

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

COMMERCE AND TOURISM
Senator Montford, Chair
Senator Gainer, Vice Chair

MEETING DATE: Monday, March 27, 2017
TIME: 1:30—3:00 p.m.
PLACE: *Toni Jennings Committee Room*, 110 Senate Office Building

MEMBERS: Senator Montford, Chair; Senator Gainer, Vice Chair; Senators Gibson, Hutson, Latvala, Passidomo, Rodriguez, and Young

| TAB | BILL NO. and INTRODUCER | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|-----|--|---|----------------------------|
| 1 | SM 572 Campbell (Identical HM 933, Compare HM 45, CS/HM 935, HR 8015, SM 710) | Haitian Independence and Flag Day/Haitian Heritage Month ; Urging Congress to annually recognize January 1 as "Haitian Independence Day," May 18 as "Haitian Flag Day," and the month of May as "Haitian Heritage Month", etc. CM 03/27/2017 Fav/CS RC | Fav/CS Yeas 8 Nays 0 |
| 2 | SB 650 Book (Similar H 669) | Retail Establishments and Shopping Centers; Requiring certain parking lots to contain a minimum amount of parking spaces designated for use by expectant mothers, subject to certain requirements; requiring the Department of Transportation to establish requirements for signage and markings for such parking spaces; requiring certain retail establishments and shopping centers to provide and maintain breastfeeding areas, etc. CM 03/27/2017 Temporarily Postponed TR RC | Temporarily Postponed |
| 3 | CS/SB 794 Banking and Insurance / Brandes (Similar CS/H 339) | Motor Vehicle Service Agreement Companies; Revising qualifications for a motor vehicle service agreement company to obtain and maintain a license; requiring specified refunds by insurers or service agreement companies if service agreements are canceled by lenders, finance companies, or creditors after a specified timeframe; providing a limitation on such cancellations, etc. BI 03/14/2017 Fav/CS CM 03/27/2017 Favorable RC | Favorable Yeas 8 Nays 0 |
| 4 | CS/SB 812 Banking and Insurance / Perry (Identical CS/CS/H 805) | Insurance Policy Transfers; Authorizing an insurer to transfer a personal lines residential or commercial residential property insurance policy to another authorized insurer upon expiration of the policy term if specified conditions are met, etc. BI 03/14/2017 Fav/CS CM 03/27/2017 Favorable RC | Favorable Yeas 8 Nays 0 |

COMMITTEE MEETING EXPANDED AGENDA

Commerce and Tourism

Monday, March 27, 2017, 1:30—3:00 p.m.

| TAB | BILL NO. and INTRODUCER | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|-----|---|--|----------------------------|
| 5 | SB 1698 Baxley (Identical H 1261) | Annual Corporate Reports and Fees; Establishing a biennial report filing fee and a biennial supplemental corporate fee; authorizing domestic and foreign corporations to submit biennial reports to the Department of State, etc. CM 03/27/2017 Favorable ATD AP | Favorable Yeas 6 Nays 2 |
| 6 | CS/SB 466 Transportation / Hutson (Similar CS/H 775) | Motor Vehicle Warranty Repairs and Recall Repairs; Prohibiting a manufacturer, factory branch, distributor, or importer from denying a claim of a motor vehicle dealer, reducing compensation to a motor vehicle dealer, or processing a chargeback to a motor vehicle dealer because of specified circumstances; requiring a manufacturer, factory branch, distributor, or importer to compensate a motor vehicle dealer for a used motor vehicle under specified circumstances, etc. TR 03/14/2017 Fav/CS CM 03/27/2017 Fav/CS RC | Fav/CS Yeas 8 Nays 0 |
| 7 | CS/SB 554 Regulated Industries / Young (Similar H 679) | Craft Breweries; Exempting certain vendors from specified delivery restrictions under certain circumstances; providing that certain manufacturers may transport malt beverages in vehicles owned or leased by certain persons other than the manufacturers, etc. RI 02/22/2017 Fav/CS CM 03/27/2017 Fav/CS AGG AP | Fav/CS Yeas 6 Nays 1 |

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/SM 572

INTRODUCER: The Committee on Commerce and Tourism and Senator Campbell

SUBJECT: Haitian Independence and Flag Day/Haitian Heritage Month

DATE: March 27, 2017

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------|
| 1. | Flynn | McKay | CM | Fav/CS |
| 2. | | | RC | |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SM 572 urges Congress to enact legislation recognizing:

- January 1 as “Haitian Independence Day”;
- May 18 as “Haitian Flag Day”;
- The month of May as “Haitian Heritage Month”; and
- The month of June as “Caribbean American Heritage Month.”

Legislative memorials are not subject to the Governor’s veto power and are not presented to the Governor for review. Memorials have no force of law, as they are mechanisms for formally petitioning the federal government to act on a particular subject.

II. Present Situation:

Haitian American History

Located in the Caribbean on the western one-third of the island of Hispaniola, Haiti is a country of approximately 10.5 million people.¹ Due in part to Haiti’s close proximity to the United States, the Haitian American population amounted to roughly 880,000 in 2010, the year the most

¹ UNITED STATES CENTRAL INTELLIGENCE AGENCY, *The World Factbook: Haiti*, <https://www.cia.gov/library/publications/the-world-factbook/geos/ha.html> (last visited Mar. 22, 2017).

recent U.S. Census was administered.² The bulk of the Haitian American population resides in Florida and New York.³ These two states were home to more than 70 percent of Haitian immigrants in the 2008-12 period.⁴

Many Haitian holidays fall in May.⁵ Haiti celebrates “Labor and Agricultural Day” on May 1, Haiti’s Mother’s Day is celebrated on the last Sunday of May each year, and Haitian Flag Day is celebrated on May 18.⁶ Toussaint L’Ouverture, one of the leaders of the Haitian Revolution, is believed to have been born on May 20, 1743.⁷

Recognition of Haitian American Events

Various governmental entities in the United States have issued resolutions or proclamations recognizing the importance of May in Haitian and Haitian American culture, including, but not limited to, the following:

- In 2001, Miami-Dade County passed a resolution designating May as “Haitian Cultural Heritage Month”⁸ and has held annual celebration in the county ever since;⁹
- In 2003, the Palm Beach County School District issued a resolution recognizing May as “Haitian Heritage Month”;¹⁰
- In 2015, the Governor of the Commonwealth of Massachusetts proclaimed the month of May 2015 to be “Haitian Heritage Month”;¹¹
- In 2015, the Mayor of the City of Boston and the City of Boston City Council issued separate proclamations to designate the month of May as “Haitian Heritage Month” and specifically to honor “Haitian Flag Day.”¹²

At the federal level, several resolutions have been introduced in the United States House of Representatives to recognize May as “Haitian American Heritage Month.” For example, House Resolution 777, sponsored by former Congressman Kendrick Meek, was introduced, but never

² UNITED STATES CENSUS BUREAU, *American Fact Finder*, available at https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_10_1YR_B04003&prodType=table (last visited Mar. 22, 2017).

³ MIGRATION POLICY INSTITUTE, *Haitian Immigrants in the United States*, <http://www.migrationpolicy.org/article/haitian-immigrants-united-states> (last visited Mar 22, 2017).

⁴ *Id.*

⁵ WORLD TRAVEL GUIDE, *Haiti Public Holidays*, <http://faculty.webster.edu/corbetre/haiti/misctopic/holidays/holidays.htm> (last visited Mar. 22, 2017).

⁶ *Id.*

⁷ ENCYCLOPEDIA.COM, *François Dominique Toussaint L’Ouverture*, <http://www.encyclopedia.com/people/history/haiti-history-biographies/francois-dominique-toussaint-louverture> (last visited Mar. 22 2017).

⁸ MIAMI-DADE BOARD OF COUNTY COMMISSIONERS, *County Resolution R-452-01*, available at <http://www.miamidade.gov/govaction/matter.asp?matter=011622&file=false&yearFolder=Y2001> (last visited Mar. 22, 2017).

⁹ MIAMI-DADE COUNTY, *Haitian Cultural Heritage Month kicks off on May 1*, <http://www.miamidade.gov/district02/releases/2015-04-24-haitian-month.asp> (last visited Mar. 22, 2017).

¹⁰ A copy of the resolution, dated April 23, 2003, is on file with the House of Representatives Local & Federal Affairs Committee.

¹¹ THE OFFICIAL WEBSITE OF THE GOVERNOR OF MASSACHUSETTS, *Issued Proclamations, Haitian Heritage Month*, <http://www.mass.gov/governor/constituent-services/recognition/issued-proclamations/haitian-heritage-month.html>.

¹² A copy of each resolution is on file with the House of Representatives Local & Federal Affairs Committee.

heard, during the 109th congress.¹³ Additionally, House Resolution 224, sponsored by Congresswoman Frederica Wilson, was introduced, but never heard, during the 113th Congress.¹⁴

Caribbean American History

In 2014, approximately 4 million immigrants from the Caribbean resided in the United States, accounting for 9 percent of the nation's 42.4 million immigrants.¹⁵ In the early 1900s, the United States became a major destination for Caribbean migrants due to the increased economic opportunities the industrial revolution created.¹⁶ The United States is currently the top destination for Caribbean emigrants, accounting for more than 60 percent of the 6 million Caribbean emigrants worldwide.¹⁷

Caribbean Americans have made numerous contributions to the United States.¹⁸ Some of the most famous Caribbean Americans include Alexander Hamilton, the first Secretary of the Treasury for the United States, who was born on the Caribbean Island of Nevis,¹⁹ W.E.B. Du Bois, a civil rights activist and the first African American to graduate from Harvard, was the son of a Haitian immigrant,²⁰ and Colin Powell, the first African American Secretary of State, was the son of Jamaican immigrants.²¹

History of Caribbean American Heritage Month

Federal Bill HR570 was presented to the U.S. House of Representatives in 2004.²² In 2005, the Bill was reintroduced as House Concurrent Resolution 71 with 81 bipartisan co-sponsors that originated from 26 states plus American Samoa, District of Columbia, Guam, Puerto Rico, and the US Virgin Islands.²³ On June 27, 2005, the U.S. House passed the bill declaring June as Caribbean American Heritage Month.²⁴ In 2006, Senator Schumer introduced HR71 to the

¹³ 109TH CONGRESS 2005-2006, *H. Res. 777 – Expressing the sense of the House of Representatives, in recognition of the contributions of the Haitian people to the history and culture of the United States, by establishing “Haitian-American Heritage Month”*, available at <https://www.congress.gov/bill/109th-congress/house-resolution/777?q=%7B%22search%22%5C%22hres777%5C%22%22%5D%7D&resultIndex=5>

¹⁴ 113TH CONGRESS 2013-2014, *H.Res.224 – Expressing the sense of the House of Representatives that a Haitian-American Heritage Month” should be established in recognition of the contributions of the Haitian people to the history and culture of the United States*, available at <https://www.congress.gov/bill/113th-congress/house-resolution/224?r=25>

¹⁵ MIGRATION POLICY INSTITUTE, *Caribbean Immigrants in the United States*, <http://www.migrationpolicy.org/article/caribbean-immigrants-united-states> (last visited Mar. 24, 2017).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ BIOGRAPHICAL DIRECTORY OF THE UNITED STATES CONGRESS, *Alexander Hamilton*, <http://bioguide.congress.gov/scripts/biodisplay.pl?index=h000101> (last visited Mar. 24, 2017).

¹⁹ *Id.*

²⁰ NATIONAL CONSORTIUM ON RACIAL AND ETHNIC FAIRNESS IN THE COURTS, *Special Recognition: Caribbean American Heritage Month*, <http://www.national-consortium.org/Special-Recognition/Caribbean.aspx> (last visited at Mar. 24, 2017).

²¹ Jonathan Power, *Colin Powell's Jamaican connection*, (Nov. 3, 1995), available at http://articles.baltimoresun.com/1995-11-03/news/1995307066_1_michael-manley-colin-powell-jamaica (last visited Mar. 24, 2017).

²² CARIBBEAN HERITAGE ORGANIZATION, *Institute of Caribbean Studies: The History of National Caribbean American Heritage Month*, <http://caribbeanheritage.org/wp-content/uploads/2016/12/cam-congressional-resolution.pdf> (last visited Mar. 24, 2017).

²³ *Id.*

²⁴ *Id.*

Senate.²⁵ The measure was passed in the U.S. Senate on February 14, 2006.²⁶ In June of 2006, President George Bush issued a presidential proclamation recognizing Caribbean American Heritage Month.²⁷ In each year since, the White House has issued an annual proclamation recognizing June as Caribbean American Heritage Month.²⁸ June of 2016 marked the tenth anniversary of June as National Caribbean American Heritage Month.²⁹

Federal Recognition of Other Commemorative Events

Congress has passed legislation relating to national observances and commemorative months on several occasions. For example, Congress has passed legislation to commemorate or authorize the President to proclaim February as “National African American History Month,” November as “Native American Heritage Month,”³⁰ May as “Jewish American Heritage Month,” May as “Asian Pacific Heritage Month,” and the period beginning September 15 and ending October 15 as “National Hispanic Heritage Month.”³¹ In addition, Congress has passed legislation to commemorate or authorize the President to proclaim several days of national observance such as Flag Day on June 14,³² and Native American Heritage Day on the first Friday after Thanksgiving.³³

III. Effect of Proposed Changes:

CS/SM 572 urges Congress to enact legislation to memorialize Haitian and Caribbean Americans’ contributions to the United States by recognizing:

- January 1 as “Haitian Independence Day”;
- May 18 as “Haitian Flag Day”;
- The month of May as “Haitian Heritage Month”; and
- The month of June as “Caribbean American Heritage Month.”

Copies of the memorial will be sent to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of representatives, and to each member of the Florida Delegation to the United States Congress.

Legislative memorials are not subject to the Governor’s veto power and are not presented to the Governor for review. Memorials have no force of law, as they are mechanisms for formally petitioning the federal government to act on a particular subject.

²⁵ *Id.*

²⁶ *Id.*

²⁷ NATIONAL CARIBBEAN AMERICAN HERITAGE FOUNDATION, *National Caribbean-American Heritage Month Marks Tenth Anniversary in 2016*, <http://www.caribbeanamericanmonth.org/> (last visited Mar 24, 2017).

²⁸ *Id.*

²⁹ *Id.*

³⁰ The observance was first authorized by President H.W. Bush in 1990 under the title ‘National American Indian Heritage Month’ and has since been titled under several variations. The current title of the observation is ‘Native American Heritage Month.’ LIBRARY OF CONGRESS, *About Native American Heritage Month*, <http://nativeamericanheritagemonth.gov/about/> (last visited Mar. 22, 2017).

³¹ LIBRARY OF CONGRESS, *Commemorative Observances*, <http://www.loc.gov/law/help/commemorative-observations/> (Last visited Mar. 22, 2017).

³² House Joint Resolution 211, Pub. L. 99-54 (1985), available at <https://www.gpo.gov/fdsys/pkg/STATUTE-99/pdf/STATUTE-99-Pg97.pdf>

³³ House Joint Resolution 40, Pub. L. 111-33 (2009), available at <https://www.congress.gov/bill/111th-congress/house-joint-resolution/40/text>

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

None.

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 27, 2017:

The committee substitute urges the Congress of the United States to recognize June as “Caribbean American Heritage Month.”

B. Amendments:

None.

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



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LEGISLATIVE ACTION

| Senate | . | House |
|------------|---|-------|
| Comm: RCS | . | |
| 03/27/2017 | . | |
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| | . | |

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

Senate Amendment (with title amendment)

Delete everything after the resolving clause
and insert:

That the Congress of the United States is urged to
recognize January 1 as "Haitian Independence Day," the month of
May as "Haitian American Heritage Month," May 18 as "Haitian
Flag Day," and the month of June as "Caribbean American Heritage
Month."

BE IT FURTHER RESOLVED that the Secretary of State is



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11 directed to dispatch copies of this memorial to the President of
12 the United States, to the President of the United States Senate,
13 to the Speaker of the United States House of Representatives,
14 and to each member of the Florida delegation to the United
15 States Congress.

16
17 ===== T I T L E A M E N D M E N T =====

18 And the title is amended as follows:

19 Delete everything before the resolving clause
20 and insert:

21 Senate Memorial

22 A memorial to the Congress of the United States,
23 urging Congress to recognize January 1 as "Haitian
24 Independence Day," the month of May as "Haitian
25 American Heritage Month," May 18 as "Haitian Flag
26 Day," and the month of June as "Caribbean American
27 Heritage Month."

28
29 WHEREAS, the United States of America has thrived as a
30 country of immigrants, united by common values and the promise
31 of a better tomorrow, and

32 WHEREAS, the Republic of Haiti, an island nation located in
33 the West Indies on the western third of the Island of
34 Hispaniola, declared its independence from French colonial rule
35 on January 1, 1804, following a slave revolt under the
36 leadership of Generals Toussaint L'Ouverture, Jean-Jacques
37 Dessalines, and Alexandre Pétion, becoming the first and only
38 nation created from a successful slave rebellion, and

39 WHEREAS, Haiti was the first independent nation in Latin



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40 America and the first postcolonial independent nation led by
41 blacks in the world, and

42 WHEREAS, as educators, authors, community leaders,
43 activists, athletes, artists, musicians, and politicians,
44 Haitian Americans have made their mark in every facet of society
45 and have contributed to the betterment and diversity of this
46 nation, and

47 WHEREAS, the close proximity of Haiti to American shores,
48 in conjunction with our common bond of mutual values and
49 commitment to democracy, ensures lasting comity of nations and
50 continued trade and diplomatic relations, and

51 WHEREAS, an estimated 1.5 million persons of Haitian
52 descent now live throughout this nation, and

53 WHEREAS, the United States and Haiti share a history of
54 freedom, a common belief in human rights, and diverse, complex,
55 and resilient peoples who have impacted the world through
56 vibrant cultures, democracy, and a wealth of talent and
57 achievement, and

58 WHEREAS, Haitian Independence Day is globally acknowledged
59 and annually celebrated on January 1 as an affirmation of
60 equality, freedom, and the abolition of slavery, and

61 WHEREAS, Congresswoman Frederica S. Wilson and Congressman
62 Kendrick B. Meek, having acknowledged the importance of Haitian
63 Americans in this nation's history and diversity, have proposed
64 resolutions in the United States House of Representatives to
65 recognize the month of May as "Haitian American Heritage Month"
66 in the United States, and

67 WHEREAS, Haitian American Heritage Month is held to salute
68 the Haitian and Haitian American communities and to exhibit



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69 appreciation for their culture and heritage, which have
70 immeasurably enriched the lives of the people of this nation,
71 and

72 WHEREAS, the Haitian flag known today, a variant of which
73 first came into use in 1806, is emblazoned with the country's
74 coat of arms and the colors red and blue, adopted from the flag
75 of France, the country from which Haiti gained its independence,
76 and

77 WHEREAS, General Jean-Jacques Dessalines is regarded as the
78 father of the Haitian flag, known to have dramatically cut the
79 French tricolor with his saber at the May 1803 Congress of
80 Arcahaie, ripping away the white of the French flag to symbolize
81 an end to European influence and leaving two strips that
82 Catherine Flon then sewed back together: the blue, which
83 represented the former African slaves brought to Haiti by
84 colonial powers, and the red, which symbolized a people of mixed
85 ancestry, and

86 WHEREAS, the Haitian flag is a definitive symbol of pride
87 for the Caribbean nation, having become the second republic,
88 after the United States, to defeat a European colonial power in
89 the Americas, and

90 WHEREAS, Haitian Flag Day events are annually observed and
91 celebrated with pride and enthusiasm throughout the United
92 States, and

93 WHEREAS, from a region that conjures images of a scenic
94 paradise, Caribbean Americans are as vibrant as the islands from
95 which they come, possessing a wealth of talent and history that
96 reverberates throughout this great state and nation, and

97 WHEREAS, emigration from the Caribbean region to the



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98 American colonies began as early as 1619, with the arrival of
99 indentured workers in Jamestown, Virginia, and since 1820,
100 millions of people have emigrated from the Caribbean region to
101 the United States, and

102 WHEREAS, as educators, authors, community leaders and
103 activists, musicians, and politicians, Caribbean Americans have
104 made their mark on every facet of our society and have
105 contributed to the betterment and diversity of our state and
106 nation, and

107 WHEREAS, counted among the many famous sons and daughters
108 of the Caribbean are activist W. E. B. Du Bois; Secretary of the
109 Treasury Alexander Hamilton; the first African American
110 Secretary of State, Colin Powell; actress Cicely Tyson; actor
111 Sidney Poitier, the first African American actor to receive the
112 Academy Award for Best Actor in a Leading Role; author, poet,
113 and civil rights activist James Weldon Johnson; musician, actor,
114 and activist Harry Belafonte; athlete Roberto Clemente, the
115 first Latino inducted into the National Baseball Hall of Fame;
116 and numerous others who have displayed great strength and
117 resiliency while serving as pioneers among the people of the
118 Caribbean, and

119 WHEREAS, the modern political influences of Caribbean
120 Americans are evident in the election of a former member of the
121 Florida House of Representatives, Jennifer Carroll of Trinidad
122 and Tobago, as Florida's first Caribbean American Lieutenant
123 Governor; the election of former Maryland Lieutenant Governor
124 Anthony G. Brown, who is of Jamaican descent; and the continued
125 representation in local, state, and national governments by
126 members from the Bahamas, the Cayman Islands, Haiti, Jamaica,



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127 and other Caribbean nations, and

128 WHEREAS, in June 2005, the United States House of
129 Representatives unanimously adopted a concurrent resolution
130 recognizing the significance of Caribbean people and their
131 descendants in the history and culture of the United States and
132 observing the month of June as "Caribbean American Heritage
133 Month," and

134 WHEREAS, on February 14, 2006, the United States Senate
135 unanimously passed the resolution, culminating a two-year
136 bicameral effort, and

137 WHEREAS, since the passage of the resolution in 2005, the
138 White House has issued an annual proclamation recognizing June
139 as "Caribbean American Heritage Month," exemplifying the
140 importance of this observance across the nation, NOW, THEREFORE,

By Senator Campbell

38-00762-17

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Senate Memorial

A memorial to the Congress of the United States, urging Congress to annually recognize January 1 as "Haitian Independence Day," May 18 as "Haitian Flag Day," and the month of May as "Haitian Heritage Month."

WHEREAS, the Republic of Haiti, an island nation located in the West Indies on the western third of the Island of Hispaniola, declared its independence from French colonial rule on January 1, 1804, following a slave revolt under the leadership of Generals Toussaint L'Ouverture, Jean-Jacques Dessalines, and Alexandre Pétion, becoming the first and only state created from a successful slave rebellion, and

WHEREAS, Haiti was the first independent nation in Latin America and the first postcolonial independent nation led by blacks in the world, and

WHEREAS, Haitian Independence Day is globally acknowledged and annually celebrated on January 1 as an affirmation of equality, freedom, and the abolition of slavery, and

WHEREAS, the Haitian flag known today, a variant of which first came into use in 1806, is emblazoned with the country's coat of arms and the colors red and blue, adopted from the flag of France, the country from which Haiti gained its independence, and

WHEREAS, General Jean-Jacques Dessalines is regarded as the father of the Haitian flag, known to have dramatically cut the French tricolor with his saber at the May 1803 Congress of Arcahaie, ripping away the white of the French flag to symbolize an end to European influence and leaving two strips that Catherine Flon then sewed back together: the blue, which represented the former African slaves brought to Haiti by

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colonial powers, and the red, which symbolized a people of mixed ancestry, and

WHEREAS, the Haitian flag is a definitive symbol of pride for the Caribbean nation, having become the second republic, after the United States, to defeat a European colonial power in the Americas, and

WHEREAS, Haitian Flag Day events are annually observed and celebrated with pride and enthusiasm throughout the United States, and

WHEREAS, Haitian Heritage Month is a jubilant celebration in the United States, embracing Haitian heritage and culture, and

WHEREAS, first celebrated in Boston, Massachusetts, in 1998, Haitian Heritage Month is observed nationwide in the month of May from Florida to New York with parades, festivals, and school activities, and

WHEREAS, the importance of Haitian Heritage Month is exemplified by South Florida Congressman Kendrick B. Meek's introduction of a bill in the United States House of Representatives in 2004 and 2006 to recognize the month of May as Haitian Heritage Month; by former President George W. Bush and First Lady Laura Bush's letter, sent in May 2005, to congratulate the Haitian-American community on the occasion of the heritage month; and by the organization of a celebration at the White House that same year, and

WHEREAS, as educators, authors, community leaders, activists, athletes, artists, musicians, and politicians, Haitians and Haitian Americans have left an indelible mark on every facet of this nation's society and the world, evidenced by

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62 the accomplishments of such icons as Jean Baptiste Point du
63 Sable, founder of the City of Chicago; civil rights activist
64 W.E.B. Du Bois; National Football League player Pierre Garçon;
65 author and candidate for the Nobel Prize for Literature in 2009
66 Frankétienne; and Tony Award-winning actress and singer Nikki M.
67 James, and

68 WHEREAS, the close proximity of Haitian and American
69 shores, in conjunction with our countries' common bond of mutual
70 values and commitment to democracy, ensures lasting comity of
71 nations and continued trade and diplomatic relations, and

72 WHEREAS, with an estimated 1.5 million persons of Haitian
73 descent now residing in the United States, it is important to
74 acknowledge the positive impact of Haitian Americans in their
75 contribution to the betterment and diversity of this country,
76 and

77 WHEREAS, the United States and Haiti share a history of
78 freedom, a common belief in human rights, and diverse, complex,
79 and resilient peoples who have impacted the world through
80 vibrant cultures, democracy, and a wealth of talent and
81 achievement, and

82 WHEREAS, Haitian Independence Day, Haitian Flag Day, and
83 Haitian Heritage Month are each observed to salute the Haitian
84 and Haitian-American communities and to exhibit appreciation for
85 their culture and heritage, which have immeasurably enriched the
86 lives of the people of this nation, NOW, THEREFORE,

87

88 Be It Resolved by the Legislature of the State of Florida:

89

90 That the Congress of the United States is urged to

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

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91 recognize January 1 of each year as "Haitian Independence Day,"
92 May 18 of each year as "Haitian Flag Day," and the month of May
93 of each year as "Haitian Heritage Month" and to encourage the
94 people of the United States to observe these occasions with
95 appropriate ceremonies, celebrations, and activities.

96 BE IT FURTHER RESOLVED that the Secretary of State is
97 directed to dispatch copies of this memorial to the President of
98 the United States, to the President of the United States Senate,
99 to the Speaker of the United States House of Representatives,
100 and to each member of the Florida delegation to the United
101 States Congress.

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

The Florida Senate **COMMITTEE VOTE RECORD**

COMMITTEE: Commerce and Tourism
ITEM: SM 572
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Monday, March 27, 2017
TIME: 1:30—3:00 p.m.
PLACE: 110 Senate Office Building

| FINAL VOTE | | SENATORS | Campbell | | | | | |
|------------|------------|--------------------|------------|------------|------------|------------|------------|------------|
| Yea | Nay | | Yea | Nay | Yea | Nay | Yea | Nay |
| X | | Gibson | | | | | | |
| X | | Hutson | | | | | | |
| X | | Latvala | | | | | | |
| X | | Passidomo | | | | | | |
| X | | Rodriguez | | | | | | |
| X | | Young | | | | | | |
| X | | Gainer, VICE CHAIR | | | | | | |
| X | | Montford, CHAIR | | | | | | |
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| Yea | Nay | | Yea | Nay | Yea | Nay | Yea | Nay |

CODES: FAV=Favorable RCS=Replaced by Committee Substitute TP=Temporarily Postponed WD=Withdrawn
 UNF=Unfavorable RE=Replaced by Engrossed Amendment VA=Vote After Roll Call OO=Out of Order
 -R=Reconsidered RS=Replaced by Substitute Amendment VC=Vote Change After Roll Call AV=Abstain from Voting

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 650

INTRODUCER: Senator Book

SUBJECT: Retail Establishments and Shopping Centers

DATE: March 24, 2017

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------------|----------------|-----------|--------------------|
| 1. | <u>Little</u> | <u>McKay</u> | <u>CM</u> | <u>Pre-meeting</u> |
| 2. | _____ | _____ | <u>TR</u> | _____ |
| 3. | _____ | _____ | <u>RC</u> | _____ |

I. Summary:

SB 650 requires at least one parking space to be designated for use by expectant mothers in parking lots of retail establishments and shopping centers containing more than 100 parking spaces. Expectant mother parking spaces must be located as closely as possible to parking spaces designated for use by persons with disabilities.

The bill directs the Department of Transportation to establish requirements for signage and markings of parking spaces designated for use by expectant mothers.

The bill also requires retail establishments and shopping centers containing a parking lot with more than 100 parking spaces to provide and maintain a breastfeeding area located within the establishment or shopping center. The breastfeeding area must be a room or other location, where a woman may breastfeed or express breast milk. The area must be shielded from view, free from intrusion, and accessible for persons with disabilities, including those who use a wheelchair. The area must also have a door that can be locked and a place to sit. The bill specifies that the breastfeeding area may not be located in a restroom or dressing room.

The bill takes effect July 1, 2017.

II. Present Situation:

Florida Law Relating to Breastfeeding

The Centers for Disease Control and Prevention (CDC) reports that approximately 224,000 babies were born in Florida in 2015,¹ and previous studies estimate between 70-80% of the

¹ The Centers for Disease Control and Prevention, *National Vital Statistics Reports, Vol. 65, No. 3*, (June 2, 2016), available at https://www.cdc.gov/nchs/data/nvsr/nvsr65/nvsr65_03.pdf (last visited March 24, 2017).

babies born in Florida are breastfed at least once after birth.²

Florida law acknowledges “breastfeeding a baby is an important and basic act of nurture which must be encouraged in the interests of maternal and child health and family values.”³ In furtherance of this goal, mothers in Florida have the affirmative right to breastfeed in any public or private location where the mother is authorized to be.⁴ Mothers in Florida are also legally protected from being charged with sexual offenses for breastfeeding, such as lewdness,⁵ indecent exposure,⁶ and sexual conduct.⁷

Federal Law Relating to Breastfeeding

The federal Fair Labor Standards Act⁸ requires employers to provide nursing employees a reasonable amount of break time to express breast milk for 1 year after the birth of the child. The employer is also required to provide the nursing mother with a place, other than a bathroom, to express breast milk. The place must be shielded from view and intrusion by co-workers and the public. However, an employer is only required to provide the space for the duration of time the space may be needed by an employee, and the law does not apply to employers that employ less than 50 employees if the requirements would impose undue hardship on the employer.⁹

Designated Parking Spaces for Expectant Mothers

Unless an expectant mother qualifies for a disabled parking permit, Florida law does not currently require parking accommodations to be made for expectant mothers. However, businesses may choose to designate a parking space for expectant mothers. The University of Central Florida allows faculty, staff, and students to obtain an expectant mother parking space in their third trimester of pregnancy.¹⁰ The county of Miami-Dade issues “baby stroller permits” for individuals traveling with a baby and a stroller. The baby stroller permit is issued until one month before the child’s third birthday and allows individuals with the permit to park in spaces designated for baby stroller parking throughout participating cities within the county.¹¹

Designated Parking Spaces for Individuals with Disabilities

The federal Americans with Disabilities Act (ADA) requires businesses to make reasonable accommodations for persons with disabilities.¹² Businesses must adhere to specific design and

² National Immunization Surveys provided by The Centers for Disease Control and Prevention include breastfeeding data and statistics by state. See https://www.cdc.gov/breastfeeding/data/nis_data/ (last visited March 24, 2017).

³ Section 383.015, F.S.

⁴ *Id.*

⁵ Section 800.02, F.S.

⁶ Section 800.03, F.S.

⁷ Section 775.0847, F.S.

⁸ See 29 U.S.C. 201, *et seq.*

⁹ U.S. Department of Labor Wage and Hour Division, *Fact Sheet #73: Break Time for Nursing Mothers under the FLSA* (August 2013), available at <https://www.dol.gov/whd/regs/compliance/whdfs73.pdf> (last visited March 24, 2017).

¹⁰ <https://womenfaculty.afia.ucf.edu/2015/11/10/ucf-expectant-mothers-parking-application/>

¹¹ <http://www.miamidade.gov/information/baby-stroller-permit.asp>

¹² See 42 U.S.C. 12101-12213.

construction standards that promote accessibility.¹³ For instance, the ADA requires accessible seating, entryways, and parking spaces to be provided for disabled individuals that use wheelchairs.

The ADA requires a minimum number of designated accessible parking spaces to be designated for persons with disabilities based on the total number of parking spaces in a parking lot. The ADA parking space requirements are summarized in the following table:

| Total Number of Spaces in Parking Lot | Minimum Number of Accessible Spaces |
|---------------------------------------|---|
| 1 to 25 | |
| 26 to 50 | 1 |
| 51 to 75 | 2 |
| 76 to 100 | 3 |
| 101 to 150 | 4 |
| 151 to 200 | 5 |
| 201 to 300 | 6 |
| 301 to 400 | 7 |
| 401 to 500 | 8 |
| 501 to 1000 | 9 |
| 1001 and over | 20, plus 1 for each 100, or fraction thereof, – over 1000 ¹⁴ |

Florida incorporates the federal ADA accessibility requirements in the Florida Americans With Disabilities Accessibility Implementation Act (the act)¹⁵ and the Florida Accessibility Code for Building Construction¹⁶ in order to establish standards that promote accessibility for persons with disabilities. The standards apply to buildings, structures, and facilities in the state¹⁷ and are enforced by local governments.¹⁸

The act also establishes state standards for providing accessible parking spaces to persons with disabilities. Accessible parking spaces must be designed and marked for the exclusive use of individuals who have been issued a disabled parking permit by the Department of Highway Safety and Motor Vehicles (DHSMV).¹⁹ For places with multiple entrances or multiple retail stores, the act requires accessible parking spaces to be dispersed in order to ensure disabled parking spaces are nearest to an accessible entrance.²⁰

Accessible parking spaces must be clearly distinguishable as spaces designated for persons with disabilities. Accessible parking spaces are required to be at least 12 feet wide, prominently

¹³ U.S. Department of Justice, *2010 ADA Standards for Accessible Design* (Sept. 15, 2010) available at <https://www.ada.gov/regs2010/2010ADASTandards/2010ADASTandards.htm> (last visited March 24, 2017).

¹⁴ *Id.* at Table 208.2 Parking Spaces.

¹⁵ See ss. 553.501-553.513, F.S.

¹⁶ Section 553.503, F.S.

¹⁷ Section 553.504, F.S.

¹⁸ See s. 553.513, F.S.

¹⁹ Section 553.5041(3), F.S.

²⁰ Section 553.5041(4), F.S.

outlined in blue ink, and located near an accessible route so users are not compelled to walk or wheel behind other parked vehicles. A permanent sign, approved by the Department of Transportation, must be posted at each parking space designated for use by persons with disabilities. The sign must bear the international symbol of accessibility and must also be captioned: “PARKING BY DISABLED PERMIT ONLY.”²¹

In addition to the ADA requirements, the act sets forth additional standards for the number of accessible parking spaces as follows:

- One accessible parking space in the immediate vicinity of a publicly owned or leased building that houses a governmental entity or a political subdivision;
- One accessible parking space for each 150 metered on-street parking spaces provided by state-agencies and political subdivisions; and
- The number of parking spaces for persons who have disabilities must be increased on the basis of demonstrated and documented need.²²

Disabled Parking Permits in Florida

The DHSMV is tasked with issuing disabled parking permits in the state of Florida.²³ An individual with a disability, causing long-term or temporary mobility impairment, must apply to the DHSMV in order to receive a disabled parking permit. The application requires a licensed physician to certify the applicant’s claim of being disabled.²⁴

To qualify for a permanent disabled parking permit, which may be issued for a period of up to 4 years, the applicant must have a long-term disability. The application requires a licensed physician to certify the applicant is legally blind or has any of the following disabilities that render the applicant unable to walk 200 feet without stopping to rest:

- Inability to walk without the use of an assistive device, such as a brace, cane crutch, or prosthetic device;
- The need to permanently use a wheelchair;
- Restriction by lung disease to the extent the individual’s forced (respiratory) expiratory volume for 1 second, when measured by spirometry, is less than 1 liter, or the individual’s arterial oxygen is less than 60mm/hg on room air at rest;
- Use of portable oxygen; or
- Restriction by cardiac condition to the extent that the person’s functional limitations are classified in certain severity classes set by the American Heart Association.²⁵

To qualify for a temporary disabled parking permit, a licensed physician must certify the applicant has a temporary disability. A temporary disability is one that exists for a period of 6 months or less, and limits or impairs the applicant’s sight or ability to walk. The DHSMV issues temporary disabled parking permits for a period not to exceed 6 months.²⁶ Under current law, an expectant mother, with a temporary inability to walk caused by her pregnancy, may be eligible to

²¹ Sections 553.5041(5) and (6), F.S.

²² Section 553.5041(4), F.S.

²³ See s. 320.0848, F.S.

²⁴ Section 320.0848(1)(b)2., F.S.

²⁵ Section 320.0848(2), F.S.

²⁶ Section 320.0848(3), F.S.

park in designated spaces located close to the entrance of certain buildings if she were to apply and receive a temporary disabled parking permit from the DHSMV.

The same accessible parking spaces are available for use by individuals issued permanent disabled parking permits and individuals issued temporary disabled parking permits. Disabled parking permits must be displayed on a motor vehicle parked in an accessible parking space designated for persons with disabilities.²⁷ Individuals approved for permanent disabled parking permits receive a placard or specialty license plate containing the international symbol of accessibility.²⁸ Individuals approved for a temporary disabled parking permit receive placards of a different color than the permanent disabled parking permits placards and temporary permits must conspicuously display the expiration date of the permit.²⁹

It is a misdemeanor of the first degree for an individual to knowingly provide false or misleading information on an application for a disabled parking permit.³⁰ It is a misdemeanor of the second degree for an individual to fraudulently obtain or unlawfully display a disabled parking permit while occupying a disabled parking space or access aisle.³¹ Florida law authorizes law enforcement officers and parking enforcement officers to confiscate a disabled parking permit from any person who fraudulently obtains or uses the permit. A disabled parking permit may also be confiscated if it is expired, defaced, or has been reported as lost or stolen.³²

III. Effect of Proposed Changes:

Section 1 of the bill requires at least one parking space to be designated for expectant mothers in parking lots of retail establishments and shopping centers containing more than 100 parking spaces. The expectant mother parking spaces must be located as close as possible to parking spaces designated for use by persons with disabilities. The bill specifies parking spaces designated for use by persons with disabilities shall take precedence over parking spaces designated for use by expectant mothers.

The bill directs the Department of Transportation to establish requirements for signage and markings to designate the parking spaces for use by expectant mothers.

Section 2 of the bill amends the state's goal of encouraging maternal and child health and family values by requiring retail establishments or shopping centers having a parking lot containing more than 100 parking spaces to provide and maintain a breastfeeding area. A "breastfeeding area" is "a room or other location in a retail establishment or shopping center which:

- Provides a location shielded from view and free from intrusion by the public where a woman may breastfeed or express breast milk;
- Has a door that can be locked;
- Includes a place to sit;

²⁷ Sections 320.0848 (2) and (3), F.S.

²⁸ Section 320.0848 (2), F.S.

²⁹ Section 320.0848(3), F.S.

³⁰ Section 320.0848(6), F.S.

³¹ Parking access aisles are reserved for the temporary, exclusive use of persons who have disabled parking permits and are subject to width and accessibility requirements. *See* ss. 320.0848(7) and 553.5041, F.S.

³² Section 320.0848(8), F.S.

- Is readily accessible to and useable by persons with disabilities, including persons who use wheelchairs, as required under the Americans with Disabilities Act of 1990; and
- Is not located in a restroom or dressing room.”

Section 3 of the bill provides an effective date of July 1, 2017.

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:

Retail establishments and shopping centers with parking lots containing more than 100 parking spaces will incur costs associated with designating required parking spaces for expectant mothers and providing breastfeeding areas.

C. Government Sector Impact:

The Department of Transportation may incur costs associated with creating requirements for the signage and markings of expectant mother parking spaces.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Expectant Mother Parking Spaces

The bill requires parking lots of shopping centers and retail establishments to designate at least one parking space for expectant mothers. Although the bill requires the Department of Transportation to create signage and markings requirements, the bill does not specify which party is responsible for designating and maintaining the expectant mother parking space. Additionally, the bill does not provide definitions for the terms “shopping center” or “retail

establishment.” Without defining these terms, it is unclear which businesses are subject to the requirements of the bill.

Breastfeeding Area

The bill requires shopping centers and retail establishments with more than 100 parking spaces to provide breastfeeding areas. Without defining “shopping center” or “retail establishment” it is unclear which businesses are subject to the bill, especially if multiple businesses exist within one shopping center. The bill does not address whether a building’s developer, owner, or tenant is subject to the breastfeeding area requirements. For this reason, it is unclear if the bill will conflict with existing leasing or development contracts that do not currently provide a breastfeeding area.

Enforcement

The bill does not provide a mechanism to enforce the expectant mother parking spaces or the breastfeeding areas required by the bill. Unlike existing laws regulating disabled parking spaces, the bill does not make it a crime to improperly park in spaces designated for expectant mothers. The bill also does not address which entity will ensure a breastfeeding area is provided or if a penalty would be imposed against a shopping center or retail establishment that fails to provide a breastfeeding area that meets the criteria required by the bill.

Effective Date

The effective date of July 1, 2017, may not provide sufficient time to implement the requirements of the bill. The Department of Transportation will likely need additional time to develop signage and markings for the expectant mother parking spaces. Shopping centers and retail establishments subject to the bill may also need additional time to establish breastfeeding areas that are accessible to individuals with disabilities.

VIII. Statutes Affected:

This bill substantially amends sections 316.1966 and 383.015 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By Senator Book

32-00526-17

2017650__

A bill to be entitled

An act relating to retail establishments and shopping centers; creating s. 316.1966, F.S.; requiring certain parking lots to contain a minimum amount of parking spaces designated for use by expectant mothers, subject to certain requirements; requiring the Department of Transportation to establish requirements for signage and markings for such parking spaces; amending s. 383.015, F.S.; requiring certain retail establishments and shopping centers to provide and maintain breastfeeding areas; defining the term "breastfeeding area"; providing an effective date.

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

Section 1. Section 316.1966, Florida Statutes, is created to read:

316.1966 Parking spaces for expectant mothers.—

(1) The parking lot of a retail establishment or shopping center which contains more than 100 parking spaces must include at least 1 parking space that is designated for use by expectant mothers. Such a parking space must be located as closely as possible to parking spaces designated for use by persons with disabilities as provided in s. 553.5041; however, the location of parking spaces designated for use by persons with disabilities shall take precedence.

(2) The Department of Transportation shall establish requirements for signage and markings used by the retail establishment or shopping center to designate parking spaces for use by expectant mothers as provided in subsection (1).

Section 2. Present subsection (2) of section 383.015, Florida Statutes, is redesignated as subsection (3), and a new

Page 1 of 2

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

32-00526-17

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subsection (2) is added to that section, to read:

383.015 Breastfeeding.—The breastfeeding of a baby is an important and basic act of nurture which must be encouraged in the interests of maternal and child health and family values, and in furtherance of this goal:

(2) A retail establishment or shopping center having a parking lot containing more than 100 parking spaces must provide and maintain a breastfeeding area located in such establishment or center. As used in this subsection, the term "breastfeeding area" means a room or other location in a retail establishment or shopping center which:

(a) Provides a location shielded from view and free from intrusion by the public where a woman may breastfeed or express breast milk;

(b) Has a door that can be locked;

(c) Includes a place to sit;

(d) Is readily accessible to and usable by persons with disabilities, including persons who use wheelchairs, as required under the Americans with Disabilities Act of 1990; and

(e) Is not located in a restroom or dressing room.

Section 3. This act shall take effect July 1, 2017.

Page 2 of 2

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Environmental Preservation and
Conservation, *Chair*
Appropriations Subcommittee on the Environment
and Natural Resources, *Vice Chair*
Appropriations
Appropriations Subcommittee on Health and
Human Services
Health Policy
Rules

SENATOR LAUREN FRANCES BOOK

Democratic Leader Pro Tempore
32nd District

February 17, 2017

The Honorable Bill Montford
Chair, Commerce and Tourism Committee

Via email

Dear Chair Montford:

Senate Bill 650, Retail Establishments and Shopping Centers, has been referred to the Commerce and Tourism Committee. I would appreciate it if you would agenda the bill at the next opportunity.

Thank you for your consideration.

Sincerely,

Lauren Book
Senator, District 32

Cc: Mr. Todd McKay, Staff Director; Ms. Gabriela Denton, Administrative Assistant

REPLY TO:

☐ 202 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5032

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 794

INTRODUCER: Banking and Insurance Committee and Senator Brandes

SUBJECT: Motor Vehicle Service Agreement Companies

DATE: March 27, 2017

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 794 expands the methods by which a motor vehicle service agreement company may insure its ability to pay out on its warranty claims, specifically by allowing the motor vehicle service agreement company to procure insurance to cover its motor vehicle service agreement claim exposure from a risk retention group that is authorized to do business in Florida. The risk retention group must meet certain requirements that ensure its financial health.

The bill also allows a motor vehicle service agreement company that provides vehicle protection expenses to obtain insurance coverage on its warranty claims from an insurer that is affiliated with the company.

Lastly, the bill allows a lender, finance company, or creditor to cancel a motor vehicle service agreement if those entities are authorized to do so in the underlying service agreement.

II. Present Situation:

Warranty Associations

Warranty associations, which include motor vehicle service agreement companies,¹ home

¹ Section 634.011, F.S.

warranty associations,² and service warranty associations,³ are governed under ch. 634 of the Florida Insurance Code. Service warranties, also known as “extended warranties,” are contracts between a company and consumer that are designed to protect the consumer from certain losses due to failure or improper functioning of a mechanical or other component of the warranted object, e.g., car, air conditioner, or large appliance.⁴ Service warranties are not considered traditional insurance products.⁵ Therefore, warranty associations are not required to submit their rates for approval by the Office of Insurance Regulation (OIR) like traditional insurance companies.⁶

Service warranty associations are generally regulated by the OIR, but are exempt from all other provisions of the Florida Insurance Code unless otherwise specified.⁷ The OIR’s regulatory authority includes, among other duties, the licensure of warranty associations,⁸ disapproval of noncompliant service agreement forms,⁹ annual review of a warranty association’s statistical reports,¹⁰ investigation of consumer complaints made against a warranty association,¹¹ and observation of a warranty association’s compliance with monetary reserve requirements.¹²

Motor Vehicle Service Agreement Companies

Motor vehicle service agreement companies are a type of warranty association that sell motor vehicle service agreements (warranties), also known as extended vehicle warranties. There are 90 motor vehicle service agreement companies currently licensed by the OIR in Florida.¹³

Motor Vehicle Service Agreements

Motor vehicle service agreements indemnify the service agreement holder (owner) of the motor vehicle listed on the service agreement contract from losses caused by the failure or improper function of any mechanical or other component part arising out of the ownership, operation, and use of the motor vehicle.¹⁴ The five specific types of motor vehicle service agreements included under the definition of a motor vehicle service agreement are those that provide for:

² Section 634.301, F.S.

³ Section 634.401, F.S.

⁴ Florida Department of Financial Services, *Motor Vehicle Service Agreements Overview*, available at <http://www.myfloridacfo.com/Division/Consumers/UnderstandingCoverage/MotorVehicleServiceAgreementsOverview.htm> (last visited Mar. 21, 2017).

⁵ Section 634.023, F.S. Kenneth E. Spahn, *Service Warranty Associations: Regulating Service Contracts as “Insurance” Under Florida’s Chapter 634*, 25 Stetson Law Rev. 597, 614-615, available at <http://www.stetson.edu/law/lawreview/media/service-warranty-associations-regulating-service-contracts-as-insurance-under-floridas-chapter-634-25-3.pdf> (last visited Mar. 22, 2017).

⁶ Section 634.121(11), F.S.

⁷ Sections 634.023, 634.3025, and 634.4025, F.S.

⁸ Sections 634.041 and 634.061-634.081, F.S.

⁹ Section 634.1213, F.S.

¹⁰ Section 634.137, F.S.

¹¹ Section 634.141(2)(c), F.S.

¹² Section 634.141(2)(d), F.S.

¹³ Florida Office of Insurance Regulation, *Active Company Search*, available at <http://www.floir.com/CompanySearch/>, Select “Motor Vehicle Service Agreement Company” under “Company Type” (last visited March 21, 2017).

¹⁴ Section 634.011(8), F.S.

- Coverage issued in conjunction with an additive product¹⁵ that is applied to the motor vehicle;
- Payment of vehicle protection expenses, contingent upon the use of a vehicle protection product (product or system designed to prevent theft, or assist in recovery of the motor vehicle);
- Repair or replacement of tires on a motor vehicle that is damaged as a result of a road hazard;
- Indemnification of the consumer for paintless dent-removal services; and
- Replacement of a motor vehicle's key or key fob, if the key or fob is inoperable, lost, or stolen.¹⁶

Licensure

The OIR licenses and supervises motor vehicle service agreement companies under part I of ch. 634, F.S. To become licensed by the OIR, a motor vehicle service agreement company must:¹⁷

- Prove that it is a financially solvent corporation formed under Florida or another state's law;
- Establish that the corporation's management is competent and trustworthy;
- Deposit \$200,000 with the Department of Financial Services (DFS) to ensure that the corporation will meet its warranty obligations;¹⁸
- Have and maintain at least \$500,000 in net assets, which must be kept in the United States;
- Respond, under oath of two executive officers, to any inquiries made in writing by the OIR regarding the corporation's transactions and affairs; and
- Have not violated any requirement of part I of ch. 634, F.S., or any related rules, within the previous 3 years.¹⁹

Financial Health

To ensure that motor vehicle service agreement companies will be able to pay out on claims made against the warranties they issue, the OIR also requires as a qualification for licensure that all motor vehicle service agreement companies either maintain an unearned premium reserve,²⁰ or obtain contractual liability insurance on 100 percent of its warranty claim exposure.²¹ An unearned premium reserve is a cache of unencumbered assets held by the motor vehicle service agreement company that may be used to pay an unusual number of warranty claims made against the company.²² Contractual liability insurance is an insurance policy that the motor vehicle service agreement company may purchase to cover any claims or cancellation refunds that the

¹⁵ Section 634.011(2), F.S., defines an "additive product" as "any fuel supplement, oil supplement, or any other supplement product added to a motor vehicle for the purpose of increasing or enhancing the performance or improving the longevity of such motor vehicle."

¹⁶ Section 634.011(8), F.S.

¹⁷ Section 634.041, F.S.

¹⁸ *See*, s. 634.052, F.S. If the company maintains less than \$750,000 in unearned gross premium, the deposit may be lowered to \$100,000. The Department of Financial Services may also lower the required deposit to no less than \$100,000 after the first year of business. For good cause shown after notice and a hearing, the OIR may require the deposit to be increased to no more than \$500,000 to protect the company's customers and creditors. The deposit must be in the form of the various securities specified in s. 625.52, F.S.

¹⁹ Section 634.041(5), F.S.

²⁰ Section 634.041(8)(a), F.S.

²¹ Section 634.041(8)(b), F.S.

²² *See* ss. 634.011(18), .041(8)(a), F.S.

company cannot pay in the event of an unusual number of warranty claims.²³ Currently, s. 634.041(8)(b), F.S., requires such insurance policies to be purchased exclusively from an insurer that is approved by the OIR to do business in Florida, which must have \$4 million in its reserves.²⁴

However, motor vehicle service agreement companies that provide warranties that promise “vehicle protection expenses,” or a flat amount payable to the agreement holder upon the loss or damage to the vehicle, are not given a choice regarding how they may cover their claim exposure.²⁵ These companies are required to maintain a contractual liability insurance policy on 100 percent of their warranty claim exposures; they may not use an unearned premium reserve.²⁶ Additionally, these companies must obtain their insurance from an insurer who is not affiliated with their company, unless the insurer issued the policy to the company before January 1, 2002.²⁷

Cancellation of Motor Vehicle Service Agreements

Currently, an agreement purchaser, insurer, or service agreement company are authorized under conditions specified by law to cancel a motor vehicle service agreement, depending on the length of time since the purchase of the service agreement.²⁸ An agreement holder must positively act to cancel his or her service agreement after he or she satisfies the vehicle financing, through either sale, trade-in, or pay-off of the vehicle following an insured total loss; cancellation of the warranty does not automatically occur. Cancellation allows the agreement holder to avoid unnecessary premiums and to obtain a refund of a portion of the premium paid, as provided by law.^{29, 30} In current practice, some service agreement lenders, finance companies, or creditors request the cancellation of a service agreement on behalf of a consumer when the agreement is no longer necessary, but this is not expressly permitted in law.

Warranties under the Uniform Commercial Code

Extended warranty motor vehicle service agreements are distinct from the basic manufacturer’s warranty traditionally offered by motor vehicle manufacturers. A basic motor vehicle warranty is generally provided for in Florida’s Uniform Commercial Code,³¹ which defines a warranty as any writing or promise made by the vehicle manufacturer that relates to the nature of the material

²³ Contractual liability insurance is casualty insurance. Section 624.605(1)(b), F.S. Casualty insurers are initially required to have at least \$5,000,000 in surplus as to policyholders and subsequently must maintain \$4,000,000 in surplus as to policy holders. Sections 624.407 and 624.408, F.S.

²⁴ Section 624.408(1)(e), F.S.

²⁵ Section 634.011(8)(b), F.S.

²⁶ Section 634.041(11)(a), F.S.

²⁷ *Id.*

²⁸ Section 634.121, F.S.

²⁹ Section 634.121(3), F.S. This section also governs cancellations by the service agreement company and provides detailed requirements concerning justification and process.

³⁰ “Unearned premium” is the portion of the gross written premium that has not been earned on a straight pro rata basis. Section 634.011(16), F.S. Premium is not earned until the policy period expires and are usually paid in advance. Unearned premium is that portion of a premium that the insurer has already received, but relates to future coverage during the policy period.

³¹ See ch. 681, F.S., “Motor Vehicle Warranty Enforcement Act.”

or workmanship of the vehicle, and affirms or promises that such material or workmanship is free of defects.³²

Basic warranties are not considered insurance for several reasons, namely because they are a product given to the consumer for no extra cost, and because warranties only cover defects that are under the manufacturers' control, whereas insurance or service agreements are separate contracts that indemnify consumers against harm or loss unrelated to defects found in the vehicle.³³ As a result, basic warranties are regulated by the Florida Attorney General's Office,³⁴ and the Federal Trade Commission.³⁵

Risk Retention Groups

State and federal laws authorize risk retention groups (groups).³⁶ Federal law generally preempts their regulation but for requirements that relate to the formation and operations of the groups.³⁷ Specifically, the Federal Liability Risk Retention Act³⁸ provides that a state has primary regulatory oversight of the groups to which it issues charters. While some groups are chartered under s. 627.943, F.S., and are therefore regulated by the OIR, other groups are chartered in foreign states and are therefore subject to those states' regulatory authority. Despite this, all groups that are chartered by any state, and that meet the requirements of the Federal Liability Risk Retention Act, may operate as a group in Florida.^{39,40} There are 108 risk retention groups active in Florida.⁴¹

Risk retention groups are corporations or limited liability associations that are certified or licensed as a liability insurance company, and that operate with the primary purpose of sharing any liabilities of the members of the group among the members themselves. The true hallmark of a risk retention group, however, is that its members⁴² must engage in similar businesses or activities, and those similar interests must constitute the exposed risk that the group seeks to insure.

³² Section 681.102(22), F.S.

³³ Kenneth E. Spahn, *Service Warranty Associations: Regulating Service Contracts as "Insurance" Under Florida's Chapter 634*, 25 Stetson Law Rev. 597, 610-614, available at <http://www.stetson.edu/law/lawreview/media/service-warranty-associations-regulating-service-contracts-as-insurance-under-floridas-chapter-634-25-3.pdf> (last visited Mar. 23, 2016).

³⁴ Section 681.102(6), F.S.

³⁵ 15 U.S.C. §2302; United States Federal Trade Commission, *Consumer Information: Warranties*, available at <http://www.consumer.ftc.gov/articles/0252-warranties> (last visited Mar. 23, 2016).

³⁶ 15 U.S.C. ss. 3901, et seq. (2016); part XIX of ch. 627, F.S., "Purchasing Groups and Risk Retention Groups."

³⁷ 15 U.S.C. s. 3902 (2016).

³⁸ 15 USC §3901.

³⁹ Fla. Admin. Code R. 69-O-200.006, requires insurers who write contractual liability insurance to obtain a certificate of authority from the OIR to do so. The OIR asserts that risk retention groups from outside of Florida may not receive certificates of authority under current law, and therefore the groups cannot offer contractual liability insurance in Florida. Florida Office of Insurance Regulation, *Agency Analysis of 2017 Senate Bill 794*, p. 5 (Feb. 17, 2017). This rule may conflict with federal preemption regarding risk retention groups and could be resolved by the bill.

⁴⁰ Section 627.944, F.S.

⁴¹ Florida Office of Insurance Regulation, *Active Company Search*, <http://www.floir.com/CompanySearch/>, Select "Risk Retention Group" under "Company Type" (last visited March 23, 2017).

⁴² Section 627.942(9)(e), F.S. requires that risk retention groups be owned by either their members, who must also receive insurance from the group, or by an organization made up of members who receive insurance from the group.

Risk retention groups may only insure specific risks: liability insurance, and reinsurance of other risk retention groups that share the same common interests required to form a group. Benefits of membership in a risk retention group include better control of overhead costs and profits, higher standards of underwriting, and stability of coverage.⁴³ The availability of participation in risk retention groups provide business with another option to compete in the market.

III. Effect of Proposed Changes:

Section 1 amends s. 634.041, F.S., to revise how motor vehicle service warranty companies may obtain contractual liability insurance to cover their claim exposure. Specifically, it allows motor vehicle service warranty companies to meet their reserve requirements by participating in a risk retention group, if the group covers 100 percent of the claims exposure of the company, and maintains net assets (surplus as regards policyholders) of at least \$15 million. Additionally, the bill makes the \$15 million minimum surplus as regards policyholders uniformly apply to both risk retention groups and insurers that provide claims coverage for a motor vehicle service agreement company; this represents an increase from a \$4 million surplus as regards policyholders requirement previously applied to such insurers.

Motor vehicle service warranty companies that offer vehicle protection expenses may opt to meet their reserve requirements through risk retention groups, rather than exclusively through traditional insurers. The bill also permits these specific warranty companies to purchase their claim insurance through an insurance company that is affiliated with their business.

Section 2 amends s. 634.121(3)(b), F.S., to authorize additional parties, specifically the lender, finance company, or creditor, to cancel a motor vehicle service agreement. However, these parties may only do so 60 days or more after the motor vehicle service agreement was purchased, and where such a right of cancellation is expressly provided for in the contract.

Section 3 of the bill provides an effective date of July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁴³ Golden Insurance Company, *Risk Retention Group FAQ's*, <http://www.golden-insurance.com/FAQS> (last visited Mar. 22, 2017); Captive Insurance Companies Association, *Risk Retention FAQ's: What are the advantages of risk retention groups?*, <http://www.cicaworld.com/Resources/risk-retention-faqs> (last visited Mar. 22, 2017).

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

None.

B. Private Sector Impact:

Insurers and risk retention groups providing contractual liability coverage on motor vehicle service warranties will need to maintain a surplus of at least \$15 million dollars.

The bill may increase the amount of and options related to contractual liability coverage of motor vehicle service agreements.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends ss. 634.041, and 634.121, 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 Banking and Insurance on March 14, 2017:

- Makes technical and grammatical changes to the provision of the bill; and
- Allows a lender, finance company, or creditor to cancel service agreements, if provided for in the underlying agreement.

B. Amendments:

None.

By the Committee on Banking and Insurance; and Senator Brandes

597-02421-17

2017794c1

1 A bill to be entitled
 2 An act relating to motor vehicle service agreement
 3 companies; amending s. 634.041, F.S.; revising
 4 qualifications for a motor vehicle service agreement
 5 company to obtain and maintain a license; amending s.
 6 634.121, F.S.; requiring specified refunds by insurers
 7 or service agreement companies if service agreements
 8 are canceled by lenders, finance companies, or
 9 creditors after a specified timeframe; providing a
 10 limitation on such cancellations; providing an
 11 effective date.

12
 13 Be It Enacted by the Legislature of the State of Florida:

14
 15 Section 1. Paragraph (b) of subsection (8) and paragraph
 16 (a) of subsection (11) of section 634.041, Florida Statutes, are
 17 amended to read:

18 634.041 Qualifications for license.—To qualify for and hold
 19 a license to issue service agreements in this state, a service
 20 agreement company must be in compliance with this part, with
 21 applicable rules of the commission, with related sections of the
 22 Florida Insurance Code, and with its charter powers and must
 23 comply with the following:

24 (8)

25 (b) A service agreement company does not have to establish
 26 and maintain an unearned premium reserve if it secures ~~purchases~~
 27 and maintains contractual liability insurance in accordance with
 28 the following:

29 1. Coverage of ~~The insurance covers~~ 100 percent of the its

Page 1 of 5

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

597-02421-17

2017794c1

30 claim exposure ~~and~~ is obtained from an insurer that is approved
 31 by the office and that ~~which~~ holds a certificate of authority
 32 under s. 624.401 to do business within this state, or such
 33 coverage is secured through a risk retention group that is
 34 authorized to do business within this state under s. 627.943 or
 35 s. 627.944. Such insurer or risk retention group shall maintain
 36 a surplus as regards policyholders of at least \$15 million.

37 2. If the service agreement company does not meet its
 38 contractual obligations, the contractual liability insurance
 39 policy binds its issuer to pay or cause to be paid to the
 40 service agreement holder all legitimate claims and cancellation
 41 refunds for all service agreements issued by the service
 42 agreement company while the policy was in effect. This
 43 requirement also applies to those service agreements for which
 44 no premium has been remitted to the insurer.

45 3. If the issuer of the contractual liability policy is
 46 fulfilling the service agreements covered by the contractual
 47 liability policy and the service agreement holder cancels the
 48 service agreement, the issuer must make a full refund of
 49 unearned premium to the consumer, subject to the cancellation
 50 fee provisions of s. 634.121(3). The sales representative and
 51 agent must refund to the contractual liability policy issuer
 52 their unearned pro rata commission.

53 4. The policy may not be canceled, terminated, or
 54 nonrenewed by the insurer or the service agreement company
 55 unless a 90-day written notice thereof has been given to the
 56 office by the insurer before the date of the cancellation,
 57 termination, or nonrenewal.

58 5. The service agreement company must provide the office

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2017794c1

59 with the claims statistics.

60
61 All funds or premiums remitted to an insurer by a motor vehicle
62 service agreement company under this part shall remain in the
63 care, custody, and control of the insurer and shall be counted
64 as an asset of the insurer; provided, however, this requirement
65 does not apply when the insurer and the motor vehicle service
66 agreement company are affiliated companies and members of an
67 insurance holding company system. If the motor vehicle service
68 agreement company chooses to comply with this paragraph but also
69 maintains a reserve to pay claims, such reserve shall only be
70 considered an asset of the covered motor vehicle service
71 agreement company and may not be simultaneously counted as an
72 asset of any other entity.

73 (11) (a) A service agreement company offering service
74 agreements providing vehicle protection expenses may meet the
75 requirements for this part only by maintaining contractual
76 liability insurance covering 100 percent of its vehicle
77 protection claim exposure in accordance with paragraph (8) (b) ~~7~~
78 ~~which insurance must be issued by an insurance company not~~
79 ~~affiliated with the service agreement company, unless the~~
80 ~~insurance company had issued a contractual liability insurance~~
81 ~~policy to a service agreement company on or before January 1,~~
82 ~~2002.~~ Service agreements providing vehicle protection expenses
83 may be sold only to a service agreement holder that has in-force
84 comprehensive motor vehicle insurance coverage for the vehicle
85 to be covered by the service agreement.

86 Section 2. Paragraph (b) of subsection (3) of section
87 634.121, Florida Statutes, is amended to read:

Page 3 of 5

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597-02421-17

2017794c1

88 634.121 Forms, required procedures, provisions.-

89 (3)

90 (b) After the service agreement has been in effect for 60
91 days, it may not be canceled by the insurer or service agreement
92 company unless:

93 1. There has been a material misrepresentation or fraud at
94 the time of sale of the service agreement;

95 2. The agreement holder has failed to maintain the motor
96 vehicle as prescribed by the manufacturer;

97 3. The odometer has been tampered with or disabled and the
98 agreement holder has failed to repair the odometer; or

99 4. For nonpayment of premium by the agreement holder, in
100 which case the service agreement company shall provide the
101 agreement holder notice of cancellation by certified mail.

102
103 If the service agreement is canceled by the insurer or service
104 agreement company, the return of premium must not be less than
105 100 percent of the paid unearned pro rata premium, less any
106 claims paid on the agreement. If, after 60 days, the service
107 agreement is canceled by the service agreement holder, lender,
108 finance company, or creditor, the insurer or service agreement
109 company shall return directly to the agreement holder not less
110 than 90 percent of the unearned pro rata premium, less any
111 claims paid on the agreement. Cancellations initiated by
112 lenders, creditors, or finance companies are valid only if
113 authorized by the terms of the service agreement. The service
114 agreement company remains responsible for full refunds to the
115 consumer on canceled service agreements. However, the
116 salesperson and agent are responsible for the refund of the

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2017794c1

117 unearned pro rata commission. A service agreement company may
118 effectuate refunds through the issuing salesperson or agent in
119 accordance with paragraphs (c) and (d).

120 Section 3. This act shall take effect July 1, 2017.

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) 794

Topic _____

Amendment Barcode (if applicable) _____

Name TIM MEEMAN

Job Title _____

Address 325 W Edgely Ave

Phone 850 425-4000

City Tall State _____ Zip _____

Email _____

Speaking: For Against Information

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

Representing SFMS INC.

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
COMMITTEE VOTE RECORD

COMMITTEE: Commerce and Tourism
ITEM: CS/SB 794
FINAL ACTION: Favorable
MEETING DATE: Monday, March 27, 2017
TIME: 1:30—3:00 p.m.
PLACE: 110 Senate Office Building

Table with 10 columns: FINAL VOTE, SENATORS, and multiple Yea/Nay columns. Rows include names like Gibson, Hutson, Latvala, Passidomo, Rodriguez, Young, Gainer, and Montford. Totals row shows 8 Yea and 0 Nay.

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

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 812

INTRODUCER: Banking and Insurance Committee and Senators Perry and Gibson

SUBJECT: Insurance Policy Transfers

DATE: March 24, 2017

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 812 allows an insurer to transfer a personal lines residential or a commercial residential policy to another authorized insurer under certain circumstances. Under current law, an insurer is not authorized to transfer a policy providing residential property insurance coverage, unless the policy falls within the exception for specific policies relating to farm coverage. Instead, these insurers are required to cancel, nonrenew, or terminate the policy.

The bill authorizes an insurer to transfer a policy providing personal lines residential or commercial residential property insurance coverage to an authorized insurer owned by the same holding company or a member in the same group as the transferring insurer, if the following conditions are met:

- The insurer being transferred the policy is admitted to do business in Florida and other states and is writing residential property insurance in such states;
- The policy is not being converted to a surplus lines policy;
- The transfer results in substantially similar coverage;
- The insurer being transferred the policy provides the policyholder with at least 60 days advance notice of the change in policy terms, the policy transfer, the renewal premium, and the new insurer's financial rating;
- The policyholder of the policy being transferred is selected on a nondiscriminatory basis;
- The Office of Insurance Regulation determines the insurer being transferred the policy has the same or better financial strength as the transferring insurer; and
- The Office of Insurance Regulation approves the transfer.

II. Present Situation:

Chapter 627 of the Florida Statutes sets forth the Florida Insurance Code, which governs insurance practices in the state. Insurance policies that fall under the purview of the law include personal auto, worker's compensation, employer's liability, personal liability, and residential. Pursuant to s. 627.1025(1), F.S., residential coverage includes both personal lines residential coverage¹ and commercial lines residential coverage.²

Notice of Cancellation, Nonrenewal, or Renewal of Insurance Policies

The requirements for an insurer to provide notice of cancellation, nonrenewal, or renewal premium are set forth in s. 627.4133, F.S. The specific notice depends on the type of insurance provided and the particular circumstances of the subject policy.³

Insurers writing personal lines residential or commercial lines residential property insurance policies are generally subject to the following requirements:

- An insurer must give written notice of cancellation, nonrenewal, or termination at least 120 days prior to the effective date of the cancellation, nonrenewal, or termination and the notice is required to include the reason for nonrenewal, cancellation, or termination;⁴ and
- An insurer must give written notice of renewal premium at least 45 days prior to the renewal premium⁵ and the notice of renewal premium must specify certain information, including the dollar amount of any premium increase that is due to an approved rate increase and the total dollar amount that is due to coverage changes.⁶

Notice of Change in Policy Terms

Section 627.43141, F.S., requires an insurer to provide the policyholder and the policyholder's insurance agent with notification, entitled "Notice of Change in Policy Terms," when a renewal policy contains a change in policy terms.⁷ The insurer may enclose the notice of change of policy with the written notice of renewal premium required under ss. 627.4133 and 627.728, F.S.,⁸ or send the notification separately within the notice of nonrenewal timeframe for that line of insurance, as required under the Florida Insurance Code. The changes in policy terms are considered accepted by the policyholder when the insurer receives the premium payment for the renewal policy.⁹

¹ Personal lines residential coverage consists of the type of coverage provided by homeowner, mobile home owner, dwelling, tenant condominium unit owner, and cooperative unit owner. *See* s. 627.4025(1), F.S.

² Commercial lines residential coverage consists of the type of coverage provided by condominium association, cooperative association, apartment building, and similar policies, including those that cover the common elements of a homeowners association. *See* s. 627.4025(1), F.S.

³ An insurer writing most property and casualty policies are required to provide the policyholder with at least 45-day advance notification of cancellation or nonrenewal. *See* s. 627.4133(2), F.S.

⁴ Section 627.4133(2)(b), F.S.

⁵ Section 627.4133(2)(a), F.S.

⁶ Section 627.4133(7), F.S.

⁷ A change in policy terms refers to any modification, addition, or deletion of any term, coverage, duty, or condition from the previous policy.

⁸ Section 627.728, F.S., relates to cancellations and nonrenewal of motor vehicle insurance policies.

⁹ Section 627.43141, F.S.

Transfer of Insurance Policies

Upon the expiration of a commercial lines policy term, insurers writing commercial lines insurance policies may transfer a commercial lines policy to another Florida licensed insurance company if:

- The insurer being transferred the policy is owned by the same holding company¹⁰ as the transferring insurer; or
- The insurer being transferred the policy is a member of the same insurance group as the transferring insurer.

The transfer of a commercial lines policy is considered a renewal of the policy, rather than a cancellation, nonrenewal, or termination. In order to transfer a policy, the transferring insurer must provide the policyholder with a written notice of the intent to transfer at least 45 days prior to the effective date of the transfer. The notice of intent to transfer may be provided with the notice of renewal premium and is required to include the financial rating of the insurer being transferred the policy.¹¹

Under current law, insurers are not authorized to transfer policies providing residential property insurance coverage, unless the policy falls within the farm coverage exception.¹² Instead, the insurer is required to cancel, nonrenew, or terminate the policy in accordance with the notice requirements set forth in s. 627.4133, F.S.

III. Effect of Proposed Changes:

The bill allows an insurer to transfer a policy providing personal lines residential or commercial residential property insurance coverage to an authorized insurer owned by the same holding company or a member in the same group as the transferring insurer, if the following conditions are met:

- The insurer being transferred the policy must:
 - be admitted to do business in Florida and other states;
 - be writing residential property insurance in such states;
 - not convert the policy to a surplus lines policy; and
 - be determined by the Office of Insurance Regulation (OIR) to have the same or better financial strength as the transferring insurer;
- The transfer must result in substantially similar coverage;
- The insurer being transferred the policy provides a notice of change in policy terms and additional information;
- The policyholder of the policy being transferred must have been selected on a nondiscriminatory basis; and
- The transfer must be approved by the OIR.

¹⁰ A holding company is a company that holds a controlling share of stock in one or more other companies. Some Florida insurance companies are owned by holding companies and some holding companies own more than one insurance company.

¹¹ Section 627.4133(8), F.S.

¹² The exception allows farmowners insurance and commercial general liability policies providing farm coverage or commercial property policies providing farm coverage to be transferred as commercial lines policies. *See* s. 627.4133(8), F.S.

The bill requires an insurer being transferred a personal lines residential or commercial residential property insurance policy to provide the policyholder with a notice of change in policy terms at least 60 days before the effective date of the transfer. The notice of change in policy terms is required to be in compliance with s. 627.43141, F.S., and must also provide the policyholder with notification of the policy transfer, the financial rating of the insurer being transferred the policy, and the notice of renewal premium.

The bill explicitly provides that the notice and information requirements in the bill, imposed on an insurer being transferred the policy for personal lines residential or commercial residential property insurance coverage, may replace any other notice required by s. 627.4133(8), F.S. The only other notice requirements within the subsection require the transferring insurer to provide notification of intent to transfer at least 45 days before the effective date of the transfer. Therefore, it appears as though the bill relieves the insurer opting to transfer a policy for personal lines residential or commercial residential property insurance coverage from having to provide notice of intent to transfer. Instead, the bill requires the new insurer to provide the policyholder notification at least 60 days prior to the effective date of the transfer.

The bill streamlines the notification process for the transfer of a policy providing personal lines residential or commercial residential property insurance coverage. By requiring only the insurer being transferred the policy to provide notification of the policy transfer, renewal premium, and the financial rating with the notice of change in policy terms, the bill ensures the policyholder will receive all of the information relating to the policy transfer at one time.

The bill takes effect July 1, 2017.

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:

Allowing policies to be transferred between authorized insurers, rather than requiring the policies to be nonrenewed, cancelled, or terminated may allow insurers to more easily manage their book of business.

C. Government Sector Impact:

The Office of Insurance Regulation does not anticipate a fiscal impact.¹³

VI. Technical Deficiencies:

None.

VII. Related Issues:

Lines 17 and 18 refer to “commercial residential” or “commercial lines” policies. The OIR indicated the commercial residential policies fall within the category of commercial lines policies, so the inclusion of both terms may be redundant.¹⁴

Lines 27-30 of the bill do not clearly identify which policies able to be transferred and which policies must meet the established criteria. The bill allows the transfer of certain insurance policies and requires the insurer to provide notice of the intent to transfer, but then states that the subsection does not apply to certain residential policies, except for specified farm-related policies, unless certain conditions are satisfied. As worded, it may be unclear whether the conditions set forth in lines 31-51 apply to farm-related insurance policies, to policies providing residential property insurance coverage, or to both types of policies.

Lines 43-46 of the bill provide that the notice and information requirements imposed under the paragraph may replace any other notice required by the subsection. The only other notification requirements in subsection (8) are those on lines 22-26, relating to the notice of intent to transfer. If the bill also intends that the notice and information requirements in the paragraph may replace the cancellation, nonrenewal, and termination notification requirements under s. 627.4133(2)(b), F.S., the bill might be more clear if lines 43-46 provided that the required notice and information within the paragraph may replace any other notice required by subsection (8) *and* the notification requirements under s. 627.4133(2)(b), F.S.

Line 49 of the bill requires the policy transfer to be approved by the OIR. The OIR has identified a lack of guidance in the bill as to the method the OIR will use to approve the policy transfer, including how the request for approval will be submitted and the criteria the OIR is expected to use to evaluate approval requests.¹⁵

VIII. Statutes Affected:

This bill substantially amends section 627.4133 of the Florida Statutes.

¹³ Office of Insurance Regulation, *Analysis of SB 812* (March 6, 2017).

¹⁴ *Id.* at 5.

¹⁵ *Id.*

IX. Additional Information:

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

CS by Banking and Insurance on March 14, 2017:

The CS provides that a transferred policy cannot be converted to a surplus lines policy and that the policyholder of a policy being transferred must be selected on a nondiscriminatory basis.

The CS provides that the insurer to which the policy is being transferred must provide a notice of change in policy terms to the policyholder in compliance with s. 627.43141, F.S. The notice must also include notice of the policy transfer and the insurer's financial rating. The notice must be provided with the notice of renewal premium. The notice and information provided must be provided to the insured at least 60 days before the effective date of the transfer.

- B. **Amendments:**

None.

By the Committee on Banking and Insurance; and Senator Perry

597-02422-17

2017812c1

A bill to be entitled

An act relating to insurance policy transfers; amending s. 627.4133, F.S.; authorizing an insurer to transfer a personal lines residential or commercial residential property insurance policy to another authorized insurer upon expiration of the policy term if specified conditions are met; providing an effective date.

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

Section 1. Subsection (8) of section 627.4133, Florida Statutes, is amended to read:

627.4133 Notice of cancellation, nonrenewal, or renewal premium.—

(8) Upon expiration of the policy term, an insurer may transfer a personal lines residential, commercial residential, or commercial lines policy to another authorized insurer that is a member of the same group or owned by the same holding company as the transferring insurer. The transfer constitutes a renewal of the policy and may not be treated as a cancellation or a nonrenewal of the policy. The insurer must provide notice of its intent to transfer the policy at least 45 days before the effective date of the transfer along with the financial rating of the authorized insurer to which the policy is being transferred. Such notice may be provided in the notice of renewal premium. This subsection does not apply to a policy providing personal lines residential or commercial residential property insurance coverage, except for farmowners insurance,

Page 1 of 2

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

597-02422-17

2017812c1

unless:

(a) The authorized insurer to which the policy is being transferred is admitted in this state and other states and writing residential property insurance in such states, is not converting the policy to a surplus lines policy, and has been determined by the office to have the same or better financial strength than the transferring insurer;

(b) The transfer results in substantially similar coverage;

(c) The authorized insurer to which the policy is being transferred provides a notice of change in policy terms to the policyholder in compliance with s. 627.43141, which must also include notice of the policy transfer and the authorized insurer's financial rating. Such notice must be provided with the notice of renewal premium. The notice and information provided under this paragraph must be provided to the insured at least 60 days before the effective date of the transfer and may replace any other notice required by this subsection;

(d) The policyholder of the policy being transferred has been selected on a nondiscriminatory basis; and

(e) The office has approved the transfer and ~~commercial general liability policies providing farm coverage or commercial property policies providing farm coverage.~~

Section 2. This act shall take effect July 1, 2017.

Page 2 of 2

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



The Florida Senate

Committee Agenda Request

To: Senator Bill Montford, Chair
Committee on Commerce and Tourism

Subject: Committee Agenda Request

Date: March 22, 2017

I respectfully request that **Senate Bill #812**, relating to Insurance Policy Transfers, be placed on the:

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

A handwritten signature in cursive script that reads "W. Keith Perry".

Senator Keith Perry
Florida Senate, District 8

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)
CS/SB 812

Topic _____

Amendment Barcode (if applicable) _____

Name TIM MEERN

Job Title _____

Address 325 W College Ave
Street
Fallahassee
City FL
State _____
Zip _____

Phone (888) 425-4000
Email _____

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

Representing Nationwide Insurance

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
COMMITTEE VOTE RECORD

COMMITTEE: Commerce and Tourism
ITEM: CS/SB 812
FINAL ACTION: Favorable
MEETING DATE: Monday, March 27, 2017
TIME: 1:30—3:00 p.m.
PLACE: 110 Senate Office Building

| FINAL VOTE | | SENATORS | | | | | | |
|------------|-----|--------------------|-----|-----|-----|-----|-----|-----|
| Yea | Nay | | Yea | Nay | Yea | Nay | Yea | Nay |
| X | | Gibson | | | | | | |
| X | | Hutson | | | | | | |
| X | | Latvala | | | | | | |
| X | | Passidomo | | | | | | |
| X | | Rodriguez | | | | | | |
| X | | Young | | | | | | |
| X | | Gainer, VICE CHAIR | | | | | | |
| X | | Montford, CHAIR | | | | | | |
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| Yea | Nay | TOTALS | Yea | Nay | Yea | Nay | Yea | Nay |

CODES: FAV=Favorable
 UNF=Unfavorable
 -R=Reconsidered

RCS=Replaced by Committee Substitute
 RE=Replaced by Engrossed Amendment
 RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
 VA=Vote After Roll Call
 VC=Vote Change After Roll Call

WD=Withdrawn
 OO=Out of Order
 AV=Abstain from Voting

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 1698

INTRODUCER: Senator Baxley

SUBJECT: Annual Corporate Reports and Fees

DATE: March 23, 2017

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|------------------|
| 1. | Harmsen | McKay | CM | Favorable |
| 2. | | | ATD | |
| 3. | | | AP | |

I. Summary:

SB 1698 permits domestic and foreign corporations to file either an annual or a biennial report with the Florida Department of State. Currently, those corporations must file an annual report and remit related fees each year.

II. Present Situation:

The Florida Department of State (Department) consists of six divisions: the Division of Elections; Division of Historical Resources; Division of Library and Information Services; Division of Cultural Affairs; Division of Administration; and Division of Corporations.¹

The Division of Corporations (Division) maintains a registry for recording and retrieving commercial information that is filed or registered with the Department. In total, the Division maintains more than eight million records, including a variety of business entity filings such as annual reports, articles of incorporation or other forms of business entity organization, trade and service mark registrations, judgment lien filings, and fictitious name registrations.² The Division determines whether submitted filings and forms meet the pertinent statutory requirements and then records and indexes those filings in its database of records. In fiscal year 2015-2016, the Division received and processed 1,649,335 total annual reports from domestic, foreign, not-for-profit corporations, and various other business entities.³

Chapter 607, F.S., the “Florida Business Corporation Act,” requires all for-profit and foreign corporations that are authorized to transact business in Florida to file an annual report with the

¹ Section 20.10, F.S.

² Florida Department of State, *Overview of the Division of Corporations*, (Dec. 2016), (on file with the Committee on Commerce and Tourism).

³ Conversation with Department of State employee (Mar. 17, 2017).

Department between January 1 and May 1 of each year.^{4,5} A domestic or foreign corporation is subject to a \$61.25 annual report filing fee,⁶ in addition to an \$88.75 supplemental corporate fee⁷ (for a total fee of \$150 each year). Over the past 5 years, the Department has collected an average of \$82 million in annual report fees; \$114 million in corporate supplemental fees; and \$37 million in late fees each year.⁸

The corporation's annual report must include the following information regarding the corporation:⁹

- Its name, and the state or country in which it is incorporated;
- When it was incorporated, or admitted to do business in Florida;
- Its principal office and mailing addresses;
- Its federal employer identification number (FEIN), or if it does not have one, a statement of whether or not an FEIN has been requested;
- Its directors' and principal officers' names and business addresses;
- Its registered agent's name, and the street address of the registered office at which the agent is located; and
- Any additional information the Department may deem necessary.

A corporation's failure to file an annual report by May 1 results in a \$400 late filing fee, in addition to the underlying report and supplemental corporate fees.¹⁰ Alternately, if a corporation fails to file an annual report by the close of business on the third Friday in September, the Department may institute proceedings to administratively dissolve the domestic corporation, or revoke a foreign corporation's authority to transact business in the state.¹¹ In calendar year 2016, the Department administratively dissolved 281,544 corporations and business entities out of a total of 2,033,115 active business entities registered with the Department.¹²

III. Effect of Proposed Changes:

Section 2 amends s. 607.1622, F.S., to permit the Department to prescribe the form of an annual and biennial report. This section further requires all domestic and foreign corporations to file either an annual or a biennial report.

Section 1 amends s. 607.0122, F.S., to make conforming changes to the document filing fee schedule applied to corporations. Specifically, the bill amends the schedule to add a biennial

⁴ Section 607.1622, F.S.; Florida Department of State, *File Annual Report*, available at: <http://dos.myflorida.com/sunbiz/manage-business/efile/annual-report/> (last visited Mar. 21, 2017).

⁵ Not-for-profit corporations are required to file an annual report under s. 617.1622, F.S. and partnerships and other related business entities are required to file an annual report under s. 620.1210, F.S. Their filing fees are \$61.25 and \$411.25 respectively. *See* ss. 617.0122(17), and 620.1109(7), F.S.

⁶ Section 607.0122(17), F.S.

⁷ Sections 607.0122(23), 607.193, F.S.

⁸ Florida Department of State, *SB 1698 Agency Analysis*, p. 3 (Mar. 21, 2017) (on file with the Committee on Commerce and Tourism).

⁹ Section 607.1622, F.S.

¹⁰ Section 607.193(2)(b), F.S.

¹¹ Sections 607.1420-.1421; 607.1530-.1531; 607.1622(8) F.S.

¹² Conversation with Department of State representative (Mar. 17, 2017); Florida Department of State, *Yearly Statistics*, available at: <http://dos.myflorida.com/sunbiz/about-us/yearly-statistics/> (last visited Mar. 21, 2017).

report filing fee of \$122.50 (double the current annual report filing fee), and a biennial supplemental corporate fee of \$177.50 (double the current annual supplemental corporate fee).

Sections 3 through 18 amend ss. 606.06, 607.0121, 607.0128, 607.01401, 607.0141, 607.0502, 607.0705, 607.1420, 607.1421, 607.1509, 607.15101, 607.1530, 607.1531, 607.15315, 607.1601, and 607.193, F.S., to make conforming, technical changes throughout ch. 607, F.S.

Section 19 provides an effective date of January 1, 2018.

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:

This bill may allow for a more efficient report filing process for corporations, which will be able to submit required reports every other year instead of annually. Corporations that opt to file biennially will also be subject to fewer possible late filing fees.

C. Government Sector Impact:

The Department may be required to amend certain forms to reflect a corporation's ability to file its annual report either annually or biennially. Overall, however, the ability for corporations to file biennial reports may result in a reduction of workload for the Department's employees.

The Department cites a need for "significant financial support" to re-design multiple platforms to accommodate the biennial filing option, including its:

- Information technology systems;
- Physical annual report filing documents (paperwork);
- Administrative dissolution and revocation process;
- Certification process; and

- Late fees and reinstatement fees for filing of annual or biennial reports.¹³

Additionally, the Department states that biennial filings will negatively affect the state's annual revenue stream by reducing the number of late fees that it may collect.¹⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

Biennial reporting may potentially result in a greater lapse in time between when a corporation ceases to be active and the Department's detection of the corporation's inactivity and resulting administrative dissolution. The Department also states that biennial reporting will affect the validity of information relating to corporations that it maintains on sunbiz.org.¹⁵ This may impact the public's ability to find valid information on corporations, as well as the Department's ability to make legally required notifications to corporations.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 607.0122, 607.1622, 606.06, 607.0121, 607.0128, 607.01401, 607.0141, 607.0502, 607.0705, 607.1420, 607.1421, 607.1509, 607.15101, 607.1530, 607.1531, 607.15315, 607.1601, and 607.193.

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.

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

¹³ Florida Department of State, *SB 1698 Agency Analysis* (Mar. 21, 2017) (on file with the Committee on Commerce and Tourism).

¹⁴ *Id.*

¹⁵ *Id.*

By Senator Baxley

12-01221-17

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A bill to be entitled

An act relating to annual corporate reports and fees; amending s. 607.0122, F.S.; establishing a biennial report filing fee and a biennial supplemental corporate fee; amending s. 607.1622, F.S.; authorizing domestic and foreign corporations to submit biennial reports to the Department of State; amending ss. 606.06, 607.0121, 607.0128, 607.01401, 607.0141, 607.0502, 607.0705, 607.1420, 607.1421, 607.1509, 607.15101, 607.1530, 607.1531, 607.15315, 607.1601, and 607.193, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Present subsections (4) and (18) through (24) of section 607.0122, Florida Statutes, are amended, and a new subsection (18) and subsection (25) are added to that section, to read:

607.0122 Fees for filing documents and issuing certificates.—The Department of State shall collect the following fees when the documents described in this section are delivered to the department for filing:

(4) Corporation's statement of change of registered agent or registered office or both if not included on the annual or biennial report: \$35.

(18) Biennial report: \$122.50.

(19)~~(18)~~ Articles of correction: \$35.

(20)~~(19)~~ Application for certificate of status: \$8.75.

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

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(21)~~(20)~~ Certificate of domestication of a foreign corporation: \$50.

(22)~~(21)~~ Certified copy of document: \$52.50.

(23)~~(22)~~ Serving as agent for substitute service of process: \$87.50.

(24)~~(23)~~ Annual supplemental corporate fee: \$88.75.

(25) Biennial supplemental corporate fee: \$177.50.

(26)~~(24)~~ Any other document required or permitted to be filed by this act: \$35.

Section 2. Section 607.1622, Florida Statutes, is amended to read:

607.1622 Annual or biennial report for Department of State.—

(1) Each domestic corporation and each foreign corporation authorized to transact business in this state shall deliver to the Department of State for filing a sworn annual or biennial report on such forms as the Department of State prescribes that sets forth:

(a) The name of the corporation and the state or country under the law of which it is incorporated;

(b) The date of incorporation or, if a foreign corporation, the date on which it was admitted to do business in this state;

(c) The address of its principal office and the mailing address of the corporation;

(d) The corporation's federal employer identification number, if any, or, if none, whether one has been applied for;

(e) The names and business street addresses of its directors and principal officers;

(f) The street address of its registered office and the

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59 name of its registered agent at that office in this state;

60 (g) Language permitting a voluntary contribution of \$5 per

61 taxpayer, which contribution shall be transferred into the

62 Election Campaign Financing Trust Fund. A statement providing an

63 explanation of the purpose of the trust fund shall also be

64 included; and

65 (h) Such additional information as may be necessary or

66 appropriate to enable the Department of State to carry out ~~the~~

67 ~~provisions of~~ this act.

68 (2) Proof to the satisfaction of the Department of State

69 that, on or before May 1 of the year the report was due, such

70 report was deposited in the United States mail in a sealed

71 envelope, properly addressed with postage prepaid, shall be

72 deemed compliance with this requirement.

73 (3) If an annual or biennial report does not contain the

74 information required by this section, the Department of State

75 shall promptly notify the reporting domestic or foreign

76 corporation in writing and return the report to it for

77 correction. If the report is corrected to contain the

78 information required by this section and delivered to the

79 Department of State within 30 days after the effective date of

80 notice, it is deemed to be timely filed.

81 (4) Each report shall be executed by the corporation by an

82 officer or director or, if the corporation is in the hands of a

83 receiver or trustee, shall be executed on behalf of the

84 corporation by such receiver or trustee, and the signing thereof

85 shall have the same legal effect as if made under oath, without

86 the necessity of appending such oath thereto.

87 (5) The first ~~annual~~ report must be delivered to the

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88 Department of State between January 1 and May 1 of the year

89 following the calendar year in which a domestic corporation was

90 incorporated or a foreign corporation was authorized to transact

91 business. Subsequent annual or biennial reports must be

92 delivered to the Department of State between January 1 and May 1

93 of the subsequent calendar years in which the reports are due.

94 (6) Information in the annual or biennial report must be

95 current as of the date the ~~annual~~ report is executed on behalf

96 of the corporation.

97 (7) If an additional updated report is received, the

98 department shall file the document and make the information

99 contained therein part of the official record.

100 (8) Any corporation failing to file an annual or biennial

101 report that ~~which~~ complies with ~~the requirements of~~ this section

102 shall not be permitted to maintain or defend any action in any

103 court of this state until such report is filed and all fees and

104 taxes due under this act are paid and shall be subject to

105 dissolution or cancellation of its certificate of authority to

106 do business as provided in this act.

107 (9) The department shall prescribe the forms on which to

108 make the annual or biennial report called for in this section

109 and may substitute the uniform business report, pursuant to s.

110 606.06, as a means of satisfying the requirement of this part.

111 Section 3. Subsection (2) of section 606.06, Florida

112 Statutes, is amended to read:

113 606.06 Uniform business report.—The department may use the

114 uniform business report:

115 (2) As a substitute for any annual or biennial report or

116 renewal filing required by chapters 495, 605, 607, 609, 617,

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117 620, 621, and 865.

118 Section 4. Subsection (1) of section 607.0121, Florida

119 Statutes, is amended to read:

120 607.0121 Forms.—

121 (1) The Department of State may prescribe and furnish on

122 request forms for:

123 (a) An application for certificate of status,

124 (b) A foreign corporation's application for certificate of

125 authority to transact business in the state,

126 (c) A foreign corporation's application for certificate of

127 withdrawal, and

128 (d) The annual or biennial report, for which the department

129 may prescribe the use of the uniform business report, pursuant

130 to s. 606.06.

131

132 If the Department of State so requires, the use of these forms

133 shall be mandatory.

134 Section 5. Subsection (2) of section 607.0128, Florida

135 Statutes, is amended to read:

136 607.0128 Certificate of status.—

137 (2) A certificate of status or authorization sets forth:

138 (a) The domestic corporation's corporate name or the

139 foreign corporation's corporate name used in this state;

140 (b) 1. That the domestic corporation is duly incorporated

141 under the law of this state and the date of its incorporation,

142 or

143 2. That the foreign corporation is authorized to transact

144 business in this state;

145 (c) That all fees and penalties owed to the department have

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146 been paid, if:

147 1. Payment is reflected in the records of the department,

148 and

149 2. Nonpayment affects the existence or authorization of the

150 domestic or foreign corporation;

151 (d) That its most recent annual or biennial report required

152 by s. 607.1622 has been delivered to the department; and

153 (e) That articles of dissolution have not been filed.

154 Section 6. Subsection (20) of section 607.01401, Florida

155 Statutes, is amended to read:

156 607.01401 Definitions.—As used in this act, unless the

157 context otherwise requires, the term:

158 (20) "Principal office" means the office (in or out of this

159 state) where the principal executive offices of a domestic or

160 foreign corporation are located as designated in the articles of

161 incorporation or other initial filing until an annual or

162 biennial report has been filed, and thereafter as designated in

163 the annual or biennial report.

164 Section 7. Subsection (4) of section 607.0141, Florida

165 Statutes, is amended to read:

166 607.0141 Notice.—

167 (4) Written notice to a domestic or foreign corporation

168 authorized to transact business in this state may be addressed:

169 (a) To its registered agent at its registered office; or

170 (b) To the corporation or its secretary at its principal

171 office or electronic mail address as authorized and shown in its

172 most recent annual or biennial report or, in the case of a

173 corporation that has not yet delivered an annual or biennial

174 report, in a domestic corporation's articles of incorporation or

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175 in a foreign corporation's application for certificate of
 176 authority.

177 Section 8. Subsections (2) and (4) of section 607.0502,
 178 Florida Statutes, are amended to read:

179 607.0502 Change of registered office or registered agent;
 180 resignation of registered agent.—

181 (2) Any registered agent may resign his or her agency
 182 appointment by signing and delivering for filing with the
 183 Department of State a statement of resignation and mailing a
 184 copy of such statement to the corporation at its principal
 185 office address shown in its most recent annual or biennial
 186 report or, if none, filed in the articles of incorporation or
 187 other most recently filed document. The statement of resignation
 188 shall state that a copy of such statement has been mailed to the
 189 corporation at the address so stated. The agency is terminated
 190 as of the 31st day after the date on which the statement was
 191 filed and unless otherwise provided in the statement,
 192 termination of the agency acts as a termination of the
 193 registered office.

194 (4) Changes of the registered office or registered agent
 195 may be made by a change on the corporation's annual or biennial
 196 report form filed with the Department of State.

197 Section 9. Subsection (5) of section 607.0705, Florida
 198 Statutes, is amended to read:

199 607.0705 Notice of meeting.—

200 (5) Notwithstanding the foregoing, no notice of a
 201 shareholders' meeting need be given to a shareholder if:

202 (a) An annual or biennial report and proxy statements for
 203 two consecutive annual meetings of shareholders; or

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204 (b) All, and at least two checks in payment of dividends or
 205 interest on securities during a 12-month period,
 206
 207 have been sent by first-class United States mail, addressed to
 208 the shareholder at her or his address as it appears on the share
 209 transfer books of the corporation, and returned undeliverable.
 210 The obligation of the corporation to give notice of a
 211 shareholders' meeting to any such shareholder shall be
 212 reinstated once the corporation has received a new address for
 213 such shareholder for entry on its share transfer books.

214 Section 10. Subsection (1) of section 607.1420, Florida
 215 Statutes, is amended to read:

216 607.1420 Grounds for administrative dissolution.—

217 (1) The Department of State may commence a proceeding under
 218 s. 607.1421 to administratively dissolve a corporation if:

219 (a) The corporation has failed to file its annual or
 220 biennial report and pay the annual or biennial report filing fee
 221 by 5 p.m. Eastern Time on the third Friday in September of the
 222 year the report is due;

223 (b) The corporation is without a registered agent or
 224 registered office in this state for 30 days or more;

225 (c) The corporation does not notify the Department of State
 226 within 30 days that its registered agent or registered office
 227 has been changed, that its registered agent has resigned, or
 228 that its registered office has been discontinued;

229 (d) The corporation has failed to answer truthfully and
 230 fully, within the time prescribed by this act, interrogatories
 231 propounded by the Department of State; or

232 (e) The corporation's period of duration stated in its

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233 articles of incorporation has expired.

234 Section 11. Subsection (1) of section 607.1421, Florida

235 Statutes, is amended to read:

236 607.1421 Procedure for and effect of administrative

237 dissolution.—

238 (1) If the Department of State determines that one or more

239 grounds exist under s. 607.1420 for dissolving a corporation, it

240 shall serve the corporation with notice of its intention to

241 administratively dissolve the corporation. If the corporation

242 has provided the department with an electronic mail address,

243 such notice shall be by electronic transmission. Administrative

244 dissolution for failure to file an annual or biennial report

245 shall occur on the fourth Friday in September of the each year

246 the report is due. The Department of State shall issue a

247 certificate of dissolution to each dissolved corporation.

248 Issuance of the certificate of dissolution may be by electronic

249 transmission to any corporation that has provided the department

250 with an electronic mail address.

251 Section 12. Subsection (1) of section 607.1509, Florida

252 Statutes, is amended to read:

253 607.1509 Resignation of registered agent of foreign

254 corporation.—

255 (1) The registered agent of a foreign corporation may

256 resign his or her agency appointment by signing and delivering

257 to the Department of State for filing a statement of resignation

258 and mailing a copy of such statement to the corporation at the

259 corporation's principal office address shown in its most recent

260 annual or biennial report or, if none, shown in its application

261 for a certificate of authority or other most recently filed

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262 document. The statement of resignation must state that a copy of

263 such statement has been mailed to the corporation at the address

264 so stated. The statement of resignation may include a statement

265 that the registered office is also discontinued.

266 Section 13. Subsection (2) of section 607.15101, Florida

267 Statutes, is amended to read:

268 607.15101 Service of process, notice, or demand on a

269 foreign corporation.—

270 (2) A foreign corporation may be served by registered or

271 certified mail, return receipt requested, addressed to the

272 secretary of the foreign corporation at its principal office

273 shown in its application for a certificate of authority or in

274 its most recent annual or biennial report if the foreign

275 corporation:

276 (a) Has no registered agent or its registered agent cannot

277 with reasonable diligence be served;

278 (b) Has withdrawn from transacting business in this state

279 under s. 607.1520; or

280 (c) Has had its certificate of authority revoked under s.

281 607.1531.

282 Section 14. Subsection (1) of section 607.1530, Florida

283 Statutes, is amended to read:

284 607.1530 Grounds for revocation of authority to transact

285 business.—The Department of State may commence a proceeding

286 under s. 607.1531 to revoke the certificate of authority of a

287 foreign corporation authorized to transact business in this

288 state if:

289 (1) The foreign corporation has failed to file its annual

290 or biennial report with the Department of State by 5 p.m.

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291 Eastern Time on the third Friday in September of the year the
292 report is due.

293 Section 15. Subsection (1) of section 607.1531, Florida
294 Statutes, is amended to read:

295 607.1531 Procedure for and effect of revocation.—

296 (1) If the Department of State determines that one or more
297 grounds exist under s. 607.1530 for revocation of a certificate
298 of authority, the Department of State shall serve the foreign
299 corporation with notice of its intent to revoke the foreign
300 corporation's certificate of authority. If the foreign
301 corporation has provided the department with an electronic mail
302 address, such notice shall be by electronic transmission.
303 Revocation for failure to file an annual or biennial report
304 shall occur on the fourth Friday in September of the each year
305 the report is due. The department shall issue a certificate of
306 revocation to each revoked corporation. Issuance of the
307 certificate of revocation may be by electronic transmission to
308 any corporation that has provided the department with an
309 electronic mail address.

310 Section 16. Subsection (1) of section 607.15315, Florida
311 Statutes, is amended to read:

312 607.15315 Revocation; application for reinstatement.—

313 (1) (a) A foreign corporation the certificate of authority
314 of which has been revoked pursuant to s. 607.1531 may apply to
315 the Department of State for reinstatement at any time after the
316 effective date of revocation of authority. The application must:

- 317 1. Recite the name of the foreign corporation and the
- 318 effective date of its revocation of authority;
- 319 2. State that the ground or grounds for revocation of

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320 authority either did not exist or have been eliminated and that
321 no further grounds currently exist for revocation of authority;

322 3. State that the foreign corporation's name satisfies the
323 requirements of s. 607.1506; and

324 4. State that all fees owed by the corporation and computed
325 at the rate provided by law at the time the foreign corporation
326 applies for reinstatement have been paid; or

327 (b) As an alternative, the foreign corporation may submit a
328 current annual or biennial report, signed by the registered
329 agent and an officer or director, which substantially complies
330 with the requirements of paragraph (a).

331 Section 17. Subsection (5) of section 607.1601, Florida
332 Statutes, is amended to read:

333 607.1601 Corporate records.—

334 (5) A corporation shall keep a copy of the following
335 records:

336 (a) Its articles or restated articles of incorporation and
337 all amendments to them currently in effect;

338 (b) Its bylaws or restated bylaws and all amendments to
339 them currently in effect;

340 (c) Resolutions adopted by its board of directors creating
341 one or more classes or series of shares and fixing their
342 relative rights, preferences, and limitations, if shares issued
343 pursuant to those resolutions are outstanding;

344 (d) The minutes of all shareholders' meetings and records
345 of all action taken by shareholders without a meeting for the
346 past 3 years;

347 (e) Written communications to all shareholders generally or
348 all shareholders of a class or series within the past 3 years,

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349 including the financial statements furnished for the past 3
350 years under s. 607.1620;

351 (f) A list of the names and business street addresses of
352 its current directors and officers; and

353 (g) Its most recent annual or biennial report delivered to
354 the Department of State under s. 607.1622.

355 Section 18. Section 607.193, Florida Statutes, is amended
356 to read:

357 607.193 Supplemental corporate fee.—

358 (1) In addition to any other taxes imposed by law, an
359 annual supplemental corporate fee of \$88.75 or a biennial
360 supplemental corporate fee of \$177.50, as applicable, is imposed
361 on each business entity that is authorized to transact business
362 in this state and is required to file an annual or biennial
363 report with the Department of State under s. 605.0212, s.
364 607.1622, or s. 620.1210.

365 (2) (a) The business entity shall remit the supplemental
366 corporate fee to the Department of State at the time it files
367 the annual or biennial report required by s. 605.0212, s.
368 607.1622, or s. 620.1210.

369 (b) In addition to the fees levied under ss. 605.0213,
370 607.0122, and 620.1109 and the supplemental corporate fee, a
371 late charge of \$400 shall be imposed if the supplemental
372 corporate fee is remitted after May 1 of the year the fee is due
373 except in circumstances in which a business entity was
374 administratively dissolved or its certificate of authority was
375 revoked due to its failure to file an annual or biennial report
376 and the entity subsequently applied for reinstatement and paid
377 the applicable reinstatement fee.

Page 13 of 14

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

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378 Section 19. This act shall take effect January 1, 2018.

Page 14 of 14

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

The Florida Senate COMMITTEE VOTE RECORD

COMMITTEE: Commerce and Tourism
ITEM: SB 1698
FINAL ACTION: Favorable
MEETING DATE: Monday, March 27, 2017
TIME: 1:30—3:00 p.m.
PLACE: 110 Senate Office Building

| FINAL VOTE | | SENATORS | | | | | | |
|------------|------------|--------------------|------------|------------|------------|------------|------------|------------|
| Yea | Nay | | Yea | Nay | Yea | Nay | Yea | Nay |
| | X | Gibson | | | | | | |
| X | | Hutson | | | | | | |
| X | | Latvala | | | | | | |
| | X | Passidomo | | | | | | |
| X | | Rodriguez | | | | | | |
| X | | Young | | | | | | |
| X | | Gainer, VICE CHAIR | | | | | | |
| X | | Montford, CHAIR | | | | | | |
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| 6 | 2 | TOTALS | | | | | | |
| Yea | Nay | | Yea | Nay | Yea | Nay | Yea | Nay |

CODES: FAV=Favorable RCS=Replaced by Committee Substitute TP=Temporarily Postponed WD=Withdrawn
 UNF=Unfavorable RE=Replaced by Engrossed Amendment VA=Vote After Roll Call OO=Out of Order
 -R=Reconsidered RS=Replaced by Substitute Amendment VC=Vote Change After Roll Call AV=Abstain from Voting

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 466

INTRODUCER: Commerce and Tourism Committee; Transportation Committee; and Senator Hutson and others

SUBJECT: Motor Vehicle Warranty Repairs and Recall Repairs

DATE: March 27, 2017

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------------|----------------|-----------|---------------|
| 1. | <u>Jones</u> | <u>Miller</u> | <u>TR</u> | <u>Fav/CS</u> |
| 2. | <u>Harmsen</u> | <u>McKay</u> | <u>CM</u> | <u>Fav/CS</u> |
| 3. | _____ | _____ | <u>RC</u> | _____ |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 466 prohibits a licensed motor vehicle manufacturer, distributor, or importer (licensee), except as otherwise authorized by law, from denying a motor vehicle dealer's claim, reducing the dealer's compensation, or processing a chargeback to a dealer who performs covered warranty or recall repairs on a used motor vehicle under specific circumstances. Motorcycle manufacturers, distributors, or importers are not covered by this bill.

The bill also requires a licensee who has a franchise agreement with a motor vehicle dealer to compensate the dealer for a used motor vehicle that:

- Was originally manufactured, imported, or distributed by the licensee;
- Is subject to a recall notice, including those issued prior to July 1, 2017;
- Is held in the dealer's inventory at the time the recall notice was issued, or taken into the dealer's inventory after the recall notice;
- Cannot be repaired due to unavailability of a remedy within 30 days of the recall; and
- Is not subject to written statement from the licensee indicating that the vehicle may be sold or delivered to a retail customer before completion of the recall repair.

The bill requires such compensation to be the greater of:

- At least 1.75 percent of the motor vehicle's value for each month, or portion of a month, that the dealer does not receive a remedy for the vehicle; or

- Payment under a national program applicable to motor vehicle dealers holding a franchise agreement with the licensee for the dealer's costs associated with holding the used vehicle.

II. Present Situation:

Florida has substantially regulated motor vehicle manufacturers and motor vehicle dealers since before 1950.¹ Initially, the Florida Legislature implemented only consumer protections aimed at preventing consumer abuse by dealers.² In 1970, the Legislature passed more comprehensive legislation, embodied in ch. 320, F.S.,³ which regulates the contractual relationship between manufacturers and dealers,⁴ requires the licensing of manufacturers, and regulates numerous aspects of the contracts between manufacturers and dealers. This legislation applies only to those dealers and manufacturers who engage in the business of buying, selling, or dealing in motor vehicles, which includes any motor vehicle, but excludes recreational vehicles, mopeds, motorcycles powered by a motor with a displacement of 50 cubic centimeters or less, or mobile homes.⁵

Florida Automobile Dealers Act

The "Florida Automobile Dealers Act"⁶ (act), primarily regulates the contractual business relationship between dealers and licensees. A manufacturer, factory branch, distributor, or importer (licensee) must be licensed under s. 320.61(1), F.S., to engage in business in Florida.

The act specifies, in part:

- The conditions and situations under which the Department of Highway Safety and Motor Vehicles (DHSMV) may deny, suspend, or revoke a regulated license;
- The process, timing, and notice requirements for licensees who wish to discontinue, cancel, modify, or otherwise replace a franchise agreement with a dealer, and the conditions under which the DHSMV may deny such a request;
- The procedures a licensee must follow to add a dealership in an area already served by a franchised dealer, the protest process, and the DHSMV's role in these circumstances;
- The damages that can be assessed against a licensee who is in violation of Florida Statutes; and
- The DHSMV's authority to adopt rules to implement these sections of law.

Section 320.64, F.S., currently lists 40 criteria that may cause the DHSMV to deny, suspend, or revoke a licensee's license. A motor vehicle dealer who can demonstrate that he or she will be adversely affected by an applicant's or licensee's violation of, or failure to comply with, any of these provisions, is entitled to pursue an injunction against the licensee, and to be awarded treble

¹ Chapter 9157, Laws of Fla. (1923); Chapter 20236, Laws of Fla. (1941).

² Walter E. Forehand and John W. Forehand, *Motor Vehicle Dealer and Motor Vehicle Manufacturers: Florida Reacts to Pressures in the Marketplace*, 29 Fla. St. Univ. Law Rev. 1058, 1064 (2002), <http://ir.law.fsu.edu/cgi/viewcontent.cgi?article=1632&context=lr> (last visited Mar. 23, 2017).

³ See ch. 70-424, Laws of Fla.

⁴ See s. 320.60(11), F.S.

⁵ Section 320.27(b)-(c), F.S.

⁶ Sections 320.60-320.70, F.S.; See also, Walter E. Forehand, *supra* note 2 at 1065.

damages and attorney's fees.⁷ If the party bringing the action can show a violation under the law, the burden shifts to the licensee to prove otherwise.⁸

Applicability

Section 320.6992, F.S., provides that the act shall apply to all presently existing or future systems of distribution of motor vehicles in Florida, except to the extent that such application would impair valid contractual agreements in violation of the State Constitution or Federal Constitution. Generally, all agreements that are renewed, amended, or entered into subsequent to October 1, 1988, are governed by the act, including amendments to the act, unless specifically provided otherwise.

In 2009, the DHSMV held in an administrative proceeding that amendments to the act do not apply to dealers whose franchise agreements were signed prior to the effective date of various amendments to the act.⁹ The DHSMV has indicated that it will apply the *Motorsports* holding to every amendment to the act. This may result in different protections accruing to dealers, depending on when they signed their franchise agreements.

Motor Vehicle Warranties

A motor vehicle warranty is any written warranty, or affirmation of fact or promise issued or made by the motor vehicle manufacturer in connection with the sale of a motor vehicle to a consumer. This promise must relate to the nature of the material or workmanship and affirm or promise that such material or workmanship is free of defects or will meet a specified level of performance.¹⁰

Chapter 681, F.S., the "Motor Vehicle Warranty Enforcement Act," provides a regulatory framework for motor vehicle sales warranties.

Motor Vehicle Warranty Repairs

A licensee is required to timely compensate a motor vehicle dealer who performs work to maintain or repair a licensee's product under a warranty.¹¹ For this purpose, "timely" means within 30 days of receipt of the claim, and "compensate" includes payment for all labor (employee time spent for diagnosis and repair) and parts (replacement parts and accessories) included in the work.¹²

⁷ See ss. 320.64, 320.694, and 320.697, F.S.

⁸ Section 320.697, F.S.

⁹ See *Motorsports of Delray, LLC v. Yamaha Motor Corp., U.S.A.*, Case No. 09-002129 (Fla. DOAH Dec. 9, 2009). The DHSMV found that a 2006 amendment to the Florida Automobile Dealers Act does not apply to a dealer terminated in 2008 because the dealer's franchise agreement was entered into prior to the effective date of the amendment. This Final Order was initially appealed but was later voluntarily dismissed. See also, *In re Am. Suzuki Motor Corp.*, 494 B.R. 466, 480 (Bankr. C.D. Cal. 2013).

¹⁰ Section 681.102(22), F.S.

¹¹ Section 320.696(1), F.S.

¹² *Id.*

Motor Vehicle Recalls

If a licensee finds that a motor vehicle or its equipment contains a defect related to motor vehicle safety, or does not comply with applicable federal motor vehicle safety standards, the manufacturer may either decide to issue a recall notice, or may be required by the National Highway Traffic Safety Administration (NHTSA) to issue a recall notice.¹³ If a manufacturer determines that there is a safety-related defect in its vehicle or its equipment, or that the vehicle or its equipment is noncompliant with motor vehicle safety standards, it must submit a report to the NHTSA within 5 working days. However, a manufacturer may petition for exemption from recall notification and remedy requirements if the defect or noncompliance is inconsequential to motor vehicle safety.¹⁴ If it is determined the defect or noncompliance does pose a risk to safety, the manufacturer must:

- Notify owners, purchasers, and dealers of the vehicle or equipment; and
- Remedy the defect or noncompliance (either by repairing or replacing it, offering a refund, or repurchasing the vehicle.)¹⁵

The recall notice must be issued no later than 60 days from the date the manufacturer filed its report with the NHTSA.¹⁶ Recall notifications sent to motor vehicle dealers and distributors must contain a clear statement identifying the notification as a safety recall notice, and include:

- An identification of the motor vehicles or equipment included in the recall;
- A description of the defect or noncompliance;
- A brief evaluation of the risk to motor vehicle safety related to the defect or noncompliance;
- A complete description on the recall remedy;
- The estimated date on which the remedy will be available; and
- An advisory stating that it is a Federal violation for a dealer to sell or lease a new motor vehicle or any new or used item of motor vehicle equipment covered by the notification until the defect or noncompliance is remedied.¹⁷

A 2015 NHTSA annual report of recalls by year shows a steady increase in the number of recalls issued from 1995 to 2005.¹⁸ In 2015, the NHTSA issued 973 recalls, affecting over 87.5 million vehicles or equipment.¹⁹ Of note is the Takata airbag recall, which has resulted in a NHTSA recall of 46 million airbag inflators in 29 million cars in the United States since 2014.²⁰ The NHTSA expects to recall an additional 35-40 million airbags between May 2016 and December 2019.²¹

¹³ 49 C.F.R. ss. 577.5 and 577.6

¹⁴ 49 C.F.R. s. 573.6

¹⁵ NHTSA's Safercar.gov website, *Vehicle Recalls: Frequently Asked Questions*, <https://vinrcl.safercar.gov/vin/faq.jsp> (last visited Mar. 23, 2017).

¹⁶ 49 C.F.R. s. 577.7

¹⁷ 49 C.F.R. s. 577.13

¹⁸ NHTSA's Safercar.gov website, *2015 Annual Recalls Report*, <https://www.safercar.gov/staticfiles/safercar/pdf/2015-annual-recalls-report.pdf> (last visited Mar. 23, 2017).

¹⁹ *Id.*

²⁰ Kelsey Mays, Cars.com, *Is Your Car Part of the Takata Airbag Recall?* (Feb. 3, 2017), <https://www.cars.com/articles/is-your-car-part-of-the-takata-airbag-recall-1420680509675/> (last visited Mar. 23, 2017).

²¹ NHTSA, *Takata Air Bags: Timeline of NHTSA Actions* (Jan. 19, 2017), <https://www.nhtsa.gov/recall-spotlight/takata-air-bags> (last visited Mar. 23, 2017)

Recalls on New Vehicles

Federal law prohibits the sale of new motor vehicles determined to have a safety defect or noncompliance with motor vehicle safety standards,²² and requires a manufacturer, after selling the motor vehicle or equipment to the dealer and before it is sold by the dealer, to immediately:

- Repurchase the vehicle or equipment from the motor vehicle dealer at the same price paid, plus transportation charges and at least one percent a month of the price paid prorated from the date of notice to the date of repurchase; or
- Give the dealer, at the manufacturer's expense, the part or equipment needed to remedy the defect or noncompliance, plus cost of installation and one percent a month of the price paid prorated from the date of notice to the date the defect or noncompliance is remedied.²³

Recalls on Used Vehicles

Federal law, generally, does not prohibit the resale of used vehicles subject to a safety recall. However, manufacturers may choose to direct their dealers to stop selling such vehicles. Additionally, manufacturers may require such vehicles to be held in the dealer's inventory without a remedy to the dealer.

In 2016, Virginia and Maryland passed laws to require licensees to compensate their franchise dealers if the dealer is instructed or coerced by the licensee not to sell used vehicles within its inventory that have a recall with no remedy available. Specifically, Maryland law requires a licensee that issues a stop sale directive without an available remedy for the recall on a used vehicle held in its franchise dealer's inventory, to compensate the dealer by:

- Providing payment to the dealer at a rate of at least one percent per month or portion of a month of the value of the vehicle; or
- Compensating the dealer under a national program that is applicable to all dealers holding a franchise from the licensee for the dealer's costs associated with the stop sale directive.²⁴

Virginia law prohibits a licensee from coercing any dealer, whether by agreement program, incentive provision, or threat of loss of incentive payments or benefits. It further prohibits a licensee from requiring a dealer to refrain from selling any used motor vehicle subject to a recall, stop sale directive, technical service bulletin,²⁵ or other licensee notification unless the licensee has an available remedy. If no remedy for the recall is available, and the licensee prohibits the dealer from selling the vehicle, the licensee must then compensate the dealer at at least one percent of the cost of the used vehicle per month, or for any part of a month that the vehicle cannot be sold. The required compensation includes repairs and re-conditioning expenses incurred by the dealer.²⁶

²² Commonly referred to as "stop sale" notices.

²³ 49 U.S.C. s. 30116

²⁴ Maryland General Assembly, *House Bill 525 – Enrolled*, (Enacted May 28, 2016), available at: <http://mgaleg.maryland.gov/2016RS/bills/hb/hb0525E.pdf> (last visited Mar. 23, 2017).

²⁵ Technical service bulletins, not to be confused with recalls, are notices issued to dealers from manufacturers for nonsafety-related defects. These bulletins usually include recommended procedures for repairing vehicles if certain issues arise.

²⁶ Virginia Acts of Assembly – 2016 Session, *Chapter 534* (Mar. 29, 2016), available at: <https://lis.virginia.gov/cgi-bin/legp604.exe?161+ful+CHAP0534+pdf> (last visited Mar. 23, 2017).

III. Effect of Proposed Changes:

Section 1 amends s. 320.64, F.S., to prohibit a licensee, notwithstanding the terms of any franchise agreement, and except as authorized by law upon detection of fraudulent payments, from denying a dealer's claim, reducing the dealer's compensation, or processing a chargeback to a dealer for performing covered warranty or recall repairs on a used motor vehicle²⁷ due to:

- A dealer's discovery of a need for such repairs during the course of a separate repair requested by the consumer; or
- Notification by the dealer to the consumer of the need for such repairs after issuance of an outstanding recall for a safety-related defect.

Section 2 creates s. 320.6407, F.S., relating to recall notices under franchise agreements. The bill requires that a licensee that has a franchise agreement with a motor vehicle dealer must compensate the dealer for a used vehicle that:

- Was originally manufactured, imported, or distributed by the licensee;
- Is subject to a recall notice, including one issued prior to July 1, 2017;
- Is held in the dealer's inventory at the time the recall notice was issued, or taken into the dealer's inventory after the recall notice due to a trade-in, lease return, or other transaction;
- Cannot be repaired due to unavailability of a remedy for the vehicle within 30 days after issuance of the recall notice; and
- For which the licensee has not issued a written statement to the dealer indicating the vehicle may be sold or delivered to a retail customer before completion of the recall repair.

The bill requires such compensation to be the greater of:

- Payment of at least 1.75 percent of the motor vehicle value (as determined by the average Black Book value for that vehicle's model year and condition) for each month or portion of a month that the dealer does not receive a remedy for the vehicle, calculated from the later of either the date the recall was issued or when the vehicle was acquired by the dealer; or
- Payment under a national program applicable to motor vehicle dealers holding a franchise agreement with the licensee for the dealer's costs associated with holding the used vehicle.

This section also clarifies that motorcycle manufacturers, distributors, or importers are exempt from the provisions of section 320.6407, F.S.

Section 3 reenacts s. 320.6992, F.S., providing that amendments made to the act shall apply to all presently existing or future systems of distribution of motor vehicles in Florida, except to the extent that such application would impair valid contractual agreements in violation of the State Constitution or Federal Constitution.

Section 4 provides an effective date of July 1, 2017.

²⁷ A "used motor vehicle" is any motor vehicle for which the title has been transferred at least once, by a manufacturer, distributor, importer, or dealer to an ultimate purchaser. *See* s. 320.60(13), 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:

The fiscal impact to the private sector is indeterminate. To the extent that agreements between dealers and licensees change, the parties could be impacted positively or negatively. Dealers with vehicles in their inventory impacted by a recall that cannot be repaired or sold will likely experience a positive fiscal impact.

C. Government Sector Impact:

The fiscal impact to state government sector is indeterminate, but appears insignificant. The DHSMV may experience an increase in the number of administrative hearings as a result of the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The United States Constitution and the Florida Constitution prohibit the state from passing any law impairing the obligation of contracts.²⁸ “[T]he first inquiry must be whether the state law has, in fact, operated as a substantial impairment of a contractual relationship. The severity of the impairment measures the height of the hurdle the state legislation must clear.”²⁹ If a law does impair contracts, the courts will assess whether the law is deemed reasonable and necessary to

²⁸ U.S. Const. Article I, s. 10; Art. I, s. 10, Fla. Const.

²⁹ *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So. 2d 774, 779 (Fla. 1979) (quoting *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 244-45 (1978)). See also, *General Motors Corp. v. Romein*, 503 U.S. 181 (1992).

serve an important public purpose.³⁰ The factors that a court will consider when balancing the impairment of contracts with the public purpose include whether the law:

- Was enacted to deal with a broad, generalized economic or social problem;
- Operates in an area that was already subject to state regulation at the time the parties undertook their contractual obligations, or whether it invades an area never before subject to regulation; and
- Results in a temporary alteration of the contractual relationships of those within its scope, or whether it permanently and immediately changes those contractual relationships, irrevocably and retroactively.³¹

Some state laws regulating contracts between automobile manufacturers and dealers have been found to violate the constitution, while other laws have been upheld as constitutional.³²

VIII. Statutes Affected:

This bill substantially amends section 320.64 of the Florida Statutes.

This bill creates section 320.6407 of the Florida Statutes.

This bill reenacts section 320.6992 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 27, 2017:

- Clarifies that the requirements on motor vehicle manufacturers, and remedies to motor vehicle dealers, apply to motor vehicle recalls that were issued prior to July 1, 2017;
- Reduces the amount required to be paid to the motor vehicle dealer from 2 to 1.75 percent;
- Exempts motorcycle manufacturers, distributors, and importers from the bill; and
- Changes the effective date from “on becoming law” to July 1, 2017.

CS by Transportation on March 14, 2017:

The CS extends the length of time that the licensee must make a recall remedy available to a dealer to avoid compensating that dealer for the used vehicle, from 15 to 30 days, and reduces the amount required to be paid to the dealer, from 2.43 percent to 2 percent.

³⁰ *Park Benziger & Co. v. Southern Wine & Spirits, Inc.*, 391 So. 2d 681, 683 (Fla. 1980); *Yellow Cab Co. of Dade County v. Dade County*, 412 So. 2d 395, 397 (Fla. 3d DCA 1982) (citing *United States Trust Co. v. New Jersey*, 431 U.S. 1 (1977)).

³¹ *See supra*, note 28; *see also*, *Vesta Fire Ins. Corp. v. State of Fla.*, 141 F. 3d 1427, 1433 (11th Cir. 1998).

³² *See Alliance of Auto. Mfrs., Inc. v. Currey*, 984 F. Supp. 2d 32 (D. Conn. 2013) (upholding state law that revised statutory method for calculating reasonable compensation for vehicle warranty work and prohibited manufacturers from recovering any additional cost of the new method from the dealers); *Arapahoe Motors, Inc. v. Gen. Motors Corp.*, No. CIV. A. 99 N 1985, 2001 WL 36400171, at 13 (D. Colo. Mar. 28, 2001) (the retroactive application of state law would be unconstitutional as it would create a new obligation or impose a new duty upon General Motors).

The CS also adds that such compensation is not required for used vehicles for which the licensee has issued a written statement to the dealer indicating the used vehicle may be sold or delivered to a retail customer prior to completion of the recall repair.

B. Amendments:

None.

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



141476

LEGISLATIVE ACTION

| Senate | . | House |
|------------|---|-------|
| Comm: RCS | . | |
| 03/27/2017 | . | |
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The Committee on Commerce and Tourism (Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete lines 76 - 135
and insert:
licensee or an authorized governmental agency, including recalls
issued prior to July 1, 2017, regardless of whether the vehicle
is identified by its vehicle identification number;
(c) That is held by the motor vehicle dealer in the
dealer's inventory at the time the recall notice is issued or
that is taken by the motor vehicle dealer into the dealer's



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11 inventory after the recall notice as a result of a trade-in,
12 lease return, or otherwise;

13 (d) That cannot be repaired due to the unavailability,
14 within 30 days after issuance of the recall notice, of remedy or
15 parts necessary for the motor vehicle dealer to make the recall
16 repair; and

17 (e) For which the licensee has not issued a written
18 statement to the motor vehicle dealer indicating that the used
19 motor vehicle may be sold or delivered to a retail customer
20 before completion of the recall repair.

21 (2) The licensee shall pay the required compensation within
22 30 days after the motor vehicle dealer's application for
23 payment. Applications for compensation payments must be
24 submitted monthly, as necessary, through the licensee's existing
25 warranty application system or another system or process
26 established by the licensee which is not unduly burdensome or
27 which does not require information unnecessary for the payment.

28 (3) Compensation under this section must be the greater of:

29 (a) Payment at a rate of at least 1.75 percent per month of
30 the motor vehicle value, as determined by the average Black Book
31 value of the corresponding model year vehicle of average
32 condition, of each eligible used motor vehicle in the motor
33 vehicle dealer's inventory for each month that the dealer does
34 not receive a remedy or parts to complete the required repair.
35 Such payment must be prorated for any period less than a month
36 based on the number of days during the month each eligible used
37 motor vehicle is in the motor vehicle dealer's inventory.
38 Payments shall be calculated from the date the recall was issued
39 or the vehicle was acquired, whichever is later.



141476

40 (b) Payment under a national program applicable to all
41 motor vehicle dealers holding a franchise agreement with the
42 licensee for the motor vehicle dealer's costs associated with
43 holding the eligible used motor vehicles.

44 (4) For purposes of this section, a licensee does not
45 include a motorcycle manufacturer, distributor, or importer.

46 Section 3. For the purpose of incorporating the amendment
47 made by this act to section 320.64, Florida Statutes, and
48 section 320.6407, Florida Statutes, as created by this act, in
49 references thereto, section 320.6992, Florida Statutes, is
50 reenacted to read:

51 320.6992 Application.—Sections 320.60-320.70, including
52 amendments to ss. 320.60-320.70, apply to all presently existing
53 or hereafter established systems of distribution of motor
54 vehicles in this state, except to the extent that such
55 application would impair valid contractual agreements in
56 violation of the State Constitution or Federal Constitution.
57 Sections 320.60-320.70 do not apply to any judicial or
58 administrative proceeding pending as of October 1, 1988. All
59 agreements renewed, amended, or entered into subsequent to
60 October 1, 1988, shall be governed by ss. 320.60-320.70,
61 including any amendments to ss. 320.60-320.70 which have been or
62 may be from time to time adopted, unless the amendment
63 specifically provides otherwise, and except to the extent that
64 such application would impair valid contractual agreements in
65 violation of the State Constitution or Federal Constitution.

66 Section 4. This act shall take effect July 1, 2017.

67
68 ===== T I T L E A M E N D M E N T =====



141476

69 And the title is amended as follows:

70 Delete lines 12 - 21

71 and insert:

72 specified circumstances; providing retroactive
73 applicability; requiring the manufacturer, factory
74 branch, distributor, or importer to pay the
75 compensation within a specified timeframe after the
76 motor vehicle dealer's application for payment;
77 requiring such applications to be submitted monthly,
78 as necessary, through the manufacturer's, factory
79 branch's, distributor's, or importer's warranty
80 application system or certain other system or process;
81 providing for calculation of the amount of
82 compensation; providing applicability; reenacting s.
83 320.6992, F.S., relating

By the Committee on Transportation; and Senators Hutson, Gainer,
and Broxson

596-02448-17

2017466c1

A bill to be entitled

An act relating to motor vehicle warranty repairs and recall repairs; amending s. 320.64, F.S.; prohibiting a manufacturer, factory branch, distributor, or importer from denying a claim of a motor vehicle dealer, reducing compensation to a motor vehicle dealer, or processing a chargeback to a motor vehicle dealer because of specified circumstances; creating s. 320.6407, F.S.; requiring a manufacturer, factory branch, distributor, or importer to compensate a motor vehicle dealer for a used motor vehicle under specified circumstances; requiring the manufacturer, factory branch, distributor, or importer to pay the compensation within a specified timeframe after the motor vehicle dealer's application for payment; requiring such applications to be submitted monthly, as necessary, through the manufacturer's, factory branch's, distributor's, or importer's warranty application system or certain other system or process; providing for calculation of the amount of compensation; reenacting s. 320.6992, F.S., relating to applicability of specified provisions to systems of distribution of motor vehicles in this state, to incorporate the amendments made to s. 320.64, F.S., and to incorporate s. 320.6407, F.S., as created by the act, in references thereto; providing an effective date.

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

Page 1 of 5

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

596-02448-17

2017466c1

Section 1. Subsection (41) is added to section 320.64, Florida Statutes, to read:

320.64 Denial, suspension, or revocation of license; grounds.—A license of a licensee under s. 320.61 may be denied, suspended, or revoked within the entire state or at any specific location or locations within the state at which the applicant or licensee engages or proposes to engage in business, upon proof that the section was violated with sufficient frequency to establish a pattern of wrongdoing, and a licensee or applicant shall be liable for claims and remedies provided in ss. 320.695 and 320.697 for any violation of any of the following provisions. A licensee is prohibited from committing the following acts:

(41) Notwithstanding the terms of any franchise agreement, and except as authorized under subsection (25), a licensee may not deny a claim of a motor vehicle dealer, reduce the amount of compensation to a motor vehicle dealer, or process a chargeback to a motor vehicle dealer for performing covered warranty repairs or required recall repairs on a used motor vehicle due to either of the following circumstances:

(a) Discovery by the motor vehicle dealer of the need for warranty or recall repairs during the course of a separate repair requested by the consumer.

(b) Notification by the motor vehicle dealer to the consumer of the need for recall repairs after the licensee or an authorized governmental agency issues a notice of an outstanding recall for a safety-related defect.

Page 2 of 5

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59 A motor vehicle dealer who can demonstrate that a violation of,
60 or failure to comply with, any of the preceding provisions by an
61 applicant or licensee will or can adversely and pecuniarily
62 affect the complaining dealer, shall be entitled to pursue all
63 of the remedies, procedures, and rights of recovery available
64 under ss. 320.695 and 320.697.

65 Section 2. Section 320.6407, Florida Statutes, is created
66 to read:

67 320.6407 Recall notices under franchise agreements;
68 compensation.—

69 (1) As provided in subsection (3), a licensee that has
70 entered into a franchise agreement with a motor vehicle dealer
71 must compensate the motor vehicle dealer for a used motor
72 vehicle:

73 (a) That was originally manufactured, imported, or
74 distributed by the licensee;

75 (b) That is subject to a recall notice issued by the
76 licensee or an authorized governmental agency, regardless of
77 whether the vehicle is identified by its vehicle identification
78 number;

79 (c) That is held by the motor vehicle dealer in the
80 dealer's inventory at the time the recall notice is issued or
81 that is taken by the motor vehicle dealer into the dealer's
82 inventory after the recall notice as a result of a trade-in,
83 lease return, or otherwise;

84 (d) That cannot be repaired due to the unavailability,
85 within 30 days after issuance of the recall notice, of remedy or
86 parts necessary for the motor vehicle dealer to make the recall
87 repair; and

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88 (e) For which the licensee has not issued a written
89 statement to the motor vehicle dealer indicating that the used
90 motor vehicle may be sold or delivered to a retail customer
91 before completion of the recall repair.

92 (2) The licensee shall pay the required compensation within
93 30 days after the motor vehicle dealer's application for
94 payment. Applications for compensation payments must be
95 submitted monthly, as necessary, through the licensee's existing
96 warranty application system or another system or process
97 established by the licensee which is not unduly burdensome or
98 which does not require information unnecessary for the payment.

99 (3) Compensation under this section must be the greater of:

100 (a) Payment at a rate of at least 2 percent per month of
101 the motor vehicle value, as determined by the average Black Book
102 value of corresponding model year vehicle of average condition,
103 of each eligible used motor vehicle in the motor vehicle
104 dealer's inventory for each month that the dealer does not
105 receive a remedy or parts to complete the required repair. Such
106 payment must be prorated for any period less than a month based
107 on the number of days during the month each eligible used motor
108 vehicle is in the motor vehicle dealer's inventory. Payments
109 shall be calculated from the date the recall was issued or the
110 vehicle was acquired, whichever is later.

111 (b) Payment under a national program applicable to all
112 motor vehicle dealers holding a franchise agreement with the
113 licensee for the motor vehicle dealer's costs associated with
114 holding the eligible used motor vehicles.

115 Section 3. For the purpose of incorporating the amendment
116 made by this act to section 320.64, Florida Statutes, and

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117 section 320.6407, Florida Statutes, as created by this act, in
118 references thereto, section 320.6992, Florida Statutes, is
119 reenacted to read:

120 320.6992 Application.—Sections 320.60-320.70, including
121 amendments to ss. 320.60-320.70, apply to all presently existing
122 or hereafter established systems of distribution of motor
123 vehicles in this state, except to the extent that such
124 application would impair valid contractual agreements in
125 violation of the State Constitution or Federal Constitution.
126 Sections 320.60-320.70 do not apply to any judicial or
127 administrative proceeding pending as of October 1, 1988. All
128 agreements renewed, amended, or entered into subsequent to
129 October 1, 1988, shall be governed by ss. 320.60-320.70,
130 including any amendments to ss. 320.60-320.70 which have been or
131 may be from time to time adopted, unless the amendment
132 specifically provides otherwise, and except to the extent that
133 such application would impair valid contractual agreements in
134 violation of the State Constitution or Federal Constitution.

135 Section 4. This act shall take effect upon becoming a law.

THE FLORIDA SENATE

APPEARANCE RECORD

Duplicate

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

3/27/17

SB 466

Meeting Date

Bill Number (if applicable)

Topic Motor Vehicle Recall

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N. Adams St

Phone 224-7173

Street

Tallahassee

FL

32301

Email bbevis@aif.com

City

State

Zip

Speaking:

For

Against

Information

Waive Speaking:

In Support

Against

(The Chair will read this information into the record.)

Representing Associated Industries 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)

3/27/17
Meeting Date

466
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable) _____

Name Gary Hunter

Job Title Attorney

Address 119 S. Monroe St Suite 300

Phone 222-7500

Street Tallahassee FL 32301
City State Zip

Email garyh@hgsllaw.com

Speaking: For Against Information

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

Representing Alliance of Automobile Mfg's

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 _____

Bill Number (if applicable) SB466

Amendment Barcode (if applicable) _____

Topic Auto recall

Name Don Book

Job Title _____

Address 104 W. Torgers

Phone 850 2243425

Street FLA

Email _____

City _____

State _____

Speaking: For Against Information

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

Representing 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 3-27-17

Bill Number (if applicable) 466

Topic Auto Recalls

Amendment Barcode (if applicable)

Name Ted Smith

Job Title President

Address 400 N. Merivale St

Phone 850-445-0835

Street Tally City FL State 32301 Zip

Email ted@flada.org

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

Representing FL Automobile Dealers 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
COMMITTEE VOTE RECORD

COMMITTEE: Commerce and Tourism
ITEM: CS/SB 466
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Monday, March 27, 2017
TIME: 1:30—3:00 p.m.
PLACE: 110 Senate Office Building

| FINAL VOTE | | SENATORS | 3/27/2017 Amendment 141476 | | | | | |
|------------|-----|--------------------|-------------------------------|-----|-----|-----|-----|-----|
| Yea | Nay | | Hutson | | Yea | Nay | Yea | Nay |
| X | | Gibson | | | | | | |
| X | | Hutson | | | | | | |
| X | | Latvala | | | | | | |
| X | | Passidomo | | | | | | |
| X | | Rodriguez | | | | | | |
| X | | Young | | | | | | |
| X | | Gainer, VICE CHAIR | | | | | | |
| X | | Montford, CHAIR | | | | | | |
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| Yea | Nay | TOTALS | RCS | - | | | | |
| | | | Yea | Nay | Yea | Nay | Yea | Nay |

CODES: FAV=Favorable RCS=Replaced by Committee Substitute TP=Temporarily Postponed WD=Withdrawn
 UNF=Unfavorable RE=Replaced by Engrossed Amendment VA=Vote After Roll Call OO=Out of Order
 -R=Reconsidered RS=Replaced by Substitute Amendment VC=Vote Change After Roll Call AV=Abstain from Voting

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 554

INTRODUCER: Commerce and Tourism Committee, Regulated Industries Committee, and Senator Young and others

SUBJECT: Craft Breweries

DATE: March 27, 2017

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------|----------------|------------|---------------|
| 1. | <u>Oxamendi</u> | <u>McSwain</u> | <u>RI</u> | Fav/CS |
| 2. | <u>Askey</u> | <u>McKay</u> | <u>CM</u> | Fav/CS |
| 3. | _____ | _____ | <u>AGG</u> | _____ |
| 4. | _____ | _____ | <u>AP</u> | _____ |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 554 authorizes a craft brewery with a retail vendor's license to sell, transport, and deliver its own beer from its brewery to other vendors. A craft brewery that distributes beer to a vendor is subject to the same restrictions as a licensed distributor (i.e., the brewer cannot give the vendor any financial assistance, such as a gift, loan, or rebate).

A craft brewery may self-distribute to a vendor only beer in kegs or similar containers that hold 5.16 gallons (i.e., a 1/6th keg), 7.75 gallons (i.e., a "pony keg") or 15.5 gallons (i.e., a keg). A craft brewery may not distribute its own beer to a vendor if it has a franchise agreement with a distributor to distribute its product anywhere in the state, or has a total production volume of more than 7,000 kegs (i.e., 108,500 gallons) of malt beverages a year.

Deliveries of beer to a vendor must be made in vehicles owned by the brewery or in a vehicle owned by a person required to be disclosed on the alcoholic beverage application.

The bill allows brew pubs to transfer beer to a restaurant, of common owner affiliation, which is a part of a restaurant group of not more than 15 restaurants.

The bill has no fiscal impact on state government.

II. Present Situation:

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

Three-Tier System

In the United States, the regulation of alcohol since the repeal of Prohibition has traditionally been based upon a “three-tier system.” The system requires separation of the manufacture, distribution, and sale of alcoholic beverages. The manufacturer creates the beverages, and the distributor obtains the beverages from the manufacturer to deliver to the vendor. The vendor makes the ultimate sale to the consumer.⁴ A manufacturer, distributor, or exporter may not be licensed as a vendor to sell directly to consumers.⁵

Generally, in Florida, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.⁶ Licensed manufacturers, distributors, and registered exporters are prohibited from also being licensed as vendors.⁷ Manufacturers are also generally prohibited from having an interest in a vendor and from distributing directly to a vendor.⁸

Tied House Evil Prohibitions

The three-tier system is deeply rooted in the perceived evils of the “tied house” in which a bar is owned or operated by a manufacturer or the manufacturer exercises undue influence over the retail vendor.⁹ Section 561.42, F.S., regulates the permitted and prohibited relationships and interactions of manufacturers and distributors with vendors in order to prevent a manufacturer or distributor from having a financial interest, directly or indirectly, in the establishment or business of a licensed vendor, and to prevent a manufacturer or distributor from giving a vendor gifts, loans or property, or rebates. However, s. 561.423, F.S., permits a distributor of beer or malt beverages to provide in-store servicing of beer or malt beverages.

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

² See s. 561.14, F.S.

³ Section 561.02, F.S.

⁴ Section 561.14, F.S.

⁵ Section 561.22(1), F.S.

⁶ Section 561.14(3), F.S. However, see the exceptions provided in ss. 561.221 and 565.03, F.S.

⁷ Section 561.22, F.S.

⁸ Sections 563.022(14) and 561.14(1), F.S.

⁹ Erik D. Price, *Time to Untie the House? Revisiting the Historical Justifications of Washington’s Three-Tier System Challenged by Costco v. Washington State Liquor Control Board*, (June 2004) available at: http://www.lanepowell.com/wp-content/uploads/2009/04/pricee_001.pdf (last visited February 13, 2017).

Three-Tier System Exceptions

Exceptions to the three-tier regulatory system permit in-state wineries,¹⁰ breweries,¹¹ and craft distilleries to be licensed as a vendor and sell directly to consumers.¹² Restaurants licensed as vendors (brew pubs) may manufacture a limited quantity of malt beverages and sell directly to consumers for consumption on the licensed premises of a restaurant.¹³

Craft Breweries

Section 561.221(2), F.S., authorizes the division to issue a vendor's license to a manufacturer of malt beverages for the sale of alcoholic beverages on property consisting of a single complex that includes a brewery (craft brewery), which may be divided by no more than one public street or highway. A vendor license to a craft brewery is an exception to the three-tier system described in ss. 561.14 and 561.22, F.S., and to the tied-house evil restrictions in s. 561.42, F.S.

A craft brewery with multiple manufacturing licenses may transfer malt beverages that it produces between its breweries, as provided in s. 563.022(14)(d), F.S. Such transfers are limited to an amount equal to 100 percent of the yearly production of the receiving brewery.

All malt beverages and other alcoholic beverages that are not manufactured by the craft brewery must be obtained through a distributor, an importer, sales agent, or broker.

A craft brewery may not make deliveries as provided in s. 561.57(1), F.S., which permits a vendor to deliver products sold at the licensed place of business to an off-site location. Telephone or mail orders received at a vendor's licensed place of business are considered a sale actually made at the vendor's licensed place of business. However, deliveries made by a vendor away from his or her place of business may only be made in vehicles that are owned or leased by the licensee. By acceptance of an alcoholic beverage licensee, the vendor is presumed to have agreed to the inspection of the vehicle without a search warrant by employees of the division or law enforcement officers to ascertain compliance with all provisions of the alcoholic beverage laws.¹⁴

The division may not issue more than eight vendor's licenses to a manufacturer of malt beverages.¹⁵

Come-to-Rest Requirement

Section 561.5101, F.S., requires, for purposes of inspection and tax-revenue control, all malt beverages to come to rest at the licensed premises of an alcoholic beverage wholesaler in this state before being sold to a vendor by the wholesaler. The come-to-rest requirement does not apply to malt beverages that a craft brewery manufacturers and sells to consumers as a vendor, or

¹⁰ See s. 561.221(1), F.S.

¹¹ See s. 561.221(2), F.S.

¹² See s. 565.03, F.S.

¹³ See s. 561.221(3), F.S.

¹⁴ Section 561.57(2), F.S.

¹⁵ Section 561.221(2)(e), F.S.

to malt beverages manufactured and sold by a brew pub. It is a felony of the third degree, punishable as provided in ss. 775.082, 775.083, or 775.084, F.S.,¹⁶ for any person in the business of selling alcoholic beverages to knowingly and intentionally sell malt beverages in a manner inconsistent with the come-to-rest requirement, whether the sale is to a vendor or to an ultimate consumer.

Excise Tax Reporting and Payment

Craft brewers are required to report and pay the excise tax on malt beverages imposed by s. 563.05, F.S. Manufacturers and distributors are required to compute and submit the applicable excise taxes on alcoholic beverages with the report required by s. 561.55, F.S., to the division, on or before the 10th of each month, for all beverages sold during the previous calendar month.¹⁷

III. Effect of Proposed Changes:

The bill creates s. 561.221(2)(f), F.S., to authorize a craft brewery to sell, transport, and deliver (distribute) its own beer from its licensed premises to vendors.

A craft brewery that distributes beer to a vendor is subject to the same restrictions as a licensed distributor under ss. 561.42 and 561.423, F.S., (e.g., the brewer cannot give the vendor any financial assistance, such as a gift, loan, or rebate).

A craft brewery may distribute to a vendor only beer in kegs¹⁸ or similar containers that hold 5.16 gallons (i.e., a 1/6th keg), 7.75 gallons (i.e., a “pony keg”) or 15.5 gallons (i.e., a keg).

A craft brewery may not distribute to a vendor, if it:

- Has a franchise agreement with a distributor to distribute its product anywhere in the state; or
- Has a total production volume of more than 7,000 kegs (i.e., 108,500 gallons) of malt beverages a year.

The brewery must deliver beer to a vendor in a vehicle owned by the brewery or in a vehicle owned by a person required to be disclosed on the alcoholic beverage application,¹⁹ as provided in s. 561.57, F.S.

The bill allows brew pubs to transfer beer to a restaurant, of common owner affiliation, which is a part of a restaurant group of not more than 15 restaurants.

The bill amends the come-to-rest requirement in s. 561.5101, F.S., to provide that this requirement does not apply to deliveries by a craft distillery to a vendor as provided in s. 561.221(2)(f), F.S.

¹⁶ Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed \$5,000. Section 775.084, F.S., provides increased penalties for habitual offenders.

¹⁷ Section 561.50, F.S.

¹⁸ Section 561.221(3)(a)1., F.S. provides that a “keg” equals 15.5 gallons.

¹⁹ Section 561.17, F.S., requires that the alcoholic beverage license application include all persons, officers, shareholders, and directors of the applicant that have a direct or indirect interest in the business seeking to be licensed under the Beverage Law.

The bill also amends s. 561.022(14)(d), F.S., to provide that the Beverage Law does not prohibit a delivery from a brewery to a vendor's licensed premises as provided in s. 561.221(2)(f), F.S.

The effective date of the bill is July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 561.221, 561.5101, 561.57, and 563.022.

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 Committee on March 27, 2017:

The committee substitute allows brew pubs to transfer beer to a restaurant, of common owner affiliation, which is a part of a restaurant group of not more than 15 restaurants.

CS by Regulated Industries Committee on February 22, 2017:

The committee substitute:

- Allows a craft brewery to distribute kegs or similar containers that hold 5.16 gallons (i.e., a 1/6th keg), 7.75 gallons (i.e., a “pony keg”) or 15.5 gallons (i.e., a keg), of malt beverages manufactured on its licensed premises; and
- Clarifies that the authority to distribute does not apply to a manufacturer who has a total production volume of more than 7,000 kegs, (i.e., 108,500 gallons) of malt beverages a year.

- B. **Amendments:**

None.



855550

LEGISLATIVE ACTION

| | | |
|------------|---|-------|
| Senate | . | House |
| Comm: RCS | . | |
| 03/27/2017 | . | |
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The Committee on Commerce and Tourism (Latvala) recommended the following:

Senate Amendment (with directory and title amendments)

Between lines 54 and 55
insert:

(4) Notwithstanding any other provision of the Beverage Law, any vendor licensed as a manufacturer under this section may transfer malt beverages to any restaurant with which it has common ownership affiliations, which restaurant is part of a restaurant group that comprises not more than 15 restaurants.



855550

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

12 And the directory clause is amended as follows:

13 Delete lines 17 - 18

14 and insert:

15 that subsection, paragraph (a) of subsection (3) of that section
16 is amended, and subsection (4) is added to that section, to
17 read:

18

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

20 And the title is amended as follows:

21 Delete line 5

22 and insert:

23 circumstances; providing applicability; authorizing
24 vendors licensed as manufacturers under ch. 561, F.S.,
25 to transfer malt beverages to certain restaurants with
26 common ownership affiliations; amending s.

By the Committee on Regulated Industries; and Senators Young and Latvala

580-01967-17

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1 A bill to be entitled
 2 An act relating to craft breweries; amending s.
 3 561.221, F.S.; exempting certain vendors from
 4 specified delivery restrictions under certain
 5 circumstances; providing applicability; amending s.
 6 561.5101, F.S.; revising applicability; amending s.
 7 561.57, F.S.; providing that certain manufacturers may
 8 transport malt beverages in vehicles owned or leased
 9 by certain persons other than the manufacturers;
 10 amending s. 563.022, F.S.; conforming a provision to
 11 changes made by the act; providing an effective date.
 12
 13 Be It Enacted by the Legislature of the State of Florida:
 14
 15 Section 1. Paragraph (d) of subsection (2) of section
 16 561.221, Florida Statutes, is amended, paragraph (f) is added to
 17 that subsection, and paragraph (a) of subsection (3) of that
 18 section is amended, to read:
 19 561.221 Licensing of manufacturers and distributors as
 20 vendors and of vendors as manufacturers; conditions and
 21 limitations.—
 22 (2)
 23 (d) A manufacturer possessing a vendor's license under this
 24 subsection is not permitted to make deliveries under s.
 25 561.57(1), except as provided in paragraph (f).
 26 (f) Notwithstanding any other provision of the Beverage
 27 Law, a manufacturer possessing a vendor's license under this
 28 subsection may sell, transport, and deliver to vendors, from the
 29 manufacturer's licensed premises, malt beverages that have been

Page 1 of 4

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30 manufactured on its licensed premises if the manufacturer
 31 complies with the requirements in ss. 561.42 and 561.423, as
 32 applicable, to the same extent as if the manufacturer were a
 33 distributor.
 34 1. The authority provided in this paragraph is limited to
 35 the sale, transport, and delivery of kegs or similar containers
 36 that hold 5.16 gallons, 7.75 gallons, or 15.5 gallons.
 37 2. Any delivery under this paragraph is subject to the
 38 provisions of s. 561.57(2) related to deliveries by licensees.
 39 3. This paragraph does not apply to a manufacturer who:
 40 a. Has a franchise agreement with a distributor pursuant to
 41 s. 563.022; or
 42 b. Has a total production volume of more than 7,000 kegs of
 43 malt beverages a year.
 44 (3) (a) Notwithstanding other provisions of the Beverage
 45 Law, any vendor licensed in this state may be licensed as a
 46 manufacturer of malt beverages upon a finding by the division
 47 that:
 48 1. The vendor will be engaged in brewing malt beverages at
 49 a single location and in an amount which will not exceed 10,000
 50 kegs per year. For purposes of this section subsection, the term
 51 "keg" means 15.5 gallons.
 52 2. The malt beverages so brewed will be sold to consumers
 53 for consumption on the vendor's licensed premises or on
 54 contiguous licensed premises owned by the vendor.
 55 Section 2. Subsection (1) of section 561.5101, Florida
 56 Statutes, is amended to read:
 57 561.5101 Come-to-rest requirement; exceptions; penalties.—
 58 (1) For purposes of inspection and tax-revenue control, all

Page 2 of 4

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59 malt beverages, except those manufactured and sold by the same
 60 licensee, pursuant to s. 561.221(2) or (3), must come to rest at
 61 the licensed premises of an alcoholic beverage wholesaler in
 62 this state before being sold to a vendor by the wholesaler. The
 63 prohibition contained in this subsection does not apply to the
 64 shipment of malt beverages commonly known as private labels. The
 65 prohibition contained in this subsection shall not prevent a
 66 manufacturer from shipping malt beverages for storage at a
 67 bonded warehouse facility, provided that such malt beverages are
 68 distributed as provided in this subsection or to an out-of-state
 69 entity. The prohibition contained in this subsection does not
 70 apply to a manufacturer delivering alcoholic beverages to a
 71 licensed vendor as provided in s. 561.221(2)(f).

72 Section 3. Subsection (2) of section 561.57, Florida
 73 Statutes, is amended to read:

74 561.57 Deliveries by licensees.—

75 (2) Deliveries made by a manufacturer, distributor, or
 76 vendor away from his or her place of business may be made only
 77 in vehicles that ~~which~~ are owned or leased by the licensee.
 78 However, a manufacturer authorized to make deliveries under s.
 79 561.221(2)(f) to the licensed premises of a vendor may transport
 80 malt beverages if the vehicle used to transport the alcoholic
 81 beverages is owned or leased by the manufacturer or any person
 82 who has been disclosed on a license application filed by the
 83 manufacturer and approved by the division. By acceptance of an
 84 alcoholic beverage license and the use of such vehicles, the
 85 licensee agrees that such vehicle shall always be subject to be
 86 inspected and searched without a search warrant, for the purpose
 87 of ascertaining that all provisions of the alcoholic beverage

Page 3 of 4

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

580-01967-17

2017554c1

88 laws are complied with, by authorized employees of the division
 89 and also by sheriffs, deputy sheriffs, and police officers
 90 during business hours or other times the vehicle is being used
 91 to transport or deliver alcoholic beverages.

92 Section 4. Paragraph (d) of subsection (14) of section
 93 563.022, Florida Statutes, is amended to read:

94 563.022 Relations between beer distributors and
 95 manufacturers.—

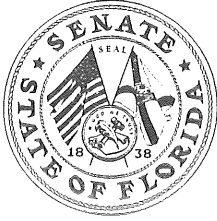
96 (14) MANUFACTURER; PROHIBITED INTERESTS.—

97 (d) Nothing in the Beverage Law shall be construed to
 98 prohibit a manufacturer from shipping products to or between its
 99 breweries, or between its breweries and the licensed premises of
 100 a vendor as provided in s. 561.221(2)(f), without a
 101 distributor's license.

102 Section 5. This act shall take effect July 1, 2017.

Page 4 of 4

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Health Policy, *Chair*
Appropriations Subcommittee on Pre-K - 12
Education, *Vice Chair*
Commerce and Tourism
Communications, Energy, and Public Utilities
Regulated Industries

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR DANA YOUNG

18th District

February 24, 2017

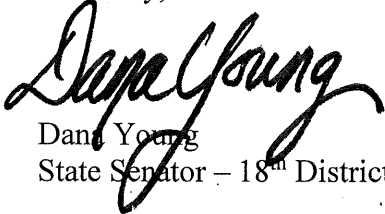
Senator Bill Montford, Chair
Commerce and Tourism Committee
310 Knott Building
404 S. Monroe Street
Tallahassee, Florida 32399-1100

Dear Chair Montford,

My Senate Bill 554, Craft Breweries has been referred to our committee for a hearing. As a member of the committee, I respectfully request that this bill be placed on the next available agenda.

If I may provide any additional information, please do not hesitate to contact me.

Sincerely,



Dana Young
State Senator – 18th District

DY:mfh

cc: Todd McKay, Staff Director – Commerce and Tourism Committee

REPLY TO:

- 1211 N. Westshore Blvd, Suite 409, Tampa, Florida 33607 (813) 281-5507
- 316 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5018

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
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 March 27, 2017

Bill Number (if applicable) 554

Topic Craft Beer

Amendment Barcode (if applicable) _____

Name Josh Aubuchon

Job Title Attorney

Address 315 S. Calhoun St., Suite 600

Phone 224-7000

City Tallahassee State FL Zip 32301

Email _____

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

Representing Florida Brewers Guild

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

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/27/17

Meeting Date

CS/SB 554

Bill Number (if applicable)

Topic Craft Breweries

Amendment Barcode (if applicable)

Name Mitch Rubin

Job Title Executive Director

Address 215 S. Monroe St # 340

Phone 850-224-2330

Street Tallahassee, FL

Email Mitch@fbwv.com

City State

Zip 32301

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

Representing Florida Beer Wholesalers Assn

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

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

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

Meeting Date

Bill Number (if applicable)

3-27-17

554

Topic

Carroll Bricevorts

Amendment Barcode (if applicable)

Name

Don Costello

Job Title

Address

118 S Monroe St

Phone

906-850-5114

Street

Tallahassee FL 32310

Email

don@doncostello.com

City

State

Zip

Speaking:

For

Against

Information

Waive Speaking:

In Support

Against

(The Chair will read this information into the record.)

Representing

Miller Coors

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 3/27

Bill Number (if applicable) 554

Amendment Barcode (if applicable) _____

Topic Beer - Self Distribution

Name Eric Coiss

Job Title President

Address 110 S. Monroe St

Street Tallahassee City FL State 32301 Zip

Phone 491 3903

Email eric@floridabeers.org

Speaking: For Against Information

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

Representing Beer Industry of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date 3/27

Amendment Barcode (if applicable) CS SB 554

Topic Beer - self Distribution

Bill Number (if applicable) 455550

Name Eric Criss

Job Title President

Address 110 S. Monroe St

Phone 991-3903

City _____ State _____ Zip _____

Email eric@floridabeers.org

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

Representing Beer Industry of Florida

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

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

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 3/27/17

09/305 554
Bill Number (if applicable)

855550
Amendment Barcode (if applicable)

Topic Craft Breweries

Amendment

Name Mitch Rubin

Job Title _____

Address 215 S. Monroe St # 348

Phone 850-224-2387

Street 215 S. Monroe St
City Palmdale State FL Zip 32301

Email Mitch@fbwa.com

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

Representing Florida Beer Wholesalers Assn

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

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

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

CourtSmart Tag Report

Room: EL 110

Case No.:

Type:
Judge:

Caption: Senate Committee on Commerce and Tourism

Started: 3/27/2017 1:32:56 PM

Ends: 3/27/2017 2:38:08 PM

Length: 01:05:13

1:32:55 PM Meeting called to order
1:32:59 PM Roll call
1:33:02 PM Quorum present
1:33:19 PM Pledge
1:33:48 PM Tab 1
1:34:22 PM SB 572 by Senator Campbell
1:34:34 PM Amendment 396826
1:34:50 PM Back on bill as amended
1:35:11 PM Senator Campbell on SB 572
1:35:32 PM Questions?
1:36:31 PM Debate?
1:36:36 PM Senator Campbell closes on SB 572
1:36:49 PM Roll call on SB 572
1:37:08 PM SB 572 reported favorably
1:37:19 PM Tab 2
1:37:24 PM SB 650 TPed
1:37:31 PM Tab 3
1:37:35 PM CS/SB 794
1:37:43 PM CS/SB 794 by Senator Brandes
1:38:17 PM Questions?
1:38:24 PM Appearance cards?
1:38:29 PM Tim Meenan, Ethos Inc.
1:38:42 PM Debate?
1:38:44 PM Senator Brandes closes on CS/SB 794
1:38:56 PM CS/SB 794 reported favorably
1:39:13 PM Tab 4
1:39:16 PM SB 812 by co-sponsor Gibson
1:40:10 PM Questions?
1:41:14 PM Appearance forms?
1:41:19 PM Tim Meenan, Nationwide Insurance
1:41:33 PM Debate?
1:41:37 PM Senator Rodriguez
1:41:53 PM Senator Gibson closes on CS/SB 812
1:42:15 PM CS/SB 812 reported favorably
1:42:30 PM Tab 5
1:42:33 PM SB 1698 by Senator Baxley
1:42:45 PM Questions?
1:43:30 PM Senator Passidomo
1:43:35 PM Senator Baxley
1:44:37 PM Senator Gibson
1:45:24 PM Senator Baxley
1:46:10 PM Senator Gibson
1:46:55 PM Senator Baxley
1:48:51 PM Senator Montford
1:49:50 PM Debate?
1:50:33 PM Senator Passidomo
1:51:49 PM Senator Baxley closes on SB 1698
1:52:48 PM Senator Baxley closes on SB 1698
1:52:48 PM SB 1698 reported favorably
1:53:24 PM Tab 6
1:53:29 PM CS/SB 466 by Senator Hutson
1:53:41 PM Amendment 141476

1:54:14 PM Questions?
1:54:40 PM Senator Rodriguez
1:55:03 PM Senator Hutson
1:56:17 PM Senator Young
1:57:16 PM Senator Hutson
1:58:02 PM Senator Young
1:59:01 PM Senator Hutson
1:59:58 PM Senator Hutson closes on amendment 141476
2:00:58 PM Back on the bill as amended
2:01:01 PM Questions?
2:01:07 PM Appearance forms?
2:01:11 PM Ted Smith, FL Automobile Dealers Association
2:01:35 PM Ron Book, Auto Nation
2:06:30 PM Gary Hunter, Alliance of Automobile Mfg.'s.
2:09:24 PM Brewster Bevis, Associated Industries of Florida
2:11:07 PM Debate?
2:11:30 PM Senator Gainer
2:11:35 PM Senator Hutson
2:12:30 PM Debate?
2:13:30 PM Senator Gibson
2:15:15 PM Senator Hutson closes on SB 466 as amended
2:16:21 PM SB 466 reported favorably
2:17:20 PM Tab 7
2:17:30 PM SB 554 by Senator Young
2:17:39 PM Short Recess
2:17:40 PM Recording Paused
2:17:40 PM Recording Resumed
2:18:33 PM Recording Paused
2:28:20 PM Recording Resumed
2:28:20 PM Meeting back to order
2:28:49 PM Tab 7
2:29:49 PM Senator Young on CS/SB 554
2:30:00 PM Amendment on the bill barcode 855550
2:30:27 PM Senator Latvala on barcode 855550
2:30:37 PM Mitch Rubin, Florida Beer Wholesalers
2:31:07 PM Eric Criss, Beer Industry of Florida
2:31:23 PM Senator Latvala closes on amendment barcode 855550
2:31:53 PM Amendment is adopted
2:32:09 PM Back on bill as amended
2:32:12 PM Questions?
2:32:21 PM Senator Gibson
2:32:25 PM Senator Young
2:32:59 PM Senator Gibson
2:33:22 PM Senator Young
2:33:42 PM Senator Gibson
2:34:18 PM Senator Young
2:34:39 PM Appearance forms?
2:35:27 PM Josh Aubuchon, Florida Brewers Guild
2:35:58 PM Jon Costello, Miller/Coors
2:36:00 PM Mitch Rubin, Florida Brwers Wholesalers
2:36:03 PM Eric Criss, Beer Industry of Florida
2:36:12 PM Senator Young closes on bill as amended
2:36:51 PM SB 554 reported favorably
2:37:50 PM Senator Young moves to adjourn
2:37:58 PM Meeting Adjourned