (i) A photograph, videotape, or digital image of the
 209 regulated metals being sold.
 210 (j) A photograph, videotape, or similar likeness of the
 211 person receiving consideration in which such person's facial
 212 features are clearly visible.

213 (3) A secondary metals recycler complies with the
 214 requirements of this section if it maintains an electronic
 215 database containing the information required by subsection (2)
 216 as long as the electronic information required by subsection
 217 (2), along with an electronic oath of ownership with an
 218 electronic signature of the seller of the secondary metals being
 219 purchased by the secondary metals recyclers and an electronic
 220 image of the seller's right thumbprint that has no smudges and
 221 smears, can be downloaded onto a paper form in the image of the
 222 form approved by the department ~~of Law Enforcement~~ as provided
 223 in subsection (2).

224 Section 6. Section 538.20, Florida Statutes, is amended to
 225 read:
 226 538.20 Inspection of regulated metals property and
 227 records.—During the usual and customary business hours of a
 228 secondary metals recycler, a law enforcement officer or employee
 229 of the department who is a nonsworn trained regulatory
 230 investigator shall, after properly identifying herself or
 231 himself as such a law enforcement officer, have the right to
 232 inspect:

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233 (1) Any and all purchased regulated metals property in the
234 possession of the secondary metals recycler, ~~and~~

235 (2) Any and all records required to be maintained under s.
236 538.19.

237 Section 7. Subsection (3) of section 538.21, Florida
238 Statutes, is amended to read:

239 538.21 Hold notice.—

240 (3) A secondary metals recycler may not dispose of any
241 property identified by a hold notice or extended hold notice
242 until the applicable hold period expires. At the expiration of
243 the hold period or, if extended in accordance with this section,
244 at the expiration of the extended hold period, the hold is
245 automatically released and the secondary metals recycler may
246 dispose of the regulated metals property unless other
247 disposition has been ordered by a court of competent
248 jurisdiction.

249 Section 8. Subsection (1), (3), (4), and (5) of section
250 538.23, Florida Statutes, are amended to read:

251 538.23 Violations and penalties.—

252 (1)(a) Except as provided in paragraph (b), a secondary
253 metals recycler that ~~who~~ knowingly and intentionally:

- 254 1. Violates s. 538.20, ~~or~~ s. 538.21, or s. 538.26;
255 2. Engages in a pattern of failing to keep records required
256 by s. 538.19;
257 3. Violates s. 538.26(2); or
258 4. Violates s. 538.235,

259
260 commits a felony of the third degree, punishable as provided in
261 s. 775.082, s. 775.083, or s. 775.084.

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262 (b) A secondary metals recycler that ~~who~~ commits a third or
263 subsequent violation of paragraph (a) commits a felony of the
264 second degree, punishable as provided in s. 775.082, s. 775.083,
265 or s. 775.084.

266 (3) Any person who knowingly provides false information,
267 gives false verification of ownership, ~~or who~~ gives a false or
268 altered identification and who receives money or other
269 consideration from a secondary metals recycler in return for
270 regulated metals property commits:

271 (a) A felony of the third degree, punishable as provided in
272 s. 775.082, s. 775.083, or s. 775.084, if the value of the money
273 or other consideration received is less than \$300.

274 (b) A felony of the second degree, punishable as provided
275 in s. 775.082, s. 775.083, or s. 775.084, if the value of the
276 money or other consideration received is \$300 or more or if the
277 money or other consideration received is for restricted
278 regulated metals.

279 (4) If a lawful owner recovers stolen regulated metals
280 property from a secondary metals recycler that ~~who~~ has complied
281 with this part, and the person who sold the regulated metals
282 property to the secondary metals recycler is convicted of theft,
283 a violation of this section, or dealing in stolen property, the
284 court shall order the defendant to make full restitution,
285 including, without limitation, attorneys' fees, court costs, and
286 other expenses to the secondary metals recycler pursuant to s.
287 775.089.

288 (5) A person acting as a secondary metals recycler that ~~who~~
289 is not registered with the department under s. 538.25 commits a
290 felony of the third degree, punishable as provided in s.

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291 775.082, s. 775.083, or s. 775.084.

292 Section 9. Section 538.25, Florida Statutes, is amended to
293 read:

294 538.25 Registration; renewal.-

295 (1) A person may not engage in business as a secondary
296 metals recycler at any location without registering with the
297 department on an application form prescribed by the department.
298 An application for registration must state the full name of the
299 applicant, the physical address where business will be
300 conducted, and any other relevant information required by the
301 department. If the applicant is not an individual, the
302 application must state the full name and address of each direct
303 or beneficial owner of at least a 10 percent equity interest in
304 the business. If the applicant is a corporation, the application
305 must state the full name and address of each officer and
306 director of the corporation. The department shall accept
307 applications only from a fixed business address. The department
308 may not accept an application that provides an address of a
309 hotel room or motel room, a vehicle, or a post office box.

310 (a) Fingerprint fees shall be assessed and paid as
311 specified in subparagraph (b)2. and A fee equal to the federal
312 and state costs for processing required fingerprints must be
313 submitted to the department with each application for
314 registration. One application is required for each secondary
315 metals recycler. If a secondary metals recycler is the owner of
316 more than one secondary metals recycling location, the
317 application must list each location, and the department shall
318 issue a duplicate registration for each location. For purposes
319 of subsections (3) and, (4), and (5), these duplicate

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320 registrations shall be deemed individual registrations. A
321 secondary metals recycler shall remit an annual registration fee
322 of \$350 to the department at the time of registration for each
323 of its business locations pay a fee of \$6 per location at the
324 time of registration and an annual renewal fee of \$6 per
325 location on October 1 of each year. All fees collected, less
326 costs of administration, shall be transferred into the General
327 Inspection Operating Trust Fund.

328 (b)1. An applicant must submit a full set of fingerprints
329 to the department or to a vendor, entity, or agency authorized
330 by s. 943.053(13). The department, vendor, entity, or agency
331 shall forward the fingerprints to the Department of Law
332 Enforcement for state processing, and the Department of Law
333 Enforcement shall forward the fingerprints to the Federal Bureau
334 of Investigation for national processing.

335 2. Fees for state and federal fingerprint processing and
336 retention shall be borne by the applicant. The state cost for
337 fingerprint processing shall be as provided in s. 943.053(3) (b)
338 for records provided to persons or entities other than those
339 specified as exceptions therein.

340 3. Fingerprints submitted to the Department of Law
341 Enforcement pursuant to this paragraph shall be retained by the
342 Department of Law Enforcement as provided in s. 943.05(2) (g) and
343 (h) and, when the Department of Law Enforcement begins
344 participation in the program, enrolled in the Federal Bureau of
345 Investigation's national retained print arrest notification
346 program. The fingerprints shall be submitted to the Department
347 of Law Enforcement for a state criminal history record check and
348 to the Federal Bureau of Investigation for a national criminal

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

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349 ~~history check. Any arrest record identified shall be reported to~~
350 ~~the department.~~

351 4. For a renewal of an applicant's registration, the
352 department shall request the Department of Law Enforcement to
353 forward his or her retained fingerprints to the Federal Bureau
354 of Investigation unless they are enrolled in the national
355 retained print arrest notification program as described in
356 subparagraph 3. The fee for the national criminal history check
357 shall be recovered from the applicant as part of the
358 department's registration renewal fee and shall be forwarded by
359 the department to the Department of Law Enforcement upon
360 receipt. If an applicant's fingerprints are retained in the
361 national notification program, the applicant must pay the state
362 and national retention fees to the department, which shall
363 forward them to the Department of Law Enforcement.

364 5. The department shall notify the Department of Law
365 Enforcement regarding a person whose fingerprints have been
366 retained but who is no longer registered under this chapter.

367 6. The department shall consider the background screening
368 results in determining whether an applicant meets registration
369 or registration renewal requirements.

370 ~~The department shall forward the full set of fingerprints to the~~
371 ~~Department of Law Enforcement for state and federal processing,~~
372 ~~provided the federal service is available, to be processed for~~
373 ~~any criminal justice information as defined in s. 943.045. The~~
374 ~~cost of processing such fingerprints shall be payable to the~~
375 ~~Department of Law Enforcement by the department. The department~~
376 ~~may issue a temporary registration to each location pending~~
377 ~~completion of the background check by state and federal law~~

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378 ~~enforcement agencies but shall revoke such temporary~~
379 ~~registration if the completed background check reveals a~~
380 ~~prohibited criminal background. The Department of Law~~
381 ~~Enforcement shall report its findings to the Department of~~
382 ~~Revenue within 30 days after the date the fingerprints are~~
383 ~~submitted for criminal justice information.~~

384 (c) An applicant for a secondary metals recycler
385 registration must be a natural person who has reached the age of
386 18 years or a corporation organized or qualified to do business
387 in the state.

388 1. If the applicant is a natural person, the registration
389 must include a complete set of her or his fingerprints,
390 certified by an authorized law enforcement officer, and a valid
391 ~~recent~~ fullface photographic identification card of herself or
392 himself.

393 2. If the applicant is a partnership, all the partners must
394 make application for registration.

395 3. If the applicant is a corporation, the registration must
396 include the name and address of such corporation's registered
397 agent for service of process in the state and a certified copy
398 of statement from the Secretary of State that the corporation is
399 duly organized in the state or, if the corporation is organized
400 in a state other than Florida, a certified copy of the statement
401 that the corporation is duly qualified to do business in this
402 state.

403 (d) Each secondary metals recycler shall maintain workers'
404 compensation insurance and general liability insurance coverage
405 throughout the registration period as required by the department
406 by rule and shall provide the department with written evidence

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 407 of such coverage as a condition of registration with the
 408 department under this section. Failure to maintain such coverage
 409 constitutes an immediate threat to the public health, safety,
 410 and welfare, and the department may immediately suspend the
 411 registration or eligibility for registration of a noncompliant
 412 secondary metals recycler, which must immediately cease
 413 operating in this state.

414 (e) A person applying for or renewing a local business tax
 415 receipt to engage in business as a secondary metals recycler
 416 must exhibit an active registration certificate from the
 417 department before the local business tax receipt may be issued
 418 or renewed pursuant to s. 205.194.

419 (2) A secondary metals recycler's registration shall be
 420 conspicuously displayed at the place of business identified set
 421 forth on the registration. A secondary metals recycler shall
 422 allow department personnel to enter its place of business in
 423 order to verify that it has displayed a valid registration. If a
 424 secondary metals recycler refuses to grant department personnel
 425 entry for this purpose, the department may seek a warrant from a
 426 court of competent jurisdiction authorizing such inspection
 427 shall not dispose of property at any location until any holding
 428 period has expired.

429 ~~(3) The Department of Revenue may impose a civil fine of up~~
 430 ~~to \$10,000 for each knowing and intentional violation of this~~
 431 ~~section, which fine shall be transferred into the General~~
 432 ~~Revenue Fund. If the fine is not paid within 60 days, the~~
 433 ~~department may bring a civil action under s. 120.69 to recover~~
 434 ~~the fine.~~

435 (3)(4) In addition to the penalties fine provided in s.

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 436 538.27 subsection (3), registration or registration renewal
 437 under this section may be denied or any registration granted may
 438 be revoked, restricted, or suspended by the department if, after
 439 October 2, 1989, and within a 10-year 24-month period
 440 immediately preceding such denial, revocation, restriction, or
 441 suspension:

442 (a) The applicant or registrant, or an owner, officer,
 443 director, or trustee of the applicant or registrant, was ~~has~~
 444 ~~been~~ convicted of knowingly and intentionally:

- 445 1. Violating s. 538.20, ~~or~~ s. 538.21, or s. 538.26;
- 446 2. Engaging in a pattern of failing to keep records as
- 447 required by s. 538.19;
- 448 3. Making a material false statement in the application for
- 449 registration; or
- 450 4. Engaging in a fraudulent act in connection with any
- 451 purchase or sale of regulated metals property;

452 (b) The applicant or registrant, or an owner, officer,
 453 director, or trustee of the applicant or registrant, was ~~has~~
 454 ~~been~~ convicted of, or entered a plea of guilty or nolo
 455 contendere to, a felony ~~committed by the secondary metals~~
 456 ~~recycler~~ against the laws of the state or of the United States
 457 involving theft, larceny, dealing in stolen property, receiving
 458 stolen property, burglary, embezzlement, obtaining property by
 459 false pretenses, possession of altered property, or any felony
 460 drug offense or of knowingly and intentionally violating the
 461 laws of the state relating to registration as a secondary metals
 462 recycler; or

463 (c) The applicant ~~has~~, after receipt of written notice from
 464 the Department of Revenue of failure to pay sales tax, failed or

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465 refused to pay, within 30 days after the secondary metals
466 recycler's receipt of such written notice, any sales tax owed to
467 the Department of Revenue.

468 ~~(4)-(5)~~ A denial of an application, or a revocation,
469 restriction, or suspension of a registration, by the department
470 shall be probationary for a period of 12 months in the event
471 that the secondary metals recycler subject to such action has
472 not had any other application for registration denied, or any
473 registration revoked, restricted, or suspended, by the
474 department within the previous 24-month period.

475 (a) If, during the 12-month probationary period, the
476 department does not again deny an application or revoke,
477 restrict, or suspend the registration of the secondary metals
478 recycler, the action of the department shall be dismissed and
479 the record of the secondary metals recycler cleared thereof.

480 (b) If, during the 12-month probationary period, the
481 department, for reasons other than those existing ~~before~~ prior
482 ~~to~~ the original denial or revocation, restriction, or
483 suspension, again denies an application or revokes, restricts,
484 or suspends the registration of the secondary metals recycler,
485 the probationary nature of such original action shall terminate
486 and both the original action of the department and the action of
487 the department causing the termination of the probationary
488 nature thereof shall immediately be reinstated against the
489 secondary metals recycler.

490 (5) The department shall suspend a registration or deny an
491 application for registration if the registrant or applicant, or
492 any of the owners, officers, directors, or trustees of the
493 registrant or applicant, has been convicted of a felony under

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494 chapter 812 or chapter 817. The department shall suspend such
495 registration or application immediately upon receiving written
496 verification of the conviction from a law enforcement agency, a
497 court, a state attorney's office, or the Department of Law
498 Enforcement.

499 (6) Upon the request of a law enforcement official, the
500 department ~~of Revenue~~ shall release to the official the name and
501 address of any secondary metals recycler registered to do
502 business within the official's jurisdiction.

503 Section 10. Subsection (1) and paragraph (b) of subsection
504 (5) of section 538.26, Florida Statutes, are amended to read:

505 538.26 Certain acts and practices prohibited.—It is
506 unlawful for a secondary metals recycler to do or allow any of
507 the following acts:

508 (1) Purchase regulated metals property, restricted
509 regulated metals property, or ferrous metals between the hours
510 of 7 p.m. and before 7 a.m. or at any time on Sunday after 7
511 p.m.

512 (5)

513 (b) The purchase of any of the following regulated metals
514 property is subject to the restrictions provided in paragraph
515 (a):

516 1. A manhole cover.

517 2. A metal ~~An~~ electric light pole ~~or other utility~~
518 ~~structure~~ and its fixtures, ~~wires,~~ and hardware that is are
519 readily identifiable as connected to a metal electric light the
520 ~~utility~~ structure.

521 3. A guard rail.

522 4. A street sign, traffic sign, or traffic signal and its

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523 fixtures and hardware.

524 5. Communication, transmission, distribution, and service

525 wire from a utility, including copper or aluminum bus bars,

526 connectors, grounding plates, or grounding wire.

527 6. A funeral marker or funeral vase.

528 7. A historical marker.

529 8. Railroad equipment, including, but not limited to, a tie

530 plate, signal house, control box, switch plate, E clip, or rail

531 tie junction.

532 9. Any metal item that is observably marked upon reasonable

533 inspection with any form of the name, initials, or logo of a

534 governmental entity, utility company, cemetery, or railroad.

535 10. A copper, aluminum, or aluminum-copper condensing or

536 evaporator coil, including its tubing or rods, from an air-

537 conditioning or heating unit, excluding coils from window air-

538 conditioning or heating units and motor vehicle air-conditioning

539 or heating units.

540 11. An aluminum or stainless steel container or bottle

541 designed to hold propane for fueling forklifts.

542 12. A stainless steel beer keg.

543 13. A catalytic converter or any nonferrous part of a

544 catalytic converter unless purchased as part of a motor vehicle.

545 14. Metallic wire that has been burned in whole or in part

546 to remove insulation.

547 15. A brass or bronze commercial valve or fitting, referred

548 to as a "fire department connection and control valve" or an

549 "FDC valve," that is commonly used on structures for access to

550 water for the purpose of extinguishing fires.

551 16. A brass or bronze commercial potable water backflow

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552 preventer valve that is commonly used to prevent backflow of

553 potable water from commercial structures into municipal domestic

554 water service systems.

555 17. A shopping cart.

556 18. A brass water meter.

557 19. A storm grate.

558 20. A brass sprinkler head used in commercial agriculture.

559 21. Three or more ~~than two~~ lead-acid batteries, or any part

560 or component thereof, in a single purchase or from the same

561 individual in a single day.

562 Section 11. Section 538.27, Florida Statutes, is created to

563 read:

564 538.27 Administrative penalties.—The department may take

565 one or more of the following actions against a secondary metals

566 recycler found to be in violation of s. 538.19, s. 538.235, s.

567 538.25, or s. 538.26:

568 (1) Issuance of a notice of noncompliance pursuant to s.

569 120.695.

570 (2) Imposition of an administrative fine of up to \$200 per

571 violation, not to exceed \$5,000 per inspection. Collected fines

572 shall be deposited in the General Inspection Trust Fund. If a

573 fine is not paid within 60 days after imposition, the department

574 may bring a civil action under s. 120.69 to recover the fine.

575 (3) Issuing a directive to the secondary metals recycler to

576 cease and desist specified activities.

577

578 Administrative proceedings initiated under this section shall be

579 conducted in accordance with chapter 120.

580 Section 12. Section 538.29, Florida Statutes, is created to

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581
582
583
584
585

read:

538.29 Rulemaking authority.—The department may adopt rules
to implement this part. Such rules shall include tiered
penalties for violations of this part.

Section 13. This act shall take effect July 1, 2015.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Communications, Energy, and Public Utilities, *Chair*
Agriculture
Appropriations
Appropriations Subcommittee on Health
and Human Services
Health Policy
Transportation

JOINT COMMITTEES:

Joint Administrative Procedures Committee
Joint Legislative Budget Commission

SENATOR DENISE GRIMSLEY

Deputy Majority Leader
21st District

March 2, 2015

The Honorable Nancy Detert, Chair
Senate Committee on Commerce and Tourism
Room 310 Knott Building
402 S. Monroe Street
Tallahassee, FL 32399-1300

Dear Chair Detert:

I have two bills on your agenda today, Senate Bill 526, relating to Notaries Public and Senate Bill 618 relating to Secondary Metal Recyclers. I've asked my staff to present these bills since I have an Agriculture Committee meeting, and as the Senate President's designate I will be attending the Statewide Council on Human Trafficking meeting. Staff presenting will be Marty Mielke and Anne Bell, respectively.

Thank you for hearing my bills.

Sincerely,

A handwritten signature in cursive script that reads "Denise Grimsley".

Denise Grimsley
Senator, District 21

DG/mm

REPLY TO:

- 205 South Commerce Avenue, Suite A, Sebring, Florida 33870 (863) 386-6016
- 212 East Stuart Avenue, Lake Wales, Florida 33853 (863) 679-4847
- 306 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5021

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)

Meeting Date 3/2/15

Bill Number (if applicable) 5B 418

Topic Secondary Metals Recyclers Amendment Barcode (if applicable) _____

Name Bruce Kershner

Job Title _____

Address 231 West Bay Ave Phone 407-830-1882

Street Lynnwood City FL State 32750 Zip Bkershner@att.net Email

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

Representing NCCA 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.

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)

Meeting Date: 3/2/15

Bill Number (if applicable): 615

Topic: Senary Hotel Recycles Amendment Barcode (if applicable)

Name: Richard Batm

Job Title: Legislative Counsel

Address: P.O. Box 10035 Phone: 850 222-0000

Street: Tradehouse Fl 32302 City: SM State: FL Zip: 32302 Email: rick@batm.com

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

Representing: Associates Builders & Contractors of FL

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)

Meeting Date March 2nd 2015

Bill Number (if applicable) SB 618

Topic Secondary Metals Recyclers

Amendment Barcode (if applicable)

Name KATHIE KELLY

Job Title _____

Address _____

Phone _____

Street

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing The Florida Chamber

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

Meeting Date March 2nd 2015

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

Amendment Barcode (if applicable)

SB 618
Bill Number (if applicable)

Topic Secondary Metals Recyclers

Name Erin Daly Ballas

Job Title _____

Address 110 East College Ave

Phone 850 728 6387

Street Tallahassee State FL Zip 32301

City _____ Email erin.dalyballas@preconsultants.com

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

Representing NATIONAL WASTE AND RECYCLING 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.

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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)

Meeting Date 3-2-15

Bill Number (if applicable) SB 618

Topic _____

Amendment Barcode (if applicable) _____

Name ROBERT WEBER

Job Title PRESIDENT GARDEN STREET TOWN & METAL

Address 3350 METRO PKWY Phone 239-707-5865

Street KT. MYERS City FC State FL Zip 33916 Email ROBERTWEBER@GMAIL.COM

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

Representing _____

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)

03-02-15

Meeting Date

618

Bill Number (if applicable)

SB 618

Amendment Barcode (if applicable)

Name GREG BULLOCK

Job Title VICE PRESIDENT

Address CON FLORENCE PER 85 119

Phone 813-363-8493

Street

Email GREG.BULLOCK@FLSENATE.NET

City

State

Zip

Speaking: For Against Information

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

Representing FLORIDA PAPERTRY RECOVERY UNIT

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)

Meeting Date 3/2/15

Bill Number (if applicable) 618

Topic Metals Recycling

Amendment Barcode (if applicable)

Name Jim McGill

Job Title Lobbyist

Address 101 N. Monroe St. Suite 1050

Phone 681-0411

Street TALCAHUASSGE
City TZ State FL Zip 322301

Email JAMES.MGILL@BIRG

Speaking: For Against Information

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

Representing FLORIDA RECYCLERS ASSOC. TRADEWACKLE METALS

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.

CourtSmart Tag Report

Room: EL 110

Case:

Type:

Caption: Commerce and Tourism Committee Judge:

Started: 3/2/2015 1:03:47 PM

Ends: 3/2/2015 1:27:32 PM Length: 00:23:46

1:03:49 PM Call to order
1:04:29 PM Tab 4 SB 554 Senator Simmons
1:05:34 PM Amendment 1 Barcode 218950
1:05:55 PM Senator Simmons
1:06:41 PM Amendment passes
1:06:59 PM Greg Black, Business Law Section of the Florida Bar
1:07:18 PM Roll call on CS/SB 554
1:07:35 PM Bill reported favorably
1:08:05 PM Tab 2 CS/SB 202 Senator Bradley
1:08:40 PM Amendment 1 Barcode 551394
1:08:51 PM Senator Bradley
1:09:00 PM Amendment passes
1:09:10 PM Roll call on CS/SB 202
1:09:25 PM Bill reported favorably
1:09:53 PM Tab 1 SB 526
1:10:22 PM Senator Grimsley LA
1:10:46 PM Amendment 1 Barcode 709170
1:11:16 PM Amendment passes
1:11:20 PM Senator Thompson
1:12:46 PM Matt Dunagan, Florida Sheriffs Association
1:13:02 PM Lorelei Bowden Jacobs, Hillsbough County Sheriff's Office
1:13:27 PM Roll call on SB 526
1:13:36 PM Bill reported favorably
1:13:45 PM Tab 3 CS/SB 394 Senator Brandes
1:13:59 PM Senator Detert
1:15:00 PM Richard Turner, Florida Restaurant and Lodging
1:15:16 PM Roll call on SB 394
1:15:22 PM Bill reported favorably
1:15:39 PM Tab 5 SB 604
1:15:48 PM Senator Flores LA
1:16:19 PM Amendment 1 Barcode 192498
1:16:58 PM Amendment passes
1:17:03 PM Amendment 2 Barcode 887890
1:17:32 PM Amendment passes
1:17:48 PM Senator Detert
1:19:31 PM Roll call on CS/SB 604
1:20:13 PM Bill reported favorably
1:20:17 PM Tab 6 SB 618
1:20:32 PM Senator Grimsley LA
1:21:52 PM Senator Latvala
1:23:45 PM Jim Magill, Florida Recyclers Assoc.
1:24:39 PM Greg Pollock, Florida Property Recovery Unit
1:24:55 PM Erin Daly Ballas, National Waste and Recylcing Assoc.
1:25:16 PM Katie Kelly, The Florida Chamber
1:25:25 PM Robert Weber
1:25:35 PM Richard Watson
1:25:42 PM Bruce Kershner, NUCA of Florida
1:25:53 PM Roll call on SB 618
1:26:02 PM Bill reported favorably
1:26:10 PM Senator Ring
1:26:42 PM Adjourned



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Governmental Oversight and Accountability, *Chair*
Appropriations Subcommittee on Finance and
Tax, *Vice Chair*
Appropriations
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Banking and Insurance
Commerce and Tourism
Judiciary
Rules

JOINT COMMITTEES:

Joint Legislative Auditing Committee
Joint Select Committee on Collective Bargaining

SENATOR JEREMY RING

29th District

March 2, 2015

Senator Nancy Detert
416 Senate Office Building
Tallahassee, FL 32399-100

Dear Senator Detert,

I am requesting to be excused from the Commerce and Tourism meeting scheduled for March 2nd due to unexpected surgery over the weekend.

Thank you in advance for considering this request to be excused from the Commerce and Tourism meeting scheduled for March 2nd due to this medical issue. Please do not hesitate to contact me if you have any questions.

Sincerely,

Handwritten signature of Jeremy Ring in cursive.

Jeremy Ring
Senator District 29

CC: Todd McKay, Staff Director

Handwritten signature of Nancy Detert in cursive.

REPLY TO:

- 5790 Margate Boulevard, Margate, Florida 33063 (954) 917-1392 FAX: (954) 917-1394
- 405 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5029

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore