SB 414 by **Altman**; (Similar to CS/H 0071) Service Animals

892640	A	S	CM, Bean	Delete L.67 - 92:	03/27 04:11 PM

SB 564 by **Richter**; (Similar to CS/H 0091) Trade Secrets

631270	A	S	CM, Richter	Delete L.67 - 75.	03/27 04:10 PM

SB 566 by **Richter**; (Similar to CS/H 0093) Public Records/Trade Secrets

888378	A	S	CM, Richter	Delete L.303 - 314:	03/27 04:10 PM
851880	A	S	CM, Richter	Delete L.521 - 540:	03/27 04:34 PM

CS/SB 596 by **RI, Hays**; (Similar to CS/H 0263) Craft Distilleries

413416	A	S	CM, Richter	btw L.75 - 76:	03/30 07:12 AM

SB 742 by **Simpson**; (Compare to CS/H 0463) Ticket Sales

702540	D	S	CM, Bean	Delete everything after	03/27 04:09 PM

CS/SB 806 by **BI, Richter**; (Identical to CS/H 0703) Regulation of Financial Institutions

507830	A	S	CM, Latvala	Delete L.252:	03/27 04:10 PM

CS/SB 916 by **BI, Montford**; (Identical to CS/H 0639) Commercial Insurer Rate Filing Procedures

CS/SB 968 by **BI, Detert**; (Identical to CS/CS/H 0731) Employee Health Care Plans

CS/SB 998 by **RI, Margolis**; (Similar to H 0823) Alcoholic Beverages

132462	A	S	L	CM, Thompson	Delete L.25 - 26:	03/27 04:22 PM

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

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

MEETING DATE: Monday, March 30, 2015
TIME: 4:00 —6:00 p.m.
PLACE: *Toni Jennings Committee Room,* 110 Senate Office Building

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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 414** Altman (Similar CS/H 71)	Service Animals; Requiring a public accommodation to permit use of a service animal by an individual with a disability under certain circumstances; prohibiting a public accommodation from inquiring about the nature or extent of an individual's disability; providing conditions for a public accommodation to exclude or remove a service animal; revising penalties for certain persons or entities who interfere with use of a service animal in specified circumstances; providing a penalty for knowing and willful misrepresentation with respect to use or training of a service animal, etc. CM 03/30/2015 CA FP	
2	**SB 564** Richter (Similar CS/H 91, Compare CS/H 93, Link S 566)	Trade Secrets; Including financial information in provisions prohibiting the theft, embezzlement, or unlawful copying of trade secrets; providing criminal penalties, etc. CM 03/30/2015 CJ RC	
3	**SB 566** Richter (Similar CS/H 93, Compare CS/H 91, Link S 564)	Public Records/Trade Secrets; Expanding public records exemptions for certain data processing software obtained by an agency, certain information held by a county tourism promotion agency, information related to trade secrets held by specified entities, and specified data, programs, or supporting documentation held by an agency; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity, etc. CM 03/30/2015 GO RC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**CS/SB 596** Regulated Industries / Hays (Similar H 263)	Craft Distilleries; Defining the term “branded product”; revising the current limitation on the number of containers that may be sold to consumers by craft distilleries; applying such limitation to individual containers for each branded product; prohibiting a craft distillery from shipping or arranging to ship any of its distilled spirits to consumers; providing an exception, etc. RI 03/11/2015 Fav/CS CM 03/30/2015 FP	
5	**SB 742** Simpson (Similar H 463)	Ticket Sales; Prohibiting a person from selling, using, or causing to be used specified means to bypass portions of the ticket-buying process or disguise the identity of the ticket purchaser under certain circumstances; deleting a civil penalty and upgrading the severity of a certain offense to a misdemeanor of the second degree; establishing registration requirements for a ticket broker, etc. CM 03/30/2015 CJ AP	
6	**CS/SB 806** Banking and Insurance / Richter (Identical CS/H 703)	Regulation of Financial Institutions; Requiring mailed semiannual assessments to be received by the Office of Financial Regulation by a specified date; deleting the requirement that the office select a licensed or certified appraiser to conduct certain appraisals; revising the individuals for whom certain information must be provided to the office on an application for authority to organize a banking corporation or trust company, etc. BI 03/17/2015 Fav/CS CM 03/30/2015 RC	
7	**CS/SB 916** Banking and Insurance / Montford (Identical CS/H 639)	Commercial Insurer Rate Filing Procedures; Restricting to certain property rate filings a requirement that the chief executive officer or chief financial officer and chief actuary of a property insurer certify the information contained in a rate filing; exempting commercial nonresidential multiperil insurance from annual base rate filing, etc. BI 03/10/2015 Fav/CS CM 03/30/2015 RC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	**CS/SB 968** Banking and Insurance / Detert (Identical CS/CS/H 731)	Employee Health Care Plans; Removing provisions requiring certain insurance carriers to provide semiannual reports to the Office of Insurance Regulation; repealing requirements that certain insurance carriers offer standard, basic, high deductible, and limited health benefit plans; authorizing certain health benefit plans to use a stop-loss insurance policy; defining the term “stop-loss insurance policy”; providing requirements for such policies, etc. BI 03/23/2015 Fav/CS CM 03/30/2015 AP	
9	**CS/SB 998** Regulated Industries / Margolis (Similar H 823, H 1247, Compare S 536)	Alcoholic Beverages; Defining the term “powdered alcohol”; prohibiting the sale, offer for sale, purchase, use, offer for use, or possession of powdered alcohol; providing penalties; providing an exemption for the use of powdered alcohol by specified entities for research purposes; providing an exemption for the possession of powdered alcohol solely for the purpose of transportation through this state by specified entities, etc. RI 03/18/2015 Fav/CS CM 03/30/2015 RC	
	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:	SB 414
INTRODUCER:	Senator Altman
SUBJECT:	Service Animals
DATE:	March 27, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Siples	McKay	CM	**Pre-meeting**
2.			CA	
3.			FP	

I. Summary:

SB 414 amends Florida's law related to service animals and aligns it with similar provisions in the American with Disabilities Act and the Fair Housing Act. The bill revises the definitions of individual with a disability and related terms. The bill redefines "service animal," and for the purposes of public accommodation, limits the term to a dog or miniature horse. The bill expands the definition of public accommodation to include certain timeshares.

The bill requires a business to modify its policies, practices, and procedures to accommodate the use of a service animal by an individual with a disability. Although a business may not ask about the nature of an individual's disability, it may ask if the service animal is required because of a disability and what tasks the service animal is trained to perform. A service animal must be on a leash or harness unless it would interfere with the service animal's ability to perform the tasks it is trained to do. However, it must still be under the handler's control. If an animal is not under the handler's control, is not housebroken, or poses a threat, the business may request its removal. In addition to the criminal penalties in current law, the bill requires a business unlawfully denying or interfering with an individual's right to use or train a service animal to perform 30 hours of community service with an organization that serves individuals with disabilities.

The bill creates a second-degree misdemeanor for a person who knowingly and willfully misrepresents that he or she is qualified to use a service animal or is a trainer of service animals. In addition to the criminal penalty, an individual in violation of this provision must also perform 30 hours of community service with an organization that serves individuals with disabilities.

II. Present Situation:

Americans with Disabilities Act

The Americans with Disabilities Act (ADA)[1] prohibits discrimination against individuals with disabilities[2] in employment,[3] in the provision of public services,[4] and in public accommodations and businesses.[5] One of the requirements of the ADA is that public entities and businesses provide reasonable accommodations to disabled individuals accompanied by a service animal in all areas that are open to the public.[6]

A service animal is defined as a dog that is individually trained to do work or perform tasks for an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.[7] The work or tasks performed by a service dog must be directly related to the individual's disability.[8] Emotional support, comfort, and companionship provided by a dog, even for therapeutic or medical purposes, are insufficient to classify it as a service animal.[9]

Service dogs must be harnessed or leashed, unless doing so interferes with the dog's work or the individual's disability prevents doing so.[10] A person with a disability cannot be asked to remove his or her service dog from the premises, unless it is out of control and the dog's handler does not take action to control it, or if the dog is not housebroken.[11] However, if the dog is removed under such circumstances, the business or public entity must still allow the individual with a disability the opportunity to remain at the business or public entity without the service dog.[12]

Generally, when it is clear that a dog is trained to do work or perform tasks (such as a guide dog), a business or public entity may not ask about the necessity of the service dog. If it is not obvious what service or task the dog is providing, extremely limited questions are allowed: staff may only ask if a service dog is required because of a disability, and what tasks the dog has been trained to perform.[13] Any other questions, including the nature and extent of the person's disability or medical documentation, are prohibited.[14]

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[1] 42 U.S.C. s. 12101 *et seq*.
[2] Under the ADA, a disability is broadly defined to mean a physical or mental impairment that substantially limits the major life activities of an individual, having a record of such impairment, or being regarded as having such an impairment. 42 U.S.C. s. 12102(1).
[3] 42 U.S.C. s. 12112.
[4] 42 U.S.C. s. 12132.
[5] 42 U.S.C. s. 12182.
[6] 28 C.F.R. ss. 36.302(a) and (c)(7) and 35.136(a) and (g).
[7] 28 C.F.R. ss. 35.104 and 36.104.
[8] *Id.*
[9] *Id.*; ADA National Network, *Service Animals and Emotional Support Animals: Where are they allowed and under what conditions?*, 3 (2014), *available at* http://adata.org/sites/adata.org/files/files/Service_Animal_Booklet_2014(1).pdf (last visited Mar. 20, 2015).
[10] 28 C.F.R. ss. 35.136(d) and 36.302(b)(4).
[11] 28 C.F.R. ss. 35.136(b) and 36.302(c)(2).
[12] 28 C.F.R. ss. 35.136(c) and 36.302(c)(3).
[13] 28 C.F.R. ss. 35.136(f) and 36.302(c)(6).
[14] *Id.*

Although the definition of a service animal is limited to dogs, the ADA contains an additional provision related to miniature horses that have been individually trained to work or perform tasks for individuals with disabilities.[15] Miniatures horses are an alternative to individuals with disabilities who may be allergic to dogs or whose religious belief precludes the use of dogs. [16] Additionally, miniature horses also have life spans considerably longer than dogs and are generally stronger than most dogs. Similar to the requirements for service dogs, public entities and public accommodations and businesses must permit the use of a miniature horse by an individual with a disability, where reasonable. In determining whether permitting a miniature horse is reasonable, a facility must consider four factors:

- Whether the miniature horse is housebroken;
- Whether the miniature horse is under the owner's control;
- Whether the facility can accommodate the miniature horse's type, size, and weight; and
- Whether the miniature horse's presence will compromise safety requirements.[17]

If a business or public entity violates the ADA, a private party may file suit to obtain a court order to stop the violation. No monetary damages will be available in such suits; however, a reasonable attorney's fee may be awarded.[18] Individuals may also file complaints with the U.S. Attorney General, who is authorized to bring lawsuits in cases of general public importance or where a "pattern or practice" of discrimination is alleged.[19] In suits brought by the Attorney General, monetary damages and civil penalties may be awarded. Civil penalties may not exceed $50,000 for a first violation or $100,000 for any subsequent violation.[20]

Fair Housing Act

The federal Fair Housing Act (FHA)[21] prohibits discrimination against a person with a disability in the sale or rental of housing.[22] Similar to the ADA, the FHA also requires a property owner to provide reasonable accommodations, including permitting the use of service animals, for a person with a disability.[23] However, unlike the ADA, which does not require reasonable accommodations for emotional support animals, accommodation of untrained emotional support animals may be required under the FHA if such an accommodation is reasonably necessary to allow a person with a handicap an equal opportunity to enjoy and use housing.[24]

A property owner may not ask about the existence, nature, and extent of a person's disability. However, an individual with a disability who requests a reasonable accommodation may be

[15] 28 C.F.R. ss. 35.136(i) and 36.302(c)(9). Miniature horses generally range in height from 2 to 3 feet to the shoulders and weigh between 70 and 100 pounds. U.S. Dep't of Justice, Civil Rights Division, *Service Animals*, 3 (July 2011), *available at* http://www.ada.gov/service_animals_2010.pdf (last visited Mar. 23, 2015).
[16] U.S. Dep't. of Justice, *Americans with Disabilities Act Title III Regulations: Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities*, 96 (Sept. 15, 2010) *available at* http://www.ada.gov/regs2010/titleIII_2010/titleIII_2010_regulations.pdf (last visited Mar. 25, 2015).
[17] 28 C.F.R. ss. 35.136(i) and 36.302(c)(9).
[18] 42 U.S.C. ss. 12188 and 2000a-3.
[19] 42 U.S.C. s. 12188(b)(1)(B).
[20] 42 U.S.C. s 12188(b)(2).
[21] 42 U.S.C. s. 3601 *et seq.*
[22] 42 U.S.C. s. 3604(f).
[23] *Id*.; 24 C.F.R. 5.303.
[24] 73 Fed Reg. 63834, 63836.

asked to provide documentation so that the property owner can properly review the accommodation request. They can ask a person to certify, in writing, that the tenant or a member of his or her family is a person with a disability; the need for the animal to assist the person with that specific disability; and that the animal actually assists the person with a disability.[25]

Air Carrier Access Act

The federal Air Carrier Access Act prohibits discrimination, by an air carrier, against an individual with disabilities in the provision of air transportation.[26] In air transportation, emotional and psychiatric service animals are also allowable.[27] Air carriers are generally required to accommodate service animals; however, an air carrier is not required to accommodate certain unusual service animals, such as snakes, reptiles, and spiders. If the service animal is precluded from traveling in the cabin, the airline must advise the passenger of the reason of the denial and document the denial in writing.[28]

The Air Carrier Access Act preempts any state law that relates to the price, route, or service of an air craft carrier governed by its provisions.[29]

Florida Service Animal Law

Section 413.08, F.S., specifies Florida law regarding service animals, and while it is similar to the ADA and FHA, s. 413.08, F.S., contains some significant differences from the ADA and the FHA. Consequently, businesses and public entities in Florida that comply with Florida law may be in violation of the ADA or the FHA.

Section 413.08, F.S., provides that an individual with a disability is entitled to equal access in public accommodations,[30] public employment,[31] and housing.[32] An "individual with a disability" means a person who is deaf, hard of hearing, blind, visually impaired, or otherwise has a physical impairment that substantially limits one or more major life activities.[33] Unlike the ADA and FHA, this definition does not include mental impairment. Consequently, s. 413.08, F.S., is narrower in scope than the ADA and FHA.

Under s. 413.08, F.S., an individual with a disability has the right to be accompanied by a trained service animal in all areas of public accommodations that the public is normally allowed to

[25] 73 Fed Reg. 63834.
[26] 49 U.S.C. s.41705.
[27] 42 C.F.R. s. 382.117
[28] *Id.* at (a) and (f). The air carrier must take into account such factors as whether the animal is too large or heavy to be accommodated in the cabin, whether the animal poses a direct threat to the health and safety of others, whether it would cause a significant disruption of cabin service, or whether the service animal would be denied entry to a foreign country that is the flight's destination.
[29] 49 U.S.C. s. 41713.
[30] Section 413.08(2), F.S. Pursuant to s.413.08(1)(c), F.S., a public accommodation is "a common carrier, airplane, motor vehicle, railroad train, motor bus, streetcar, boat, or other public . . . transportation; hotel; lodging place; place of public accommodation, amusement, or resort; and other places to which the general public is invited . . . .".
[31] Section 413.08(5), F.S.
[32] Section 413.08(6), F.S.
[33] Section 413.08(1)(b), F.S.

occupy.[34] However, unlike the ADA, s. 413.08, F.S., does not require a public accommodation to provide reasonable accommodations to such individuals.

Section 413.08, F.S., defines "service animal" broadly to mean "an animal that is trained to perform tasks for an individual with a disability," and does not limit service animals only to dogs as in the ADA.[35] Additionally, because the definition of "individual with a disability" under s. 413.08, F.S., does not include mental impairment, an animal that is trained to perform work or tasks for an individual with a mental impairment is not considered a service animal under this section, as it would be under the ADA.

Similar to the ADA, s. 413.08, F.S., provides that documentation that a service animal is trained is not a precondition for providing service, though a public accommodation may ask if an animal is a service animal or what tasks it is trained to perform.[36] However, unlike the ADA, s. 413.08, F.S., does not prohibit asking about the nature or extent of an individual's disability nor does it require the service animal be under the control of its handler and have a harness or leash. Although s. 413.08, F.S., permits a public accommodation to exclude or remove a service animal if its behavior poses a direct threat to the health and safety of others,[37] unlike the ADA it does not specify that a public accommodation may remove a service animal if it is out of control or not housebroken.

Like the FHA, under s. 413.08, F.S., an individual with a disability is entitled to rent or purchase any housing accommodations subject to the same conditions that are applicable to everyone.[38] An individual with a disability who has a service animal is entitled to full and equal access to all housing accommodations, and may not be required to pay extra compensation for the service animal.[39] Unlike the FHA, s. 413.08, F.S., does not provide an individual with a disability who has an emotional support animal with the same housing accommodation rights as an individual with a disability who has a service animal.

Section 413.08, F.S., provides that any person who denies or interferes with the rights of a person with a disability or an individual training a service animal commits a second-degree misdemeanor.[40]

III. Effect of Proposed Changes:

The bill amends s. 413.08, F.S., to revise definitions, clarify the rights of an individual with a disability to use a service animal in public accommodations, and provide penalties for an individual who knowingly misrepresents himself or herself as being qualified to have a service animal in a public accommodation.

[34] Section 413.08(3), F.S.
[35] Section 413.08(1)(d), F.S.
[36] Section 413.08(3)(a), F.S.
[37] Section 413.08(3)(e), F.S.
[38] Section 413.08(6), F.S.
[39] *Id.* at (6)(b).
[40] A second-degree misdemeanor is punishable by up to 60 days in jail or a fine up to $500. Sections 775.082(4)(b) and 775.083(1)(e), F.S.

Definitions

The bill revises the definition of "individual with a disability" to mean a person with a physical or mental impairment that substantially limits one or more major life activities, such as caring for oneself, walking, seeing, speaking, and performing manual tasks. A "physical or mental impairment" is defined to include physiological disorders that affect one or more bodily functions, and mental or psychological disorders as specified by the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

The bill revises the definition of public accommodations to include a time share that is a transient public lodging establishment, which means it is rented to guests more than three times in a calendar year for periods of less than a month, or is held out to the public as a place that regularly rents to guests.[41]

The definition of service animal is revised to include animals trained to work or perform tasks to assist individuals with physical, sensory, psychiatric, intellectual, or other mental disabilities. The work or tasks performed by the service animal must be directly related to the disability. The bill includes examples of work or tasks performed by a service animal, such as providing physical support with balance and stability to an individual with a mobility disability, reminding an individual with mental illness to take his or her medications, and calming an individual with posttraumatic stress disorder during an anxiety attack. The bill specifies that any crime-deterrent effect due to an animal's presence or the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks within the definition of a service animal. Further, for the purposes of the provisions related to public accommodations, a service animal is limited to dogs and miniature horses.

Public Accommodations

The bill requires a public accommodation to modify its policies, practices, and procedures to permit use of a service animal by a person with a disability. The bill also provides that a service animal must be kept under the control of its handler by a leash or harness, unless doing so interferes with the dog's work or the individual's disability prevents doing so. A public accommodation may remove the animal if it is out of control and the handler does not take effective measures to control it, the animal is not housebroken, or the animal's behavior poses a serious threat to others. A public accommodation may not ask about the nature or extent of an individual's disability in order to determine whether an animal is a service animal or pet, but it may ask whether an animal is a service animal required because of a disability and what work the animal has been trained to perform. The bill exempts air carriers covered by the Air Carrier Access Act of 1986, from the definition of service animal and provides that the definition of service animals is governed by the regulations of the United States Department of Transportation.

The bill provides an additional penalty for any person who interferes with the rights of an individual with a disability or a person training a service animal. In addition to the current second-degree misdemeanor penalty, the bill also requires such person to complete 30 hours of

[41] Section 509.013(4)(a)1., F.S., defines public lodging establishment.

community service for an organization that serves individuals with disabilities or other court-determined organization within 6 months of the court's order.

Housing Accommodations

The bill clarifies that the provisions of s. 413.08(6), F.S., do not limit the rights or remedies of a housing accommodation or an individual with a disability that are granted by federal law or another law of this state with regard to other assistance animals. Section 413.08(6), F.S., provides that an individual with a disability is entitled to rent or lease housing accommodations, under the same conditions as other individuals.[42]

Misrepresentation of Service Animals

The bill makes it a second-degree misdemeanor to knowingly and willfully misrepresent oneself as using a service animal and being qualified to use a service animal, or as a trainer of a service animal. A violation is punishable by up to 60 days in jail, a fine up to $500,[43] and 30 hours of community service for an organization that serves individuals with disabilities or other court-determined organization, to be completed within 6 months.

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.

[42] This section does not require a person providing the rental property to modify the property to provide a higher degree of care for an individual with a disability than for an individual without a disability.
[43] Sections 775.082(4)(b) and 775.083(1)(e), F.S.

C. Government Sector Impact:

The judicial system may incur costs related to prosecution and enforcement of the provisions of the bill. Specifically, the bill makes it a second-degree misdemeanor to misrepresent that one is qualified to use or train a service animal.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 413.08 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.

892640

LEGISLATIVE ACTION

Senate . House

. . . . . .

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

Senate Amendment

Delete lines 67 - 92
and insert:
alike to all persons. The term does not include air carriers covered by the Air Carrier Access Act of 1986, 49 U.S.C. s. 41705, and by regulations that implement such act that are adopted by the United States Department of Transportation.

(d) "Service animal" means an animal that is trained to do work or perform tasks for an individual with a disability,

892640

including a physical, sensory, psychiatric, intellectual, or other mental disability. The work done or tasks performed must be directly related to the individual's disability and may include, but are not limited to, guiding an individual ~~a person~~ who is visually impaired or blind, alerting an individual ~~a person~~ who is deaf or hard of hearing, pulling a wheelchair, assisting with mobility or balance, alerting and protecting an individual ~~a person~~ who is having a seizure, retrieving objects, alerting an individual to the presence of allergens, providing physical support and assistance with balance and stability to an individual with a mobility disability, helping an individual with a psychiatric or neurological disability by preventing or interrupting impulsive or destructive behaviors, reminding an individual with mental illness to take prescribed medications, calming an individual with posttraumatic stress disorder during an anxiety attack, or doing other specific work or performing other special tasks. For purposes of subsections (2), (3), and (4), the term is limited to a dog or miniature horse. A service animal is not a pet. The crime-deterrent

By Senator Altman

16-00385-15 2015414__

A bill to be entitled

An act relating to service animals; amending s. 413.08, F.S.; providing and revising definitions; requiring a public accommodation to permit use of a service animal by an individual with a disability under certain circumstances; prohibiting a public accommodation from inquiring about the nature or extent of an individual's disability; providing conditions for a public accommodation to exclude or remove a service animal; revising penalties for certain persons or entities who interfere with use of a service animal in specified circumstances; specifying that the act does not limit certain rights or remedies granted under federal or state law; providing a penalty for knowing and willful misrepresentation with respect to use or training of a service animal; providing an effective date.

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

Section 1. Section 413.08, Florida Statutes, is amended to read:

413.08 Rights and responsibilities of an individual with a disability; use of a service animal; prohibited discrimination in public employment, public accommodations, and ~~or~~ housing accommodations; penalties.—

(1) As used in this section and s. 413.081, the term:

(a) "Housing accommodation" means any real property or portion thereof which is used or occupied, or intended,

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arranged, or designed to be used or occupied, as the home, residence, or sleeping place of one or more persons, but does not include any single-family residence, the occupants of which rent, lease, or furnish for compensation not more than one room therein.

(b) "Individual with a disability" means a person who has a physical or mental impairment that substantially limits one or more major life activities of the individual ~~is deaf, hard of hearing, blind, visually impaired, or otherwise physically disabled~~. As used in this paragraph, the term:

1. "Major life activity" means a function such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working ~~"Hard of hearing" means an individual who has suffered a permanent hearing impairment that is severe enough to necessitate the use of amplification devices to discriminate speech sounds in verbal communication~~.

2. "Physical or mental impairment" means:

a. A physiological disorder or condition, disfigurement, or anatomical loss that affects one or more bodily functions; or

b. A mental or psychological disorder that meets one of the diagnostic categories specified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association, such as an intellectual or developmental disability, organic brain syndrome, traumatic brain injury, posttraumatic stress disorder, or an emotional or mental illness ~~"Physically disabled" means any person who has a physical impairment that substantially limits one or more major life activities~~.

(c) "Public accommodation" means a common carrier, airplane, motor vehicle, railroad train, motor bus, streetcar, boat, or other public conveyance or mode of transportation; hotel; a timeshare that is a transient public lodging establishment as defined in s. 509.013; lodging place; place of public accommodation, amusement, or resort; and other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons.

(d) "Service animal" means an animal that is trained to do work or perform tasks for an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. The work done or tasks performed must be directly related to the individual's disability and may include, but are not limited to, guiding an individual ~~a person~~ who is visually impaired or blind, alerting an individual ~~a person~~ who is deaf or hard of hearing, pulling a wheelchair, assisting with mobility or balance, alerting and protecting an individual ~~a person~~ who is having a seizure, retrieving objects, alerting an individual to the presence of allergens, providing physical support and assistance with balance and stability to an individual with a mobility disability, helping an individual with a psychiatric or neurological disability by preventing or interrupting impulsive or destructive behaviors, reminding an individual with mental illness to take prescribed medications, calming an individual with posttraumatic stress disorder during an anxiety attack, or doing other specific work or performing other special tasks. A service animal is not a pet. For purposes of subsections (2), (3), and (4), the term "service animal" is

limited to a dog or miniature horse, except that the term, as applied to an air carrier covered by the Air Carrier Access Act of 1986, 49 U.S.C. s. 41705, shall be as provided in the act and by regulations adopted by the United States Department of Transportation that implement the act. The crime-deterrent effect of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for purposes of this definition.

(2) An individual with a disability is entitled to full and equal accommodations, advantages, facilities, and privileges in all public accommodations. A public accommodation must modify its policies, practices, and procedures to permit use of a service animal by an individual with a disability. This section does not require any person, firm, business, or corporation, or any agent thereof, to modify or provide any vehicle, premises, facility, or service to a higher degree of accommodation than is required for a person not so disabled.

(3) An individual with a disability has the right to be accompanied by a service animal in all areas of a public accommodation that the public or customers are normally permitted to occupy.

(a) The service animal must be under the control of its handler and must have a harness, leash, or other tether, unless either the handler is unable because of a disability to use a harness, leash, or other tether, or the use of a harness, leash, or other tether would interfere with the service animal's safe, effective performance of work or tasks, in which case the service animal must be otherwise under the handler's control by means of voice control, signals, or other effective means.

(b) ~~(a)~~ Documentation that the service animal is trained is not a precondition for providing service to an individual accompanied by a service animal. A public accommodation may not ask about the nature or extent of an individual's disability. To determine the difference between a service animal and a pet, a public accommodation may ask if an animal is a service animal required because of a disability and what work or ~~what~~ tasks the animal has been trained to perform ~~in order to determine the difference between a service animal and a pet~~.

(c) ~~(b)~~ A public accommodation may not impose a deposit or surcharge on an individual with a disability as a precondition to permitting a service animal to accompany the individual with a disability, even if a deposit is routinely required for pets.

(d) ~~(c)~~ An individual with a disability is liable for damage caused by a service animal if it is the regular policy and practice of the public accommodation to charge nondisabled persons for damages caused by their pets.

(e) ~~(d)~~ The care or supervision of a service animal is the responsibility of the individual owner. A public accommodation is not required to provide care or food or a special location for the service animal or assistance with removing animal excrement.

(f) ~~(e)~~ A public accommodation may exclude or remove any animal from the premises, including a service animal, if the animal is out of control and the animal's handler does not take effective action to control it, the animal is not housebroken, or the animal's behavior poses a direct threat to the health and safety of others. Allergies and fear of animals are not valid reasons for denying access or refusing service to an individual

with a service animal. If a service animal is excluded or removed for being a direct threat to others, the public accommodation must provide the individual with a disability the option of continuing access to the public accommodation without having the service animal on the premises.

(4) Any person, firm, or corporation, or the agent of any person, firm, or corporation, who denies or interferes with admittance to, or enjoyment of, a public accommodation or, with regard to a public accommodation, otherwise interferes with the rights of an individual with a disability or the trainer of a service animal while engaged in the training of such an animal pursuant to subsection (8), commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and must perform 30 hours of community service for an organization that serves individuals with disabilities, or for another entity or organization at the discretion of the court, to be completed in not more than 6 months.

(5) It is the policy of this state that an individual with a disability be employed in the service of the state or political subdivisions of the state, in the public schools, and in all other employment supported in whole or in part by public funds, and an employer may not refuse employment to such a person on the basis of the disability alone, unless it is shown that the particular disability prevents the satisfactory performance of the work involved.

(6) An individual with a disability is entitled to rent, lease, or purchase, as other members of the general public, any housing accommodations offered for rent, lease, or other compensation in this state, subject to the conditions and

limitations established by law and applicable alike to all persons.

(a) This section does not require any person renting, leasing, or otherwise providing real property for compensation to modify her or his property in any way or provide a higher degree of care for an individual with a disability than for a person who is not disabled.

(b) An individual with a disability who has a service animal or who obtains a service animal is entitled to full and equal access to all housing accommodations provided for in this section, and such a person may not be required to pay extra compensation for such ~~the service~~ animal. However, such a person is liable for any damage done to the premises or to another person on the premises by the ~~such an~~ animal. A housing accommodation may request proof of compliance with vaccination requirements.

(c) This subsection does not limit the rights or remedies of a housing accommodation or an individual with a disability that are granted by federal law or another law of this state with regard to other assistance animals.

(7) An employer covered under subsection (5) who discriminates against an individual with a disability in employment, unless it is shown that the particular disability prevents the satisfactory performance of the work involved, or any person, firm, or corporation, or the agent of any person, firm, or corporation, providing housing accommodations as provided in subsection (6) who discriminates against an individual with a disability, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s.

775.083.

(8) Any trainer of a service animal, while engaged in the training of such an animal, has the same rights and privileges with respect to access to public facilities and the same liability for damage as is provided for those persons described in subsection (3) accompanied by service animals.

(9) A person who knowingly and willfully misrepresents herself or himself, through conduct or verbal or written notice, as using a service animal and being qualified to use a service animal or as a trainer of a service animal commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and must perform 30 hours of community service for an organization that serves individuals with disabilities, or for another entity or organization at the discretion of the court, to be completed in not more than 6 months.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Military and Veterans Affairs, Space, and Domestic Security, *Chair*
Children, Families, and Elder Affairs, *Vice-Chair*
Appropriations
Appropriations Subcommittee on General Government
Environmental Preservation and Conservation
Finance and Tax

SENATOR THAD ALTMAN
16th District

February 5, 2014

The Honorable Nancy C. Detert
Senate Committee on Commerce and Tourism, Chair
310 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Madame Chair Detert:

I respectfully request that SB 0414, related to *Service Animals,* be placed on the committee agenda at your earliest convenience.

Thank you for your consideration, and please do not hesitate to contact me should you have any questions.

Sincerely,

Thad Altman

CC: Todd McKay, Staff Director, 310 Knott Building
Patty Blackburn, Committee Administrative Assistant

TA/svb

REPLY TO:
❒ 8710 Astronaut Blvd, Cape Canaveral, FL 32920 (321) 752-3138
❒ 314 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

Senate's Website: *www.flsenate.gov*

ANDY GARDINER
President of the Senate

GARRETT RICHTER
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:	SB 564
INTRODUCER:	Senator Richter
SUBJECT:	Trade Secrets
DATE:	March 27, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	**Pre-meeting**
2.			CJ	
3.			RC	

I. Summary:

SB 564 expands the definition of "trade secret" provided in s. 812.081, F.S., to include *financial* information, in addition to any scientific, technical, or commercial information that is used in the operation of a business and which provides the business an advantage over those who do not know or use the trade secret.

An individual who steals, copies without authorization, or misappropriates a trade secret is subject to a third degree felony under s. 812.081, F.S.

II. Present Situation:

Trade Secret

Section 812.081, F.S., defines a "trade secret" as information[1] used in the operation of a business, which provides the business an advantage or an opportunity to obtain an advantage, over those who do not know or use it. The test provided for in statute, and adopted by Florida courts,[2] requires that a trade secret be actively protected from loss or public availability to any person not selected by the secret's owner to have access thereto, and be:

- Secret;
- Of value;
- For use or in use by the business; and
- Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it. [3]

[1] A trade secret may manifest as any scientific, technical, or commercial information, including any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Section 812.081, F.S.
[2] See, e.g., *Sepro Corp. v. Dep't. of Envt'l. Prot.*, 839 So. 2d 781 (Fla. 1st DCA 2003).
[3] Section 812.081(1)(c), F.S.

Penalties

Florida law criminalizes the disclosure or theft of trade secrets. For example:

- Section 815.04, F.S., makes it a third degree felony[4] for a person to willfully, knowingly, and without authorization disclose or take data, programs, or supporting documentation that are trade secrets that reside or exist internal or external to a computer, computer system, computer network, or electronic device.[5]
- Section 812.081, F.S., makes it a third degree felony for a person to steal, embezzle, or copy without authorization an article that represents a trade secret, when done with an intent to:
  - Deprive or withhold from the trade secret's owner the control of a trade secret, or
  - Appropriate a trade secret to his or her own use or to the use of another.
- Section 581.199, F.S., makes it a first degree misdemeanor[6] for a designated employee, inspector, or collaborator of the Florida Department of Agriculture and Consumer Services' Division of Plant Industry or the United States Department of Agriculture who, in an official capacity obtains under ch. 581, F.S., any information entitled to protection as a trade secret, to use such information for personal gain or to reveal it to an unauthorized person.

A number of statutes also provide non-criminal protections for trade secrets. The majority of these statutes provide public record exemptions for trade secrets,[7] but others provide procedural safeguards or civil remedies instead.[8]

Related Definitions and Law

The federal Freedom of Information Act exempts "trade secrets and commercial or financial information" from public disclosure.[9] In order to withhold financial or commercial information from public review, it must be shown that the release of the information is likely to (1) impair the government's ability to obtain necessary information in the future; or (2) cause substantial harm to the competitive position of the person from whom the information was obtained.[10] "Substantial harm" may manifest as the disclosure of a company's assets, profits, losses, and market shares.[11]

Florida law also defines "trade secret" in the Florida Uniform Trade Secrets Act[12] as a "formula, pattern, compilation, program, device, method, technique, or process" that derives actual or potential economic independent economic value from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value

[4] A third degree felony is punishable by up to 5 years imprisonment and a $5,000 fine. (ss. 775.082 and 775.083, F.S.)
[5] The offense is a second degree felony if committed for the purpose of creating or executing any scheme or artifice to defraud or to obtain property.
[6] A first degree misdemeanor is punishable by up to 1 year in jail and a $1,000 fine. (ss. 775.082 and 775.083, F.S.)
[7] Sections 119.071(1)(f), 125.0104(9)(d), 288.1226(8), 331.326, 365.174, 381.83, 403.7046(2)-(3), 403.73, 499.012(g), (m), 499.0121(7), 499.051(7), 499.931, 502.222, 570.48(3), 573.123(2), 581.199, 601.10(8)(a), 601.15(7)(d), 601.152(8)(c), 601.76, and 815.045, F.S.
[8] Sections 721.071 and 812.035, F.S.
[9] 5 USC §552(b)(4).
[10] 110 Am. Jur, Trials 367, Pt. 3 (February 2015).
[11] *Id*.
[12] Section 688.002(4), F.S.

from its disclosure or use when it is the subject of reasonable efforts under the circumstances to maintain its secrecy.

III. Effect of Proposed Changes:

Section 1 adds financial information to protected information classified as a trade secret, which is exempt from public records disclosure requirements.[13]

Section 2 reenacts s. 499.931, F.S., which requires trade secret information maintained by the Department of Business and Professional Regulation in the administration and enforcement of medical gas to be confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Businesses previously hesitant to enter into contracts with the state because of fear of release of their trade secrets may now feel more secure entering into such contracts.

C. Government Sector Impact:

In response to public records requests, state agencies will be required to interpret what constitutes a financial information trade secret. In turn, agencies may incur costs related to litigation regarding its determination to protect a document as trade secret or provide it as a public record.

[13] Section 119.07 and s. 24(a), Art. I, Fla. Const.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not define what type of documents constitute "financial information."

SB 566, the companion to this bill, contains public record exemptions for trade secrets as defined by s. 812.081, F.S.

VIII. Statutes Affected:

This bill substantially amends section 812.081, of the Florida Statutes.

This bill reenacts section 499.931, 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.

631270

LEGISLATIVE ACTION

Senate . House

. .

. .

. .

. .

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

Senate Amendment (with title amendment)

Delete lines 67 - 75.

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

And the title is amended as follows:

Delete lines 6 - 9

and insert:

penalties; providing an

By Senator Richter

23-00590-15 2015564__

A bill to be entitled

An act relating to trade secrets; amending s. 812.081, F.S.; including financial information in provisions prohibiting the theft, embezzlement, or unlawful copying of trade secrets; providing criminal penalties; reenacting s. 499.931, F.S., relating to trade secret information concerning medical gas, to incorporate the amendments made by the act to s. 812.081, F.S., in a reference thereto; providing an effective date.

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

Section 1. Section 812.081, Florida Statutes, is amended to read:

812.081 Trade secrets; theft, embezzlement; unlawful copying; definitions; penalty.—

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

(a) "Article" means any object, device, machine, material, substance, or composition of matter, or any mixture or copy thereof, whether in whole or in part, including any complete or partial writing, record, recording, drawing, sample, specimen, prototype model, photograph, microorganism, blueprint, map, or copy thereof.

(b) "Representing" means completely or partially describing, depicting, embodying, containing, constituting, reflecting, or recording.

(c) "Trade secret" means the whole or any portion or phase of any formula, pattern, device, combination of devices, or

23-00590-15 2015564__

compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. The term ~~"Trade secret"~~ includes any scientific, technical, ~~or~~ commercial, or financial information, including any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

1. Secret;

2. Of value;

3. For use or in use by the business; and

4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it

when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

(d) "Copy" means any facsimile, replica, photograph, or other reproduction in whole or in part of an article and any note, drawing, or sketch made of or from an article or part or portion thereof.

(2) Any person who, with intent to deprive or withhold from the owner thereof the control of a trade secret, or with an intent to appropriate a trade secret to his or her own use or to the use of another, steals or embezzles an article representing

a trade secret or without authority makes or causes to be made a copy of an article representing a trade secret commits ~~is guilty of~~ a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

(3) In a prosecution for a violation of ~~the provisions of~~ this section, the fact ~~it is no defense~~ that the person so charged returned or intended to return the article so stolen, embezzled, or copied is not a defense.

Section 2. For the purpose of incorporating the amendment made by this act to section 812.081, Florida Statutes, in a reference thereto, section 499.931, Florida Statutes, is reenacted to read:

499.931 Trade secret information.—Information required to be submitted under this part which is a trade secret as defined in s. 812.081(1)(c) and designated as a trade secret by an applicant or permitholder must be maintained as required under s. 499.051.

Section 3. This act shall take effect October 1, 2015.

The Florida Senate

Committee Agenda Request

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

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

Subject: Committee Agenda Request

Date: February 19, 2015

I respectfully request that **Senate Bill #564**, relating to Trade Secrets, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Garrett Richter
Florida Senate, District 23

File signed original with committee office

S-020 (03/2004)

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 566
INTRODUCER:	Senator Richter
SUBJECT:	Public Records/Trade Secrets
DATE:	March 27, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	**Pre-meeting**
2.			GO	
3.			RC	

I. Summary:

SB 566 reenacts several public records exemptions of trade secret information to conform to the new definition of trade secret proposed in SB 564, which adds "financial information" into the definition. The exemption for trade secret information, which is "any scientific, technical, commercial, or financial information that is used in the operation of a business and which provides the business an advantage over those who do not know or use the trade secret," allows state agencies to refuse to disclose such information pursuant to a public records request.

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

II. Present Situation:

Public Records and Open Meetings Requirements

The Florida Constitution provides that the public has the right to access government records and meetings. The public may inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.[1] The public also has a right to be afforded notice and access to meetings of any collegial public body of the executive branch of state government or of any local government.[2] The Legislature's meetings must also be open and noticed to the public, unless there is an exception provided by the constitution.[3]

[1] FLA. CONST., art. I, s. 24(a).
[2] FLA. CONST., art. I, s. 24(b).
[3] FLA. CONST., art. I, s. 24(b).

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records and meetings. The Public Records Act[4] guarantees every person's right to inspect and copy any state or local government public record.[5] The Sunshine Law[6] requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken to be noticed and open to the public.[7]

The Legislature may create an exemption to public records or open meetings requirements.[8] An exemption must specifically state the public necessity justifying the exemption[9] and must be tailored to accomplish the stated purpose of the law.[10]

Open Government Sunset Review Act

The Open Government Sunset Review Act ("OGSR Act") prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.[11] The OGSR Act provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.[12]

[4] Chapter 119, F.S.
[5] Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992). The Legislature's records are public pursuant to s. 11.0431, F.S.
[6] Section 286.011, F.S.
[7] Section 286.011(1)-(2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in the Florida Constitution. Article III, s. 4(e) of the Florida Constitution provides that legislative committee meetings must be open and noticed to the public. In addition, prearranged gatherings, between more than two members of the Legislature, or between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon or to take formal legislative action, must be reasonably open to the public.
[8] FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential* and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).
[9] FLA. CONST., art. I, s. 24(c).
[10] FLA. CONST., art. I, s. 24(c).
[11] Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR Act does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.
[12] Section 119.15(3), F.S.

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

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

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

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

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

Trade Secrets

Florida law contains a variety of provisions making trade secret information confidential and/or exempt from public records requirements. For example:

- Section 119.071(1)(f), F.S., exempts data processing software obtained by an agency under a licensing agreement that prohibits its disclosure where the software is trade secret;
- Section 125.0104(9)(d), F.S., exempts trade secrets held by a county tourism promotion agency;

[13] Section 119.15(6)(b), F.S.
[14] Section 119.15(6)(b)1., F.S.
[15] Section 119.15(6)(b)2., F.S.
[16] Section 119.15(6)(b)3., F.S.
[17] Section 119.15(6)(b), F.S.
[18] Section 119.15(6)(a), F.S. The specified questions are:
- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

[19] FLA. CONST., art. I, s. 24(c).
[20] Section 119.15(7), F.S.

- Section 288.1226(8), F.S., exempts trade secrets relating to projects conducted by the Florida Tourism Industry Marketing Corporation (Visit Florida);
- Section 331.326, F.S., makes trade secrets held by Space Florida confidential and exempt;[21]
- Section 365.174(3), F.S., makes trade secret business information submitted to the E911 Board or the Department of Management Services confidential and exempt;
- Section 381.83, F.S., makes trade secret information obtained by the Department of Health confidential and exempt;
- Sections 403.7046(2) and (3) and 403.73, F.S., make trade secret information reported to the Department of Environmental Protection pursuant to specified regulations confidential and exempt;
- Section 499.012(8)(g) and (m), F.S., makes trade secret information provided to the Department of Business and Professional Regulation (DBPR) in a prescription drug permit application confidential and exempt;
- Section 499.0121(7), F.S., makes trade secret information reported to DBPR in a list of prescription drug wholesalers confidential and exempt;
- Section 499.051(7), F.S., makes trade secret information obtained by DBPR during an investigation of a permit holder confidential and exempt;
- Section 499.931, F.S., makes trade secret information submitted to DBPR for medical gas permitting purposes confidential and exempt;
- Section 502.222, F.S., makes trade secret information of a dairy industry business held by the Department of Agriculture and Consumer Services (DACS) confidential and exempt;
- Section 570.48(3), F.S., makes records containing trade secrets held by DACS' Division of Fruit and Vegetables confidential and exempt;
- Section 573.123(2), F.S., makes records containing trade secrets provided to DACS by specified persons confidential and exempt;
- Section 601.10(8)(a), F.S., makes any information held by the Department of Citrus that contains trade secrets confidential and exempt;
- Section 601.15(7)(d), F.S., makes trade secret information that is provided by noncommodity advertising and promotional program participants to Department of Citrus confidential and exempt;
- Section 601.152(8)(c), F.S, makes trade secret information provided by citrus handlers to Department of Citrus confidential and exempt;
- Section 601.76, F.S., makes formulas containing trade secrets that are submitted to DACS confidential and exempt; and
- Section 815.04(3), makes trade secret information that is held by an agency and exists internal or external to a computer, computer system, computer network, or electronic device confidential and exempt.

[21] There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), *review denied* 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. *See* Attorney General Opinion 85-62 (August 1, 1985).

The above-described statutes define the term "trade secret" in accordance with s. 812.081(1)(c), F.S., as "any scientific, technical, commercial, ***or financial*** information, including any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains."

Section 812.081, F.S., further defines a "trade secret" as information used in the operation of a business, which provides the business an advantage or an opportunity to obtain an advantage, over those who do not know or use it. The test provided for in statute, requires that a trade secret be actively protected from loss or public availability to any person not selected by the secret's owner to have access thereto, and be:

- Secret;
- Of value;
- For use or in use by the business; and
- Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it. [22]

Courts similarly use this factor test to determine whether a document is trade secret subject to protection from public records laws. In *Sepro v. Department of Environmental Protection*,[23] the court held that a document was subject to disclosure because the business failed the first prong of the test (that the document be secret) because it had not actively protected or held out the document as a trade secret.

III. Effect of Proposed Changes:

The bill conforms and reenacts provisions that make trade secrets confidential and exempt to the new definition of trade secret proposed by SB 564, which adds "financial information" into the definition.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

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

Public Necessity Statement

[22] Section 812.081(1)(c), F.S.
[23] 839 So. 2d 781 (Fla. 1st DCA 2003).

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

Breadth of Exemption
Section 24(c), Article I of the Florida Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption limited to trade secret information, including financial information. Generally, the exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose. However, section 9 of the bill appears to broaden the exemption to include not only trade secret information, but also "all information obtained by the department (of Agriculture and Consumer Services) pursuant to the investigation"

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Businesses previously hesitant to enter into contracts with the state because of fear of release of their financial trade secrets may now attempt to enter that marketplace.

C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC) met March 11, 2015, and determined that HB 91, which is identical to this bill, will have a positive insignificant impact on state prison beds. This means CJIC estimates that this bill may increase the department's prison bed population by less than 10 inmates annually. The bill may also have a negative jail bed impact on local governments because it expands the application of a misdemeanor offense.

VI. Technical Deficiencies:

None.

VII. Related Issues:

State agencies must balance this exemption against the general policy that "all state, county, and municipal records shall be open for personal inspection by any person."[24] This may prove difficult because what constitutes "financial information" under the bill may entail a highly fact-

[24] Section 119.01(1), F.S.

specific determination based on, e.g., the business' treatment of the information as secret and the value of the information to the business. This may result in the same type of information being classified as trade secret for one business, but not another.

Section 9 of the bill appears to broaden the proposed exemption, but the public necessity statement does not address the need for "information obtained by the department [of Agriculture and Consumer Services] pursuant to the investigation" to be subject to a public records exemption.

VIII. Statutes Affected:

This bill substantially amends sections 119.071, 125.0104, 288.1226, 331.326, 365.174, 381.83, 403.7046, 403.73, 499.051, 502.222, 570.48, 573.123, 601.10, 601.15, 601.152, 601.76, and 815.04 of the Florida Statutes.

This bill reenacts sections 499.012 and 499.0121 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.

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LEGISLATIVE ACTION

Senate . House

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

Senate Amendment (with title amendment)

Delete lines 303 - 314
and insert:
Section 9. Paragraphs (g) and (m) of subsection (8) of section 499.012, Florida Statutes, are amended to read:
499.012 Permit application requirements.—
(8) An application for a permit or to renew a permit for a prescription drug wholesale distributor or an out-of-state prescription drug wholesale distributor submitted to the

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department must include:

(g)1. For an application for a new permit, the estimated annual dollar volume of prescription drug sales of the applicant, the estimated annual percentage of the applicant's total company sales that are prescription drugs, the applicant's estimated annual total dollar volume of purchases of prescription drugs, and the applicant's estimated annual total dollar volume of prescription drug purchases directly from manufacturers.

2. For an application to renew a permit, the total dollar volume of prescription drug sales in the previous year, the total dollar volume of prescription drug sales made in the previous 6 months, the percentage of total company sales that were prescription drugs in the previous year, the total dollar volume of purchases of prescription drugs in the previous year, and the total dollar volume of prescription drug purchases directly from manufacturers in the previous year.

3. Such portions of the information required pursuant to this paragraph which are a trade secret, as defined in s. 812.081, shall be maintained by the department as trade secret information is required to be maintained under s. 499.051. This subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

(m) For an applicant that is a secondary wholesale distributor, each of the following:

1. A personal background information statement containing the background information and fingerprints required pursuant to

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subsection (9) for each person named in the applicant's response to paragraphs (k) and (l) and for each affiliated party of the applicant.

2. If any of the five largest shareholders of the corporation seeking the permit is a corporation, the name, address, and title of each corporate officer and director of each such corporation; the name and address of such corporation; the name of such corporation's resident agent, such corporation's resident agent's address, and such corporation's state of its incorporation; and the name and address of each shareholder of such corporation that owns 5 percent or more of the stock of such corporation.

3.a. The name and address of all financial institutions in which the applicant has an account which is used to pay for the operation of the establishment or to pay for drugs purchased for the establishment, together with the names of all persons that are authorized signatories on such accounts.

b. The portions of the information required pursuant to this subparagraph which are a trade secret, as defined in s. 812.081, shall be maintained by the department as trade secret information is required to be maintained under s. 499.051. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

4. The sources of all funds and the amounts of such funds used to purchase or finance purchases of prescription drugs or to finance the premises on which the establishment is to be located.

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5. If any of the funds identified in subparagraph 4. were borrowed, copies of all promissory notes or loans used to obtain such funds.

Section 10. Subsection (7) of section 499.0121, Florida Statutes, is amended to read:

499.0121 Storage and handling of prescription drugs; recordkeeping.—The department shall adopt rules to implement this section as necessary to protect the public health, safety, and welfare. Such rules shall include, but not be limited to, requirements for the storage and handling of prescription drugs and for the establishment and maintenance of prescription drug distribution records.

(7) PRESCRIPTION DRUG PURCHASE LIST.—

(a) Each wholesale distributor, except for a manufacturer, shall annually provide the department with a written list of all wholesale distributors and manufacturers from whom the wholesale distributor purchases prescription drugs. A wholesale distributor, except a manufacturer, shall notify the department not later than 10 days after any change to either list.

(b) Such portions of the information required pursuant to this subsection which are a trade secret, as defined in s. 812.081, shall be maintained by the department as trade secret information is required to be maintained under s. 499.051. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 11. Subsection (7) of section 499.051, Florida Statutes, is amended to read:

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499.051 Inspections and investigations.—

(7)(a) The complaint and all information obtained pursuant to the investigation by the department are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the investigation and the enforcement action are completed.

(b) Information that constitutes a ~~However,~~ trade secret, as defined in s. 812.081, ~~information~~ contained in the complaint ~~therein as defined by s. 812.081(1)(c)~~ shall

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

And the title is amended as follows:

Delete lines 4 - 16

and insert:

403.7046, 403.73, 499.012, 499.0121, 499.051, 502.222, 570.48, 573.123, 601.10, 601.15, 601.152, 601.76, and 815.04, F.S.; expanding public records exemptions for certain data processing software obtained by an agency, certain information held by a county tourism promotion agency, information related to trade secrets held by the Florida Tourism Industry Marketing Corporation, information related to trade secrets held by Space Florida, proprietary confidential business information submitted to the Department of Revenue, trade secret information held by the Department of Health, trade secret information reported or submitted to the Department of Environmental Protection, trade secret information in an application for a permit for a prescription drug wholesale distributor or an out-

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of-state prescription drug wholesale distributor, trade secret information contained in an application for a permit for a secondary wholesale distributor, trade secret information contained in the prescription drug purchase list, trade secret

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LEGISLATIVE ACTION

Senate . House

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

Senate Amendment (with title amendment)

Delete lines 521 - 540

and insert:

Section 18. The Legislature finds that it is a public necessity that financial information comprising a trade secret as defined in s. 812.081, Florida Statutes, be made exempt or confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The Legislature recognizes that in many instances, businesses are required to


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provide financial information for regulatory or other purposes to governmental entities and that disclosure of such information to competitors of those businesses would be detrimental to the businesses. The Legislature's intent is to protect trade secret information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.

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

And the title is amended as follows:

Delete lines 40 - 44

and insert:

technical changes; providing a statement of public necessity;

By Senator Richter

23-00815-15 2015566__

A bill to be entitled

An act relating to public records; amending ss. 119.071, 125.0104, 288.1226, 331.326, 365.174, 381.83, 403.7046, 403.73, 499.051, 502.222, 570.48, 573.123, 601.10, 601.15, 601.152, 601.76, and 815.04, F.S.; expanding public records exemptions for certain data processing software obtained by an agency, certain information held by a county tourism promotion agency, information related to trade secrets held by the Florida Tourism Industry Marketing Corporation, information related to trade secrets held by Space Florida, proprietary confidential business information submitted to the Department of Revenue, trade secret information held by the Department of Health, trade secret information reported or submitted to the Department of Environmental Protection, trade secret information contained in a complaint and any investigatory documents held by the Department of Business and Professional Regulation, trade secret information of a dairy industry business held by the Department of Agriculture and Consumer Services, trade secret information held by the Division of Fruits and Vegetables of the Department of Agriculture and Consumer Services, trade secret information of a person subject to a marketing order held by the Department of Agriculture and Consumer Services, trade secret information provided to the Department of Citrus, trade secret information of noncommodity advertising and promotional program participants held

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by the Department of Citrus, trade secret information contained in a citrus handler's return filed with the Department of Citrus, a manufacturer's formula filed with the Department of Agriculture and Consumer Services, and specified data, programs, or supporting documentation held by an agency, respectively, to incorporate the amendment made to the definition of the term "trade secret" in s. 812.081, F.S., by SB ___; providing for future legislative review and repeal of the exemptions; making editorial and technical changes; reenacting ss. 499.012(8)(g) and (m) and 499.0121(7), F.S., relating to the Florida Drug and Cosmetic Act, to incorporate the amendment made to s. 812.081, F.S., by SB ___, in references thereto; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Paragraph (f) of subsection (1) of section 119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of public records.—

(1) AGENCY ADMINISTRATION.—

(f) Data processing software obtained by an agency under a licensing agreement that prohibits its disclosure and which software is a trade secret, as defined in s. 812.081, and agency-produced data processing software that is sensitive are exempt from s. 119.07(1) and s. 24(a), Art. I of the State

Constitution. The designation of agency-produced software as sensitive does ~~shall~~ not prohibit an agency head from sharing or exchanging such software with another public agency. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. Paragraph (d) of subsection (9) of section 125.0104, Florida Statutes, is amended to read:

125.0104 Tourist development tax; procedure for levying; authorized uses; referendum; enforcement.—

(9) COUNTY TOURISM PROMOTION AGENCIES.—In addition to any other powers and duties provided for agencies created for the purpose of tourism promotion by a county levying the tourist development tax, such agencies are authorized and empowered to:

(d) Undertake marketing research and advertising research studies and provide reservations services and convention and meetings booking services consistent with the authorized uses of revenue as set forth in subsection (5).

1. Information given to a county tourism promotion agency which, if released, would reveal the identity of persons or entities who provide data or other information as a response to a sales promotion effort, an advertisement, or a research project or whose names, addresses, meeting or convention plan information or accommodations or other visitation needs become booking or reservation list data, is exempt from s. 119.07(1) and from s. 24(a), Art. I of the State Constitution.

2. The following information, when held by a county tourism promotion agency, is exempt from s. 119.07(1) and ~~from~~ s. 24(a),

Art. I of the State Constitution:

a. ~~A trade secret, as defined in s. 812.081.~~

~~b.~~ Booking business records, as defined in s. 255.047.

b.~~c.~~ Trade secrets and commercial or financial information gathered from a person and privileged or confidential, as defined and interpreted under 5 U.S.C. s. 552(b)(4), or any amendments thereto.

3. A trade secret, as defined in s. 812.081, held by a county tourism agency is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 3. Subsection (8) of section 288.1226, Florida Statutes, is amended to read:

288.1226 Florida Tourism Industry Marketing Corporation; use of property; board of directors; duties; audit.—

(8) PUBLIC RECORDS EXEMPTION.—The identity of any person who responds to a marketing project or advertising research project conducted by the corporation in the performance of its duties on behalf of Enterprise Florida, Inc., or trade secrets as defined by s. 812.081 obtained pursuant to such activities, are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 4. Section 331.326, Florida Statutes, is amended to

read:

331.326 Information relating to trade secrets confidential.—The records of Space Florida regarding matters encompassed by this act are public records subject to ~~the provisions of~~ chapter 119. Any information held by Space Florida which is a trade secret, as defined in s. 812.081, including trade secrets of Space Florida, any spaceport user, or the space industry business, is confidential and exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State Constitution and may not be disclosed. If Space Florida determines that any information requested by the public will reveal a trade secret, it shall, in writing, inform the person making the request of that determination. The determination is a final order as defined in s. 120.52. Any meeting or portion of a meeting of Space Florida's board is exempt from ~~the provisions of~~ s. 286.011 and s. 24(b), Art. I of the State Constitution when the board is discussing trade secrets. Any public record generated during the closed portions of the meetings, such as minutes, tape recordings, and notes, is confidential and exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 5. Subsection (2) of section 365.174, Florida Statutes, is amended to read:

365.174 Proprietary confidential business information.—

(2)(a) All proprietary confidential business information submitted by a provider to the Department of Revenue, as an

agent of the board, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) The Department of Revenue may provide information relative to s. 365.172(9) to the Secretary of Management Services, or his or her authorized agent, or to the E911 Board established in s. 365.172(5) for use in the conduct of the official business of the Department of Management Services or the E911 Board.

(c) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020 ~~2019~~, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 6. Section 381.83, Florida Statutes, is amended to read:

381.83 Trade secrets; confidentiality.—

(1) Records, reports, or information obtained from any person under this chapter, unless otherwise provided by law, shall be available to the public, except upon a showing satisfactory to the department by the person from whom the records, reports, or information is obtained that such records, reports, or information, or a particular part thereof, contains trade secrets as defined in s. 812.081~~(1)(c)~~. Such trade secrets are ~~shall be~~ confidential and ~~are~~ exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State Constitution. The person submitting such trade secret information to the department must request that it be kept confidential and must inform the department of the basis for the claim of trade secret. The department shall, subject to notice and opportunity for hearing, determine whether the information, or portions

thereof, claimed to be a trade secret is or is not a trade secret. Such trade secrets may be disclosed, however, to authorized representatives of the department or, pursuant to request, to other governmental entities in order for them to properly perform their duties, or when relevant in any proceeding under this chapter. Authorized representatives and other governmental entities receiving such trade secret information shall retain its confidentiality. Those involved in any proceeding under this chapter, including a hearing officer or judge or justice, shall retain the confidentiality of any trade secret information revealed at such proceeding.

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

Section 7. Subsection (2) and paragraph (b) of subsection (3) of section 403.7046, Florida Statutes, are amended to read:

403.7046 Regulation of recovered materials.—

(2) Information reported pursuant to the requirements of this section or any rule adopted pursuant to this section which, if disclosed, would reveal a trade secret, as defined in s. 812.081~~(1)(c)~~, is confidential and exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State Constitution. For reporting or information purposes, however, the department may provide this information in such form that the names of the persons reporting such information and the specific information reported are not revealed. This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and

saved from repeal through reenactment by the Legislature.

(3) Except as otherwise provided in this section or pursuant to a special act in effect on or before January 1, 1993, a local government may not require a commercial establishment that generates source-separated recovered materials to sell or otherwise convey its recovered materials to the local government or to a facility designated by the local government, nor may the local government restrict such a generator's right to sell or otherwise convey such recovered materials to any properly certified recovered materials dealer who has satisfied the requirements of this section. A local government may not enact any ordinance that prevents such a dealer from entering into a contract with a commercial establishment to purchase, collect, transport, process, or receive source-separated recovered materials.

(b)1. Before engaging in business within the jurisdiction of the local government, a recovered materials dealer must provide the local government with a copy of the certification provided for in this section. In addition, the local government may establish a registration process whereby a recovered materials dealer must register with the local government before engaging in business within the jurisdiction of the local government. Such registration process is limited to requiring the dealer to register its name, including the owner or operator of the dealer, and, if the dealer is a business entity, its general or limited partners, its corporate officers and directors, its permanent place of business, evidence of its certification under this section, and a certification that the recovered materials will be processed at a recovered materials

processing facility satisfying the requirements of this section. The local government may not use the information provided in the registration application to compete unfairly with the recovered materials dealer until 90 days after receipt of the application. All counties, and municipalities whose population exceeds 35,000 according to the population estimates determined pursuant to s. 186.901, may establish a reporting process that ~~which~~ shall be limited to the regulations, reporting format, and reporting frequency established by the department pursuant to this section, which shall, at a minimum, include requiring the dealer to identify the types and approximate amount of recovered materials collected, recycled, or reused during the reporting period; the approximate percentage of recovered materials reused, stored, or delivered to a recovered materials processing facility or disposed of in a solid waste disposal facility; and the locations where any recovered materials were disposed of as solid waste. ~~Information reported under this subsection which, if disclosed, would reveal a trade secret, as defined in s. 812.081(1)(c), is confidential and exempt from the provisions of s. 24(a), Art. I of the State Constitution and s. 119.07(1).~~ The local government may charge the dealer a registration fee commensurate with and no greater than the cost incurred by the local government in operating its registration program. Registration program costs are limited to those costs associated with the activities described in this paragraph. Any reporting or registration process established by a local government with regard to recovered materials shall be governed by ~~the provisions of~~ this section and department rules adopted pursuant thereto.

2. Information reported under this subsection which, if disclosed, would reveal a trade secret, as defined in s. 812.081, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 8. Section 403.73, Florida Statutes, is amended to read:

403.73 Trade secrets; confidentiality.—

(1) Records, reports, or information obtained from any person under this part, unless otherwise provided by law, shall be available to the public, except upon a showing satisfactory to the department by the person from whom the records, reports, or information is obtained that such records, reports, or information, or a particular part thereof, contains trade secrets as defined in s. 812.081~~(1)(c)~~. Such trade secrets are ~~shall be~~ confidential and ~~are~~ exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State Constitution. The person submitting such trade secret information to the department must request that it be kept confidential and must inform the department of the basis for the claim of trade secret. The department shall, subject to notice and opportunity for hearing, determine whether the information, or portions thereof, claimed to be a trade secret is or is not a trade secret. Such trade secrets may be disclosed, however, to authorized representatives of the department or, pursuant to request, to other governmental entities in order for them to

properly perform their duties, or when relevant in any proceeding under this part. Authorized representatives and other governmental entities receiving such trade secret information shall retain its confidentiality. Those involved in any proceeding under this part, including an administrative law judge, a hearing officer, or a judge or justice, shall retain the confidentiality of any trade secret information revealed at such proceeding.

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

Section 9. Subsection (7) of section 499.051, Florida Statutes, is amended to read:

499.051 Inspections and investigations.—

(7)(a) The complaint and all information obtained pursuant to the investigation by the department are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the investigation and the enforcement action are completed.

(b) Information that constitutes a ~~However,~~ trade secret, as defined in s. 812.081, ~~information~~ contained in the complaint and all information obtained by the department pursuant to the investigation ~~therein as defined by s. 812.081(1)(c) shall~~ remain confidential and exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State Constitution, as long as the information is retained by the department. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2,

2020, unless reviewed and saved from repeal through reenactment by the Legislature.

(c) This subsection does not prohibit the department from using such information for regulatory or enforcement proceedings under this chapter or from providing such information to any law enforcement agency or any other regulatory agency. However, the receiving agency shall keep such records confidential and exempt as provided in this subsection. In addition, this subsection is not intended to prevent compliance with ~~the provisions of~~ s. 499.01212, and the pedigree papers required in that section are ~~shall~~ not ~~be~~ deemed a trade secret.

Section 10. Section 502.222, Florida Statutes, is amended to read:

502.222 Information relating to trade secrets confidential.—The records of the department regarding matters encompassed by this chapter are public records, subject to ~~the provisions of~~ chapter 119, except that any information that ~~which~~ would reveal a trade secret, as defined in s. 812.081, of a dairy industry business is confidential and exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State Constitution. If the department determines that any information requested by the public will reveal a trade secret, it shall, in writing, inform the person making the request of that determination. The determination is a final order as defined in s. 120.52. This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 11. Subsection (3) of section 570.48, Florida

Statutes, is amended to read:

570.48 Division of Fruit and Vegetables; powers and duties; records.—The duties of the Division of Fruit and Vegetables include, but are not limited to:

(3) Maintaining the records of the division. The records of the division are public records; however, trade secrets as defined in s. 812.081 are confidential and exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature. This section may ~~shall~~ not be construed to prohibit:

(a) A disclosure necessary to enforcement procedures.

(b) The department from releasing information to other governmental agencies. Other governmental agencies that receive confidential information from the department under this subsection shall maintain the confidentiality of that information.

(c) The department or other agencies from compiling and publishing appropriate data regarding procedures, yield, recovery, quality, and related matters, provided such released data do not reveal by whom the activity to which the data relate was conducted.

Section 12. Subsection (2) of section 573.123, Florida Statutes, is amended to read:

573.123 Maintenance and production of records.—

(2) Information that, if disclosed, would reveal a trade secret, as defined in s. 812.081, of any person subject to a

marketing order is confidential and exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State Constitution and may ~~shall~~ not be disclosed except to an attorney who provides legal advice to the division about enforcing a market order or by court order. A person who receives confidential information under this subsection shall maintain the confidentiality of that information. This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 13. Subsection (8) of section 601.10, Florida Statutes, is amended to read:

601.10 Powers of the Department of Citrus.—The department shall have and shall exercise such general and specific powers as are delegated to it by this chapter and other statutes of the state, which powers shall include, but are not limited to, the following:

(8)(a) To prepare and disseminate information of importance to citrus growers, handlers, shippers, processors, and industry-related and interested persons and organizations relating to department activities and the production, handling, shipping, processing, and marketing of citrus fruit and processed citrus products. ~~Any information that constitutes a trade secret as defined in s. 812.081(1)(c) is confidential and exempt from s. 119.07(1) and shall not be disclosed.~~ For referendum and other notice and informational purposes, the department may prepare and maintain, from the best available sources, a citrus grower mailing list. Such list shall be a public record available as

other public records, but is not ~~it shall not be~~ subject to the purging provisions of s. 283.55.

(b) Any information provided to the department which constitutes a trade secret, as defined in s. 812.081, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

(c)~~(b)~~ Any nonpublished reports or data related to studies or research conducted, caused to be conducted, or funded by the department under s. 601.13 is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 14. Paragraph (d) of subsection (7) of section 601.15, Florida Statutes, is amended to read:

601.15 Advertising campaign; methods of conducting; assessments; emergency reserve fund; citrus research.—

(7) All assessments levied and collected under this chapter shall be paid into the State Treasury on or before the 15th day of each month. Such moneys shall be accounted for in a special fund to be designated as the Florida Citrus Advertising Trust Fund, and all moneys in such fund are appropriated to the department for the following purposes:

(d)1. The pro rata portion of moneys allocated to each type of citrus product in noncommodity programs shall be used by the

department to encourage substantial increases in the effectiveness, frequency, and volume of noncommodity advertising, merchandising, publicity, and sales promotion of such citrus products through rebates and incentive payments to handlers and trade customers for these activities. The department shall adopt rules providing for the use of such moneys. The rules shall establish alternate incentive programs, including at least one incentive program for product sold under advertised brands, one incentive program for product sold under private label brands, and one incentive program for product sold in bulk. For each incentive program, the rules shall establish eligibility and performance requirements and shall provide appropriate limitations on amounts payable to a handler or trade customer for a particular season. Such limitations may relate to the amount of citrus assessments levied and collected on the citrus product handled by such handler or trade customer during a 12-month representative period.

2. The department may require from participants in noncommodity advertising and promotional programs commercial information necessary to determine eligibility for and performance in such programs. Any information ~~so~~ required which ~~that~~ constitutes a "trade secret," as defined in s. 812.081, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 15. Paragraph (c) of subsection (8) of section 601.152, Florida Statutes, is amended to read:

601.152 Special marketing orders.—

(8)

(c)1. Every handler shall, at such times as the department may require, file with the department a return, not under oath, on forms to be prescribed and furnished by the department, certified as true and correct, stating the quantity of the type, variety, and form of citrus fruit or citrus product specified in the marketing order first handled in the primary channels of trade in the state by such handler during the period of time specified in the marketing order. Such returns shall contain any further information deemed by the department to be reasonably necessary to properly administer or enforce this section or any marketing order implemented under this section.

2. Information that, if disclosed, would reveal a trade secret, as defined in s. 812.081, of any person subject to a marketing order is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 16. Section 601.76, Florida Statutes, is amended to read:

601.76 Manufacturer to furnish formula and other information.—Any formula required to be filed with the Department of Agriculture shall be deemed a trade secret as defined in s. 812.081, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, and shall ~~only~~ be divulged only to the Department of Agriculture or

to its duly authorized representatives or upon court order ~~orders of a court of competent jurisdiction~~ when necessary in the enforcement of this law. A person who receives such a formula from the Department of Agriculture under this section shall maintain the confidentiality of the formula. This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 17. Subsections (3) and (6) of section 815.04, Florida Statutes, are amended to read:

815.04 Offenses against intellectual property; public records exemption.—

(3) Data, programs, or supporting documentation that is a trade secret as defined in s. 812.081, that is held by an agency as defined in chapter 119, and that resides or exists internal or external to a computer, computer system, computer network, or electronic device is confidential and exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(6) Subsection ~~Subsections (3) and~~ (4) is ~~are~~ subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature. Subsection (3) is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 18. Paragraphs (g) and (m) of subsection (8) of s. 499.012 and subsection (7) of s. 499.0121, Florida Statutes, are

reenacted for the purpose of incorporating the amendment made by SB __ to s. 812.081, Florida Statutes, in references thereto.

Section 19. The Legislature finds that it is a public necessity that financial information comprising a trade secret as defined in s. 812.081, Florida Statutes, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The Legislature recognizes that in many instances, businesses are required to provide financial information for regulatory or other purposes to governmental entities and that disclosure of such information to competitors of those businesses would be detrimental to the businesses. The Legislature's intent is to avoid placing businesses that must provide financial information to governmental entities at a competitive disadvantage by making the information referenced in the amendment made to s. 812.081, Florida Statutes, confidential and exempt by incorporating the amendment into the existing public records exemptions amended by this act.

Section 20. This act shall take effect on the same date that SB ____ or similar legislation relating to trade secrets takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

The Florida Senate

Committee Agenda Request

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

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

Subject: Committee Agenda Request

Date: February 19, 2015

I respectfully request that **Senate Bill #566**, relating to Public Records/ Trade Secrets, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Garrett Richter
Florida Senate, District 23

File signed original with committee office

S-020 (03/2004)

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 596
INTRODUCER:	Regulated Industries Committee and Senator Hays
SUBJECT:	Craft Distilleries
DATE:	March 27, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Fav/CS**
2.	Siples	McKay	CM	**Pre-meeting**
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 596 increases the number of factory sealed containers of distilled spirits that a craft distillery may sell directly to consumers by providing that a craft distillery may sell no more than two of each branded product or up to four individual containers, whichever is greater, in face-to-face transactions with a consumer per calendar year. For example, if a craft distillery has five different branded products that are distilled on the premises, then that distillery could sell a maximum of ten factory-sealed containers (two containers for each branded product) to each customer per calendar year. However, if the craft distillery has one branded product, the craft distillery could sell four containers to each customer per calendar year. Under current law the distillery is limited to the sale of no more than two containers of distilled spirits to each customer per calendar year.

The bill defines the term branded product to mean the distilled spirit product manufactured on site, which requires a federal certificate and label approval by the Federal Alcohol Administrative Act or regulations.

The bill also limits direct-to-consumer sales of distilled spirits to craft distilleries. However, a licensed distillery that produces more than 75,000 gallons of distilled spirits on its licensed premises per calendar year could not sell distilled spirits in its souvenir gift shop for off premises consumption.

The bill provides that craft distillery may only sell and deliver distilled spirits to consumers within the state in a face-to-face transaction at the distillery property.

The bill provides that a craft distillery may be affiliated with another distillery that produces 75,000 or fewer gallons on each of its premises in this state or in another state, territory, or country.

II. Present Situation:

In Florida, alcoholic beverages are regulated by the Beverage Law.[1] These provisions regulate the manufacture, distribution, and sale of wine, beer, and liquor through manufacturers, distributors, and vendors.[2] The Division of Alcoholic Beverage and Tobacco (division) within the Department of Business and Professional Regulation is the agency authorized to administer and enforce the Beverage Law.[3]

Section 565.01, F.S., defines the terms "liquor," "distilled spirits," "spirituous liquors," "spirituous beverages," or "distilled spirituous liquors" to mean:

> that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced.

Section 565.03(1)(b), F.S., defines the term "distillery" to mean a manufacturer of distilled spirits. Section 565.03(1)(a), F.S., defines the term "craft distillery" to mean a licensed distillery that produces 75,000 or fewer gallons of distilled spirits per calendar year on its premises. The distillery must have also notified the division in writing of its status as a craft distillery.

Distilleries licensed to distill, rectify,[4] or blend distilled spirits pay a state license tax of $4,000 for each plant or branch operating in the state.[5] Licensed liquor manufacturers may also rectify and blend spirituous liquors in addition to distilling liquors without paying an additional license tax.[6]

According to the Florida Craft Distillers Guild, there are 15 distilleries that are located in Florida and are members of the guild.[7]

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[1] The Beverage Law means chs. 561, 562, 563, 564, 565, 567, and 568, F.S. *See* s. 561.01(6), F.S.
[2] *See* s. 561.14, F.S.
[3] Section 561.02, F.S.
[4] Merriam-Webster defines rectify as the purification (especially alcohol) by repeated or fractional distillation, *available at* http://www.merriam-webster.com/dictionary/rectify (last visited Mar. 26, 2015).
[5] Section 565.03(2), F.S.
[6] Section 565.03(2)(b), F.S.
[7] *See* Florida Craft Distillers Guild at http://floridadistillers.org/members (last visited March 23, 2015).

The labels of distilled spirits containers must be approved by the Alcohol and Tobacco Tax and Trade Bureau[8] within the U.S. Department of Treasury pursuant to the Federal Alcohol Administration Act.[9]

Three Tier System

In the United States, the regulation of alcohol, since the repeal of Prohibition, has traditionally been through what is termed the "three-tier system." The system requires that the manufacture, distribution, and sale of alcoholic beverages be separated. Retailers (vendors) must buy their products from distributors who in turn buy their products from the manufacturers. Manufacturers cannot sell directly to retailers or directly to consumers. The system is deeply rooted in the perceived evils of the "tied house" in which a bar is owned or operated by a manufacturer or the manufacturer exercises undue influence over the retail vendor.[10]

In the three-tier system, each license classification has clearly delineated functions. For example, in Florida, distributors are licensed to sell and distribute alcoholic beverages at wholesale to persons who are licensed to sell alcoholic beverages at retail.[11] Only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.[12] Vendors are limited to purchasing their alcoholic beverage inventory from licensed distributors, manufacturers, or bottlers.[13] Licensed manufacturers, distributors, and registered exporters are prohibited from being licensed as vendors.[14] In addition to being prohibited from having an interest in a vendor, manufacturers are also prohibited from distributing directly to a vendor other than to a vendor licensed under s. 561.221(2), F.S.[15] However, a manufacturer of wine may be licensed as a distributor.[16]

There are some exceptions to this regulatory system. The exceptions include allowing beer brew pubs to manufacture malt beverages and to sell them to consumers,[17] allowing individuals to bring small quantities of alcohol back from trips out-of-state,[18] and allowing in-state wineries to manufacture and sell directly to consumers.[19]

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[8] For information about the Alcohol and Tobacco Tax and Trade Bureau, *see* http://www.ttb.gov/index.shtml (last visited March 23, 2015).
[9] 27 U.S.C. 201 et seq. See 27 C.F.R. pt. 5 for the labeling and advertising regulations for distilled spirits.
[10] 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 March 23, 2015).
[11] Section 561.14(2), F.S.
[12] Section 561.14(3), F.S.
[13] Section 561.14(3), F.S. Vendors may buy from vendors in a pool buying group if the initial purchase was by a single purchase by a pool buying agent.
[14] Section 561.22, F.S.
[15] Section 563.022(14), F.S.
[16] Section 561.221(1)(a), F.S.
[17] *See* s. 561.221(2), F.S., which permits the limited manufacture of beer by vendors (brew pubs).
[18] *See* s. 562.16, F.S., which permits the possession of less than one gallon of untaxed alcoholic beverages when purchased by the possessor out-of-state in accordance with the laws of the state where purchased and brought into the state by the possessor.
[19] *See* s. 561.221, F.S.

Vendor Licenses

Section 561.20, F.S., limits the number of alcoholic beverage licenses that permit the sale of liquor along with beer and wine that may be issued per county. The number of licenses is limited to one license per 7,500 residents within the county. These limited alcoholic beverage licenses are known as "quota" licenses. New quota licenses are created and issued when there is an increase in the population of a county. The licenses can also be issued when a county initially changes from a county which does not permit the sale of intoxicating liquors to one that does permit their sale. The quota license is the only type of alcoholic beverage license that is limited in number.

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

Exception for Vender-Licensed Distilleries

Section 565.03(2), F.S., permits craft distilleries and all other licensed distilleries to sell the distilled spirits it produces on their manufacturing premises to consumers for off premises consumption. The sales must occur at the distillery's souvenir gift shop that is located on private property contiguous to the licensed distillery premises, and included on the sketch submitted with the license application.[20] The division must approve any subsequent revisions to a craft distillery's sketch to verify that the retail location operated by the craft distillery is "owned or leased by the craft distillery and on property contiguous to the craft distillery's production building."

Section 565.03(2)(c), F.S., prohibits craft distilleries and licensed distilleries from selling distilled spirits except in face-to-face transactions with consumers making the purchases for personal use and not for resale. The distillery may sell no more than two individual containers to the consumer. The container must comply with the container limits in s. 565.10, F.S.[21] The distillery must submit any beverage excise taxes under the Beverage Law in its monthly report to the division with any tax payments due to the state.[22]

Section 565.03(2)(c)1., F.S., requires the craft distillery to report to the division within 5 business days after it has reached the 75,000 gallon production limitation. The craft distillery must cease making sales to consumers on the day after it reaches the production limit.

Section 565.03(2)(c)2., F.S., provides that a craft distillery may ship, arrange to ship, or deliver distilled spirits to manufacturers of distilled spirits, wholesale distributors, bonded warehouses, and exporters.

[20] *See* s. 561.01(11), F.S., which defines the term "licensed premises" to include the area embraced within the sketch that appears on, or is attached to, the application for the license.
[21] Section 565.10, F.S, prohibits the sale and distribution of distilled spirits in any size container in excess of 1.75 liters or 59.18 ounces.
[22] Section 565.03(5), F.S.

Section 565.03(2)(c)3., F.S., prohibits the transfer of a craft distillery license, including the transfer of an ownership interest in the license, to any individual or entity with a direct or indirect interest in another distillery.

Section 565.03(2)(c)4., F.S., permits a craft distillery to have its ownership interest affiliated with another distiller if the other distiller produces 75,000 gallons or fewer of distilled spirits on its licensed premises per calendar year.

III. Effect of Proposed Changes:

The bill creates s. 565.03(1)(a), F.S., to define the term branded product to mean any distilled spirit product manufactured on site, which requires a federal certificate and label approval by the Federal Alcohol Administrative Act or regulations.

The bill amends s. 565.03(2)(c), F.S., to increase the number of factory sealed containers of distilled spirits that a craft distillery may sell directly to consumers by providing that a craft distillery may sell no more than two of each branded product or up to four individual containers, whichever is greater, in face-to-face transactions with a consumer per calendar year. For example, if a craft distillery has five different branded products that are distilled on the premises, then that distillery could sell a maximum of ten factory-sealed containers (two containers for each branded product) to each customer per calendar year. Under current law the distillery is limited to the sale of no more than two containers of distilled spirits per calendar year.

The bill also amends s. 565.03(2)(c), F.S., to limit direct-to-consumer sales of distilled spirits to craft distilleries. However, a licensed distillery that produces more than 75,000 gallons of distilled spirits on its licensed premises per calendar year could not sell distilled spirits in its souvenir gift shop for off premises consumption.

The bill amends s. 565.03(2)(c)2., F.S., to provide that craft distilleries may only sell and deliver distilled spirits to consumers within the state in a face-to-face transaction at the distillery property.

The bill amends s. 565.03(2)(c)4., F.S., to provide that a craft distillery may be affiliated with another distillery that produces 75,000 gallons or fewer on each of its premises in this state or in another state, territory, or country.

The bill provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There may be an increase in sales revenue generated by the ability to sell two factory-sealed containers of each branded product or up to four individual containers, whichever is greater.

C. Government Sector Impact:

There may be an increase in tax revenue generated through the increased sales of distilled spirits products at the craft distilleries.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 565.03 of the Florida Statutes.

IX. Additional Information:

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

CS by Regulated Industries on March 11, 2015:
The committee substitute (CS) amends s. 565.03(2)(c), F.S., to permit craft distilleries to sell no more than two of each branded product or up to four individual containers, whichever is greater, in face-to-face transactions with a consumer per calendar year.

The CS amends s. 565.03(2)(c)2., F.S., to provide that craft distilleries may only sell and deliver distilled spirits to consumers within the state in a face-to-face transaction at the distillery property.

The CS amends s. 565.03(2)(c)4., F.S., to provide that a craft distillery may be affiliated with another distillery that produces 75,000 gallons or fewer on each of its premises in this state or in another state, territory, or country.

B. Amendments:

None.

413416

LEGISLATIVE ACTION

Senate . House

. . . . .

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

Senate Amendment (with directory and title amendments)

Between lines 75 and 76
insert:

(6) Upon the request of a craft distillery licensed in this state, the Department of Transportation shall install directional signs for the craft distillery on the rights-of-way of interstate highways and primary and secondary roads in accordance with Florida's Highway Guide Sign Program, Rule 14-

413416

51, Florida Administrative Code. A craft distillery licensed in this state which requests placement of a directional sign through the department's permit process shall pay all associated costs.

====== D I R E C T O R Y C L A U S E A M E N D M E N T ======
And the directory clause is amended as follows:
Delete line 17
and insert:
subsection, subsection (6) of that section is redesignated as subsection (7), a new subsection (6) is added to that section, and paragraph (c) of subsection (2) of that section

================ T I T L E A M E N D M E N T ================
And the title is amended as follows:
Delete line 10
and insert:
an exception; requiring the Department of Transportation to install directional signs at specified locations in accordance with Florida's Highway Guide Sign Program upon the request of a craft distillery licensed in this state; requiring the craft distillery licensed in this state to pay specified costs; providing an effective date.

By the Committee on Regulated Industries; and Senator Hays

580-02175-15 2015596c1

A bill to be entitled

An act relating to craft distilleries; amending s. 565.03, F.S.; defining the term "branded product"; revising the current limitation on the number of containers that may be sold to consumers by craft distilleries; applying such limitation to individual containers for each branded product; prohibiting a craft distillery from shipping or arranging to ship any of its distilled spirits to consumers; providing an exception; providing an effective date.

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

Section 1. Paragraphs (a) and (b) of subsection (1) of section 565.03, Florida Statutes, are redesignated as paragraphs (b) and (c), respectively, a new paragraph (a) is added to that subsection, and paragraph (c) of subsection (2) of that section is amended, to read:

565.03 License fees; manufacturers, distributors, brokers, sales agents, and importers of alcoholic beverages; vendor licenses and fees; craft distilleries.—

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

(a) "Branded product" means any distilled spirits product manufactured on site, which requires a federal certificate and label approval by the Federal Alcohol Administration Act or regulations.

(2)

(c) A craft distillery licensed under this section may sell to consumers, at its souvenir gift shop, branded products

580-02175-15 2015596c1

~~spirits~~ distilled on its premises in this state in factory-sealed containers that are filled at the distillery for off-premises consumption. Such sales are authorized only on private property contiguous to the licensed distillery premises in this state and included on the sketch or diagram defining the licensed premises submitted with the distillery's license application. All sketch or diagram revisions by the distillery shall require the division's approval verifying that the souvenir gift shop location operated by the licensed distillery is owned or leased by the distillery and on property contiguous to the distillery's production building in this state. A craft distillery ~~or licensed distillery~~ may not sell any factory-sealed individual containers of spirits except in face-to-face sales transactions with consumers who are making a purchase of two or fewer individual containers of each branded product, or up to four individual containers, whichever is greater, that comply with the container limits in s. 565.10, per calendar year for the consumer's personal use and not for resale and who are present at the distillery's licensed premises in this state.

1. A craft distillery must report to the division within 5 days after it reaches the production limitations provided in paragraph (1)(b) ~~(1)(a)~~. Any retail sales to consumers at the craft distillery's licensed premises are prohibited beginning the day after it reaches the production limitation.

2. A craft distillery may not ~~only~~ ship or~~,~~ arrange to ship~~, or deliver~~ any of its distilled spirits to consumers and may only sell and deliver to consumers within the state in a face-to-face transaction at the distillery property. However, a craft distiller licensed under this section may ship, arrange to

ship, or deliver such spirits to manufacturers of distilled spirits, wholesale distributors of distilled spirits, state or federal bonded warehouses, and exporters.

3. Except as provided in subparagraph 4., it is unlawful to transfer a distillery license for a distillery that produces 75,000 or fewer gallons per calendar year of distilled spirits on its premises or any ownership interest in such license to an individual or entity that has a direct or indirect ownership interest in any distillery licensed in this state; another state, territory, or country; or by the United States government to manufacture, blend, or rectify distilled spirits for beverage purposes.

4. A craft distillery shall not have its ownership affiliated with another distillery, unless such distillery produces 75,000 or fewer gallons per calendar year of distilled spirits on <u>each of</u> its premises <u>in this state or in another state, territory, or country</u>.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR ALAN HAYS
11th District

COMMITTEES:
Appropriations Subcommittee on General Government, *Chair*
Governmental Oversight and Accountability, *Vice Chair*
Appropriations
Environmental Preservation and Conservation
Ethics and Elections
Fiscal Policy

JOINT COMMITTEE:
Joint Select Committee on Collective Bargaining, *Alternating Chair*

MEMORANDUM

To: Senator Nancy Detert, Chair
Commerce and Tourism Committee
CC: Todd McKay, Staff Director
Patty Blackburn, Committee Administrative Assistant

From: Senator D. Alan Hays

Subject: Request to agenda SB 596 – Craft Distilleries

Date: March 13, 2015

I respectfully request that you agenda the above referenced bill at your earliest convenience. If you have any questions regarding this legislation, I welcome the opportunity to meet with you one-on-one to discuss it in further detail. Thank you so much for your consideration of this request.

Sincerely,

D. Alan Hays, DMD
State Senator, District 11

REPLY TO:
❒ 871 South Central Avenue, Umatilla, Florida 32784-9290 (352) 742-6441
❒ 320 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5011
❒ 1104 Main Street, The Villages, Florida 32159 (352) 360-6739 FAX: (352) 360-6748
❒ 685 West Montrose Street, Suite 210, Clermont, Florida 34711 (352) 241-9344 FAX: (888) 263-3677

Senate's Website: *www.flsenate.gov*

ANDY GARDINER
President of the Senate

GARRETT RICHTER
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:	SB 742
INTRODUCER:	Senator Simpson
SUBJECT:	Ticket Sales
DATE:	March 27, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Siples	McKay	CM	**Pre-meeting**
2.			CJ	
3.			AP	

I. Summary:

SB 742 amends provisions of law that govern ticket sales in Florida. Specifically, the bill:

- Expands the prohibition on the use of technology that acts to circumvent security measures or purchase restrictions on a ticket seller's website, mobile application, or other digital platform;
- Creates criminal penalties for the use of technology that circumvent security measures on a ticket sellers website, mobile application, or other digital platform;
- Creates a private right of action for a person harmed by the use of such technology;
- Requires ticket brokers to register with the Department of Agriculture and Consumer Services (department);
- Requires a ticket broker, resale website, mobile application, or other digital platform to make certain disclosures to the prospective ticket buyer prior to purchase;
- Prohibits a resale website, mobile application, or other digital platform from using an artist's or team's name, image, or other trademark without express written consent of the intellectual property owner, except when it constitutes fair use under federal law;
- Allows an aggrieved individual to bring an action for declaratory and injunctive relief, and allows for the recovery of actual damages, plus attorney fees and costs;
- Permits the department to assess administrative fines or revocation or suspension of a ticket broker's registration for violations of s. 817.36, F.S., or for the obstruction of the enforcement of its provisions;
- Creates a third degree felony, in addition to any noncriminal penalties, for any violation of s. 817.36, F.S., unless other specific criminal sanctions are provided; and
- Defines department, face value, online marketplace, place of entertainment, resale website, ticket, and ticket broker.

II. Present Situation:

A "ticket" is defined as "a slip of paper containing a certificate" entitling the holder to some right or privilege.[1] It is generally held that "in the absence of statute, a mere license to witness the performance, which the owner of proprietor may revoke at will, either before or after admission of the ticket holder, and it is immaterial whether the ticket is one for general admission, or for particular seats, or to a designated portion of the place of amusement."[2] Admissions tickets are generally considered revocable licenses.[3] As such, a ticket can be revoked by the proprietor at any time.[4] When the proprietor "revokes or denies the holder's admission to a performance, the holder has a cause of action for breach of contract."[5] There has been some case law to suggest that under certain circumstances, season tickets can be regarded as a property right.[6] Generally, there is little regulation on the initial sale of tickets by the original ticket issuers. While traditionally tickets have been sold by venues or promoters, or resold by scalpers outside of venues where the events are taking place, the Internet has come to dominate the ticket sale industry. Some examples of online ticket sellers include Tickets.com,[7] Ticketmaster[8], StubHub,[9] and eBay.[10] Some ticket sellers will also "hold-back" tickets from primary sale.[11]

Resale of Tickets in Florida

Current Florida law provides that any person or entity offering a resale of a ticket may only charge $1 over the admission price charged by the original ticket seller for the following transactions:

- Tickets sold for passage or accommodation on any common carrier in Florida;[12]
- Multiday or multi-event tickets to a park or entertainment complex, or a concert, entertainment event, permanent exhibition, or recreational activity within a park or complex, including an entertainment/resort complex;[13]

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[1] Black's Law Dictionary, *What is TICKET?*, *available at* http://thelawdictionary.org/ticket/ (last visited Mar. 16, 2015).
[2] 27A Am. Jur. 2d Entertainment and Sports Law s. 42.
[3] *Jacksonville Bulls Football, Ltd. v. Blatt*, 535 So. 2d 626 (Fla. 3d DCA 1988).
[4] *Id* at 629.
[5] *Id* at 630. (citing *Marrone v. Washington Jockey Club*, 227 U.S. 633 (1913); *Burnham v. Flynn*, 189 N.Y. 180 (App. Ct. N.Y. 1907); *Boswell v. Barnum & Bailey*, 135 Tenn. 35 (Tenn. 1916)).
[6] *Grossman v. Boston Red Sox Baseball Club Ltd. P'ship. (In re Platt)*, 292 B.R. 12, 17 (US Bankr. Ct. for the Dist. Of Mass. 2003).
[7] Tickets.com, *About Us*, *available at* http://www.tickets.com/about-us/ (last visited Mar. 16, 2015).
[8] Ticketmaster.com, *Who We Are*, *available at* http://www.ticketmaster.com/about/about-us.html?tm_link=tm_i_abouttm (last visited Mar. 16, 2015). Ticketmaster also owns *LiveNation*, which allows people to sell their TM+ event tickets through this website. Live Nation.com, *Frequently Asked Questions*, available at http://concerts.livenation.com/h/help.html?tm_link=help_nav_4_top10 (last visited Mar. 16, 2015).
[9] "StubHub is an eBay company." StubHub.com, *Overview*, *available at* http://www.stubhub.com/about-us/ (last visited Mar. 16, 2015.)
[10] eBay.com, *Even Ticket Resale Policy*, *available at* http://pages.ebay.com/help/policies/event-tickets.html (last visited Mar. 16, 2015).
[11] Scott Simon, *Note: If You Can't Beat 'Em, Join 'Em: Implications for New York's Scalping Law in Light of Recent Developments in the Ticket Business*, 72 Fordham L. Rev. 1171, 1181.
[12] Section 817.36(1)(a), F.S. However, this provision does not apply to travel agencies that have an established place of business in this state and are required to pay state, county, and city occupational license taxes.
[13] Section 817.36(1)(b), F.S.

- Tickets for events for which 3,000 or fewer tickets are issued by a 501(c)(3) charitable organization;[14] and
- Tickets resold or offered through an internet website unless authorized by the original ticket seller or when the website makes and posts the following certain guarantees and disclosures:
  - A full refund guarantee, including any servicing, handling, or processing fees, when the ticketed event is canceled, the purchaser is denied admission to the event through no fault of his or her own, or the ticket is not delivered in the requested manner and in accordance with any delivery guarantee made by the reseller and such failure results in the purchaser's inability to attend the ticketed event.
  - Disclosure that the website is not the issuer, original seller, or reseller of the ticket and does not control the pricing of the ticket.[15]

Any ticket outside the four categories listed above may be sold at any amount over the original admissions price. Any sales tax due on resold tickets is to be remitted to the Florida Department of Revenue, in accordance with s. 212.04, F.S.[16]

Section 817.36(4), F.S., imposes a civil penalty on an individual or entity who knowingly resells a ticket or tickets in violation of this section equal to three times the amount of the price of the ticket or tickets that were resold. An individual or entity that uses or sells software to circumvent security measures used to ensure equitable ticket-buying on a ticket seller's website is subject to a civil penalty, paid to the state, equal to three times the amount of the price of the ticket or tickets sold.

Regulation of Fraudulent Ticket Sales

Pursuant to s. 817.361, F.S., it is a second degree misdemeanor[17] to offer for sale, sell, or transfer, with or without consideration, any nontransferable multiuse ticket[18] that has been used at least once for admission. A second or subsequent violation of this section results in a third degree felony.[19]

[14] Section 817.36(1)(c), F.S. However, the ticket must be printed with the following statement: "Pursuant to s. 817.36, Florida Statutes, this ticket may not be resold for more than $1 over the original admission price." This provision does not apply to tickets issued or sold by a third party contractor ticketing services on behalf of a charitable organization unless the required disclosure is printed on the ticket.
[15] Section 817.36(1)(d), F.S.
[16] Section 817.36(3), F.S. Section 212.04, F.S., imposes a tax on sale of admissions and also provides exceptions to this rule.
[17] Section 775.082(4)(b), F.S., provides that a misdemeanor of the second degree is punishable by a term of imprisonment not exceeding 60 days. Section 775.083(1)(e), F.S., provides that a person convicted of a misdemeanor of the second degree is subject to a fine not to exceed $500.
[18] A multiuse ticket is a ticket that is designed for admission to more than one theme park complex or to more than one amusement location in a theme park complex, or for admission for more than 1 day or more than once in the same day to one or more such locations or facilities in a theme park complex.
[19] Section 775.082(3)(e), F.S., provides that a felony of the third degree is punishable by a term of imprisonment not exceeding 5 years. Section 775.083(1)(c), F.S., provides that a person convicted of a felony of the third degree is subject to a fine not to exceed $5,000. Section 775.082, F.S., provides for enhanced penalties for habitual offenders.

Pursuant to s. 817.355, F.S., it is a first degree misdemeanor[20] to counterfeit, forge, alter, or possess a ticket with the intent to defraud a facility.

Pursuant to s. 817.357, F.S., it is a violation of the Florida Deceptive and Unfair Trade Practices Act[21] to knowingly purchase a quantity of tickets exceeding the maximum ticket limit with the intent to resell the tickets. This section does not apply to the original ticket seller.[22]

III. Effect of Proposed Changes:

The bill amends s. 817.36, F.S., to limit the use of technology used to circumvent controls that may be instituted on a ticket sale website, to require the registration of ticket brokers with the Department of Agriculture and Consumer Services, and to provide for the enforcement of the provisions of the bill. The bill adds mobile applications and other digital platforms as mediums on which ticket sales may occur. The bill also repeals a requirement that a reseller must post on its website, mobile application, or digital platform that it will refund the price the purchaser paid for the ticket if the ticket is not delivered in the requested manner and pursuant to any delivery guarantee made by the reseller, and this failure results in the purchaser being unable to attend the event.

Technology to Circumvent Controls

The bill amends s. 817.36, F.S., to protect against technology that would circumvent controls by providing the following:

- A person may not sell or use any means, technology, devices, or software that functions to bypass portions of the ticket-buying process or disguise the identity of the ticket purchaser or circumvent a security measure on a ticket issuer's or resale ticket agent's website, mobile application, or digital platform;
- A person may not use any means or technology that functions to disguise the identity of the purchaser with the purpose of purchasing, via online sale, a quantity of tickets to a place of entertainment in excess of authorized limits established by the owner or operator of the place of entertainment or of the entertainment event;
- A violation of these provisions is punishable as a second-degree misdemeanor and each ticket purchase, sale, or violation constitutes a separate offense;
- Repeal of a provision that imposed a civil penalty, to be paid to the state, on a person who used or sold technology that would circumvent controls on a ticket seller's website; and
- Creation of a private right of action for any person injured by wrongful conduct in violation of these provisions to recover all actual damages; and authorizing the court to award up to three times the amount of actual damages.

[20] Section 775.082(4)(a), F.S., provides that a misdemeanor of the first degree is punishable by a term of imprisonment not to exceed 1 year. Section 775.083(1)(d), F.S., provides that a person convicted of a misdemeanor of the first degree is subject to a fine not to exceed $1,000.
[21] Sections 501.201-501.213, F.S.
[22] "Original ticket seller" means the issuer of the ticket or a person or firm who provides distribution services or ticket sales services under a contract with such issuer.

Registration of Ticket Brokers

The bill requires a ticket broker to register with the Department of Agriculture and Consumer Services (department) by April 1, 2016, or within 30 days after commencing business as a ticket broker in Florida, whichever is later. A ticket broker must actively maintain its registration with the department by:

- Maintaining a permanent office or place of business in Florida for the purpose of engaging in the business as a ticket broker;
- Submitting its business name, a physical address in Florida, and other information as requested on a form adopted by the department by rule;
- Certifying that it does not use, sell, give, transfer, or distribute software that is primarily designed for the purpose of interfering with the operations of any ticket seller in violation of law;
- Annually renewing its registration and paying a registration fee as determined by the department;[23] and
- Registering for sales and use tax purposes under ch. 212, F.S.

Once registered, the department must issue each ticket broker a unique registration number and publish a list of registered ticket brokers on its website. A person who has been convicted of a felony and has not been pardoned or had his or her civil rights, other than voting, restored may not register as a ticket broker.

Disclosures

The bill requires a ticket broker, resale website, mobile application, or other digital platform to clearly and conspicuously disclose to a prospective ticket resale purchaser:

- The face value[24] and exact location of the seat offered for sale, including a section, row, and seat number or area specifically designated as accessible seating;
- Whether the ticket offered for sale is in the actual possession of the reseller and available for delivery; and if the ticket is not in the actual physical possession of the reseller, the period of time the reseller reasonably expects to have the ticket in its actual possession and available for delivery;
- Whether the reseller is actively making an offer to procure the ticket;
- The refund policy of the ticket broker or resale website in connection with the cancellation or postponement of an entertainment event; and
- That the reseller's ticket prices often exceed face value.

The bill provides that a resale website, mobile application, or other digital platform may not use the name of the venue, artist, or team trademark or service mark without express written consent of the owner of the name of the venue, the artist, or the owner of the team trademark or service

[23] The bill requires the department to determine the fee by rule, and the fee must cover the department's cost to administer the registration program.
[24] The bill defines face value as the face price of a ticket, as determined by the event presenter and printed or displayed on the ticket.

mark, except when it constitutes fair use[25] and is consistent with applicable laws, including full disclosure or attribution of the true owner.

Enforcement

In addition to any other remedy or relief to which a person is entitled, the bill provides that a person who is aggrieved by a violation of s. 817.36, F.S., may bring an action to obtain a declaratory judgment that an act or practice violated the provisions of the bill and to enjoin a person from engaging in an activity in violation of the law. In such an action, a person suffering a loss may recover actual damages, plus attorney fees and court costs.

The bill repeals a provision that subjected a person who knowingly resells a ticket in violation of the law to a civil penalty, payable to the state, of three times the price of the ticket. Under the bill, an unlawful resale of a ticket is a second degree misdemeanor.

Additionally, the department may impose an administrative fine of up to $1,000 per occurrence, the revocation or suspension of a registration, or both, against any person who violates the requirements of the law or any rules the department has adopted, or who impedes, obstructs, hinders, or otherwise interferes with the department's performance of its duties required under the bill.

The bill also provides that, in addition to any noncriminal penalties that may be assessed, a person who knowingly violates the provisions of the bill commits a third degree felony,[26] or may be fined up to $10,000, unless another specific criminal is provided.

New Definitions

Additionally, the bill provides for the following definitions:

- Department means the Department of Agriculture and Consumer Services;
- Face value means the face price of a ticket, as determined by the event presenter and printed or displayed on the ticket;
- Online marketplace means a website, mobile application, or any other digital platform that provides a forum for the buying and selling of tickets, but does not include a website, mobile application, or any other digital platform operated by a reseller, ticket issuer, event presenter, or agent of an owner or operator of a place of entertainment;
- Place of entertainment means a privately owned and operated entertainment facility or publicly owned and operated entertainment facility in this state, such as a theater, stadium, museum, arena, racetrack, or other place where performances, concerts, exhibits, games, athletic events, or contests are held for which an entry fee is charged. A facility owned by a

[25] 17 U.S.C. s. 107, governs fair use under the Copyright Law of the United States of America. Generally, fair use of copyrighted work is not considered an infringement on a copyright. However, to determine whether a particular use is considered fair use, the following factors should be considered: (1) the purpose and character of the use; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use on the potential market for or value of the copyrighted work.

[26] Section 775.082(3)(e), F.S., provides that a felony of the third degree is punishable by a imprisonment not exceeding 5 years. Section 775.083(1)(e), F.S., provides that a person convicted of a felony of the third degree is subject to a fine not to exceed $5,000.

school, college, university, or house of worship is a place of entertainment only when an event is held for which an entry fee is charged;

- Resale website means a website, mobile application, or any other digital platform or portion of a website, that facilitates the sale of tickets by resellers to consumers or on which resellers offer tickets for sale to consumers;
- Ticket means a printed, electronic, or other type of evidence of the right, option, or opportunity to occupy space at, or to enter or attend, an entertainment event even if there is no physical manifestation of such right. A ticket is a revocable license, held by the person in possession of the ticket, to use a seat or occupy a standing area in a specific place of entertainment for a limited time. The license represented by the ticket may be revoked at any time, with or without cause, by the ticket issuer; and
- Ticket broker means a person, or persons acting in concert, involved in the business of reselling tickets of admission to places of entertainment. However, the term does not include:
  - An individual who does not regularly engage in the business of reselling tickets, who resells less than 60 tickets or one-third of all tickets purchased from a professional sports entity during any 12-month period, and who obtained the tickets for the person's own use or the use of the person's family, friends, or acquaintances; or
  - A person operating a website whose primary business is to serve as an online marketplace for third parties to buy and sell tickets, and whose primary business is not engaging in the reselling of tickets.

Section 2 provides that the bill takes effect October 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Ticket brokers will have to pay a fee to register with the department. The department has indicated that the annual registration fee is to be set at $875.[27]

C. Government Sector Impact:

The department estimates the following to implement the provisions of the bill:[28]

	FY 15-16	FY 16-17	FY 17-18
Registration Fees	$70,000	$70,000	$70,000
Recurring Costs, including personnel costs	$73,216	$55,451	$55,451
Non-Recurring Costs, including computer software	$44,200	$0	$0
Total Recurring and Non-Recurring Costs	**$91, 298**	**$55,451**	**$55,451**
Non-operating costs, including information technology support	$13,449	$13,449	$13,449
Total Expenditures	**$104,747**	**$68,900**	**$68,900**
Net Gain (Loss)	**($34,747)**	**$1,100**	**$1,100**

The Criminal Justice Impact Conference (CJIC) has not yet considered SB 742; the bill has been requested for consideration at the next CJIC meeting to determine the bill's impact on prison beds. However, a preliminary estimate indicates that the bill will have a positive insignificant effect on prison beds.[29]

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill requires the Department of Agriculture and Consumer Services to adopt rules to administer those provisions related to the registration of ticket brokers.

An individual who purchase tickets on behalf of another individual and does not clearly identify the purchaser may be subject to the penalties provided in the bill. For example, if a group of individuals planning to attend an event designate one person to purchase all the tickets on behalf of the other group members and provide the money to cover the purchase price, this could be

[27] Department of Agriculture and Consumer Services, *Agency Bill Analysis Senate Bill 742*, (Mar. 16, 2015) (on file with the Senate Commerce and Tourism Committee).
[28] *Id.*
[29] Email from Matthew Hasbrouck, Office of Economic and Demographic Research, (Mar. 16, 2015) (on file with the Senate Commerce and Tourism Committee).

construed under the bill's provisions as an individual purchasing tickets using a method that disguises the identity of the purchaser.

On lines 227-231, the bill provides that a violation of 817.36, F.S., is punishable as a third degree felony, unless otherwise provided. However, the bill also provides, on lines 111-116, that a person who knowingly resells a ticket in violation of s. 817.36, F.S., commits a second degree misdemeanor. Since any ticket sold in violation of this section of law would necessarily encompass a violation of any other provision in this section, confusion may arise about which criminal penalty would apply. For example, a person who knows that they must register with the department as a ticket broker but fails to do so and subsequently resells a ticket, commits a second degree misdemeanor for reselling a ticket in violation of the law for not being registered as required, and also commits a third degree felony for not being registered as required.

VIII. Statutes Affected:

This bill substantially amends section 817.36 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.

LEGISLATIVE ACTION

Senate . House

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 817.36, Florida Statutes, is amended to read:

817.36 Ticket sales ~~Resale of tickets~~.—

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

(a) "Department" means the Department of Agriculture and Consumer Services.

(b) "Face value" means the face price of a ticket, as determined by the event presenter and printed or displayed on the ticket.

(c) "Online marketplace" means a website, software application for a mobile device, or any other digital platform that provides a forum for the buying and selling of tickets, but does not include a website, software application for a mobile device, or any other digital platform operated by a reseller, ticket issuer, event presenter, or agent of an owner or operator of a place of entertainment.

(d) "Place of entertainment" means a privately owned and operated entertainment facility or publicly owned and operated entertainment facility in this state, such as a theater, stadium, museum, arena, racetrack, or other place where performances, concerts, exhibits, games, athletic events, or contests are held and for which an entry fee is charged. A facility owned by a school, college, university, or house of worship is a place of entertainment only when an event is held for which an entry fee is charged.

(e) "Resale website" means a website, software application for a mobile device, any other digital platform, or portion thereof, whose primary purpose is to facilitate the resale of tickets to consumers, but excludes an online marketplace.

(f) "Ticket" means a printed, electronic, or other type of evidence of the right, option, or opportunity to occupy space at or to enter or attend an entertainment event even if not evidenced by any physical manifestation of such right.

(2) ~~(1)~~ A person or entity that offers for resale or resells any ticket may charge only $1 above the face value ~~admission~~

~~price~~ charged therefor by the original ticket seller of the ticket for the following transactions:

(a) Passage or accommodations on any common carrier in this state. However, this paragraph does not apply to travel agencies that have an established place of business in this state and are required to pay state, county, and city occupational license taxes.

(b) Multiday or multievent tickets to a park or entertainment complex or to a concert, entertainment event, permanent exhibition, or recreational activity within such a park or complex, including an entertainment/resort complex as defined in s. 561.01(18).

(c) Event tickets originally issued by a charitable organization exempt from taxation under s. 501(c)(3) of the Internal Revenue Code for which no more than 3,000 tickets are issued per performance. The charitable organization must issue event tickets with the following statement conspicuously printed or displayed on the face or back of the ticket: "Pursuant to s. 817.36, Florida Statutes, this ticket may not be resold for more than $1 over the face value ~~original admission price~~." This paragraph does not apply to tickets issued or sold by a third party contractor ticketing services provider on behalf of a charitable organization otherwise included in this paragraph unless the required disclosure is printed or displayed on the ticket.

(d) Any tickets, other than the tickets in paragraph (a), paragraph (b), or paragraph (c), that are resold or offered through a resale ~~an Internet~~ website~~,~~ or online marketplace unless such resale website or online marketplace is authorized

by the original ticket seller to sell such tickets or makes and posts the following guarantees and disclosures on ~~through Internet~~ web pages on which are visibly posted, or links to web pages on which are posted, text to which a prospective purchaser is directed before completion of the resale transaction:

1. The resale website or online marketplace operator guarantees a full refund of the amount paid for the ticket including any servicing, handling, or processing fees, if such fees are not disclosed, when:

a. The ticketed event is canceled;

b. The purchaser is denied admission to the ticketed event, unless such denial is due to the action or omission of the purchaser; or

c. The ticket is not delivered to the purchaser ~~in the manner requested and~~ pursuant to any delivery guarantees made by the reseller and such failure results in the purchaser's inability to attend the ticketed event.

2. The resale website or online marketplace operator discloses that it is not the issuer, original seller, or reseller of the ticket or items and does not control the pricing of the ticket or items, which may be resold for more than their face ~~original~~ value.

(3)~~(2)~~ This section does not authorize any individual or entity to sell or purchase tickets at any price on property or place of entertainment where an event is being held without the prior express written consent of the owner of the property or place of entertainment.

(4)~~(3)~~ Any sales tax due for resales under this section shall be remitted to the Department of Revenue in accordance

with s. 212.04.

~~(4) A person who knowingly resells a ticket or tickets in violation of this section is liable to the state for a civil penalty equal to treble the amount of the price for which the ticket or tickets were resold.~~

(5)(a) A person may not sell, use, or cause to be used any means, method, technology, device, or software that is designed or intended to, or that functions to, bypass portions of the ticket-buying process or disguise the identity of the ticket purchaser with the intent to circumvent a security measure, an access control system or other control, authorization, or measure on a ticket issuer's or resale ticket agent's website, software application for a mobile device, or digital platform.

(b) A person may not use or cause to be used any means, method, or technology that is designed, intended, or functions to disguise the identity of the purchaser with the purpose of purchasing or attempting to purchase via online sale a quantity of tickets to a place of entertainment in excess of authorized limits established by the owner or operator of a place of entertainment or of the entertainment event or his or her agent.

(c) A person who knowingly violates this subsection commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083 or by a fine not to exceed $10,000, or both. Each ticket purchase, sale, or violation of this subsection constitutes a separate offense.

(d) A party that has been injured by wrongful conduct in violation of this subsection may bring an action to recover all actual damages suffered as a result of any of such wrongful conduct. The court in its discretion may award damages up to

three times the amount of actual damages. ~~A person who intentionally uses or sells software to circumvent on a ticket seller's Internet website a security measure, an access control system, or any other control or measure that is used to ensure an equitable ticket-buying process is liable to the state for a civil penalty equal to treble the amount for which the ticket or tickets were sold.~~

(6) A person, resale website or online marketplace must clearly and conspicuously disclose to a prospective ticket resale purchaser, whether on the resale website or online marketplace, or in person, before a resale:

(a) The refund policy of the person or resale website, or online marketplace in connection with the cancellation or postponement of an entertainment event;

(b) That it is a resale website or online marketplace and prices of tickets can often exceed face value; and

(c) If the ticket is in the actual physical possession of the reseller, the face value and exact location of the seat offered for sale, including a section, row, and seat number, or area specifically designated as accessible seating; or

(d) If the ticket is not in the actual physical possession of the reseller:

1. That the ticket offered for sale is not in the actual physical possession of the reseller;

2. The period of time when the reseller reasonably expects to have the ticket in actual physical possession and available for delivery; and

3. Whether the reseller is actively making an offer to procure the ticket.

This subsection does not apply to a person who does not regularly engage in the business of reselling tickets; who, in any given 12-month period, resells fewer than 60 tickets or fewer than one-third of all tickets purchased from a given sports entity, whichever is less; and who obtains the tickets for his or her own use or the use of his or her family members, friends, or acquaintances. ~~As used in this section, the term "software" means computer programs that are primarily designed or produced for the purpose of interfering with the operation of any person or entity that sells, over the Internet, tickets of admission to a sporting event, theater, musical performance, or place of public entertainment or amusement of any kind.~~

(7)(a) A resale website or online marketplace shall not make any representation of affiliation or endorsement with a venue or artist without the express written consent of the venue or artist, except when it constitutes fair use and is consistent with applicable laws.

(b) A person who knowingly violates this subsection commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083 or by a fine not to exceed $10,000, or both.

(8)(a) A person aggrieved by a violation of this section may, without regard to any other remedy or relief to which the person is entitled, bring an action to obtain a declaratory judgment that an act or practice violates this section and to enjoin a person who has violated, is violating, or is otherwise likely to violate this section.

(b) In any action brought by a person who has suffered a

loss as a result of a violation of this section, such person may recover actual damages, plus attorney fees and court costs.

(9) If the department, by its own inquiry or as a result of complaints, has reason to believe that a violation of this section has occurred or is occurring, the department may conduct an investigation, conduct hearings, subpoena witnesses and evidence, and administer oaths and affirmations. If, as a result of the investigation, the department has reason to believe a violation of this section has occurred, the department with the coordination of the Department of Legal Affairs and any state attorney, if the violation has occurred or is occurring within her or his judicial circuit, shall have the authority to bring a civil action and to seek any other relief, including injunctive relief, as the court deems appropriate. The Department of Legal Affairs or any state attorney having jurisdiction may bring a civil or criminal action to seek any other relief, as the court deems appropriate. This subsection does not prohibit the department from providing information to any law enforcement agency or to any other regulatory agency.

(10) Except as otherwise provided in this section a person who knowingly resells a ticket or tickets in violation of this section commits misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Each violation of this section constitutes a separate offense.

(11) The department shall adopt rules to implement this section.

Section 2. This act shall take effect October 1, 2015.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to ticket sales; amending s. 817.36, F.S.; defining terms; revising provisions to include digital platforms; revising certain presale disclosure requirements; revising provisions relating to prohibitions on bypassing portions of the ticket-buying process, disguising the identity of a buyer, or circumventing security measures; providing criminal penalties for violations; providing for recovery of damages up to treble the amount of actual damages for such violations; providing criminal penalties for knowingly reselling a ticket in violation of statute; deleting provisions imposing penalties for intentionally using or selling software to circumvent certain ticket seller security measures; requiring specified disclosures before resale of a ticket; prohibiting misrepresentations of affiliation or endorsement by resellers without consent; providing exceptions; authorizing declaratory judgments; authorizing the Department of Legal Affairs or a state attorney to bring a civil or criminal action under certain circumstances; providing criminal penalties for certain violations; requiring rulemaking; providing an effective date.

By Senator Simpson

18-00504-15 2015742__

A bill to be entitled

An act relating to ticket sales; amending s. 817.36, F.S.; authorizing a specified phrase to be printed or displayed on the ticket; requiring certain guarantees and disclosures for tickets sold through a mobile application or digital platform; deleting the requirement that the ticket seller guarantee a refund if the seller cannot transmit tickets to the buyer in the buyer's preferred method, resulting in the buyer's inability to attend the event; including mobile applications and digital platforms as prohibited places where an individual may not sell or purchase tickets absent the property owner's consent; prohibiting a person from selling, using, or causing to be used specified means to bypass portions of the ticket-buying process or disguise the identity of the ticket purchaser under certain circumstances; providing that a person who violates such prohibitions commits a misdemeanor of the second degree; authorizing an injured party to bring a claim to recover damages; authorizing a court to award damages up to three times the amount of actual damages; deleting a civil penalty and upgrading the severity of a certain offense to a misdemeanor of the second degree; deleting a provision to conform to changes made by the act; establishing registration requirements for a ticket broker; requiring a ticket broker to register with the Department of Agriculture and Consumer Services by a specified date; prohibiting

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certain persons from registering as a ticket broker; requiring a ticket broker, resale website, mobile application, or other digital platform to disclose specified information; prohibiting a website, mobile application, or digital platform from using a trademark or service mark without written consent; providing an exception; authorizing an aggrieved person to bring a lawsuit and obtain certain remedies; authorizing the recovery of damages, attorney fees, and court costs; authorizing the department to impose one or more specified penalties against a person in specified circumstances; providing for a penalty or a fine; requiring the department to adopt rules to implement the registration provisions; defining terms; making technical changes; providing an effective date.

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

Section 1. Section 817.36, Florida Statutes, is reordered and amended to read:

817.36 Ticket sales ~~Resale of tickets~~.—

(2)~~(1)~~ A person or entity that offers for resale or resells a ~~any~~ ticket may charge only $1 more than ~~above~~ the admission price charged ~~therefor~~ by the original ~~ticket~~ seller of the ticket for the following transactions:

(a) Passage or accommodations on any common carrier in this state. However, this paragraph does not apply to travel agencies that have an established place of business in this state and are required to pay state, county, and city occupational license

taxes.

(b) Multiday or multievent tickets to a park or entertainment complex, or to a concert, entertainment event, permanent exhibition, or recreational activity within such a park or complex, including an entertainment/resort complex as defined in s. 561.01(18).

(c) Event tickets originally issued by a charitable organization exempt from taxation under s. 501(c)(3) of the Internal Revenue Code if ~~for which~~ no more than 3,000 tickets are issued per performance. Such tickets must have ~~The charitable organization must issue event tickets with~~ the following statement conspicuously printed or displayed on their faces or backs ~~the face or back of the ticket~~: "Pursuant to s. 817.36, Florida Statutes, this ticket may not be resold for more than $1 over the original admission price." This paragraph does not apply to tickets that are not imprinted with or do not display the statement and that are issued or sold by a third-party ~~third party~~ contractor that provides ticketing services ~~provider~~ on behalf of a charitable organization otherwise included in this paragraph ~~unless the required disclosure is printed on the ticket~~.

(d) Any tickets, other than the tickets in paragraph (a), paragraph (b), or paragraph (c), which ~~that~~ are resold or offered through a ~~an Internet~~ website, mobile application, or any other digital platform, unless such website, mobile application, or digital platform is authorized by the original ticket seller to resell tickets or makes and prominently posts the following guarantees and disclosures on a web page ~~through Internet web pages on which are visibly posted, or links to web~~

~~pages on which are posted, text~~ to which a prospective purchaser is directed before completion of the resale transaction:

1. The website, mobile application, or digital platform operator guarantees a full refund of the amount paid for the ticket including any servicing, handling, or processing fees, if such fees are not disclosed, if ~~when~~:

a. The ticketed event is canceled.~~,~~

b. The purchaser is denied admission to the ticketed event, unless such denial is due to the action or omission of the purchaser.~~,~~

~~c. The ticket is not delivered to the purchaser in the manner requested and pursuant to any delivery guarantees made by the reseller and such failure results in the purchaser's inability to attend the ticketed event.~~

2. The website, mobile application, or digital platform operator discloses that it is not the issuer, original seller, or reseller of the ticket or items and does not control the pricing of the ticket or items, which may be resold for more than their face ~~original~~ value.

(3)~~(2)~~ This section does not authorize any individual or entity to sell or purchase tickets at any price on property or at a place of entertainment where an event is being held without the prior express written consent of the owner of the property.

(4)~~(3)~~ Any sales tax due for resales under this section shall be remitted to the Department of Revenue in accordance with s. 212.04.

(6)~~(4)~~ A person who knowingly resells a ticket ~~or tickets~~ in violation of this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083 ~~is~~

~~liable to the state for a civil penalty equal to treble the amount of the price for which the ticket or tickets were resold~~.

(5)(a) A person may not sell, use, or cause to be used by any means, method, technology, device, or software that is designed or intended to, or that functions to, bypass portions of the ticket-buying process or to disguise the identity of the ticket purchaser or circumvent a security measure, an access control system, or other control, authorization, or measure on a ticket issuer's or resale ticket agent's website, mobile application, or digital platform.

(b) A person may not use or cause to be used by any means, method, technology, device, or software that is designed or intended to, or that functions to, disguise the identity of the purchaser with the purpose of purchasing or attempting to purchase via online sale a quantity of tickets to a place of entertainment in excess of the authorized limits established by the owner or operator of the place of entertainment or of the entertainment event or an agent of any such person.

(c) A person who violates this subsection commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Each ticket purchase, ticket sale, or violation of this subsection constitutes a separate offense.

(d) A person injured by wrongful conduct that occurs during the commission of a violation of this subsection may bring an action to recover all actual damages suffered as a result of such conduct. The court, in its discretion, may award damages up to 3 times the amount of actual damages.

~~(5) A person who intentionally uses or sells software to circumvent on a ticket seller's Internet website a security~~

~~measure, an access control system, or any other control or measure that is used to ensure an equitable ticket-buying process is liable to the state for a civil penalty equal to treble the amount for which the ticket or tickets were sold.~~

(7)(a) A ticket broker shall register with the department by April 1, 2016, or within 30 days after commencing business as a ticket broker in this state, whichever is later, and must maintain an active registration with the department. To have and maintain an effective registration, a ticket broker must:

1. Maintain a permanent office or place of business in this state for the purpose of engaging in the business of ticket brokering.

2. Submit the ticket broker's business name, physical address in this state, and other information as requested on a form adopted by the department by rule.

3. Certify that the broker does not use, sell, give, transfer, or distribute software that is primarily designed for the purpose of interfering with the operations of any ticket seller in violation of this section.

4. Pay an annual registration fee, as determined by department rule, which must cover the cost to the department of the administration of this subsection.

5. Renew the registration annually.

6. Register for sales and use tax purposes under chapter 212.

(b) Upon registration, the department shall issue each ticket broker a unique registration number and publish a list of registered ticket brokers, including their respective registration numbers, on its website. A person who has been

convicted of a felony and who has not been pardoned or had his or her civil rights, beyond only voting rights, restored either by the relevant civil rights restoration authority or automatically by operation of law may not register as a ticket broker.

(8) A ticket broker, directly, or a resale website, mobile application, or other digital platform, through a clear and conspicuous posting on its website, mobile application, or digital online marketplace, must disclose to the purchaser, before completion of the sale:

(a) The face value and exact location of the seat offered for sale, including a section, row, and seat number, or the area specifically designated as accessible seating.

(b) Whether the ticket offered for sale is in the actual possession of the reseller and available for delivery. If the ticket is not in the actual physical possession of the reseller, the disclosure must include the time that the reseller reasonably expects to have the ticket in its actual possession and available for delivery.

(c) Whether the reseller is actively making an offer to procure the ticket.

(d) The refund policy of the ticket broker or resale website, mobile application, or digital platform in connection with the cancellation or postponement of an entertainment event.

(e) The ticket prices of a resale website, mobile application, or other digital platform often exceed face value.

(9) A resale website, mobile application, or digital platform may not use the name of a venue, artist, or team trademark or service mark without the express written consent of

the intellectual property owner; however, such use is permissible when it constitutes fair use and is consistent with applicable laws, including full disclosure or attribution of the true intellectual property owner.

(10)(a) In addition to any other remedy or relief to which a person may be entitled, a person aggrieved by a violation of this section may bring an action to obtain a declaratory judgment that an act or practice violates this section and may institute a civil action for injunctive relief to enjoin a person from engaging in any activity in violation of this section.

(b) In an action brought by a person who has suffered a loss as a result of a violation of this section, the person may recover actual damages, plus attorney fees and court costs.

(11)(a) The department may enter an order imposing one or more of the following penalties against a person who violates this section or rules adopted under this section, or who impedes, obstructs, hinders, or otherwise prevents or attempts to prevent the department from performing its duties in connection with this section:

1. Imposition of an administrative fine not to exceed $1,000 per occurrence.

2. Revocation or suspension of registration.

(b) Except as otherwise provided in this section, and in addition to any noncriminal penalties provided in this section, a person who knowingly violates this section commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.084 or by a fine of up to $10,000.

(12) The department shall adopt rules to administer the

registration process under this section.

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

(a) "Department" means the Department of Agriculture and Consumer Services.

(b) "Face value" means the face price of a ticket, as determined by the event presenter and printed or displayed on the ticket.

(c) "Online marketplace" means a website, mobile application, or any other digital platform that provides a forum for the buying and selling of tickets, but does not include a website, mobile application, or any other digital platform operated by a reseller, ticket issuer, event presenter, or agent of an owner or operator of a place of entertainment.

(d) "Place of entertainment" means a privately owned and operated entertainment facility or publicly owned and operated entertainment facility in this state, such as a theater, stadium, museum, arena, racetrack, or other place where performances, concerts, exhibits, games, athletic events, or contests are held and for which an entry fee is charged. A facility owned by a school, college, university, or house of worship is a place of entertainment only when an event is held for which an entry fee is charged.

(e) "Resale website" means a website, mobile application, or any other digital platform or portion thereof which facilitates the sale of tickets by resellers to consumers or on which resellers offer tickets for sale to consumers.

(f) "Software" means computer or application-based programs that are primarily designed or produced for the purpose of interfering with the operation of any person or entity that

sells, over the Internet, tickets of admission to a sporting event, theater, musical performance, or place of public entertainment or amusement of any kind.

(g) "Ticket" means a printed, electronic, or other type of evidence of the right, option, or opportunity to occupy space at, or to enter or attend, an entertainment event even if there is no physical manifestation of such right. A ticket is a revocable license, held by the person in possession of the ticket, to use a seat or occupy a standing area in a specific place of entertainment for a limited time. The license represented by the ticket may be revoked at any time, with or without cause, by the ticket issuer.

(h) "Ticket broker" means a person, or persons acting in concert, involved in the business of reselling tickets of admission to places of entertainment. The term does not include:

1. A person who does not regularly engage in the business of reselling tickets; who, in any given 12-month period, resells fewer than 60 tickets or fewer than one-third of all tickets purchased from a professional sports entity, whichever is less; and who obtains the tickets for his or her own use or the use of his or her family members, friends, or acquaintances.

2. A person operating a website, mobile application, or other digital platform whose primary business is to serve as an online marketplace where third parties may buy and sell tickets, and whose primary business is not the reselling of tickets.

Section 2. This act shall take effect October 1, 2015.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Community Affairs, *Chair*
Environmental Preservation and Conservation, *Vice Chair*
Appropriations Subcommittee on General Government
Finance and Tax
Judiciary
Transportation

JOINT COMMITTEE:
Joint Legislative Auditing Committee

SENATOR WILTON SIMPSON
18th District

February 13, 2015

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

Chairman Detert,

Please place Senate Bill 742 relating to ticket sales, on the next Commerce and Tourism Preservation Committee agenda.

Please contact my office with any questions. Thank you.

Wilton Simpson
Senator, 18th District

CC: Todd McKay, Staff Director

REPLY TO:
❒ 322 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5018
❒ Post Office Box 938, Brooksville, Florida 34605
❒ Post Office Box 787, New Port Richey, Florida 34656-0787 (727) 816-1120 FAX: (888) 263-4821

Senate's Website: *www.flsenate.gov*

ANDY GARDINER
President of the Senate

GARRETT RICHTER
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 806
INTRODUCER:	Banking and Insurance Committee and Senator Richter
SUBJECT:	Regulation of Financial Institutions
DATE:	March 27, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Knudson	BI	**Fav/CS**
2.	McKay	McKay	CM	**Pre-meeting**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 806 makes the following changes to the regulation of financial institutions by the Office of Financial Regulation (OFR):

- Simplifies the process by which a financial institution can notify the OFR when re-designating its main or principal office.
- Specifies the ways semiannual assessments can be transmitted electronically and further specifies the dates by which assessments must be received by the OFR.
- Deletes the requirement that the OFR select an appraiser to conduct certain real-estate appraisals.
- Specifies the date by which an international banking corporation must provide its annual certification of capital accounts to the OFR.

II. Present Situation:

Florida Financial Institutions Codes

The Florida Office of Financial Regulation (OFR)'s Division of Financial Institutions charters and regulates entities that engage in financial institution business in Florida, in accordance with

the Florida Financial Institutions Codes (Codes), and the Florida Financial Institutions Rules, adopted by the Financial Services Commission.[1] The specific chapters under the Codes are:

- Chapter 655, F.S. – Financial Institutions Generally;
- Chapter 657, F.S. – Credit Unions;
- Chapter 658, F.S. – Banks and Trust Companies;
- Chapter 660, F.S. – Trust Business;
- Chapter 663, F.S. – International Banking;
- Chapter 665, F.S. – Capital Stock Associations; and
- Chapter 667, F.S. – Savings Banks.

As of June 30, 2014, the Division of Financial Institutions licenses and regulates 254 state-chartered financial institutions for safety and soundness:[2]

- 132 banks;
- 72 credit unions;
- 25 international bank offices; and
- 12 trust companies

Main or Principal Office

Paragraph 655.005(1)(q), F.S., provides the definition for "main office" or "principal office" of a financial institution as the main business office designated in its articles of incorporation or bylaws. The identified location is approved by the OFR in the case of a state financial institution, or by the appropriate federal regulatory agency in the case of a federal financial institution. When an institution desires to redesignate the location of its main office, it must file an amendment to its articles of incorporation or bylaws and provide the changes to the OFR for review and approval.[3]

Assessments

Section 655.047, F.S., requires each state financial institution to pay the OFR a semiannual assessment based on the total assets as shown on the statement of condition for each financial institution. The mailing of such assessments must be postmarked on or before January 31 and July 31 of each year. The current statute does not explicitly authorize the acceptance of semiannual assessment payments made to the OFR electronically; however, the OFR states in its agency analysis[4] that electronic payment of assessments are currently accepted and most financial institutions have chosen to send payments electronically rather than U.S. standard mail.

Appraisals

Section 655.60, F.S., authorizes the OFR to request appraisals of real estate or other property held by any state financial institution when the OFR believes a state financial institution's own

[1] Chapters 69U-100 through 69U-150, F.A.C.
[2] OFFICE OF FINANCIAL REGULATION, *Fast Facts* (2nd ed., Dec. 2014), available at: http://flofr.com/StaticPages/documents/FastFacts2015.pdf; last visited March 27, 2015.
[3] Sections 655.043 and 658.23(6), F.S.
[4] 2015 Legislative Bill Analysis of SB 806 by Office of Financial Regulation (March 13, 2015), on file with the Senate Commerce and Tourism Committee.

appraisals or evaluations of its ability to make payments may be excessive. The statute provides that an appraisal must be made by a licensed or certified appraiser or an appraiser that is selected by the OFR. The cost of the appraisal must be paid by the state financial institution directly to the appraiser upon the institution's receipt of a statement of appraisal cost. Following the completion of the appraisal, a copy of the appraisal report made by the OFR pursuant to this section is then furnished to the financial institution within a reasonable time, not exceeding 60 days.

Banks and Trust Companies

Section 655.005, F.S., provides that "executive officer" means an individual, whether or not the individual has an official title or receives a salary or other compensation, who participates or has authority to participate, other than in the capacity of a director, in the major policymaking functions of a financial institution. The term does not include an individual who may have an official title and may exercise discretion in the performance of duties and functions, including discretion in the making of loans, but who does not participate in the determination of major policies of the financial institution and whose decisions are limited by policy standards established by other officers, whether or not the policy standards have been adopted by the board of directors. The chair of the board of directors, the president, the chief executive officer, the chief financial officer, the senior loan officer, and every executive vice president of a financial institution, and the senior trust officer of a trust company, are presumed to be executive officers unless such officer is excluded, by resolution of the board of directors or by the bylaws of the financial institution, from participating, other than in the capacity of a director, in major policymaking functions of the financial institution and the individual holding such office so excluded does not actually participate therein. Section 658.19, F.S., which relates to application for authority to organize a bank or trust company, references "president," "chief executive officer" (if other than the president), such terms appear duplicative given the definition of "executive officer" provided in s. 655.005, F.S.

International Banking

Section 663.08, F.S., provides for the certification of capital accounts for international banking corporations having offices in Florida both prior to opening an office in this state and annually thereafter. The statute does not provide a specific due date for the required annual certification of capital accounts. According to the OFR, this has resulted in the OFR receiving the annual certifications at various times throughout the year, and has caused confusion for these institutions regarding the date for submission.

III. Effect of Proposed Changes:

Main Office Designation

Section 1 amends the definition of "main office" in s. 665.005(1)(q), F.S., which will give a financial institution the ability to submit to the OFR an application for a re-designation of its main or principal office. This application is intended to streamline such changes by removing the current process that requires institutions to amend their articles of incorporation or bylaws in order to make such re-designations with the OFR.

Assessments

Section 2 amends s. 655.047, F.S., to authorize a financial institution to make an electronic payment of semiannual assessments by a wire transfer, automated clearinghouse, or other electronic means, and requires that such electronic payments must be transmitted to the OFR on or before January 31 and July 31 of each year.

The bill also changes a current requirement that assessment payments sent by mail to the OFR must be ***postmarked*** on or before January 31 and July 31 of each year, to a requirement that mailed assessment payments must be ***received by*** the OFR on or before January 31 and July 31 of each year.

Appraisals

Section 3 amends s. 655.60, F.S., to remove the requirement that the OFR select an appraiser to perform the appraisal of real estate or other property held by a state financial institution. The section also no longer requires the cost of each appraisal to be approved in writing by the OFR. The changes in this section do not affect the requirement that institutions must still hire a licensed appraiser at the request of the OFR.

Applications for Authority to Organize Banks or Trust Companies

Section 4 removes the terms "president" and "chief executive officer" from the requirements for an application for authority to organize a bank or trust company in s. 658.19, F.S. Since "president" and "chief executive officer" are included within the defined term of "executive officer"[5] elsewhere in the Codes, the bill deletes these two terms, and replaces them with the term "executive officer."

Corrected Cross Reference Related to Trust Service Offices

Section 5 corrects a cross reference. Subsection 660.33(1), F.S., includes an obsolete cross-reference to s. 660.32, F.S., which has been repealed. This section updates the cross-reference to reference s. 658.26, F.S., which is currently applicable.

Certification of Capital Accounts for International Banking Corporations

Section 6 amends s. 663.08, F.S., to mandate that a required certification of capital accounts by international banking corporations must be received by the OFR on or before June 30th of each year. Current law does not contain a specific due date for these required certifications, so this deadline should provide clarity to the industry and allow the OFR to better manage and review such certifications.

[5] Section 655.005(1)(g), F.S.

Reenactments

Sections **7 through 12** of the bill reenact the following statutory provisions, for the purposes of incorporating the changes made by the bill:

- **Section 7** reenacts subsection 655.960(8), F.S.
- **Section 8** reenacts paragraph 663.302(1)(a), F.S.
- **Section 9** reenacts subsection 658.165(1), F.S.
- **Section 10** reenacts subsection 665.013(3), F.S.
- **Section 11** reenacts subsection 667.003(3), F.S.
- **Section 12** reenacts subsection 658.12(4), F.S.

Effective Date

Section 13 provides that the effective date of the bill is October 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The changes in Section 1 will allow a financial institution to notify the office of a re-designation of its main or principal office without having to amend its articles of incorporation or bylaws. This could provide a small saving to an institution when making such a change.

The changes in Section 2 that allow for the electronic payment of semiannual assessments may provide savings on postage costs to state financial institutions.

C. Government Sector Impact:

The OFR has indicated that clarifying the due date for statutorily required assessments may have an insignificant negative fiscal impact in terms of the potential reduction in fine collection from non-compliance. The streamlining of some processes may result in a positive fiscal impact in terms of decreased costs and staff time.[6]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 655.005, 655.047, 655.60, 658.19, 660.33, and 663.08.

This bill reenacts the following sections of the Florida Statutes: 655.960, 663.302, 658.165, 665.013, 667.003, and 658.12.

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 17, 2015:
Removed section 4 of the bill dealing with the reporting of elected or appointed officers of a Credit Union.

B. Amendments:

None.

[6] 2015 Legislative Bill Analysis of SB 806 by Office of Financial Regulation (March 13, 2015), on file with the Senate Commerce and Tourism Committee.

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LEGISLATIVE ACTION

Senate . House

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. .

. .

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

Senate Amendment (with title amendment)

Delete line 252

and insert:

Section 13. Effective July 1, 2015, section 663.021, Florida Statutes, is created to read:

663.021 Civil action subpoena enforcement.—

(1)(a) Notwithstanding s. 655.059, an international representative office, international bank agency, international branch, international trust company representative office, or

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international administrative office is not required to produce a book or record pertaining to a deposit account, investment account, or loan of a customer of the international banking corporation in response to a subpoena if the book or record is maintained outside the United States and is not available to the international banking corporation's office, agency, or branch established in this state.

(b) This subsection applies only to a subpoena issued pursuant to the Florida Rules of Civil Procedure, the Federal Rules of Civil Procedure, or other similar law or rule of civil procedure in another state. This subsection does not apply to a subpoena issued by or on behalf of a federal, state, or local government law enforcement agency, administrative or regulatory agency, legislative body, or grand jury.

(2) Notwithstanding s. 48.193, a request for production of a book or record pertaining to a deposit account, investment account, or loan of a customer of an office of the international banking corporation which is established or maintained in a foreign country must be conducted pursuant to letters rogatory or in accordance with any applicable treaty and convention governing service of process entered into by the United States.

Section 14. Except as otherwise expressly provided in this act, this act shall take effect October 1, 2015.

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

And the title is amended as follows:

Delete line 31

and insert:

references thereto; creating s. 663.021, F.S.;

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providing that specified entities of an international banking corporation are not required to produce certain books or records that are maintained outside the United States and are not available to the entities in response to a subpoena; providing applicability; providing that a request for production of certain books or records for a customer of an office of the international banking corporation that is established or maintained in a foreign country must be conducted pursuant to letters rogatory or in accordance with specified treaties or conventions; providing effective dates.

By the Committee on Banking and Insurance; and Senator Richter

597-02403-15 2015806c1

A bill to be entitled

An act relating to the regulation of financial institutions; amending s. 655.005, F.S.; redefining the terms "main office" and "principal office"; amending s. 655.047, F.S.; requiring mailed semiannual assessments to be received by the Office of Financial Regulation by a specified date; requiring electronically transmitted semiannual assessments to be transmitted to the office by specified dates; amending s. 655.60, F.S.; deleting the requirement that the office select a licensed or certified appraiser to conduct certain appraisals; deleting the requirement that the office approve the cost of certain appraisals before payment of that cost by a state financial institution, subsidiary, or service corporation; amending s. 658.19, F.S.; revising the individuals for whom certain information must be provided to the office on an application for authority to organize a banking corporation or trust company; amending s. 660.33, F.S.; conforming a cross-reference; amending s. 663.08, F.S.; requiring an international banking corporation to provide its annual certification of capital accounts to the office by a specified date; reenacting ss. 655.960(8) and 663.302(1)(a), F.S., to incorporate the amendment made to s. 655.005, F.S., in references thereto; reenacting ss. 658.165(1), 665.013(3), and 667.003(3), F.S., to incorporate the amendment made to s. 658.19, F.S., in references thereto; reenacting s. 658.12(4), F.S., to

597-02403-15 2015806c1

incorporate the amendment made to s. 660.33, F.S., in references thereto; providing an effective date.

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

Section 1. Paragraph (q) of subsection (1) of section 655.005, Florida Statutes, is amended to read:

655.005 Definitions.—

(1) As used in the financial institutions codes, unless the context otherwise requires, the term:

(q) "Main office" or "principal office" of a financial institution means the main business office designated in its articles of incorporation or bylaws, or redesignated in a relocation application filed with the office, at an identified location approved by the office in the case of a state financial institution, or by the appropriate federal regulatory agency in the case of a federal financial institution. With respect to the trust department of a bank or association that has trust powers, the terms mean the office or place of business of the trust department at an identified location, which need not be the same location as the main office of the bank or association, approved by the office in the case of a state bank or association, or by the appropriate federal regulatory agency in the case of a national bank or federal association. The "main office" or "principal office" of a trust company means the office designated or provided for in its articles of incorporation~~,~~ at an identified location as approved by the relevant chartering authority.

Section 2. Subsection (2) of section 655.047, Florida

Statutes, is amended to read:

655.047 Assessments; financial institutions.—

(2) If mailed, the ~~mailing of a~~ semiannual assessment must be received by the office ~~postmarked~~ on or before January 31 and July 31 of each year. If transmitted through a wire transfer, an automated clearinghouse, or other electronic means approved by the office, the semiannual assessment must be transmitted to the office on or before January 31 and July 31 of each year. The office may levy a late payment penalty of up to $100 per day or part thereof that a semiannual assessment payment is overdue, unless it is excused for good cause. However, for intentional late payment of a semiannual assessment, the office shall levy an administrative fine of up to $1,000 a day for each day the semiannual assessment is overdue.

Section 3. Subsection (1) of section 655.60, Florida Statutes, is amended to read:

655.60 Appraisals.—

(1) The office is authorized to cause appraisals to be made ~~appraisals~~ of real estate or other property held by a ~~any~~ state financial institution, subsidiary, or service corporation or securing the assets of the state financial institution, subsidiary, or service corporation if ~~when~~ specific facts or information with respect to real estate or other property held, secured loans, or lending, or when in its opinion the state financial institution's policies, practices, operating results, and trends give evidence that the state financial institution's appraisals or evaluations of ability to make payments may be excessive, that lending or investment may be of a marginal nature, that appraisal policies and loan practices may not

conform with generally accepted and established professional standards, or that real estate or other property held by the state financial institution, subsidiary, or service corporation or assets secured by real estate or other property are overvalued. In lieu of causing such appraisals to be made, the office may accept any appraisal caused to be made by an appropriate state or federal regulatory agency or other insuring agency or corporation of a state financial institution. Unless otherwise ordered by the office, an appraisal of real estate or other property pursuant to this section must be made by a licensed or certified appraiser ~~or appraisers selected by the office, and the cost of such appraisal shall be paid promptly by such state financial institution, subsidiary, or service corporation directly to such appraiser or appraisers upon receipt by the state financial institution of a statement of such cost bearing the written approval of the office~~. A copy of the report of each appraisal caused to be made by the office pursuant to this section shall be furnished to the state financial institution, subsidiary, or service corporation within a reasonable time, not exceeding 60 days, following the completion of the ~~such~~ appraisal and may be furnished to the insuring agency or corporation or federal or state regulatory agency.

Section 4. Paragraph (f) of subsection (1) of section 658.19, Florida Statutes, is amended to read:

658.19 Application for authority to organize a bank or trust company.—

(1) A written application for authority to organize a banking corporation or a trust company shall be filed with the

office by the proposed directors and shall include:

(f) Such detailed financial, business, and biographical information as the commission or office may reasonably require for each proposed director, ~~president, chief~~ executive officer ~~(if other than the president)~~, and, if applicable, trust officer ~~(if applicable)~~.

Section 5. Subsection (1) of section 660.33, Florida Statutes, is amended to read:

660.33 Trust service offices.—

(1) In addition to its principal office and any branch trust company authorized under s. 658.26 ~~s. 660.32~~, a trust company or ~~a~~ trust department with its principal place of doing business in this state may maintain one or more trust service offices at the location of any bank, association, or credit union that ~~which~~ is organized under the laws of this state or under the laws of the United States with its principal place of doing business in this state. However, a trust service office may be established only after the trust company or ~~the~~ trust department has secured the consent of a majority of the stockholders or members entitled to vote on such proposal at a meeting of stockholders or members, and of a majority of the board of directors, of the bank, association, or credit union at which a trust service office is proposed to be maintained, and after a certificate of authorization has been issued to the trust company or ~~the~~ trust department by the office.

Section 6. Section 663.08, Florida Statutes, is amended to read:

663.08 Certification of capital accounts.—Before opening an office in this state, and annually thereafter so long as a bank

office is maintained in this state, an international banking corporation licensed pursuant to ss. 663.01-663.14 shall certify to the office the amount of its capital accounts, expressed in the currency of the jurisdiction of its incorporation. The dollar equivalent of these amounts, as determined by the office, shall be deemed to be the amount of its capital accounts. The annual certification of capital accounts must be received by the office on or before June 30 of each year.

Section 7. For the purpose of incorporating the amendment made by this act to section 655.005, Florida Statutes, in a reference thereto, subsection (8) of section 655.960, Florida Statutes, is reenacted to read:

655.960 Definitions; ss. 655.960-655.965.—As used in this section and ss. 655.961-655.965, unless the context otherwise requires:

(8) "Financial institution office" means a main office or principal office, as defined in s. 655.005, and a branch or branch office as defined in s. 658.12(4).

Section 8. For the purpose of incorporating the amendment made by this act to section 655.005, Florida Statutes, in a reference thereto, paragraph (a) of subsection (1) of section 663.302, Florida Statutes, is reenacted to read:

663.302 Applicability of state banking laws.—

(1)(a) International development banks shall be subject to the following provisions of chapter 655 as though such international development banks were state banks:

1. Section 655.005, relating to definitions.

2. Section 655.012, relating to general supervisory powers of the office.

3. Section 655.016, relating to liability.

4. Section 655.031, relating to administrative enforcement guidelines.

5. Section 655.032, relating to investigations; etc.

6. Section 655.0321, relating to hearings and proceedings.

7. Section 655.033, relating to cease and desist orders.

8. Section 655.034, relating to injunctions.

9. Section 655.037, relating to removal of financial institution-affiliated party.

10. Section 655.041, relating to administrative fines.

11. Section 655.043, relating to articles of incorporation.

12. Section 655.044, relating to accounting practices.

13. Section 655.045, relating to examinations, reports, and internal audits.

14. Section 655.049, relating to deposit of fees and assessments.

15. Section 655.057, relating to records.

16. Section 655.071, relating to international banking facilities.

17. Section 655.50, relating to reports of transactions involving currency.

Section 9. For the purpose of incorporating the amendment made by this act to section 658.19, Florida Statutes, in a reference thereto, subsection (1) of section 658.165, Florida Statutes, is reenacted to read:

658.165 Banker’s banks; formation; applicability of financial institutions codes; exceptions.—

(1) If authorized by the office, a corporation may be formed under the laws of this state for the purpose of becoming

a banker’s bank. An application for authority to organize a banker’s bank is subject to ss. 658.19, 658.20, and 658.21, except that s. 658.20(1)(b) and (c) and the minimum stock ownership requirements for the organizing directors provided in s. 658.21(2) do not apply.

Section 10. For the purpose of incorporating the amendment made by this act to section 658.19, Florida Statutes, in a reference thereto, subsection (3) of section 665.013, Florida Statutes, is reenacted to read:

665.013 Applicability of chapter 658.—The following sections of chapter 658, relating to banks and trust companies, are applicable to an association to the same extent as if the association were a “bank” operating thereunder:

(3) Section 658.19, relating to application for authority to organize a bank or trust company.

Section 11. For the purpose of incorporating the amendment made by this act to section 658.19, Florida Statutes, in a reference thereto, subsection (3) of section 667.003, Florida Statutes, is reenacted to read:

667.003 Applicability of chapter 658.—Any state savings bank is subject to all the provisions, and entitled to all the privileges, of the financial institutions codes except where it appears, from the context or otherwise, that such provisions clearly apply only to banks or trust companies organized under the laws of this state or the United States. Without limiting the foregoing general provisions, it is the intent of the Legislature that the following provisions apply to a savings bank to the same extent as if the savings bank were a “bank” operating under such provisions:

(3) Section 658.19, relating to application for authority to organize a bank or trust company.

Section 12. For the purpose of incorporating the amendment made by this act to section 660.33, Florida Statutes, in a reference thereto, subsection (4) of section 658.12, Florida Statutes, is reenacted to read:

658.12 Definitions.—Subject to other definitions contained in the financial institutions codes and unless the context otherwise requires:

(4) "Branch" or "branch office" of a bank means any office or place of business of a bank, other than its main office and the facilities and operations authorized by ss. 658.26(4) and 660.33, at which deposits are received, checks are paid, or money is lent. With respect to a bank that has a trust department, the terms have the meanings herein ascribed to a branch or a branch office of a trust company and mean any office or place of business of a trust company, other than its main office and its trust service offices established pursuant to s. 660.33, where trust business is transacted with its customers.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Ethics and Elections, *Chair*
Banking and Insurance, *Vice Chair*
Appropriations
Appropriations Subcommittee on Health and Human Services
Commerce and Tourism
Regulated Industries
Rules

SENATOR GARRETT RICHTER
President Pro Tempore
23rd District

March 17, 2015

The Honorable Nancy Detert, Chair
Committee on Commerce and Tourism
310 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Detert:

CS for Senate Bill 806, Regulation of Financial Institutions, has been reported favorably out of the Committee on Banking and Insurance and has been referred to the Committee on Commerce and Tourism. I would appreciate the placing of this bill on the committee's agenda at your earliest convenience.

Thank you for your consideration.

Sincerelv.

Garrett Richter

cc: Todd McKay, Staff Director

REPLY TO:
❒ 3299 E. Tamiami Trail, Suite 203, Naples, Florida 34112-4961 (239) 417-6205
❒ 404 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023
❒ 25 Homestead Road North, Suite 42 B, Lehigh Acres, Florida 33936 (239) 338-2777

Senate's Website: *www.flsenate.gov*

ANDY GARDINER
President of the Senate

GARRETT RICHTER
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 916
INTRODUCER:	Banking and Insurance Committee and Senator Montford
SUBJECT:	Commercial Insurer Rate Filing Procedures
DATE:	March 27, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	**Fav/CS**
2.	Askey	McKay	CM	**Pre-meeting**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 916 amends certification requirements for certain types of commercial insurance by limiting the certification requirement to residential property insurance rate filings. Most commercial nonresidential property insurers, which are not statutorily required to make rate filings, will no longer have to complete certifications.

This bill revises the types of commercial property and casualty insurance for which annual base rate filings are not required by exempting commercial nonresidential multiperil insurance and commercial motor vehicle insurance from the annual base rate filing requirement.

II. Present Situation:

Rate Filing for Property, Casualty, and Surety Insurance

The rating requirements for property, casualty, and surety insurance are located in part I of ch. 627, F.S., entitled the "Rating Law," and apply to property, casualty, and surety insurance. The law states that the rates for all classes to which part I applies "shall not be excessive, inadequate, or unfairly discriminatory."[1] The Office of Insurance Regulation (OIR) has the responsibility to review and approve or disapprove rates charged by insurance companies to ensure compliance with the rate standards.

[1] Section 627.062(1), F.S.

Section 627.062(2)(a), F.S., describes the filing process and time frames that must be followed by all insurers subject to its provisions. Generally, insurers may choose to submit their rate to the OIR pursuant to either the "file and use" method or the "use and file" method. Under "file and use," the insurer submits its proposed rate to the OIR at least 90 days before the rate's effective date but does not implement the rate until it is approved. Under "use and file," the insurer may implement the rate before filing for approval, but must submit the filing within 30 days of the rate's effective date. Under "use and file," if a portion of the rate is subsequently found to be excessive, the insurer must refund to policyholders the portion of the rate that is excessive.

For those insurers that file under s. 627.062(2)(a), F.S., the OIR applies the following factors in determining whether a rate is excessive, inadequate, or unfairly discriminatory:

- Past and prospective loss experience in Florida and in other jurisdictions;
- Past and prospective expenses;
- Degree of competition to insure the risk;
- Investment income reasonably expected by the insurer;
- Reasonableness of the judgment reflected in the filing;
- Dividends, savings, or unabsorbed premium deposits returned to Florida insureds;
- Adequacy of loss reserves;
- Cost of reinsurance;
- Trend factors, including those for actual losses per insured unit;
- Catastrophe and conflagration hazards, when applicable;
- Projected hurricane losses, if applicable;
- A reasonable margin for underwriting profit and contingencies;
- Cost of medical services, when applicable; and
- Other relevant factors impacting frequency and severity of claims or expenses.

Insurance Exemptions from Rate Filing and Review Requirements

The following types of insurance are exempt from the filing and review requirements of s. 627.062(2)(a), F.S.:

- Excess or umbrella;
- Surety and fidelity;
- Boiler and machinery and leakage and fire-extinguishing equipment;
- Errors and omissions;
- Directors and officers, employment practices and management liability;
- Intellectual property and patent infringement liability;
- Advertising injury and Internet liability;
- Property risks rated under a highly protected risks rating plan;
- General liability;
- Nonresidential property, except for collateral protection insurance;[2]
- Nonresidential multiperil;
- Excess property;

[2] Section 624.6085, F.S., defines "collateral protection insurance" to mean commercial property insurance under which a creditor is the primary beneficiary and policyholder and which protects or covers an interest of the creditor arising out of a credit transaction secured by real or personal property.

- Burglary and theft;
- Certain types of medical malpractice insurance; and
- Any other commercial lines categories of insurance or commercial lines risks that the OIR determines should not be subject to the filing and review requirements because of the existence of a competitive market for such insurance or to improve the general operational efficiency of the OIR.

These types of insurance coverages continue to be subject to the requirement that rates shall not be excessive, inadequate, or unfairly discriminatory. An insurer or rating organization covered by the exemption must notify the OIR within 30 days after the effective date of a rate change. Notice is limited to the name of the insurer, the type or kind of insurance, and the statewide percentage change in rates. The OIR, at its discretion, may review the rates for compliance with the statutory requirements.[3]

Rate Filing Certification Requirements

Current law requires the chief executive officer or chief financial officer and the chief actuary of a property insurer to certify, under oath, that they have reviewed a rate filing and that it:

- Is accurate;
- Fairly represents the basis for the filing;
- Reflects all premium savings reasonably expected to result from legislative enactments; and
- Is compliant with generally accepted and reasonable actuarial techniques.[4]

The certification requirement applies to all property insurance even though rate filings are not required for all property insurance.

Annual Base Rate Filing

Current law requires every insurer writing any line of property or casualty insurance, except workers' compensation, employer's liability and specified commercial property and casualty insurance, to make an annual base rate filing for each line of insurance written. If no rate change is proposed, the insurer may submit a certification from an actuary, in lieu of the base rate filing, which states that the existing rate is actuarially sound and is not inadequate.[5]

The current exemption from the requirement to make an annual base rate filing does not cover all types of insurance that are exempt from rate filing and approval requirements.

Rate Filing for Motor Vehicle Insurance

The rate filing and review process for motor vehicle insurance rates is similar to the rating law for other property and casualty lines of insurance.[6] Under s. 627.0651(14), F.S., commercial motor vehicle insurance is not subject to these requirements, or the requirement to make an

[3] Section 627.062(3)(d)1., F.S.
[4] Section 627.062(8)(a), F.S.
[5] Section 627.0645, F.S.
[6] Section 627.0651, F.S.

annual base rate filing. Section 627.0645, F.S., however, indicates that commercial motor vehicle insurers do have to make the annual base rate filing, creating a statutory conflict.

III. Effect of Proposed Changes:

Section 1 of this bill amends s. 627.062(8)(a), F.S., to limit the certification requirements to property insurance rate filings. Most commercial nonresidential property insurers, which are not statutorily required to make rate filings, will no longer have to complete certifications.

Section 2 of this bill revises the types of commercial property and casualty insurance for which annual base rate filings are not required by exempting commercial nonresidential multiperil insurance and commercial motor vehicle insurance from the annual base rate filing requirement. These exemptions are only for types of insurance that are already exempt from rate filing and approval requirements required under current law.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may result in a nominal reduction in costs to insurers.

C. Government Sector Impact:

The Office of Financial Regulation indicated that the bill has no impact on the agency.[7]

[7] Email from C. Michael Marschall, Assistant General Counsel, Florida Office of Financial Regulation, to Ross Nobles (March 4, 2015) available at http://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=6429 (last visited March 26, 2015) (on file with the Senate Committee on Banking and Insurance and the Senate Committee on Commerce and Tourism).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 627.062 and 627.0645.

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 10, 2015:
The CS requires a certification only of residential property insurance rate filings and removes the requirement for an annual base rate filing for commercial nonresidential multiperil insurance.

B. Amendments:

None.

By the Committee on Banking and Insurance; and Senator Montford

597-02118-15 2015916c1

A bill to be entitled

An act relating to commercial insurer rate filing procedures; amending s. 627.062, F.S.; restricting to certain property rate filings a requirement that the chief executive officer or chief financial officer and chief actuary of a property insurer certify the information contained in a rate filing; amending s. 627.0645, F.S.; exempting commercial nonresidential multiperil insurance from annual base rate filing; providing an effective date.

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

Section 1. Paragraph (a) of subsection (8) of section 627.062, Florida Statutes, is amended to read:

627.062 Rate standards.—

(8)(a) The chief executive officer or chief financial officer of a property insurer and the chief actuary of a property insurer must certify under oath and subject to the penalty of perjury, on a form approved by the commission, the following information, which must accompany a property rate filing subject to paragraph (2)(a):

1. The signing officer and actuary have reviewed the rate filing;

2. Based on the signing officer's and actuary's knowledge, the rate filing does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading;

597-02118-15 2015916c1

3. Based on the signing officer's and actuary's knowledge, the information and other factors described in paragraph (2)(b), including, but not limited to, investment income, fairly present in all material respects the basis of the rate filing for the periods presented in the filing; and

4. Based on the signing officer's and actuary's knowledge, the rate filing reflects all premium savings that are reasonably expected to result from legislative enactments and are in accordance with generally accepted and reasonable actuarial techniques.

Section 2. Subsection (1) of section 627.0645, Florida Statutes, is amended to read:

627.0645 Annual filings.—

(1) Each rating organization filing rates for, and each insurer writing, any line of property or casualty insurance to which this part applies, except:

(a) Workers' compensation and employer's liability insurance; or

(b) ~~Commercial property and casualty~~ Insurance as defined in ss. 624.604 and 624.605, but limited to coverage of commercial risks ~~s. 627.0625(1)~~ other than commercial residential multiperil ~~multiple line and commercial motor vehicle~~,

shall make an annual base rate filing for each such line with the office no later than 12 months after its previous base rate filing, demonstrating that its rates are not inadequate.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Agriculture, *Chair*
Appropriations Subcommittee on Education, *Vice Chair*
Appropriations
Banking and Insurance
Education Pre-K - 12
Rules

SENATOR BILL MONTFORD
3rd District

March 13, 2015

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

Dear Chair Detert:

I respectfully request that CS/SB 916 be scheduled for a hearing before the Senate Commerce & Tourism Committee. CS/SB 916 would clarify types of commercial insurance not currently subject to OIR rate-filing procedures.

Your assistance and favorable consideration of my request is greatly appreciated .

Sincerely,

William “Bill” Montford
State Senator, District 3

cc: James Knudson, Staff Director

BJM/mam

REPLY TO:
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❒ 20 East Washington Street, Suite D, Quincy, Florida 32351 (850) 627-9100

Senate’s Website: *www.flsenate.gov*

ANDY GARDINER
President of the Senate

GARRETT RICHTER
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 968
INTRODUCER:	Banking and Insurance Committee and Senator Detert
SUBJECT:	Employee Health Care Plans
DATE:	March 27, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Fav/CS**
2.	Harmsen	McKay	CM	**Pre-meeting**
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 968 revises and streamlines provisions relating to the 1992 Employee Health Care Access Act (act) which was enacted to promote the availability of health insurance coverage for small employers (50 or fewer employees) regardless of their claims experience, on a guaranteed issue basis. Many provisions of this act are outdated or conflict with the federal Patient Protection and Affordable Care Act.[1] The bill also amends the stop loss insurance provisions for self-insured small employers and self-insured large employers. The bill removes the following requirements from the act:

- Mandated offer of standard, basic, and high deductible plans to small employers with specified benefits. The PPACA requires health plans to provide coverage for ten essential health benefits and other benefits, which are not included in the standard, basic, or high deductible plans.
- Annual August open enrollment period for one-person employer groups. The PPACA requires continuous open enrollment for small groups.
- Submission by insurers of an annual premium report to the Office of Insurance Regulation (OIR); and
- Submission by insurers of the semiannual rating report to the OIR.

[1] On March 23, 2010, President Obama signed into law Public Law No. 111-148, the Patient Protection and Affordable Care Act (PPACA), and on March 30, 2010, President Obama signed into law Public Law No. 111-152, the Health Care and Education Affordability Reconciliation Act of 2010, amending PPACA.

II. Present Situation:

The PPACA provided fundamental changes to the U.S. health care system by requiring health insurers to make coverage available to all individuals and employers, without exclusions for preexisting conditions and without basing premiums on any health-related factors. The PPACA imposes many insurance requirements including required benefits, rating and underwriting standards, required review of rate increases, and other requirements.[2]

Essential Health Benefits

The PPACA requires coverage[3] offered in the individual and small group markets to provide the following categories of services (essential health benefits package):

- Ambulatory patient services;
- Emergency services;
- Hospitalization;
- Maternity and newborn care;
- Mental health and substance abuse disorder services, including behavioral health treatment;
- Prescription drugs;
- Rehabilitative and habilitative services and devices;
- Laboratory services;
- Preventive and wellness services and chronic disease management; or
- Pediatric services, including oral and vision care.

Rating and Underwriting Standards[4]

The PPACA requires that premiums for individual and small group policies may vary only by:

- Age, up to a maximum ratio of 3 to 1. This means that the rates for older adults cannot be more than three times greater than the rates for younger adults;
- Tobacco, up to a maximum ratio of 1.5 to 1;
- Geographic rating area; or
- Whether coverage is for an individual or a family.

Office of Insurance Regulation

The Office of Insurance Regulation (OIR) licenses and regulates the activities of insurers, health maintenance organizations, and other risk-bearing entities.[5] The Employee Health Care Access Act (act) under s. 627.6699, F.S., requires insurers in the small group market to guarantee the issuance of coverage to any small employer with 1 to 50 employees, including sole proprietors and self-employed individuals, regardless of their health condition.

The act requires small group carriers to offer the standard health benefit plan and the basic health benefit plan to each small employer applying for coverage. The act lists certain benefits that must

[2] Most of the insurance regulatory provisions in PPACA amend Title XXVII of the Public Health Service Act (PHSA), (42 U.S.C. 300gg et seq.
[3] 42 U.S.C. 300gg-6.
[4] 42 U.S.C. 300gg.
[5] Section 20.121(3)(a), F.S.

be included in each of these policies. These plans do not comply with PPACA essential health benefit requirements; therefore, insurers discontinued offering these policies for sale after January 1, 2014. Insurers are required to provide information regarding their standard and basic plans to the OIR on a quarterly basis.

Employers with fewer than 2 employees, typically referred to as "one-life groups," are limited to a 1-month open enrollment period in August of each year, rather than the year-round guarantee-issue requirement that applies to employers with 2-50 employees. The PPACA requires continuous open enrollment periods for small groups (unless groups strictly comply with market rules and elect to have open enrollment that coincides with open enrollment for the individual market), thus a separate August open enrollment period is no longer necessary.

The Small Employer Health Reinsurance Program was created by this act to facilitate the guaranteed issuance of standard and basic health benefit plans to all small employers by providing optional reinsurance coverage to small employer carriers.[6] The program now operates as the Florida Health Insurance Advisory Board. The board is required to establish a methodology for determining premium rates to be charged by the program for reinsuring small employers and individuals pursuant to this section. The basic reinsurance premium rates must be established by the board, subject to the approval of the OIR, and must be set at levels that reasonably approximate gross premiums charged to small employers by small employer carriers for health benefit plans with benefits similar to the standard and basic health benefit plan.

The act also authorizes the Chief Financial Officer to appoint a health benefit plan committee to make recommendations regarding additional benefits or provisions for the standard and basic health benefit plans.[7] The last report was issued in 2002 and recommendations by the CFO were adopted for all small group coverage effective April 1, 2003.[8]

Insurers are required to file with the OIR an annual premium report for all plans issued to small employers for the prior year.[9] In addition, each small group insurer is required to submit a semiannual report that provides the effects of certain rating factors (modified community rating) in setting premiums for small group employers. Under the act, each carrier is required to submit a semiannual report that shows the effects of certain rating factors in setting premiums.[10] The report allows OIR to compare the actual adjusted aggregate premiums charged to policyholders by each carrier to the premiums that would have been charged if the carrier's approved modified community rates were applied.[11]

A modified community rate allows a carrier to spread financial risk across a large population using separate rating factors such as age, gender, family composition, and tobacco usage.[12] It also permits adjustments to the rate for claims experience, health status, and certain expenses

[6] Section 627.6699(11), F.S.
[7] Section 627.6699(12), F.S.
[8] Florida Department of Financial Services, *Informational Memorandum DFS-03-001M*, Mar. 6, 2003, *available at* www.floir.com/siteDocuments/dfs-03-001m.pdf (last accessed March 20, 2015).
[9] Section 627.6699(4)(i)4., F.S.
[10] Section 627.6699(6)(b)5., F.S.
[11] *Id.*
[12] Section 627.6699(3)(o), F.S.

incurred by the carrier.[13] If the aggregate premium actually charged exceeds the premium that would have been charged by applying the modified community rate by 4 percent or more, the carrier is limited in the application of rate adjustments.[14]

While these rating factors are allowed in policies that are grandfathered plans[15] or transitional policies under the PPACA, PPACA-compliant policies do not use these rating factors to set premiums levels. Therefore, the usefulness of this report has decreased significantly. The data currently received by the OIR mixes grandfathered or transitional data (modified community rating allowed) with fully PPACA-compliant plans (modified community rating not allowed).

Stop-loss coverage is an arrangement whereby an insurer insures against the risk that any one claim will exceed a specific dollar amount or that an entire self-insurance plan's loss will exceed a specific amount.[16] Employers that self-insure may purchase stop-loss coverage as provided in Rule 69O-149.0025(23), F.A.C., which contains standards for stop-loss coverage purchased by a self-insured employer group and prescribes when such coverage is considered stop-loss coverage and when it is considered health insurance coverage under s. 627.6699, F.S. Additionally, Rule 69O-149.0025(23), F.A.C., provides that such coverage is considered as a health insurance policy, rather than a stop-loss coverage if the policy:

- Has an attachment point for claims incurred per individual which is lower than $20,000; or
- For insured employer groups with 50 or fewer covered employees, has an aggregate attachment point which is lower than the greater of:
  - $4,000 times the number of employees;
  - 120 percent of expected claims; or
  - $20,000.

Under such a stop-loss arrangement, the self-insured employer is solely responsible for employee health claims below the attachment point and the stop-loss insurer provides coverage for employee health claims above the attachment point. There are no minimum surplus requirements for self-insured employer plans and no guarantee fund protection for the claims obligation of the self-insured employer.

III. Effect of Proposed Changes:

Section 1 removes the following requirements that apply to insurers offering coverage in the small group market: an annual August open enrollment period for 1 person employer groups; mandatory offering of standard, basic, and high deductible plans to small employers; submission by insurers of information regarding standard and basic plans to the OIR; and the submission by

[13] Small group carriers are allowed to adjust a small employer's rate by plus or minus 15 percent, based on health status, claims experience, or duration of coverage. The renewal premium can be adjusted up to 10 percent annually (up to the total 15 percent limit) of the carrier's approved rate, based on these factors.
[14] Section 627.6699(6)(b)5., F.S.
[15] Pursuant to s. 627.402, F.S., a "grandfathered health plan" has the same meaning as provided in 42 U.S.C. s. 18011, subject to the conditions for maintaining status as a grandfathered health plan specified in regulations adopted by the federal Department of Health and Human Services in 45 C.F.R. s. 147.140. "A non-grandfathered health plan" is a health insurance policy or health maintenance organization contract that is not a grandfathered health plan and does not provide the benefits or coverages specified under s. 627.6561(5)(b)-(e), F.S.
[16] Section 627.6482(14), F.S.

the insurers of small group experience rating report to the OIR. The bill provides conforming changes to eliminate provisions relating to standard, basic, and high-deductible plans.

Section 2 revises requirements for the use of stop-loss insurance policies by small employers, as defined in s. 627.6699, F.S., and large employers. The section provides that a self-insured health benefit plan established or maintained by a small employer is exempt from s. 627.6699, F.S., and may use a stop-loss insurance policy. A "stop-loss insurance policy," is an insurance policy issued to a small employer, which covers the employer's obligations for the excess cost of medical care on an equivalent basis per employee provided under a self-insured health benefit plan.

However, a small employer stop-loss insurance policy is considered a health insurance policy and is subject to s. 627.6699, F.S., if the policy has an aggregate attachment that is lower than the greatest of:

- $2,000 times the number of employees;
- 120 percent of expected claims; or
- $20,000.

Once claims under a small employer benefit plan reach the aggregate attachment point, the stop-loss policy must cover 100 percent of all claims that exceed the aggregate attachment point.

A self-insured health benefit plan established or maintained by a large employer (51 or more employees) is considered health insurance if the plan's stop-loss coverage, as defined in s. 627.6482(14), F.S., has an aggregate attachment point that is lower than the greater of 110 percent of expected claims or $20,000.

Stop-loss insurance carriers are required to use a consistent basis for determining the number of covered employees of an employer. Such basis may include, but is not limited to, the average number of employees employed annually or at a uniform date.

Sections 3- 9 provide technical, conforming changes.

Section 10 provides the bill takes effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The elimination of the mandatory outdated reports will reduce the regulatory burden of insurers.

C. Government Sector Impact:

The elimination of outdated reports will reduce the administrative burden for the OIR.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 627.6699, 627.642, 627.6475, 627.657, 627.6571, 627.6675, 641.31074, and 641.3922.

This bill creates section 627.66997 of the Florida Statutes.

IX. Additional Information:

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

CS by Banking and Insurance on March 23, 2015:
The bill revises provisions relating to stop-loss insurance for small and large employers.

B. Amendments:

None.

By the Committee on Banking and Insurance; and Senator Detert

597-02740-15 2015968c1

A bill to be entitled

An act relating to employee health care plans; amending s. 627.6699, F.S.; revising definitions; removing provisions requiring certain insurance carriers to provide semiannual reports to the Office of Insurance Regulation; repealing requirements that certain insurance carriers offer standard, basic, high deductible, and limited health benefit plans; making conforming changes; creating s. 627.66997, F.S.; authorizing certain health benefit plans to use a stop-loss insurance policy; defining the term "stop-loss insurance policy"; providing requirements for such policies; amending ss. 627.642, 627.6475, and 627.657, F.S.; conforming cross-references; amending ss. 627.6571, 627.6675, 641.31074, and 641.3922, 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. Subsection (2) of section 627.6699, Florida Statutes, is amended, present paragraphs (c) through (x) of subsection (3) are redesignated as paragraphs (b) through (w), respectively, and present paragraphs (b) and (o) of that subsection, subsection (5), paragraph (b) of subsection (6), paragraphs (g), (h), (j), and (l) through (o) of subsection (11), subsections (12) through (14), paragraph (k) of subsection (15), and subsections (16) through (18) of that section are amended, to read:

597-02740-15 2015968c1

627.6699 Employee Health Care Access Act.—

(2) PURPOSE AND INTENT.—The purpose and intent of this section is to promote the availability of health insurance coverage to small employers regardless of their claims experience or their employees' health status, to establish rules regarding renewability of that coverage, to establish limitations on the use of exclusions for preexisting conditions~~,~~ ~~to provide for development of a standard health benefit plan and a basic health benefit plan to be offered to all small employers~~, to provide for establishment of a reinsurance program for coverage of small employers, and to improve the overall fairness and efficiency of the small group health insurance market.

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

~~(b) "Basic health benefit plan" and "standard health benefit plan" mean low-cost health care plans developed pursuant to subsection (12).~~

(n)~~(o)~~ "Modified community rating" means a method used to develop carrier premiums which spreads financial risk across a large population; allows the use of separate rating factors for age, gender, family composition, tobacco usage, and geographic area as determined under paragraph (5)(f) ~~(5)(j)~~; and allows adjustments for: claims experience, health status, or duration of coverage as permitted under subparagraph (6)(b)5.; and administrative and acquisition expenses as permitted under subparagraph (6)(b)5.

(5) AVAILABILITY OF COVERAGE.—

~~(a) Beginning January 1, 1993, every small employer carrier issuing new health benefit plans to small employers in this~~

~~state must, as a condition of transacting business in this state, offer to eligible small employers a standard health benefit plan and a basic health benefit plan. Such a small employer carrier shall issue a standard health benefit plan or a basic health benefit plan to every eligible small employer that elects to be covered under such plan, agrees to make the required premium payments under such plan, and to satisfy the other provisions of the plan.~~

(a)~~(b) In the case of~~ A small employer carrier that ~~which~~ does not~~, on or after January 1, 1993,~~ offer coverage but renews or continues ~~which does, on or after January 1, 1993, renew or continue~~ coverage in force must~~, such carrier shall be required to~~ provide coverage to newly eligible employees and dependents on the same basis as small employer carriers that offer ~~which are offering~~ coverage ~~on or after January 1, 1993~~.

(b)~~(c)~~ Every small employer carrier must, as a condition of transacting business in this state~~,~~ ~~:~~

~~1.~~ offer and issue all small employer health benefit plans on a guaranteed-issue basis to every eligible small employer, with 2 to 50 eligible employees, that elects to be covered under such plan, agrees to make the required premium payments, and satisfies the other provisions of the plan. A rider for additional or increased benefits may be medically underwritten and may only be added to the standard health benefit plan. The increased rate charged for the additional or increased benefit must be rated in accordance with this section.

~~2. In the absence of enrollment availability in the Florida Health Insurance Plan, offer and issue basic and standard small employer health benefit plans and a high-deductible plan that~~

~~meets the requirements of a health savings account plan or health reimbursement account as defined by federal law, on a guaranteed-issue basis, during a 31-day open enrollment period of August 1 through August 31 of each year, to every eligible small employer, with fewer than two eligible employees, which small employer is not formed primarily for the purpose of buying health insurance and which elects to be covered under such plan, agrees to make the required premium payments, and satisfies the other provisions of the plan. Coverage provided under this subparagraph shall begin on October 1 of the same year as the date of enrollment, unless the small employer carrier and the small employer agree to a different date. A rider for additional or increased benefits may be medically underwritten and may only be added to the standard health benefit plan. The increased rate charged for the additional or increased benefit must be rated in accordance with this section. For purposes of this subparagraph, a person, his or her spouse, and his or her dependent children constitute a single eligible employee if that person and spouse are employed by the same small employer and either that person or his or her spouse has a normal work week of less than 25 hours. Any right to an open enrollment of health benefit coverage for groups of fewer than two employees, pursuant to this section, shall remain in full force and effect in the absence of the availability of new enrollment into the Florida Health Insurance Plan.~~

~~3. This paragraph does not limit a carrier's ability to offer other health benefit plans to small employers if the standard and basic health benefit plans are offered and rejected.~~

~~(d) A small employer carrier must file with the office, in a format and manner prescribed by the committee, a standard health care plan, a high deductible plan that meets the federal requirements of a health savings account plan or a health reimbursement arrangement, and a basic health care plan to be used by the carrier. The provisions of this section requiring the filing of a high deductible plan are effective September 1, 2004.~~

~~(c) The office at any time may, after providing notice and an opportunity for a hearing, disapprove the continued use by the small employer carrier of the standard or basic health benefit plan on the grounds that such plan does not meet the requirements of this section.~~

(c)~~(f)~~ Except as provided in paragraph (d) ~~(g)~~, a health benefit plan covering small employers must comply with preexisting condition provisions specified in s. 627.6561 or, for health maintenance contracts, in s. 641.31071.

(d)~~(g)~~ A health benefit plan covering small employers, issued or renewed on or after January 1, 1994, must comply with the following conditions:

1. All health benefit plans must be offered and issued on a guaranteed-issue basis~~, except that benefits purchased through riders as provided in paragraph (c) may be medically underwritten for the group, but may not be individually underwritten as to the employees or the dependents of such employees~~. Additional or increased benefits may only be offered by riders.

2. ~~The provisions of~~ Paragraph (c) applies ~~(f) apply~~ to health benefit plans issued to a small employer who has two or

more eligible employees~~,~~ and to health benefit plans that are issued to a small employer who has fewer than two eligible employees and that cover an employee who has had creditable coverage continually to a date not more than 63 days before the effective date of the new coverage.

3. For health benefit plans that are issued to a small employer who has fewer than two employees and that cover an employee who has not been continually covered by creditable coverage within 63 days before the effective date of the new coverage, preexisting condition provisions must not exclude coverage for a period beyond 24 months following the employee's effective date of coverage and may relate only to:

a. Conditions that, during the 24-month period immediately preceding the effective date of coverage, had manifested themselves in such a manner as would cause an ordinarily prudent person to seek medical advice, diagnosis, care, or treatment or for which medical advice, diagnosis, care, or treatment was recommended or received; or

b. A pregnancy existing on the effective date of coverage.

(e)~~(h)~~ All health benefit plans issued under this section must comply with the following conditions:

1. For employers who have fewer than two employees, a late enrollee may be excluded from coverage for no longer than 24 months if he or she was not covered by creditable coverage continually to a date not more than 63 days before the effective date of his or her new coverage.

2. Any requirement used by a small employer carrier in determining whether to provide coverage to a small employer group, including requirements for minimum participation of

eligible employees and minimum employer contributions, must be applied uniformly among all small employer groups having the same number of eligible employees applying for coverage or receiving coverage from the small employer carrier, except that a small employer carrier that participates in, administers, or issues health benefits pursuant to s. 381.0406 which do not include a preexisting condition exclusion may require as a condition of offering such benefits that the employer has had no health insurance coverage for its employees for a period of at least 6 months. A small employer carrier may vary application of minimum participation requirements and minimum employer contribution requirements only by the size of the small employer group.

3. In applying minimum participation requirements with respect to a small employer, a small employer carrier shall not consider as an eligible employee employees or dependents who have qualifying existing coverage in an employer-based group insurance plan or an ERISA qualified self-insurance plan in determining whether the applicable percentage of participation is met. However, a small employer carrier may count eligible employees and dependents who have coverage under another health plan that is sponsored by that employer.

4. A small employer carrier shall not increase any requirement for minimum employee participation or any requirement for minimum employer contribution applicable to a small employer at any time after the small employer has been accepted for coverage, unless the employer size has changed, in which case the small employer carrier may apply the requirements that are applicable to the new group size.

5. If a small employer carrier offers coverage to a small employer, it must offer coverage to all the small employer's eligible employees and their dependents. A small employer carrier may not offer coverage limited to certain persons in a group or to part of a group, except with respect to late enrollees.

6. A small employer carrier may not modify any health benefit plan issued to a small employer with respect to a small employer or any eligible employee or dependent through riders, endorsements, or otherwise to restrict or exclude coverage for certain diseases or medical conditions otherwise covered by the health benefit plan.

7. An initial enrollment period of at least 30 days must be provided. An annual 30-day open enrollment period must be offered to each small employer's eligible employees and their dependents. A small employer carrier must provide special enrollment periods as required by s. 627.65615.

~~(i)1. A small employer carrier need not offer coverage or accept applications pursuant to paragraph (a):~~

~~a. To a small employer if the small employer is not physically located in an established geographic service area of the small employer carrier, provided such geographic service area shall not be less than a county;~~

~~b. To an employee if the employee does not work or reside within an established geographic service area of the small employer carrier; or~~

~~c. To a small employer group within an area in which the small employer carrier reasonably anticipates, and demonstrates to the satisfaction of the office, that it cannot, within its~~

~~network of providers, deliver service adequately to the members of such groups because of obligations to existing group contract holders and enrollees.~~

~~2. A small employer carrier that cannot offer coverage pursuant to sub-subparagraph 1.c. may not offer coverage in the applicable area to new cases of employer groups having more than 50 eligible employees or small employer groups until the later of 180 days following each such refusal or the date on which the carrier notifies the office that it has regained its ability to deliver services to small employer groups.~~

~~3.a. A small employer carrier may deny health insurance coverage in the small group market if the carrier has demonstrated to the office that:~~

~~(I) It does not have the financial reserves necessary to underwrite additional coverage; and~~

~~(II) It is applying this sub-subparagraph uniformly to all employers in the small-group market in this state consistent with this section and without regard to the claims experience of those employers and their employees and their dependents or any health-status-related factor that relates to such employees and dependents.~~

~~b. A small employer carrier, upon denying health insurance coverage in connection with health benefit plans in accordance with sub-subparagraph a., may not offer coverage in connection with group health benefit plans in the small-group market in this state for a period of 180 days after the date such coverage is denied or until the insurer has demonstrated to the office that the insurer has sufficient financial reserves to underwrite additional coverage, whichever is later. The office may provide~~

~~for the application of this sub-subparagraph on a service-area-specific basis.~~

~~4. The commission shall, by rule, require each small employer carrier to report, on or before March 1 of each year, its gross annual premiums for all health benefit plans issued to small employers during the previous calendar year, and also to report its gross annual premiums for new, but not renewal, standard and basic health benefit plans subject to this section issued during the previous calendar year. No later than May 1 of each year, the office shall calculate each carrier's percentage of all small employer group health premiums for the previous calendar year and shall calculate the aggregate gross annual premiums for new, but not renewal, standard and basic health benefit plans for the previous calendar year.~~

(f)~~(j)~~ The boundaries of geographic areas used by a small employer carrier must coincide with county lines. A carrier may not apply different geographic rating factors to the rates of small employers located within the same county.

(6) RESTRICTIONS RELATING TO PREMIUM RATES.—

(b) For all small employer health benefit plans that are subject to this section and issued by small employer carriers on or after January 1, 1994, premium rates for health benefit plans are subject to the following:

1. Small employer carriers must use a modified community rating methodology in which the premium for each small employer is determined solely on the basis of the eligible employee's and eligible dependent's gender, age, family composition, tobacco use, or geographic area as determined under paragraph (5)(f) ~~(5)(j)~~ and in which the premium may be adjusted as permitted by

this paragraph. A small employer carrier is not required to use gender as a rating factor for a nongrandfathered health plan.

2. Rating factors related to age, gender, family composition, tobacco use, or geographic location may be developed by each carrier to reflect the carrier's experience. The factors used by carriers are subject to office review and approval.

3. Small employer carriers may not modify the rate for a small employer for 12 months from the initial issue date or renewal date, unless the composition of the group changes or benefits are changed. However, a small employer carrier may modify the rate one time within the 12 months after the initial issue date for a small employer who enrolls under a previously issued group policy that has a common anniversary date for all employers covered under the policy if:

a. The carrier discloses to the employer in a clear and conspicuous manner the date of the first renewal and the fact that the premium may increase on or after that date.

b. The insurer demonstrates to the office that efficiencies in administration are achieved and reflected in the rates charged to small employers covered under the policy.

4. A carrier may issue a group health insurance policy to a small employer health alliance or other group association with rates that reflect a premium credit for expense savings attributable to administrative activities being performed by the alliance or group association if such expense savings are specifically documented in the insurer's rate filing and are approved by the office. Any such credit may not be based on different morbidity assumptions or on any other factor related

to the health status or claims experience of any person covered under the policy. This subparagraph does not exempt an alliance or group association from licensure for activities that require licensure under the insurance code. A carrier issuing a group health insurance policy to a small employer health alliance or other group association shall allow any properly licensed and appointed agent of that carrier to market and sell the small employer health alliance or other group association policy. Such agent shall be paid the usual and customary commission paid to any agent selling the policy.

5. Any adjustments in rates for claims experience, health status, or duration of coverage may not be charged to individual employees or dependents. For a small employer's policy, such adjustments may not result in a rate for the small employer which deviates more than 15 percent from the carrier's approved rate. Any such adjustment must be applied uniformly to the rates charged for all employees and dependents of the small employer. A small employer carrier may make an adjustment to a small employer's renewal premium, up to 10 percent annually, due to the claims experience, health status, or duration of coverage of the employees or dependents of the small employer. ~~Semiannually, small group carriers shall report information on forms adopted by rule by the commission, to enable the office to monitor the relationship of aggregate adjusted premiums actually charged policyholders by each carrier to the premiums that would have been charged by application of the carrier's approved modified community rates.~~ If the aggregate resulting from the application of such adjustment exceeds the premium that would have been charged by application of the approved modified community rate

by 4 percent for the current policy term ~~reporting period~~, the carrier shall limit the application of such adjustments only to minus adjustments ~~beginning within 60 days after the report is sent to the office~~. For any subsequent policy term ~~reporting period~~, if the total aggregate adjusted premium actually charged does not exceed the premium that would have been charged by application of the approved modified community rate by 4 percent, the carrier may apply both plus and minus adjustments. A small employer carrier may provide a credit to a small employer's premium based on administrative and acquisition expense differences resulting from the size of the group. Group size administrative and acquisition expense factors may be developed by each carrier to reflect the carrier's experience and are subject to office review and approval.

6. A small employer carrier rating methodology may include separate rating categories for one dependent child, for two dependent children, and for three or more dependent children for family coverage of employees having a spouse and dependent children or employees having dependent children only. A small employer carrier may have fewer, but not greater, numbers of categories for dependent children than those specified in this subparagraph.

7. Small employer carriers may not use a composite rating methodology to rate a small employer with fewer than 10 employees. For the purposes of this subparagraph, the term "composite rating methodology" means a rating methodology that averages the impact of the rating factors for age and gender in the premiums charged to all of the employees of a small employer.

8. A carrier may separate the experience of small employer groups with fewer than 2 eligible employees from the experience of small employer groups with 2-50 eligible employees for purposes of determining an alternative modified community rating.

a. If a carrier separates the experience of small employer groups, the rate to be charged to small employer groups of fewer than 2 eligible employees may not exceed 150 percent of the rate determined for small employer groups of 2-50 eligible employees. However, the carrier may charge excess losses of the experience pool consisting of small employer groups with less than 2 eligible employees to the experience pool consisting of small employer groups with 2-50 eligible employees so that all losses are allocated and the 150-percent rate limit on the experience pool consisting of small employer groups with less than 2 eligible employees is maintained.

b. Notwithstanding s. 627.411(1), the rate to be charged to a small employer group of fewer than 2 eligible employees, insured as of July 1, 2002, may be up to 125 percent of the rate determined for small employer groups of 2-50 eligible employees for the first annual renewal and 150 percent for subsequent annual renewals.

9. A carrier shall separate the experience of grandfathered health plans from nongrandfathered health plans for determining rates.

(11) SMALL EMPLOYER HEALTH REINSURANCE PROGRAM.—

(g) A reinsuring carrier may reinsure with the program coverage of an eligible employee of a small employer, or any dependent of such an employee, subject to each of the following

provisions:

~~1. With respect to a standard and basic health care plan, the program must reinsure the level of coverage provided; and, with respect to any other plan, the program must reinsure the coverage up to, but not exceeding, the level of coverage provided under the standard and basic health care plan.~~

1.~~2.~~ Except in the case of a late enrollee, a reinsuring carrier may reinsure an eligible employee or dependent within 60 days after the commencement of the coverage of the small employer. A newly employed eligible employee or dependent of a small employer may be reinsured within 60 days after the commencement of his or her coverage.

2.~~3.~~ A small employer carrier may reinsure an entire employer group within 60 days after the commencement of the group's coverage under the plan. ~~The carrier may choose to reinsure newly eligible employees and dependents of the reinsured group pursuant to subparagraph 1.~~

3.~~4.~~ The program may not reimburse a participating carrier with respect to the claims of a reinsured employee or dependent until the carrier has paid incurred claims of at least $5,000 in a calendar year for benefits covered by the program. In addition, the reinsuring carrier shall be responsible for 10 percent of the next $50,000 and 5 percent of the next $100,000 of incurred claims during a calendar year and the program shall reinsure the remainder.

4.~~5.~~ The board annually shall adjust the initial level of claims and the maximum limit to be retained by the carrier to reflect increases in costs and utilization within the standard market for health benefit plans within the state. The adjustment

shall not be less than the annual change in the medical component of the "Consumer Price Index for All Urban Consumers" of the Bureau of Labor Statistics of the Department of Labor, unless the board proposes and the office approves a lower adjustment factor.

5.~~6.~~ A small employer carrier may terminate reinsurance for all reinsured employees or dependents on any plan anniversary.

6.~~7.~~ The premium rate charged for reinsurance by the program to a health maintenance organization that is approved by the Secretary of Health and Human Services as a federally qualified health maintenance organization pursuant to 42 U.S.C. s. 300e(c)(2)(A) and that, as such, is subject to requirements that limit the amount of risk that may be ceded to the program, which requirements are more restrictive than subparagraph 3. ~~4.~~, shall be reduced by an amount equal to that portion of the risk, if any, which exceeds the amount set forth in subparagraph 3. ~~4.~~ which may not be ceded to the program.

7.~~8.~~ The board may consider adjustments to the premium rates charged for reinsurance by the program for carriers that use effective cost containment measures, including high-cost case management, as defined by the board.

8.~~9.~~ A reinsuring carrier shall apply its case-management and claims-handling techniques, including, but not limited to, utilization review, individual case management, preferred provider provisions, other managed care provisions or methods of operation, consistently with both reinsured business and nonreinsured business.

(h)1. The board, as part of the plan of operation, shall establish a methodology for determining premium rates to be

charged by the program for reinsuring small employers and individuals pursuant to this section. The methodology shall include a system for classification of small employers that reflects the types of case characteristics commonly used by small employer carriers in the state. The methodology shall provide for the development of basic reinsurance premium rates, which shall be multiplied by the factors set for them in this paragraph to determine the premium rates for the program. The basic reinsurance premium rates shall be established by the board, subject to the approval of the office~~, and shall be set at levels which reasonably approximate gross premiums charged to small employers by small employer carriers for health benefit plans with benefits similar to the standard and basic health benefit plan~~. The premium rates set by the board may vary by geographical area, as determined under this section, to reflect differences in cost. The multiplying factors must be established as follows:

a. The entire group may be reinsured for a rate that is 1.5 times the rate established by the board.

b. An eligible employee or dependent may be reinsured for a rate that is 5 times the rate established by the board.

2. The board periodically shall review the methodology established, including the system of classification and any rating factors, to assure that it reasonably reflects the claims experience of the program. The board may propose changes to the rates which shall be subject to the approval of the office.

(j)1. Before July 1 of each calendar year, the board shall determine and report to the office the program net loss for the previous year, including administrative expenses for that year,

and the incurred losses for the year, taking into account investment income and other appropriate gains and losses.

2. Any net loss for the year shall be recouped by assessment of the carriers, as follows:

a. The operating losses of the program shall be assessed in the following order subject to the specified limitations. The first tier of assessments shall be made against reinsuring carriers in an amount which shall not exceed 5 percent of each reinsuring carrier's premiums from health benefit plans covering small employers. If such assessments have been collected and additional moneys are needed, the board shall make a second tier of assessments in an amount which shall not exceed 0.5 percent of each carrier's health benefit plan premiums. Except as provided in paragraph (m) ~~(n)~~, risk-assuming carriers are exempt from all assessments authorized pursuant to this section. The amount paid by a reinsuring carrier for the first tier of assessments shall be credited against any additional assessments made.

b. The board shall equitably assess carriers for operating losses of the plan based on market share. The board shall annually assess each carrier a portion of the operating losses of the plan. The first tier of assessments shall be determined by multiplying the operating losses by a fraction, the numerator of which equals the reinsuring carrier's earned premium pertaining to direct writings of small employer health benefit plans in the state during the calendar year for which the assessment is levied, and the denominator of which equals the total of all such premiums earned by reinsuring carriers in the state during that calendar year. The second tier of assessments

shall be based on the premiums that all carriers, except risk-assuming carriers, earned on all health benefit plans written in this state. The board may levy interim assessments against carriers to ensure the financial ability of the plan to cover claims expenses and administrative expenses paid or estimated to be paid in the operation of the plan for the calendar year prior to the association's anticipated receipt of annual assessments for that calendar year. Any interim assessment is due and payable within 30 days after receipt by a carrier of the interim assessment notice. Interim assessment payments shall be credited against the carrier's annual assessment. Health benefit plan premiums and benefits paid by a carrier that are less than an amount determined by the board to justify the cost of collection may not be considered for purposes of determining assessments.

c. Subject to the approval of the office, the board shall make an adjustment to the assessment formula for reinsuring carriers that are approved as federally qualified health maintenance organizations by the Secretary of Health and Human Services pursuant to 42 U.S.C. s. 300e(c)(2)(A) to the extent, if any, that restrictions are placed on them that are not imposed on other small employer carriers.

3. Before July 1 of each year, the board shall determine and file with the office an estimate of the assessments needed to fund the losses incurred by the program in the previous calendar year.

4. If the board determines that the assessments needed to fund the losses incurred by the program in the previous calendar year will exceed the amount specified in subparagraph 2., the board shall evaluate the operation of the program and report its

findings, including any recommendations for changes to the plan of operation, to the office within 180 days following the end of the calendar year in which the losses were incurred. The evaluation shall include an estimate of future assessments, the administrative costs of the program, the appropriateness of the premiums charged and the level of carrier retention under the program, and the costs of coverage for small employers. If the board fails to file a report with the office within 180 days following the end of the applicable calendar year, the office may evaluate the operations of the program and implement such amendments to the plan of operation the office deems necessary to reduce future losses and assessments.

5. If assessments exceed the amount of the actual losses and administrative expenses of the program, the excess shall be held as interest and used by the board to offset future losses or to reduce program premiums. As used in this paragraph, the term "future losses" includes reserves for incurred but not reported claims.

6. Each carrier's proportion of the assessment shall be determined annually by the board, based on annual statements and other reports considered necessary by the board and filed by the carriers with the board.

7. Provision shall be made in the plan of operation for the imposition of an interest penalty for late payment of an assessment.

8. A carrier may seek, from the office, a deferment, in whole or in part, from any assessment made by the board. The office may defer, in whole or in part, the assessment of a carrier if, in the opinion of the office, the payment of the

assessment would place the carrier in a financially impaired condition. If an assessment against a carrier is deferred, in whole or in part, the amount by which the assessment is deferred may be assessed against the other carriers in a manner consistent with the basis for assessment set forth in this section. The carrier receiving such deferment remains liable to the program for the amount deferred and is prohibited from reinsuring any individuals or groups in the program if it fails to pay assessments.

~~(l) The board, as part of the plan of operation, shall develop standards setting forth the manner and levels of compensation to be paid to agents for the sale of basic and standard health benefit plans. In establishing such standards, the board shall take into consideration the need to assure the broad availability of coverages, the objectives of the program, the time and effort expended in placing the coverage, the need to provide ongoing service to the small employer, the levels of compensation currently used in the industry, and the overall costs of coverage to small employers selecting these plans.~~

(l) ~~(m)~~ The board shall monitor compliance with this section, including the market conduct of small employer carriers, and shall report to the office any unfair trade practices and misleading or unfair conduct by a small employer carrier that has been reported to the board by agents, consumers, or any other person. The office shall investigate all reports and, upon a finding of noncompliance with this section or of unfair or misleading practices, shall take action against the small employer carrier as permitted under the insurance code or chapter 641. The board is not given investigatory or

regulatory powers, but must forward all reports of cases or abuse or misrepresentation to the office.

(m) ~~(n)~~ Notwithstanding paragraph (j), the administrative expenses of the program shall be recouped by assessment of risk-assuming carriers and reinsuring carriers and such amounts shall not be considered part of the operating losses of the plan for the purposes of this paragraph. Each carrier's portion of such administrative expenses shall be determined by multiplying the total of such administrative expenses by a fraction, the numerator of which equals the carrier's earned premium pertaining to direct writing of small employer health benefit plans in the state during the calendar year for which the assessment is levied, and the denominator of which equals the total of such premiums earned by all carriers in the state during such calendar year.

(n) ~~(o)~~ The board shall advise the office, the Agency for Health Care Administration, the department, other executive departments, and the Legislature on health insurance issues. Specifically, the board shall:

1. Provide a forum for stakeholders, consisting of insurers, employers, agents, consumers, and regulators, in the private health insurance market in this state.

2. Review and recommend strategies to improve the functioning of the health insurance markets in this state with a specific focus on market stability, access, and pricing.

3. Make recommendations to the office for legislation addressing health insurance market issues and provide comments on health insurance legislation proposed by the office.

4. Meet at least three times each year. One meeting shall

be held to hear reports and to secure public comment on the health insurance market, to develop any legislation needed to address health insurance market issues, and to provide comments on health insurance legislation proposed by the office.

5. Issue a report to the office on the state of the health insurance market by September 1 each year. The report shall include recommendations for changes in the health insurance market, results from implementation of previous recommendations, and information on health insurance markets.

~~(12) STANDARD, BASIC, HIGH DEDUCTIBLE, AND LIMITED HEALTH BENEFIT PLANS.—~~

~~(a)1. The Chief Financial Officer shall appoint a health benefit plan committee composed of four representatives of carriers which shall include at least two representatives of HMOs, at least one of which is a staff model HMO, two representatives of agents, four representatives of small employers, and one employee of a small employer. The carrier members shall be selected from a list of individuals recommended by the board. The Chief Financial Officer may require the board to submit additional recommendations of individuals for appointment.~~

~~2. The plans shall comply with all of the requirements of this subsection.~~

~~3. The plans must be filed with and approved by the office prior to issuance or delivery by any small employer carrier.~~

~~4. After approval of the revised health benefit plans, if the office determines that modifications to a plan might be appropriate, the Chief Financial Officer shall appoint a new health benefit plan committee in the manner provided in~~

~~subparagraph 1. to submit recommended modifications to the office for approval.~~

~~(b)1. Each small employer carrier issuing new health benefit plans shall offer to any small employer, upon request, a standard health benefit plan, a basic health benefit plan, and a high deductible plan that meets the requirements of a health savings account plan as defined by federal law or a health reimbursement arrangement as authorized by the Internal Revenue Service, that meet the criteria set forth in this section.~~

~~2. For purposes of this subsection, the terms "standard health benefit plan," "basic health benefit plan," and "high deductible plan" mean policies or contracts that a small employer carrier offers to eligible small employers that contain:~~

~~a. An exclusion for services that are not medically necessary or that are not covered preventive health services; and~~

~~b. A procedure for preauthorization by the small employer carrier, or its designees.~~

~~3. A small employer carrier may include the following managed care provisions in the policy or contract to control costs:~~

~~a. A preferred provider arrangement or exclusive provider organization or any combination thereof, in which a small employer carrier enters into a written agreement with the provider to provide services at specified levels of reimbursement or to provide reimbursement to specified providers. Any such written agreement between a provider and a small employer carrier must contain a provision under which the~~

~~parties agree that the insured individual or covered member has no obligation to make payment for any medical service rendered by the provider which is determined not to be medically necessary. A carrier may use preferred provider arrangements or exclusive provider arrangements to the same extent as allowed in group products that are not issued to small employers.~~

~~b. A procedure for utilization review by the small employer carrier or its designees.~~

~~This subparagraph does not prohibit a small employer carrier from including in its policy or contract additional managed care and cost containment provisions, subject to the approval of the office, which have potential for controlling costs in a manner that does not result in inequitable treatment of insureds or subscribers. The carrier may use such provisions to the same extent as authorized for group products that are not issued to small employers.~~

~~4. The standard health benefit plan shall include:~~

~~a. Coverage for inpatient hospitalization;~~

~~b. Coverage for outpatient services;~~

~~c. Coverage for newborn children pursuant to s. 627.6575;~~

~~d. Coverage for child care supervision services pursuant to s. 627.6579;~~

~~e. Coverage for adopted children upon placement in the residence pursuant to s. 627.6578;~~

~~f. Coverage for mammograms pursuant to s. 627.6613;~~

~~g. Coverage for handicapped children pursuant to s. 627.6615;~~

~~h. Emergency or urgent care out of the geographic service~~

~~area; and~~

~~i. Coverage for services provided by a hospice licensed under s. 400.602 in cases where such coverage would be the most appropriate and the most cost-effective method for treating a covered illness.~~

~~5. The standard health benefit plan and the basic health benefit plan may include a schedule of benefit limitations for specified services and procedures. If the committee develops such a schedule of benefits limitation for the standard health benefit plan or the basic health benefit plan, a small employer carrier offering the plan must offer the employer an option for increasing the benefit schedule amounts by 4 percent annually.~~

~~6. The basic health benefit plan shall include all of the benefits specified in subparagraph 4.; however, the basic health benefit plan shall place additional restrictions on the benefits and utilization and may also impose additional cost containment measures.~~

~~7. Sections 627.419(2), (3), and (4), 627.6574, 627.6612, 627.66121, 627.66122, 627.6616, 627.6618, 627.668, and 627.66911 apply to the standard health benefit plan and to the basic health benefit plan. However, notwithstanding said provisions, the plans may specify limits on the number of authorized treatments, if such limits are reasonable and do not discriminate against any type of provider.~~

~~8. The high deductible plan associated with a health savings account or a health reimbursement arrangement shall include all the benefits specified in subparagraph 4.~~

~~9. Each small employer carrier that provides for inpatient and outpatient services by allopathic hospitals may provide as~~

~~an option of the insured similar inpatient and outpatient services by hospitals accredited by the American Osteopathic Association when such services are available and the osteopathic hospital agrees to provide the service.~~

~~(c) If a small employer rejects, in writing, the standard health benefit plan, the basic health benefit plan, and the high deductible health savings account plan or a health reimbursement arrangement, the small employer carrier may offer the small employer a limited benefit policy or contract.~~

~~(d)1. Upon offering coverage under a standard health benefit plan, a basic health benefit plan, or a limited benefit policy or contract for a small employer group, the small employer carrier shall provide such employer group with a written statement that contains, at a minimum:~~

~~a. An explanation of those mandated benefits and providers that are not covered by the policy or contract;~~

~~b. An explanation of the managed care and cost control features of the policy or contract, along with all appropriate mailing addresses and telephone numbers to be used by insureds in seeking information or authorization; and~~

~~c. An explanation of the primary and preventive care features of the policy or contract.~~

~~Such disclosure statement must be presented in a clear and understandable form and format and must be separate from the policy or certificate or evidence of coverage provided to the employer group.~~

~~2. Before a small employer carrier issues a standard health benefit plan, a basic health benefit plan, or a limited benefit~~

~~policy or contract, the carrier must obtain from the prospective policyholder a signed written statement in which the prospective policyholder:~~

~~a. Certifies as to eligibility for coverage under the standard health benefit plan, basic health benefit plan, or limited benefit policy or contract;~~

~~b. Acknowledges the limited nature of the coverage and an understanding of the managed care and cost control features of the policy or contract;~~

~~c. Acknowledges that if misrepresentations are made regarding eligibility for coverage under a standard health benefit plan, a basic health benefit plan, or a limited benefit policy or contract, the person making such misrepresentations forfeits coverage provided by the policy or contract; and~~

~~d. If a limited plan is requested, acknowledges that the prospective policyholder had been offered, at the time of application for the insurance policy or contract, the opportunity to purchase any health benefit plan offered by the carrier and that the prospective policyholder rejected that coverage.~~

~~A copy of such written statement must be provided to the prospective policyholder by the time of delivery of the policy or contract, and the original of such written statement must be retained in the files of the small employer carrier for the period of time that the policy or contract remains in effect or for 5 years, whichever is longer.~~

~~3. Any material statement made by an applicant for coverage under a health benefit plan which falsely certifies the~~

~~applicant's eligibility for coverage serves as the basis for terminating coverage under the policy or contract.~~

~~(c) A small employer carrier may not use any policy, contract, form, or rate under this section, including applications, enrollment forms, policies, contracts, certificates, evidences of coverage, riders, amendments, endorsements, and disclosure forms, until the insurer has filed it with the office and the office has approved it under ss. 627.410 and 627.411 and this section.~~

(12)~~(13)~~ STANDARDS TO ASSURE FAIR MARKETING.—

(a) Each small employer carrier shall actively market health benefit plan coverage~~, including the basic and standard health benefit plans~~, including any subsequent modifications or additions to those plans, to eligible small employers in the state. ~~Before January 1, 1994, if a small employer carrier denies coverage to a small employer on the basis of the health status or claims experience of the small employer or its employees or dependents, the small employer carrier shall offer the small employer the opportunity to purchase a basic health benefit plan and a standard health benefit plan. Beginning January 1, 1994,~~ Small employer carriers must offer and issue all plans on a guaranteed-issue basis.

(b) A ~~No~~ small employer carrier or agent shall not, directly or indirectly, engage in the following activities:

1. Encouraging or directing small employers to refrain from filing an application for coverage with the small employer carrier because of the health status, claims experience, industry, occupation, or geographic location of the small employer.

2. Encouraging or directing small employers to seek coverage from another carrier because of the health status, claims experience, industry, occupation, or geographic location of the small employer.

(c) ~~The provisions of~~ Paragraph (a) does ~~shall~~ not apply with respect to information provided by a small employer carrier or agent to a small employer regarding the established geographic service area or a restricted network provision of a small employer carrier.

(d) A ~~No~~ small employer carrier shall not, directly or indirectly, enter into any contract, agreement, or arrangement with an agent that provides for or results in the compensation paid to an agent for the sale of a health benefit plan to be varied because of the health status, claims experience, industry, occupation, or geographic location of the small employer except if the compensation arrangement provides compensation to an agent on the basis of percentage of premium, provided that the percentage shall not vary because of the health status, claims experience, industry, occupation, or geographic area of the small employer.

~~(e) A small employer carrier shall provide reasonable compensation, as provided under the plan of operation of the program, to an agent, if any, for the sale of a basic or standard health benefit plan.~~

(e)~~(f)~~ A ~~No~~ small employer carrier shall not terminate, fail to renew, or limit its contract or agreement of representation with an agent for any reason related to the health status, claims experience, occupation, or geographic location of the small employers placed by the agent with the

small employer carrier unless the agent consistently engages in practices that violate this section or s. 626.9541.

(f) ~~(g)~~ A ~~No~~ small employer carrier or agent shall not induce or otherwise encourage a small employer to separate or otherwise exclude an employee from health coverage or benefits provided in connection with the employee's employment.

(g) ~~(h)~~ Denial by a small employer carrier of an application for coverage from a small employer shall be in writing and shall state the reason or reasons for the denial.

(h) ~~(i)~~ The commission may establish regulations setting forth additional standards to provide for the fair marketing and broad availability of health benefit plans to small employers in this state.

(i) ~~(j)~~ A violation of this section by a small employer carrier or an agent is ~~shall be~~ an unfair trade practice under s. 626.9541 or ss. 641.3903 and 641.3907.

(j) ~~(k)~~ If a small employer carrier enters into a contract, agreement, or other arrangement with a third-party administrator to provide administrative, marketing, or other services relating to the offering of health benefit plans to small employers in this state, the third-party administrator shall be subject to this section.

(13) ~~(14)~~ DISCLOSURE OF INFORMATION.—

(a) In connection with the offering of a health benefit plan to a small employer, a small employer carrier:

1. Shall make a reasonable disclosure to such employer, as part of its solicitation and sales materials, of the availability of information described in paragraph (b); and

2. Upon request of the small employer, provide such

information.

(b)1. Subject to subparagraph 3., with respect to a small employer carrier that offers a health benefit plan to a small employer, information described in this paragraph is information that concerns:

a. The provisions of such coverage concerning an insurer's right to change premium rates and the factors that may affect changes in premium rates;

b. The provisions of such coverage that relate to renewability of coverage;

c. The provisions of such coverage that relate to any preexisting condition exclusions; and

d. The benefits and premiums available under all health insurance coverage for which the employer is qualified.

2. Information required under this subsection shall be provided to small employers in a manner determined to be understandable by the average small employer, and shall be sufficient to reasonably inform small employers of their rights and obligations under the health insurance coverage.

3. An insurer is not required under this subsection to disclose any information that is proprietary or a trade secret under state law.

(14) ~~(15)~~ SMALL EMPLOYERS ACCESS PROGRAM.—

(k) *Benefits.* ~~The benefits provided by the plan shall be the same as the coverage required for small employers under subsection (12).~~ Upon the approval of the office, the insurer may ~~also~~ establish an optional mutually supported benefit plan that ~~which~~ is an alternative plan developed within a defined geographic region of this state or any other such alternative

plan that ~~which~~ will carry out the intent of this subsection. Any small employer carrier issuing new health benefit plans may offer a benefit plan with coverages similar to, but not less than, any alternative coverage plan developed pursuant to this subsection.

(15)~~(16)~~ APPLICABILITY OF OTHER STATE LAWS.—

(a) Except as expressly provided in this section, a law requiring coverage for a specific health care service or benefit, or a law requiring reimbursement, utilization, or consideration of a specific category of licensed health care practitioner, does not apply to ~~a standard or basic health benefit plan policy or contract or~~ a limited benefit policy or contract offered or delivered to a small employer unless that law is made expressly applicable to such policies or contracts. A law restricting or limiting deductibles, coinsurance, copayments, or annual or lifetime maximum payments does not apply to any health plan policy~~, including a standard or basic health benefit plan policy or contract,~~ offered or delivered to a small employer unless such law is made expressly applicable to such policy or contract. ~~However, every small employer carrier must offer to eligible small employers the standard benefit plan and the basic benefit plan, as required by subsection (5), as such plans have been approved by the office pursuant to subsection (12).~~

~~(b) Except as provided in this section, a standard or basic health benefit plan policy or contract or limited benefit policy or contract offered to a small employer is not subject to any provision of this code which:~~

~~1. Inhibits a small employer carrier from contracting with~~

~~providers or groups of providers with respect to health care services or benefits;~~

~~2. Imposes any restriction on a small employer carrier's ability to negotiate with providers regarding the level or method of reimbursing care or services provided under a health benefit plan; or~~

~~3. Requires a small employer carrier to either include a specific provider or class of providers when contracting for health care services or benefits or to exclude any class of providers that is generally authorized by statute to provide such care.~~

(b)~~(c)~~ Any second tier assessment paid by a carrier pursuant to paragraph (11)(j) may be credited against assessments levied against the carrier pursuant to s. 627.6494.

(c)~~(d)~~ Notwithstanding chapter 641, a health maintenance organization may ~~is authorized to~~ issue contracts providing benefits equal to the ~~standard health benefit plan, the basic health benefit plan, and the~~ limited benefit policy authorized by this section.

(16)~~(17)~~ RESTRICTIONS ON COVERAGE.—

(a) A plan under which coverage is purchased in whole or in part with any state or federal funds through an exchange created pursuant to the federal Patient Protection and Affordable Care Act, Pub. L. No. 111-148, may not provide coverage for an abortion, as defined in s. 390.011(1), except if the pregnancy is the result of an act of rape or incest, or in the case where a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, which

would, as certified by a physician, place the woman in danger of death unless an abortion is performed. Coverage is deemed to be purchased with state or federal funds if any tax credit or cost-sharing credit is applied toward the plan.

(b) This subsection does not prohibit a plan from providing any person or entity with separate coverage for an abortion if such coverage is not purchased in whole or in part with state or federal funds.

(c) As used in this section, the term "state" means this state or any political subdivision of the state.

(17)~~(18)~~ RULEMAKING AUTHORITY.—The commission may adopt rules to administer this section, including rules governing compliance by small employer carriers and small employers.

Section 2. Section 627.66997, Florida Statutes, is created to read:

627.66997 Stop-loss insurance.—

(1) A self-insured health benefit plan established or maintained by a small employer, as defined in s. 627.6699(3)(v), is exempt from s. 627.6699 and may use a stop-loss insurance policy issued to the employer. For purposes of this subsection, the term "stop-loss insurance policy" means an insurance policy issued to a small employer which covers the small employer's obligation for the excess cost of medical care on an equivalent basis per employee provided under a self-insured health benefit plan.

(a) A small employer stop-loss insurance policy is considered a health insurance policy and is subject to s. 627.6699 if the policy has an aggregate attachment point that is lower than the greatest of:

1. Two thousand dollars multiplied by the number of employees;

2. One hundred twenty percent of expected claims, as determined by the stop-loss insurer in accordance with actuarial standards of practice; or

3. Twenty thousand dollars.

(b) Once claims under the small employer health benefit plan reach the aggregate attachment point set forth in paragraph (a), the stop-loss insurance policy authorized under this section must cover 100 percent of all claims that exceed the aggregate attachment point.

(2) A self-insured health benefit plan established or maintained by an employer with 51 or more covered employees is considered health insurance if the plan's stop-loss coverage, as defined in s. 627.6482(14), has an aggregate attachment point that is lower than the greater of:

(a) One hundred ten percent of expected claims, as determined by the stop-loss insurer in accordance with actuarial standards of practice; or

(b) Twenty thousand dollars.

(3) Stop-loss insurance carriers shall use a consistent basis for determining the number of an employer's covered employees. Such basis may include, but is not limited to, the average number of employees employed annually or at a uniform time.

Section 3. Subsection (3) of section 627.642, Florida Statutes, is amended to read:

627.642 Outline of coverage.—

(3) In addition to the outline of coverage, a policy as

specified in s. 627.6699(3)(k) ~~627.6699(3)(l)~~ must be accompanied by an identification card that contains, at a minimum:

(a) The name of the organization issuing the policy or the name of the organization administering the policy, whichever applies.

(b) The name of the contract holder.

(c) The type of plan only if the plan is filed in the state, an indication that the plan is self-funded, or the name of the network.

(d) The member identification number, contract number, and policy or group number, if applicable.

(e) A contact phone number or electronic address for authorizations and admission certifications.

(f) A phone number or electronic address whereby the covered person or hospital, physician, or other person rendering services covered by the policy may obtain benefits verification and information in order to estimate patient financial responsibility, in compliance with privacy rules under the Health Insurance Portability and Accountability Act.

(g) The national plan identifier, in accordance with the compliance date set forth by the federal Department of Health and Human Services.

The identification card must present the information in a readily identifiable manner or, alternatively, the information may be embedded on the card and available through magnetic stripe or smart card. The information may also be provided through other electronic technology.

Section 4. Paragraph (g) of subsection (7) and paragraph (a) of subsection (8) of section 627.6475, Florida Statutes, are amended to read:

627.6475 Individual reinsurance pool.—

(7) INDIVIDUAL HEALTH REINSURANCE PROGRAM.—

(g) Except as otherwise provided in this section, the board and the office shall have all powers, duties, and responsibilities with respect to carriers that issue and reinsure individual health insurance, as specified for the board and the office in s. 627.6699(11) with respect to small employer carriers, including, but not limited to, the provisions of s. 627.6699(11) relating to:

1. Use of assessments that exceed the amount of actual losses and expenses.

2. The annual determination of each carrier's proportion of the assessment.

3. Interest for late payment of assessments.

4. Authority for the office to approve deferment of an assessment against a carrier.

5. Limited immunity from legal actions or carriers.

6. Development of standards for compensation to be paid to agents. Such standards shall be limited to those specifically enumerated in s. 627.6699(12)(d) ~~627.6699(13)(d)~~.

7. Monitoring compliance by carriers with this section.

(8) STANDARDS TO ASSURE FAIR MARKETING.—

(a) Each health insurance issuer that offers individual health insurance shall actively market coverage to eligible individuals in the state. The provisions of s. 627.6699(12) ~~627.6699(13)~~ that apply to small employer carriers that market

policies to small employers shall also apply to health insurance issuers that offer individual health insurance with respect to marketing policies to individuals.

Section 5. Subsection (2) of section 627.657, Florida Statutes, is amended to read:

627.657 Provisions of group health insurance policies.—

(2) The medical policy as specified in s. 627.6699(3)(k) ~~627.6699(3)(l)~~ must be accompanied by an identification card that contains, at a minimum:

(a) The name of the organization issuing the policy or name of the organization administering the policy, whichever applies.

(b) The name of the certificateholder.

(c) The type of plan only if the plan is filed in the state, an indication that the plan is self-funded, or the name of the network.

(d) The member identification number, contract number, and policy or group number, if applicable.

(e) A contact phone number or electronic address for authorizations and admission certifications.

(f) A phone number or electronic address whereby the covered person or hospital, physician, or other person rendering services covered by the policy may obtain benefits verification and information in order to estimate patient financial responsibility, in compliance with privacy rules under the Health Insurance Portability and Accountability Act.

(g) The national plan identifier, in accordance with the compliance date set forth by the federal Department of Health and Human Services.

The identification card must present the information in a readily identifiable manner or, alternatively, the information may be embedded on the card and available through magnetic stripe or smart card. The information may also be provided through other electronic technology.

Section 6. Paragraph (e) of subsection (2) of section 627.6571, Florida Statutes, is amended to read:

627.6571 Guaranteed renewability of coverage.—

(2) An insurer may nonrenew or discontinue a group health insurance policy based only on one or more of the following conditions:

(e) In the case of an insurer that offers health insurance coverage through a network plan, there is no longer any enrollee in connection with such plan who lives, resides, or works in the service area of the insurer or in the area in which the insurer is authorized to do business ~~and, in the case of the small-group market, the insurer would deny enrollment with respect to such plan under s. 627.6699(5)(i)~~.

Section 7. Subsection (11) of section 627.6675, Florida Statutes, is amended to read:

627.6675 Conversion on termination of eligibility.—Subject to all of the provisions of this section, a group policy delivered or issued for delivery in this state by an insurer or nonprofit health care services plan that provides, on an expense-incurred basis, hospital, surgical, or major medical expense insurance, or any combination of these coverages, shall provide that an employee or member whose insurance under the group policy has been terminated for any reason, including discontinuance of the group policy in its entirety or with

respect to an insured class, and who has been continuously insured under the group policy, and under any group policy providing similar benefits that the terminated group policy replaced, for at least 3 months immediately prior to termination, shall be entitled to have issued to him or her by the insurer a policy or certificate of health insurance, referred to in this section as a "converted policy." A group insurer may meet the requirements of this section by contracting with another insurer, authorized in this state, to issue an individual converted policy, which policy has been approved by the office under s. 627.410. An employee or member shall not be entitled to a converted policy if termination of his or her insurance under the group policy occurred because he or she failed to pay any required contribution, or because any discontinued group coverage was replaced by similar group coverage within 31 days after discontinuance.

(11) ALTERNATIVE PLANS.—~~The insurer shall, in addition to the option required by subsection (10), offer the standard health benefit plan, as established pursuant to s. 627.6699(12).~~ The insurer may, at its option, ~~also~~ offer alternative plans for group health conversion in addition to the plans required by this section.

Section 8. Paragraph (e) of subsection (2) of section 641.31074, Florida Statutes, is amended to read:

641.31074 Guaranteed renewability of coverage.—

(2) A health maintenance organization may nonrenew or discontinue a contract based only on one or more of the following conditions:

(e) There is no longer any enrollee in connection with such

plan who lives, resides, or works in the service area of the health maintenance organization or in the area in which the health maintenance organization is authorized to do business ~~and, in the case of the small group market, the organization would deny enrollment with respect to such plan under s. 627.6699(5)(i)~~.

Section 9. Subsection (10) of section 641.3922, Florida Statutes, is amended to read:

641.3922 Conversion contracts; conditions.—Issuance of a converted contract shall be subject to the following conditions:

(10) ALTERNATE PLANS.—~~The health maintenance organization shall offer a standard health benefit plan as established pursuant to s. 627.6699(12).~~ The health maintenance organization may, at its option, ~~also~~ offer alternative plans for group health conversion in addition to those required by this section, provided any alternative plan is approved by the office or is a converted policy, approved under s. 627.6675 and issued by an insurance company authorized to transact insurance in this state. Approval by the office of an alternative plan shall be based on compliance by the alternative plan with the provisions of this part and the rules promulgated thereunder, applicable provisions of the Florida Insurance Code and rules promulgated thereunder, and any other applicable law.

Section 10. This act shall take effect July 1, 2015.

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 998
INTRODUCER:	Regulated Industries Committee and Senator Margolis
SUBJECT:	Alcoholic Beverages
DATE:	March 27, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Fav/CS**
2.	Askey	McKay	CM	**Pre-meeting**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 998 prohibits the sale, purchase, use, or possession of powdered alcohol, defined in the bill as alcohol prepared in a powdered form for either direct use or consumption after the powder is combined with a liquid.

The bill prohibits licensed alcoholic beverage vendors from selling powdered alcohol.

The bill provides that a person who violates the prohibition on selling or offering to sell powdered alcohol commits a first degree misdemeanor, and a second violation within 5 years is a third degree felony.

A person who purchases, uses, offers for use, or possess powdered alcohol commits a noncriminal violation, punishable by a fine of $250.

The bill provides an exception for the use of powdered alcohol for research purposes by specified entities.

The prohibition on powdered alcohol does not apply to the possession of powdered alcohol solely for the purpose of transportation through Florida by or on behalf of a licensed manufacturer or a common carrier.

II. Present Situation:

Florida Beverage Law

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

Section 561.01(4)(a), F.S., defines the term "alcoholic beverages" to mean:

> "…distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume.
> (b) The percentage of alcohol by volume shall be determined by measuring the volume of the standard ethyl alcohol in the beverage and comparing it with the volume of the remainder of the ingredients as though said remainder ingredients were distilled water."

Section 561.01(5), F.S., defines the terms "intoxicating beverage" and "intoxicating liquor" to "mean only those alcoholic beverages containing more than 4.007 percent of alcohol by volume."

Chapter 565, F.S., provides for the regulation of liquor. Section 565.01, F.S., defines the terms "liquor," "distilled spirits," "spirituous liquors," "spirituous beverages," or "distilled spirituous liquors" to mean:

> "…that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced."

Section 500.04(2), F.S., prohibits the adulteration or misbranding of any food.

Section 500.10(3), F.S., provides that food may be deemed adulterated if it is:

> "…a confectionary that bears or contains any alcohol or nonnutritive article or substance except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of 0.4 percent, harmless natural gum, and pectin; however, this subsection shall not apply to any chewing gum by reason of its containing harmless nonnutritive masticatory substances; to any confectionery by reason of its containing less than 0.5 percent by volume of alcohol derived solely from the use of flavoring extracts; or to any candy by reason of its containing more than 0.5 percent but less than 5 percent by volume of alcohol derived from any source, if such candy:
> (a) Is not sold to persons under 21 years of age;

[1] The Beverage Law means chs. 561, 562, 563, 564, 565, 567, and 568, F.S. *See* s. 561.01(6), F.S.
[2] *See* s. 561.14, F.S.
[3] Section 561.02, F.S.

(b) Is labeled with the following statement written in conspicuous print on the principal display panel of the package, or if sold in individual units, in a conspicuous manner adjacent to the product: "This product may not be sold to anyone under 21 years of age";
(c) Is not sold in a form containing liquid alcohol so that it constitutes an alcoholic beverage under the Beverage Law; and
(d) Is distributed directly to Florida consumers only from permanent facilities owned or controlled by the product's manufacturer, or from a vendor licensed pursuant to chapter 565, or from a vendor approved by the Department of Business and Professional Regulation consistent with rules adopted by such department establishing standards for such vendors."

The Alcohol and Tobacco Tax and Trade Bureau

The Alcohol and Tobacco Tax and Trade Bureau (TTB) is a bureau under the U.S. Department of Treasury. The TTB is responsible for assuring that alcohol and tobacco industry operators meet permit requirements; that alcohol beverage products comply with federal production, labeling, and marketing requirements; and for enforcing the tax code to ensure proper federal tax payment on alcohol, tobacco, firearms, and ammunition products. The TTB carries out these responsibilities by developing regulations, analyzing products, and ensuring tax and trade compliance with the Federal Alcohol Administration Act and the Internal Revenue Code. The TTB approved labels for several varieties of the powdered alcohol product "Palcohol" on March 10, 2015.[4,5]

Powdered Alcohol

Powdered alcohol is alcohol that has been molecularly encapsulated in a starch or sugar. The product which, when combined with a liquid, produces an alcoholic beverage. A U.S. patent for the process was registered as early as 1974.[6]

It is not clear under the Beverage Law whether powdered alcohol may be considered an alcoholic beverage. According to the Department of Business and Professional Regulation, the definition of liquor in s. 565.01, F.S., would include powdered distilled spirits.[7] The TTB recognizes that powdered alcohol intended for beverage use falls within the jurisdiction of both the federal government and state governments.

[4] Alcohol and Tobacco Tax and Trade Bureau Public COLA Registry, available at: https://www.ttbonline.gov/colasonline/publicSearchColasBasic.do (last visited March 25, 2015). The Application for Certification of Label Approval for the aforementioned Palcohol products is on file with the Senate Committee on Commerce and Tourism.
[5] According to labels for the product, Palcohol has 10 percent alcohol-by-volume when mixed with 6 ounces of water.
[6] General Foods Corporation, *Preparation of an Alcohol Containing Powder* (March 31, 1972) available at: http://www.google.com/patents/US3795747 (last visited March 25, 2015).
[7] *2015 Department of Business and Professional Regulation Legislative Bill Analysis for HB 823/SB 998,* (March 12, 2015) (on file with the Senate Regulated Industries Committee).

The states of Alaska, Louisiana, South Carolina, Vermont, and Virginia have banned the sale of powdered alcohol.[8] The states of Delaware and Michigan define powdered alcohol as an alcoholic beverage.[9]

III. Effect of Proposed Changes:

The bill creates s. 562.63(1), F.S., to define the term "powdered alcohol" to mean alcohol prepared in a powdered form for either direct use or consumption after the powder is combined with a liquid.

The bill creates s. 562.63(2), F.S., to prohibit the sale, offering for sale, purchase, use, offering for use, or possession of powdered alcohol.

The bill creates s. 562.63(3), F.S., to prohibit alcoholic beverage vendors licensed under s. 565.02(1)(a)-(f), F.S.,[10] from selling or offering for sale powdered alcohol as an alcoholic beverage.

The bill creates s. 562.63(4)(a), F.S., to provide that a person who violates the prohibition in this section by selling or offering to sell powdered alcohol commits a misdemeanor of the first degree, which is punishable by a term of imprisonment not to exceed 1 year or a fine not to exceed $1,000. The bill provides that a second violation within 5 years is a felony of the third degree, which is punishable by a term of imprisonment not to exceed 5 years, or a fine not to exceed $5,000. A person who violates the prohibition within 5 years of a first offense may also be treated as a habitual offender, which, in the case of a felony of the third degree, may result in a term of imprisonment not to exceed 10 years.

The bill creates s. 562.63(4)(b), F.S., to provide that a person who violates the prohibition in this section by purchasing, using, offering for use, or possessing powdered alcohol commits a noncriminal violation, punishable by a fine of $250.

The bill creates s. 562.63(5), F.S., to provide an exception for the use of powdered alcohol for research purposes by health care providers that primarily conduct scientific research, state institutions, state universities, private colleges and universities, and pharmaceutical or biotechnology companies.

The bill creates s. 562.63(6), F.S., to provide that the prohibition on powdered alcohol does not apply to the possession of powdered alcohol solely for the purpose of transportation through Florida by a licensed manufacturer or a common carrier on behalf of a licensed manufacturer.

The bill provides an effective date of July 1, 2015.

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[8] *See* Morton, Heather, *Powdered Alcohol 2015 Legislation*, National Conference of State Legislatures (March 11, 2015) at http://www.ncsl.org/research/financial-services-and-commerce/powdered-alcohol-2015-legislation/ct/df8216d7b7de6938c301e601e592f776eb0045dd9244348e1143cf5a1e963a3ae43cfdc60de6aeb2bc5403695afb7fbd8f4528943d913bb079480573998f6cb7.aspx (last visited March 25, 2015).

[9] *Id.*

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

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:

The Criminal Justice Impact Conference reported a positive, but insignificant, impact on prison costs for HB 1247, which is substantially similar.

VI. Technical Deficiencies:

None.

VII. Related Issues:

In section 562.63(3), F.S., the bill prohibits a licensed beverage vendor from selling powdered alcohol *as an alcoholic beverage*, which could be read to imply that a licensed beverage vendor could sell powdered alcohol for reasons other than to be consumed as an alcoholic beverage. Section 562.63(2), F.S., however, prohibits the sale of powdered alcohol by "a person." If the intent is to enact an outright ban on the sale of powdered alcohol by licensed vendors, the phrase "as an alcoholic beverage" could be removed.

The bill permits an exception for research purposes for certain entities including "state institutions," which are not defined. The phrase would therefore be subject to interpretation.

VIII. Statutes Affected:

This bill creates section 562.63 of the Florida Statutes.

IX. Additional Information:

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

CS by Regulated Industries on March 18, 2015:
The CS creates s. 562.63(6), F.S., to provide that the prohibition on powdered alcohol does not apply to the possession of powdered alcohol solely for the purpose of transportation through Florida by a licensed manufacturer or a common carrier on behalf of a licensed manufacturer.

B. Amendments:

None.

132462

LEGISLATIVE ACTION

Senate . House

. . . . .

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

Senate Amendment

Delete lines 25 - 26
and insert:
sell or offer for sale powdered alcohol.

By the Committee on Regulated Industries; and Senator Margolis

580-02526-15 2015998c1

A bill to be entitled

An act relating to alcoholic beverages; creating s. 562.63, F.S.; defining the term "powdered alcohol"; prohibiting the sale, offer for sale, purchase, use, offer for use, or possession of powdered alcohol; providing penalties; providing an exemption for the use of powdered alcohol by specified entities for research purposes; providing an exemption for the possession of powdered alcohol solely for the purpose of transportation through this state by specified entities; providing an effective date.

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

Section 1. Section 562.63, Florida Statutes, is created to read:

562.63 Powdered alcohol; prohibited sale, offer for sale, purchase, use, offer for use, or possession.—

(1) As used in this section, the term "powdered alcohol" means alcohol prepared in a powdered form for either direct use or consumption after the powder is combined with a liquid.

(2) A person may not sell, offer for sale, purchase, use, offer for use, or possess powdered alcohol.

(3) A vendor licensed under s. 565.02(1)(a)-(f) may not sell or offer for sale powdered alcohol as an alcoholic beverage.

(4)(a) A person who violates this section by selling or offering for sale powdered alcohol commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s.

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775.083. A person who violates this section by selling or offering for sale powdered alcohol after having been previously convicted of such an offense within the past 5 years commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A person who violates this section by purchasing, using, offering for use, or possessing powdered alcohol commits a noncriminal violation, punishable by a fine of $250.

(5) This section does not apply to the use of powdered alcohol for research purposes by a:

(a) Health care provider that operates primarily for the purpose of conducting scientific research;

(b) State institution;

(c) State university or private college or university; or

(d) Pharmaceutical or biotechnology company.

(6) This section does not apply to the possession of powdered alcohol solely for the purpose of transportation through this state by a licensed manufacturer or a common carrier on behalf of a licensed manufacturer.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Regulated Industries, *Vice Chair*
Appropriations
Appropriations Subcommittee on General Government
Banking and Insurance
Finance and Tax
Fiscal Policy

SENATOR GWEN MARGOLIS
35th District

March 25, 2015

Chair Nancy Detert
Committee on Commerce and Tourism
310 Knott Building
404 S. Monroe Street
Tallahassee, Florida 32399-1100

Dear Chair Detert,

I respectfully request that SB 998, Alcoholic Beverages be placed on the next available committee agenda. This bill would ban the retail sale of Powdered Alcohol which was recently approved for sale in the United States. This bill was recommended favorably by the Regulated Industries committee with a unanimous vote. The House companion was also recommended favorably by its first committee of reference yesterday.

Sincerely,

REPLY TO:
❒ 3050 Biscayne Boulevard, Suite 600, Miami, Florida 33137 (305) 571-5777
❒ 414 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5035

Senate's Website: *www.flsenate.gov*

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore