

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

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

MEETING DATE: Tuesday, February 6, 2018**TIME:** 9:00—10:30 a.m.**PLACE:** *Toni Jennings Committee Room*, 110 Senate Office Building**MEMBERS:** Senator Montford, Chair; Senator Gainer, Vice Chair; Senators Gibson, Hutson, Passidomo, Rodriguez, Stargel, and Young

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 762 Banking and Insurance / Mayfield (Similar CS/CS/H 483)	Permissible Insurance Acts; Revising the types, value, and frequency of advertising and promotional gifts that licensed insurers or their agents may give to insureds, prospective insureds, or others; authorizing licensed insurers and their agents to offer complimentary, or discounted rates on, certain funeral-related services in conjunction with the sale of a group life or health insurance policy, etc. BI 01/23/2018 Fav/CS CM 02/06/2018 Fav/CS RC	Fav/CS Yeas 5 Nays 0
2	SB 894 Garcia (Similar CS/H 935, Compare S 282)	Mortgage Lending; Revising the definition of the term "mortgage loan"; defining the term "hold himself or herself out to the public as being in the mortgage lending business", etc. BI 01/23/2018 Favorable CM 02/06/2018 Favorable RC	Favorable Yeas 6 Nays 0
3	SB 1114 Brandes (Similar CS/H 1041)	Professional Regulation; Authorizing a person to seek a declaratory statement from an agency as to the effect of the person's criminal background on his or her eligibility for certain licenses, registrations, or certificates; prohibiting the conviction of a crime before a specified date from being grounds for the denial of certain licenses, etc. RI 01/24/2018 Favorable CM 02/06/2018 Fav/CS RC	Fav/CS Yeas 3 Nays 2

COMMITTEE MEETING EXPANDED AGENDA

Commerce and Tourism

Tuesday, February 6, 2018, 9:00—10:30 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 1314 Brandes (Similar H 1181)	Florida Capital Formation Act; Deleting the requirement that the Department of Economic Opportunity manage certain activities related to the commercialization of specified products, services, and ideas; redesignating the Institute for the Commercialization of Public Research as the Institute for Commercialization of Florida Technology; requiring that certain proceeds be returned to the Florida Technology Seed Capital Fund after the payment of certain costs and fees, etc. CM 02/06/2018 Fav/CS ATD AP	Fav/CS Yeas 5 Nays 0
5	SB 1606 Taddeo (Similar H 341, Compare H 343, Linked S 1604)	Film and Television Production; Establishing the Florida Motion Picture Capital Corporation to encourage the use of this state as a site for scripted productions by providing financing to certain productions; requiring the production to use a bonded third-party collection account management firm; requiring the lead producer or production company to have a specified sales record or provide a completion bond; requiring the board to create the Florida Motion Picture Capital Account and maintain exclusive control of the account, etc. CM 02/06/2018 Temporarily Postponed ATD AP	Temporarily Postponed
6	SB 1604 Taddeo (Identical H 343, Compare H 341, Linked S 1606)	Public Records/Florida Motion Picture Capital Corporation; Providing an exemption from public records requirements for certain application information submitted to the Florida Motion Picture Capital Corporation; providing for legislative review and repeal of the exemption; providing a statement of public necessity, etc. CM 02/06/2018 Temporarily Postponed GO RC	Temporarily Postponed
7	SM 1658 Farmer (Similar HM 1329)	Income Inequality; Requesting Congress to adopt budgetary and other measures to reduce income inequality, etc. CM 02/06/2018 Temporarily Postponed RC	Temporarily Postponed

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Commerce and Tourism

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8	CS/SB 822 Regulated Industries / Hutson (Similar H 775)	Beverage Law; Providing an exemption from provisions relating to the tied house evil for specified financial transactions between a manufacturer or importer of malt beverages and a licensed vendor; prohibiting the manufacturer or importer of malt beverages from soliciting or receiving any portion of certain payments from its distributors; specifying that a brand naming rights agreement does not obligate or place responsibility upon a distributor, etc. RI 01/10/2018 Fav/CS CM 02/06/2018 Fav/CS RC	Fav/CS Yeas 4 Nays 1
9	SB 1828 Rodriguez (Similar H 225)	Employment Discrimination; Prohibiting an employer from taking retaliatory personnel action against an employee who has left a place of employment to evacuate under an mandatory evacuation order; providing employee remedies and relief, etc. CM 02/06/2018 Temporarily Postponed JU RC	Temporarily Postponed

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/CS/SB 762

INTRODUCER: Commerce and Tourism Committee; Banking and Insurance Committee; and Senator Mayfield

SUBJECT: Permissible Insurance Acts

DATE: February 6, 2018

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 762 amends the Unfair Insurance Trade Practices Act to allow insurers or their agents to give gifts, certain services, donations, or other items not exceeding \$100 in value per calendar year to insureds, prospective insureds, and others.

Current law limits the gifting of promotional merchandise to \$25 or less per gift to an insured, prospective insured, or any person, for the purpose of advertising. There is no limit on the frequency of giving or the aggregate value of advertising merchandise given over any period of time. The bill specifies that insurers or their agents are allowed to either give a gift to or make a charitable contribution on behalf of insureds, prospective insureds, or others. The gift or donation may not exceed a value of \$100 per calendar year, per insured or prospective insured.

In relation to advertising gifts by title insurance agents, agencies, and insurers, the bill limits them to an aggregate \$25 gift value per calendar year, rather than a limit of \$25 per gift with no annual aggregate limitation.

The bill is effective July 1, 2018.

II. Present Situation:

The Unfair Insurance Trade Practices Act¹ (Act) prohibits unfair methods of competition and unfair or deceptive acts in the business of insurance. The Act prohibits certain inducements for the purchase of insurance, including rebates, dividends, stock, and contracts that promise to return profits to prospective insurance purchasers. However, the Act also provides exceptions to these provisions.

The Act allows a licensed insurer or its agent to provide a gift for the purpose of advertising to insureds, prospective insureds, and others in the form of any article of merchandise having a value of not more than \$25.² Such gifts are exceptions to the Act's prohibitions against issuing specified stock, benefit certificates, shares, securities, or contracts as an inducement to insurance;³ engaging in specified acts of unfair discrimination;⁴ and providing unlawful rebates. While the exception restricts the value of the advertising gift, it does not limit the frequency of giving or the aggregate value of gifts given over any period of time.

III. Effect of Proposed Changes:

Section 1 amends s. 626.9541(1)(m), F.S., regarding advertising gifts permitted under the Unfair Insurance Trade Practices Act. The bill allows insurers or their agents to either make a gift to or make a charitable contribution on behalf of insureds, prospective insureds, or others.

The bill expands the items that insurers or their agents may give to include goods, wares, store gift cards, gift certificates, event tickets, anti-fraud or loss mitigation services, or other items.

The bill provides that total value of gifts or charitable contributions may not exceed \$100 in a calendar year and prohibits the giving of both merchandise and charitable contributions to a policyholder or prospective policyholder in the same year.

The bill exempts such gifts and charitable contributions from the prohibitions in paragraphs (f), (g), and (h) of s. 626.9541(1), F.S. Generally, rebates are unlawful under the Act. For example, it is an unfair method of competition and unfair act or practice to pay any valuable consideration or inducement not specified in the insurance contract as an inducement to insurance under s. 626.9541(1)(h)1.b., F.S. The bill eliminates the requirement that gifts be for the purpose of advertising, thus converting the provision allowing advertising gifts to a provision allowing certain inducements to purchase insurance.

In relation to advertising gifts by title insurance agents, agencies, and insurers, the bill limits them to an aggregate \$25 gift value per calendar year, rather than a limit of a \$25 value per gift with no annual aggregate limitation.

Section 2 provides an effective date of July 1, 2018.

¹ Section 626.9541, F.S.

² The \$25 limit has been in place since 1989. Chapter 89-360, Laws of Fla.; Section 626.9541(1)(m), F.S.

³ Section 626.9541(1)(f), F.S.

⁴ Section 626.9541(1)(g), F.S.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

Insurers and agents will be allowed to provide insureds, prospective insureds, and others with a limited amount of gifts, gift cards and services, or provide a charitable donation, as an appreciation for doing business.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 626.9541 of the Florida Statutes.

IX. Additional Information:

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

CS by Commerce and Tourism on February 6, 2018:

The committee substitute removes the provisions allowing group life and health insurers to offer policyholders funeral planning services and grief counseling provided by the proper license holders.

CS by Banking and Insurance on January 23, 2018:

The CS:

- Changes the term customer to insured.
- Clarifies that merchandise and a charitable contribution cannot both be provided to insureds or prospective insureds in the same year.
- Allows group life and health insurers to offer policyholders, at no additional cost, funeral planning services and grief counseling provided by the proper license holders. Such added benefits are not considered an advertisement, designation, direction, inducement or rebate under the Unfair Insurance Trade Practices Act.

- B. **Amendments:**

None.



689278

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/06/2018	.	
	.	
	.	
	.	

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

Senate Amendment (with directory and title amendments)

Delete lines 54 - 88.

===== 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 lines 23 - 24

and insert:

Section 1. Paragraph (m) of subsection (1) of section
626.9541, Florida Statutes, is amended to read:



689278

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16

===== T I T L E A M E N D M E N T =====
And the title is amended as follows:
 Delete lines 13 - 18
and insert:
 applicability;

By the Committee on Banking and Insurance; and Senator Mayfield

597-02381-18

2018762c1

A bill to be entitled

An act relating to permissible insurance acts; amending s. 626.9541, F.S.; revising the types, value, and frequency of advertising and promotional gifts that licensed insurers or their agents may give to insureds, prospective insureds, or others; authorizing such insurers and agents to make specified charitable contributions on behalf of insureds or prospective insureds; providing that title insurance agents, title insurance agencies, or title insurers may give insureds, prospective insureds, or others advertising gifts up to a specified value; providing applicability; authorizing licensed insurers and their agents to offer complimentary, or discounted rates on, certain funeral-related services in conjunction with the sale of a group life or health insurance policy; specifying a requirement for, and a limitation on, the providers of such services; providing construction; providing an effective date.

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

Section 1. Paragraphs (m) and (t) of subsection (1) of section 626.9541, Florida Statutes, are amended to read:

626.9541 Unfair methods of competition and unfair or deceptive acts or practices defined.—

(1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS.—The following are defined as unfair methods of competition and unfair or deceptive acts or practices:

Page 1 of 4

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

597-02381-18

2018762c1

(m) Advertising and promotional gifts and charitable contributions permitted.—

~~1. No provision of~~ Paragraph (f), paragraph (g), or paragraph (h) ~~does not shall be deemed to~~ prohibit a licensed insurer or its agent from:

a. Giving to insureds, prospective insureds, or ~~and~~ others, for the purpose of advertising, any article of merchandise, goods, wares, store gift cards, gift certificates, event tickets, anti-fraud or loss mitigation services, or other items having a total value of \$100 or less per insured or prospective insured within 1 calendar year; or having a value of not more than \$25.

b. Making charitable contributions, as defined in s. 170(c) of the Internal Revenue Code, on behalf of insureds or prospective insureds of up to \$100 per insured or prospective insured within 1 calendar year.

2. Paragraph (f), paragraph (g), or paragraph (h) does not prohibit a title insurance agent or title insurance agency, as those terms are defined in s. 626.841, or a title insurer, as defined in s. 627.7711, from giving to insureds, prospective insureds, or others, for the purpose of advertising, any article of merchandise having a value of not more than \$25. A person or entity governed by this subparagraph is not subject to subparagraph 1.

(t) Certain life insurance relations as to ~~with~~ funeral directors, funeral services, and grief counseling prohibited.—

1. A ~~No~~ life insurer may not shall permit any funeral director or direct disposer to act as its representative, adjuster, claim agent, special claim agent, or agent for such

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

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insurer in soliciting, negotiating, or effecting contracts of life insurance on any plan or of any nature issued by such insurer or in collecting premiums for holders of any such contracts except as prescribed in s. 626.785(3).

2. ~~A life insurer may not shall:~~

a. Affix, or permit to be affixed, advertising matter of any kind or character of any licensed funeral director or direct disposer to such policies of insurance.

b. Circulate, or permit to be circulated, any such advertising matter with such insurance policies.

c. Attempt in any manner or form to influence policyholders of the insurer to employ the services of any particular licensed funeral director or direct disposer.

3. ~~No~~ Such an insurer may not shall maintain, or permit its agent to maintain, an office or place of business in the office, establishment, or place of business of any funeral director or direct disposer in this state.

4. A licensed insurer or its agent may offer, in conjunction with the sale of a group life or health insurance policy, complimentary grief counseling or funeral planning services, or discounted rates on funeral services offered by a third party provider. Funeral planning services or funeral services must be rendered by persons licensed under chapter 497 or licensed under the applicable laws in another jurisdiction in which the funeral provider is located. The contact to such funeral providers must be initiated by the beneficiaries or family members of the group policy insured and not by the funeral provider. All such offerings under this paragraph are not an advertisement, designation, direction, rebate, or

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597-02381-18

2018762c1

inducement as described in this section.

Section 2. This act shall take effect July 1, 2018.

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR DEBBIE MAYFIELD
17th District

January 24, 2018

The Honorable Bill Montford
Chair, Commerce and Tourism
410 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Re: SB 762

Dear Chair Montford,

I am respectfully requesting Senate Bill 762, a bill relating to Permissible Insurance Acts, be placed on the agenda for your committee on Commerce and Tourism.

I appreciate your consideration of this bill and I look forward to working with you and the Banking and Insurance committee. If there are any questions or concerns, please do not hesitate to call my office at 850-487-5017.

Thank you,

A handwritten signature in cursive script that reads "Debbie Mayfield".

Senator Debbie Mayfield
District 17

Cc: Todd McKay, Gabriella Denton, Marilyn Barnes, Melissa Durham, Varna Mitchell, Taylor Peck

REPLY TO:

- ☐ 900 E. Strawbridge Avenue, Melbourne, Florida 32901 (321) 409-2025
- ☐ 1801 27th Street, Vero Beach, Florida 32960 (772) 226-1970
- ☐ 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5017

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

COMMITTEES:

Education, Vice Chair
Government Oversight & Accountability, Vice Chair
Appropriations Subcommittee on the
Environment and Natural Resources
Appropriations subcommittee on General
Government
Agriculture
Judiciary

JOINT COMMITTEES:

Joint Legislative Auditing Committee,
Alternating Chair

APPEARANCE RECORD

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

1/6/18

Meeting Date

762

Bill Number (if applicable)

Topic Unfair Insurance

Amendment Barcode (if applicable)

Name Sohan (Sohn) MixonJob Title ConsultantAddress 201 So MonroePhone 850 528-4441Tallahassee FL 32301

City State Zip

Email jmixon@fasa.netSpeaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)Representing Independent Funeral Directors AssocAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/7/18

Meeting Date

762

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name Robert Reyes

Job Title

Address 417 Ingleside Ave

Phone 858 509 1802

Street

TALL

32303

Email rreyes@capitol.org

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Allstate Insurance Co

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

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 894

INTRODUCER: Senator Garcia

SUBJECT: Mortgage Lending

DATE: February 5, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	Favorable
2.	Little	McKay	CM	Favorable
3.			RC	

I. Summary:

SB 894 revises provisions governing non-depository loan originators, mortgage brokers, and mortgage lender businesses subject to regulation by the Office of Financial Regulation (OFR) to provide greater consumer protections for residential loans. The bill amends the definition of “mortgage loan” to include residential mortgage loans made for business purposes. Persons originating, brokering, or lending such loans may be subject to licensure by the OFR, unless they are otherwise exempt. Further, the bill provides a definition of the term “hold himself or herself out to the public as being in the mortgage lending business,” as that term currently exists under two licensing exemption provisions.

Under ch. 494, F.S., conditions requiring licensure by the OFR include whether a person takes part in making a mortgage loan primarily for personal, family, or household use. Under current law, two exemptions in ch. 494, F.S., permit an individual investor to make or acquire a mortgage loan with his or her own funds, or to sell such mortgage loan, without being licensed as a mortgage lender, if the individual does not “hold himself or herself out to the public as being in the mortgage lending business.” However, this term is currently undefined.

The fiscal impact on the OFR is indeterminate.

II. Present Situation:

Shadow Real Estate Transactions

The federal Financial Crimes Enforcement Network (FinCEN)¹ recently announced the renewal of an existing Geographic Targeting Order (GTO) in 2017. This GTO temporarily extends the

¹ Financial Crimes Enforcement Network, a bureau of the U.S. Department of Treasury, serves as the nation’s financial intelligence unit, and is charged with safeguarding the U.S. financial system from the abuses of money laundering, terrorist financing, and other financial crime. FinCEN administers the federal Bank Secrecy Act. FinCEN analyzes and shares

requirement that U.S. title insurance companies in six metropolitan areas in the U.S., including Miami-Dade County, Florida, identify the natural persons behind shell companies used to pay “all cash” for high-end residential real estate.² FinCEN has found that about 30 percent of the transactions covered by the GTOs involve a beneficial owner or purchaser representative that is also the subject of a previous suspicious activity report. The GTOs are one of the tools that FinCEN uses to combat money laundering. According to FinCEN, this corroborates their concerns about the use of shell companies to buy luxury real estate in “all-cash” transactions. In an earlier GTO issued in January 2016, FinCEN indicated that it was prioritizing anti-money laundering protections on real estate transactions involving lending.

In recent years, private lenders and representatives of a local building association have reported alleged unlicensed mortgage lending activity in South Florida. According to these reports, some lending entities were providing residential loans with usurious interest rates and high fees made under the guise of business purpose loans in order to avoid licensure and disclosure requirements under ch. 494, F.S., as a mortgage lender. These groups also claimed that some of these unscrupulous lenders would not make the “residential loan” unless the borrower formed a limited liability company.³ In another example described by the private lenders and local building association, an offshore shell company buys a parcel of real estate. Shortly thereafter, a Florida corporation, which is formed to participate in the scheme, obtains a mortgage loan on the property through an unlicensed mortgage lender. Next, the shell company pays the Florida corporation’s monthly mortgage payments and ultimately pays off the mortgage. As a result, the perpetrator successfully launders money in the United States.

Federal Oversight of Mortgage Brokerage Industry

Secure and Fair Enforcement for Mortgage Licensing Act of 2008

On July 30, 2008, the federal Housing and Economic Recovery Act of 2008 was enacted.⁴ Title V of this act is titled the “Secure and Fair Enforcement for Mortgage Licensing Act of 2008” or the “S.A.F.E. Mortgage Licensing Act of 2008” (SAFE Act). The SAFE Act establishes minimum standards for state licensure of residential mortgage loan originators in order to increase uniformity, improve accountability of loan originators, combat fraud, and enhance consumer protections. The act required all states to adopt a system of licensure meeting minimum standards for mortgage loan originators by August 1, 2009, or be subject to federal regulation. The act establishes regulatory requirements for individuals, rather than businesses, licensed or registered as mortgage brokers and lenders, collectively known as loan originators. Pursuant to the SAFE Act, states are required to participate in a national licensing registry, the Nationwide Mortgage Licensing System and Registry (registry), which contains employment

financial intelligence with law enforcement and regulatory agencies. In addition, FinCEN works with the financial industry to deter, detect, investigate, and prosecute money laundering, terrorist financing, and other crimes.

² FinCEN Press Release (Feb. 23, 2017) available at <https://www.fincen.gov/news/news-releases/fincen-renews-real-estate-geographic-targeting-orders-identify-high-end-cash> (last viewed Feb. 5, 2018).

³ Latin Builders Association, Letter to Governor Rick Scott (Dec. 19, 2013) (on file with the Senate Committee on Banking and Insurance.).

⁴ Pub. L. No. 110-289.

history as well as disciplinary and enforcement actions against loan originators. Applicants are subject to licensure by the state regulator.⁵

Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010

In 2010, the federal Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) created the Consumer Financial Protection Bureau (CFPB) and provided sweeping changes to the regulation of financial services, including changes to federal mortgage loan origination and lending laws.⁶ The Dodd-Frank Act authorizes the CFPB to have rulemaking, enforcement, and supervisory powers over many consumer financial products and services, as well as the entities that sell them. Some of the consumer laws under the CFPB include the Truth in Lending Act (TILA)⁷ and the Real Estate Settlement Procedures Act (RESPA).⁸ The TILA is intended to ensure that credit terms are disclosed in a meaningful way so consumers can compare credit terms, and is implemented by Regulation Z. The RESPA requires lenders, mortgage brokers, or servicers of home loans to provide borrowers with pertinent and timely disclosures regarding the nature and costs of the real estate settlement process, and is implemented by Regulation X.

Both TILA and RESPA exempt from their regulations a mortgage loan made “primarily for a business, commercial or agricultural purpose.”⁹ Therefore, TILA and RESPA do not cover “business purpose” mortgage loans but rather only “consumer purpose” mortgage loans. When determining whether credit is for a consumer purpose, the creditor must evaluate all of the following factors:

- Any statement obtained from the consumer describing the purpose of the proceeds;
- The primary occupation of the consumer and how it relates to the use of the proceeds;
- Personal management of the assets purchased from proceeds;
- The size of the transaction; and
- The amount of income derived from the property acquired by the loan proceeds relative to the borrower’s total income.

The Dodd-Frank Act mandated that the CFPB adopt an integrated disclosure form for use by lenders and creditors to comply with the disclosure requirements of RESPA and TILA,¹⁰ and the CFPB issued final rules in 2015.¹¹ The integrated rule applies to most closed-end consumer mortgages secured by real property. It does not apply to home equity lines of credit (HELOCs), reverse mortgages, or mortgages secured by a mobile home or by a dwelling that is not attached to real property (i.e., land). *The Small Entity Guide* published by the CFPB does not specify whether loans for business purposes or for investment properties are exempt from the rule.

⁵ NLMS Resource Center, available at <http://mortgage.nationwidelicensingsystem.org/about/Pages/default.aspx> (last viewed Feb. 5, 2018).

⁶ Pub. L. No. 111-203.

⁷ 15 U.S.C. 1601, *et. seq.*

⁸ 15 U.S.C. 2601, *et. seq.*

⁹ Consumer Financial Protection Bureau, *2013 Integrated Mortgage Disclosure Rule Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z)*, available at <https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/2013-integrated-mortgage-disclosure-rule-under-real-estate-settlement-procedures-act-regulation-x-and-truth-lending-act-regulation-z/> (last viewed Feb. 5, 2018).

¹⁰ 12 U.S.C. ss. 5532(f), 2603; 15 U.S.C. s. 1604(b).

¹¹ 78 Fed Reg 79730.

However, the guide does provide that creditors are not prohibited from using the integrated disclosure forms on loans that are not covered by the rule.¹²

State Regulation of Mortgage Loans

The Office of Financial Regulation (OFR) regulates a wide range of financial activities, such as state-chartered banks, credit unions, and non-depository loan originators, mortgage brokers and mortgage lenders. In 2009, the Florida Legislature implemented the minimum standards of the SAFE Act, which increased licensure requirements and required licensure through the registry.¹³

Section 494.001(24), F.S., defines the term “mortgage loan” to mean a:

- Residential loan primarily for personal, family, or household use which is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling, as defined in s. 103(v) of the federal TILA,¹⁴ or for the purchase of residential real estate upon which a dwelling is to be constructed;
- Loan on commercial real property if the borrower is an individual or the lender is a noninstitutional investor; or
- Loan on improved real property consisting of five or more dwelling units if the borrower is an individual or the lender is a noninstitutional investor.

Licensure of Loan Originators, Mortgage Brokers, and Mortgage Broker Lenders

An individual who acts as a loan originator must obtain a loan originator license.¹⁵ A “loan originator” means an individual who, directly or indirectly:

- Solicits or offers to solicit a mortgage loan;
- Accepts or offers to accept an application for a mortgage loan;
- Negotiates or offers to negotiate the terms or conditions of a new or existing mortgage loan on behalf of a borrower or lender; or
- Negotiates or offers to negotiate the sale of an existing mortgage loan to a noninstitutional investor for compensation or gain.¹⁶

The term “loan originator” includes an individual who is required to be licensed as a loan originator under the SAFE Act. The term does not include an employee of a mortgage broker or mortgage lender whose duties are limited to physically handling a completed application form or transmitting a completed application form to a lender on behalf of a prospective borrower.¹⁷

¹² See CFPB, *Small Entity Compliance Guide*, available at http://s3.amazonaws.com/files.consumerfinance.gov/f/documents/kbyo_smallentitycomplianceguide_v4_10072016.pdf (last viewed Feb. 5, 2018).

¹³ Chapter 2009-241, Laws of Fla.

¹⁴ The term “dwelling” means a residential structure or mobile home which contains one to four family housing units, or individual units of condominiums or cooperatives. Current law inadvertently references the definition of “material disclosure” under s. 103(v), rather than the term “dwelling,” which is defined under s. 103(w). See 15 U.S.C. 1602.

¹⁵ Section 494.00312, F.S.

¹⁶ Section 494.001(17), F.S.

¹⁷ *Id.*

A “mortgage broker” means a person conducting loan originator activities through one or more licensed loan originators employed by the mortgage broker or as an independent contractor to the mortgage broker¹⁸ and such persons are required to be licensed as mortgage brokers.¹⁹

A “mortgage lender” means any person making a mortgage loan for compensation or gain, directly or indirectly, or selling or offering to sell a mortgage loan to a noninstitutional investor,²⁰ and such persons are required to be licensed as mortgage lenders.²¹ “Making a mortgage loan” means closing a mortgage loan in a person's name, advancing funds, offering to advance funds, or making a commitment to advance funds to an applicant for a mortgage loan.²²

The following persons are exempt from regulation as a mortgage lender under part III of ch. 494, F.S.:

- A person acting in a fiduciary capacity conferred by the authority of a court;
- A person who, as a seller of his or her own real property, receives one or more mortgages in a purchase money transaction;
- A person who acts solely under contract and as an agent for federal, state, or municipal agencies for servicing mortgage loans;
- A person who makes only nonresidential mortgage loans and sells loans only to institutional investors;
- An individual making or acquiring a mortgage loan using his or her own funds for his or her own investment, and who does not hold himself or herself out to the public as being in the mortgage lending business; and
- An individual selling a mortgage that was made or purchased with that individual's funds for his or her own investment, and who does not hold himself or herself out to the public as being in the mortgage lending business.²³

The OFR’s Examination Authority, Administrative Penalties, and Fines

The OFR may conduct investigations, examinations, and investigate complaints.²⁴ The OFR may take disciplinary action against a person licensed or subject to licensure under parts II or III of ch. 494, F.S., if the person violates any provision of RESPA, TILA, or any regulations adopted under such acts, during the course of any mortgage transaction.²⁵

In recent years, the OFR has closed cases relating to information pertaining to approximately 24 entities allegedly making residential mortgage loans for business purposes. Of these cases, the OFR imposed administrative fines on three entities engaging in unlicensed mortgage lending. The OFR was unable to take disciplinary action on 15 other cases because the residential loans were determined to be for business purposes, which is currently outside of the jurisdiction of the OFR.²⁶

¹⁸ Section 494.001(22), F.S.

¹⁹ Section 494.00321, F.S.

²⁰ Section 494.001(23), F.S.

²¹ Section 494.00611, F.S.

²² Section 494.001(20), F.S.

²³ Section 494.00115(2), F.S.

²⁴ Section 494.0012, F.S.

²⁵ See s. 494.00255, F.S.

²⁶ OFR Mortgage Lender Referrals (Nov. 3, 2016) (on file with Senate Banking and Insurance Committee).

III. Effect of Proposed Changes:

Section 1 amends the definition of the term, “mortgage loan” in s. 494.001(24), F.S., by removing the requirement that residential loans be used primarily for personal, family, or household purposes. As a result, the bill allows residential loans made for a business purpose to fall under the definition of a “mortgage loan” and to be subject to regulation by the OFR. The bill may require persons originating, brokering, or lending such loans to obtain licensure under ch. 494, F.S., unless they fall within an exemption under s. 494.00115, F.S.

The bill also makes a technical change to correct a reference to the definition of “dwelling” in s. 103(w) of the federal TILA.

Section 2 amends s. 494.00115, F.S., to define a term currently used under two mortgage lender licensing exemption provisions. The bill defines “hold himself or herself out to the public as being in the mortgage lending business” as any of the following:

- Representing to the public, through advertising or other means of communicating or providing information (including the use of business cards, stationery, brochures, signs, rate lists, or promotional items), by any medium whatsoever, that such individual can or will perform the activities described in s. 494.001(23), F.S., as a mortgage lender;
- Soliciting in a manner that would lead the intended audience to reasonably believe that such individual is in the business of performing the activities described in s. 494.001(23), F.S.;
- Maintaining a commercial business establishment at which, or premises from which, such individual regularly performs the activities described in s. 494.001(23), F.S., or regularly meets with current or prospective borrowers; or
- Advertising, soliciting, or conducting business through use of a name, trademark, service mark, trade name, Internet address, or logo which indicates or reasonably implies that the business being advertised, solicited, or conducted is the kind or character of business transacted or conducted by a licensed mortgage lender or which is likely to lead any person to believe that such business is that of a licensed mortgage lender.

The exemptions from mortgage lender licensure affected by this section are those for:

- An individual making or acquiring a mortgage loan using his or her own funds for his or her own investment, and who does hold himself or herself out to the public as being in the mortgage lending business.
- An individual selling a mortgage that was made or purchased with that individual’s funds for his or her own investment, and who does not hold himself or herself out to the public as being in the mortgage lending business.²⁷

Section 3 provides the effective date of January 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

²⁷ See s. 494.00115(2)(e) and (f), F.S.

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 affords borrowers obtaining residential mortgage loans for any purpose (not primarily for personal, family, or household use) greater consumer protections under ch. 494, F.S., which also requires compliance with RESPA and TILA.

According to the OFR, the bill will require an indeterminate number of businesses and individuals to become licensed as mortgage lenders, mortgage brokers, and loan originators. The total number of entities operating in the state of Florida in this manner is unknown; however, the OFR has received information suggesting that approximately 24 entities currently make mortgage loans for business purposes.²⁸

²⁸ Office of Financial Regulation, *Analysis of SB 894* (Dec. 17, 2017) (on file with Senate Banking and Insurance Committee).

C. Government Sector Impact:

The OFR has indicated that two additional FTEs²⁹ may be needed to perform licensing and regulatory functions, since additional persons will be required to be licensed and examined.³⁰

	<u>Year 1</u>		<u>Year 2</u>		<u>Year 3</u>	
Salaries & Benefits:	Recurring	Non-Recurring	Recurring	Non-Recurring	Recurring	Non-Recurring
Financial Specialist (Registrations)	\$46,681.50	\$0.00	\$62,242.00	\$0.00	\$62,242.00	\$0.00
Financial Specialist (Enforcement)	\$46,681.50	\$0.00	\$62,242.00	\$0.00	\$62,242.00	\$0.00
	<u>\$93,363.00</u>	<u>\$0.00</u>	<u>\$124,484.00</u>	<u>\$0.00</u>	<u>\$124,484.00</u>	<u>\$0.00</u>
Expenses:	Recurring	Non-Recurring	Recurring	Non-Recurring	Recurring	Non-Recurring
Financial Specialist (Registrations)	\$1,350.00	\$0.00	\$1,800.00	\$0.00	\$1,800.00	\$0.00
Financial Specialist (Enforcement)	\$1,350.00	\$0.00	\$1,800.00	\$0.00	\$1,800.00	\$0.00
	<u>\$2,700.00</u>	<u>\$0.00</u>	<u>\$3,600.00</u>	<u>\$0.00</u>	<u>\$3,600.00</u>	<u>\$0.00</u>
OCO:	Recurring	Non-Recurring	Recurring	Non-Recurring	Recurring	Non-Recurring
Financial Specialist (Registrations)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Financial Specialist (Enforcement)	\$0.00	\$1,500.00	\$0.00	\$0.00	\$0.00	\$0.00
	<u>\$0.00</u>	<u>\$1,500.00</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>
	<u>\$97,563.50</u>	<u>\$1,500.00</u>	<u>\$128,084.00</u>		<u>\$128,084.00</u>	

VI. Technical Deficiencies:

Section 2 of the bill amending s. 494.00115, F.S., relating to exemptions from licensure (lines 38 – 41), provides that anyone “soliciting in a manner that would lead the intended audience to reasonably believe that such individual is in the business of performing activities described in s. 494.001(23).” According to the OFR, this paragraph appears very broad, leaving uncertain who it encompasses, which will likely create confusion for impacted businesses, individuals, and the OFR. Paragraphs (a), (c), and (d) provide more definitive guidance as to the exact activities

²⁹ *Id.*

³⁰ Office of Financial Regulation correspondence (Jan. 2018) (on file with Senate Committee on Banking and Insurance Committee).

or circumstances by which a business or individual is included in the definition. The OFR suggests that paragraph (b) should be clarified or removed in its entirety.

VII. Related Issues:

A violation of RESPA, TILA, or any regulations adopted thereunder committed in any mortgage transaction, is a ground for disciplinary action under ch. 494, F.S. Both RESPA and TILA exclude business purpose loans from the scope of their regulation. Therefore, a person may be subject to licensure under ch. 494, F.S., but might not necessarily be required to provide the disclosures required under RESPA and TILA when a residential mortgage loan is made for business purposes.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 494.001 and 494.00115.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By Senator Garcia

36-01122-18

2018894__

A bill to be entitled

An act relating to mortgage lending; amending s.

494.001, F.S.; revising the definition of the term

"mortgage loan"; amending s. 494.00115, F.S.; defining

the term "hold himself or herself out to the public as

being in the mortgage lending business"; providing an

effective date.

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

Section 1. Subsection (24) of section 494.001, Florida Statutes, is amended to read:

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

(24) "Mortgage loan" means any:

(a) Residential loan that primarily for personal, family,
~~or household use which~~ is secured by a mortgage, deed of trust,
or other equivalent consensual security interest on a dwelling,
as defined in s. 103(w) ~~s. 103(v)~~ of the federal Truth in
Lending Act, or for the purchase of residential real estate upon
which a dwelling is to be constructed;

(b) Loan on commercial real property if the borrower is an
individual or the lender is a noninstitutional investor; or

(c) Loan on improved real property consisting of five or
more dwelling units if the borrower is an individual or the
lender is a noninstitutional investor.

Section 2. Subsection (4) is added to section 494.00115,
Florida Statutes, to read:

494.00115 Exemptions.—

(4) As used in this section, the term "hold himself or

36-01122-18

2018894__

herself out to the public as being in the mortgage lending

business" includes any of the following:

(a) Representing to the public, through advertising or
other means of communicating or providing information, and by
any medium whatsoever, including the use of business cards,
stationery, brochures, signs, rate lists, or promotional items,
that such individual can or will perform the activities
described in s. 494.001(23).

(b) Soliciting in a manner that would lead the intended
audience to reasonably believe that such individual is in the
business of performing the activities described in s.
494.001(23).

(c) Maintaining a commercial business establishment at
which, or premises from which, such individual regularly
performs the activities described in s. 494.001(23) or regularly
meets with current or prospective borrowers.

(d) Advertising, soliciting, or conducting business through
use of a name, trademark, service mark, trade name, Internet
address, or logo that indicates or reasonably implies that the
business being advertised, solicited, or conducted is the kind
or character of business transacted or conducted by a licensed
mortgage lender or that is likely to lead any person to believe
that such business is that of a licensed mortgage lender.

Section 3. This act shall take effect January 1, 2019.



The Florida Senate
State Senator René García
36th District

Please reply to:

☐ **District Office:**

1490 West 68 Street
Suite # 201
Hialeah, FL. 33014
Phone# (305) 364-3100

January 23, 2018

The Honorable Bill Montford
Chair, Commerce and Tourism
310 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Montford,

Please have this letter serve as my formal request to have **SB 894: Mortgage Lending** be heard during the next scheduled Commerce and Tourism Committee Meeting. Should you have any questions or concerns, please do not hesitate to contact my office.

Sincerely,

A handwritten signature in black ink, appearing to read "René García".

State Senator René García
District 36

CC: Todd McKay
Gabriela Denton

Committees: Children, Families, and Elder Affairs, Chair, Appropriations Subcommittee on Finance and Tax, Vice Chair, Appropriations Subcommittee on the Environment and Natural Resources, Appropriations Subcommittee on General Government, Banking and Insurance, Judiciary, Joint Administrative Procedures Committee.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2 / 6 / 18
Meeting Date

SB 894
Bill Number (if applicable)

Topic Speaking on SB 894

Amendment Barcode (if applicable)

Name Courtney Larkin

Job Title Government Relations

Address 200 E Gaines Street
Street

Phone 888.209.0061

Tallahassee FL 32399
City State Zip

Email Courtney.larkin@flaofr.com

Speaking: ☐ For ☐ Against ☒ Information

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

Representing FL. Office of Financial Regulation

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

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 1114

INTRODUCER: Commerce and Tourism Committee and Senator Brandes and others

SUBJECT: Professional Regulation

DATE: February 7, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>McSwain</u>	<u>RI</u>	Favorable
2.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	Fav/CS
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1114 addresses licensing, registration, and regulatory requirements for various professions and occupations. The bill:

- Permits a person to submit a petition for declaratory statement to any Florida agency to determine the effect of a criminal background on his or her eligibility for occupational or professional licensure;
- Prohibits an agency from denying an application for licensure for certain professions if a specific duration has passed since the applicant's conviction;
- Specifies accommodations that an agency must make for applicants who are under confinement or supervision at the time of their application;
- Requires pertinent boards under the Department of Business and Professional Regulation to adopt rules that specify crimes that do or do not constitute grounds for licensure denial;
- Eliminates the current licensing required for business entities engaged in certain regulated professions (architecture and interior design, landscape architecture, and asbestos abatement consulting or contracting), while retaining the license required for individuals engaged in those professions;
- Provides that licensed individuals must apply for licensure and act as qualifying agents for business organizations to be licensed to engage in architecture and interior design, landscape architecture, or asbestos abatement consulting or contracting;
- Allows certain boxing match services to be practiced without a license (announcers and knockdown timekeepers);
- Revises the current license requirements for restricted barbers to specify:

- The services that may and may not be provided by restricted barbers; and
- A minimum of 325 training hours;
- Specifies license requirements for specialists in practices defined as “nail specialty,” “facial specialty,” and “full specialty;”
- Eliminates license and registration requirements for those who engage solely in:
 - Hair braiding, hair wrapping, or body wrapping; or
 - The polishing of nails or applying makeup;
- Eliminates registration requirements for labor organizations and licensing of labor organization business agents, while maintaining civil causes of action and criminal penalties; and
- Eliminates license requirement for yacht and ship brokers’ branch offices;

The bill provides an effective date of July 1, 2018.

II. Present Situation:

Agency Declaratory Statements

The Administrative Procedure Act provides uniform procedures for agencies to exercise their authority, and is applicable to every Florida administrative agency.¹

A declaratory statement is meant to “‘enable members of the public to definitively resolve ambiguities of law arising in the conduct of their daily affairs or in the planning of their future affairs’ and ‘to enable the public to secure definitive binding advice as to the applicability of agency-enforced law to a particular set of facts.’”² A petition for declaratory statement must include a petitioner’s specific set of circumstances and the applicable law, rule, or order he or she wishes to have interpreted in light of those circumstances.³

When a petitioner files a petition for a declaratory statement with an agency, the agency must file a notice of the petition in the next available issue of the Florida Administrative Register and transmit copies of the petition to the Joint Administrative Procedures Committee.⁴ Within 90 days from the petition’s filing, the agency must either issue a declaratory statement or deny the petition. The agency must give notice of its action in the next available issue of the Florida Administrative Register.⁵

¹ See, ss. 120.50-120.515, F.S.

² Section 120.565(1), F.S.; *Fla. Dept. of Bus. & Pro. Reg., Div. of Pari-Mutuel Wagering v. Invest. Corp. of Palm Bch.*, 747 So. 2d 374 (Fla. 1999), quoting Patricia A. Dore, *Access to Florida Administrative Proceedings*, 13 Fla. St. U. L. Rev. 965 (1986)).

³ Section 120.565(2), F.S.

⁴ Section 120.565(3), F.S. The Joint Administrative Procedures Committee (JAPC) is a joint standing committee of the Legislature created by Rule 4.1 of the Joint Rules of the Florida Legislature. It is composed of five Senators appointed by the President of the Senate and six Representatives appointed by the Speaker of the House. The primary function of JAPC is to generally review agency action pursuant to the operation of the Administrative Procedure Act in ch. 120, F.S., related to the rulemaking process, to ensure that rules adopted by the executive branch agencies do not create new law and stay within the authority specifically delegated to them by the Legislature.

⁵ Section 120.565(3), F.S.

Generally, an agency will only issue a declaratory statement on actions that will take place in the future.⁶ However, the fact pattern must not be hypothetical so as to amount to a request for an advisory opinion regarding facts that are only ‘contingent, uncertain, [and] rest in the future.’⁷

Current law does not require a fee for filing a petition for declaratory statement with an agency.

Department of Business and Professional Regulation

Section 20.165, F.S., establishes the organizational structure of the Department of Business and Professional Regulation (DBPR), which has 12 divisions tasked with the regulation of several professions and businesses.⁸

Chapter 455, F.S., provides the general powers of the DBPR and sets forth the procedural and administrative framework for all of the professional boards housed under the DBPR as well as the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.⁹ The DBPR may engage in the regulation of professions “only for the preservation of the health, safety, and welfare of the public under the police powers of the state.”¹⁰ Regulation is required when:

- The potential for harming or endangering public health, safety, and welfare is recognizable and outweighs any anticompetitive impact that may result;
- The public is not effectively protected by other state statutes, local ordinances, federal legislation, or other means; and
- Less restrictive means of regulation are not available.¹¹

However, “neither the department nor any board may create a regulation that has an unreasonable effect on job creation or job retention,” or a regulation that unreasonably restricts the ability of those who desire to engage in a profession or occupation to find employment.¹²

When a person is authorized to engage in a profession or occupation in Florida, the DBPR issues a “permit, registration, certificate, or license” to the licensee.¹³

In Fiscal Year 2016-2017, there were 412,872 active licensees in the Division of Professions,¹⁴ including:

- Architects and interior designers;

⁶ *Fed’n of Mobile Home Owners of Fla., Inc. v. Dept. of Bus. Regulation*, 479 So. 2d 252 (Fla. Dist. Ct. App. 1985).

⁷ *Santa Rosa Cnty. v. Admin. Comm’n., Div. of Admin. Hearings*, 661 So. 2d 1190 (Fla. 1995).

⁸ See s. 20.165, F.S., creating the divisions of Administration; Alcoholic Beverages and Tobacco; Certified Public Accounting; Drugs, Devices, and Cosmetics; Florida Condominiums, Timeshares, and Mobile Homes; Hotels and Restaurants; Pari-mutuel Wagering; Professions; Real Estate; Regulation; Service Operations; and Technology.

⁹ See s. 455.203, F.S. The DBPR must also provide legal counsel for boards within the DBPR by contracting with the Department of Legal Affairs, by retaining private counsel, or by providing DBPR staff counsel. See s. 455.221(1), F.S.

¹⁰ Section 455.201(2), F.S.

¹¹ *Id.*

¹² Section 455.201(4)(b), F.S.

¹³ Section 455.01(4) and (5), F.S.

¹⁴ See Department of Business and Professional Regulation, *Annual Report, Fiscal Year 2016-2017*, at <http://www.myfloridalicense.com/dbpr/os/documents/DivisionAnnualReport.pdf?x40199> (last visited Feb. 7, 2018) at pages 21 and 22. Of the total 434,574 licensees in the Division of Professions, 21,702 are inactive. *Id.* at page 22.

- Asbestos consultants and contractors;
- Athlete agents;
- Auctioneers;
- Barbers (19,098 active and 199 inactive);
- Building code administrators and inspectors;
- Community association managers;
- Construction industry contractors (71,818 active and 15,004 inactive);
- Cosmetologists (237,090 active and 1,600 inactive);
- Electrical contractors (11,960 active and 1,285 inactive);
- Employee leasing companies;
- Geologists;
- Home inspectors;
- Harbor pilots;
- Landscape architects;
- Mold-related services;
- Talent agencies; and
- Veterinarians.¹⁵

Sections 455.203 and 455.213, F.S., establish general licensing authority for the DBPR, including the authority to charge license fees and license renewal fees. Each board within the DBPR must determine by rule the amount of license fees for each profession, based on estimates of the required revenue to implement the regulatory laws affecting the profession.¹⁶

Yacht and Ship Broker Branch Office Licenses

A person may not act as a yacht or ship broker or salesperson unless licensed under ch. 326, F.S.¹⁷ The Yacht and Ship Broker's Section, a unit of the Division of Florida Condominiums, Timeshares and Mobile Homes of the DBPR,¹⁸ requires each yacht or shipbroker to maintain a principal place of business in Florida. The yacht or shipbroker may maintain branch offices, but must obtain a separate license for each branch office, which requires a \$100 application fee.¹⁹ Applicants for a branch office license pay a \$100 fee, and the license must be renewed every two years.²⁰

Labor Organizations

DBPR's Division of Regulation licenses and regulates labor organizations and related business agents pursuant to ch. 447, F.S.²¹ A labor organization is an organization of employees that is

¹⁵ *Id.*

¹⁶ Section 455.219(1), F.S.

¹⁷ Section 326.004(1), F.S.

¹⁸ See Department of Business and Professional Regulation, *Yacht and Ship Brokers; Licensing and Enforcement*, <http://www.myfloridalicense.com/dbpr/lsc/YachtandShip.html> (last visited Feb. 7, 2018).

¹⁹ Section 326.004(13), F.S.

²⁰ See Fla. Admin. Code R. 61B-60.002 (2017) at <https://www.flrules.org/gateway/ChapterHome.asp?Chapter=61B-60> (last visited Feb. 7, 2018).

²¹ Section 447.01, F.S., and see <http://www.myfloridalicense.com/dbpr/reg/LaborOrganizationsandBusinessAgents.html> (last visited Feb. 7, 2018).

recognized as a unit of bargaining by one or more employers in the state that deals with employers concerning employee's hours, pay, working conditions, and other grievances.²²

A labor organization's business agent is a person who acts, for pecuniary or monetary gain, for any labor organization in:

- The issuance of membership or authorization cards, work permits, or any other evidence of rights granted or claimed in, or by, a labor organization; and
- Soliciting or receiving from any employer any right or privilege for employees."²³

A labor organization's business agents must be licensed by the DBPR.²⁴ Business agent license applicants must pay a \$25 license fee and meet a number of licensure requirements.²⁵

Asbestos Abatement Business Organizations

The Asbestos Licensing Unit licenses and regulates asbestos abatement pursuant to ch. 469, F.S.; it also responds to consumer complaints and inquiries by monitoring activities and compliance within the asbestos abatement industry.²⁶ The Asbestos Licensing Unit operates under the DBPR's Division of Professions.

Only licensed asbestos contractors may perform asbestos abatement,²⁷ unless exempted.²⁸ A person must be a licensed asbestos consultant to:

- Conduct an asbestos survey;
- Develop an operation and maintenance plan;
- Monitor and evaluate asbestos abatement; or
- Prepare asbestos abatement specifications.²⁹

An asbestos abatement professional applicant must either be currently licensed as an architect, professional engineer, or professional geologist; be a diplomat of the American Board of Industrial Hygiene; or have been awarded designation as a Certified Safety Professional by the Board of Certified Safety Professionals.³⁰

If an applicant wishes to consult or contract on asbestos abatement under any name other than his or her legal name, then the applicant must apply for licensure under the fictitious name.³¹

Similarly, a business organization must apply for licensure as an asbestos abatement consultant

²² Section 447.02(1), F.S.

²³ Section 447.02(2), F.S.

²⁴ Sections 447.04(2) and 447.06, F.S.

²⁵ Section 447.04(2), F.S.

²⁶ See Florida Department of Business and Professional Regulation, *Asbestos Contractors and Consultants*, available at <http://www.myfloridalicense.com/DBPR/asbestos-contractors-and-consultants/>, and Florida Department of Business and Professional Regulation, *DBPR Online Services*, available at <https://www.myfloridalicense.com/intentions2.asp?chBoard=true&boardid=59&SID> (last visited Feb. 7, 2018).

²⁷ Section 469.003(3), F.S.

²⁸ Section 469.002, F.S., provides that in limited circumstances, certain governmental employees with required training may engage in asbestos abatement work solely for maintenance purposes.

²⁹ Section 469.003, F.S.

³⁰ Section 469.004(1), F.S.

³¹ Section 469.006(2), F.S.

or contractor through a qualifying agent who is licensed under ch. 469, F.S. The qualifying agent must have authority to supervise the enterprise, and be financially responsible for the business.³² The business organization licensee must consistently maintain a qualifying agent.³³

Applicants for an asbestos abatement business license pay an application fee of \$300, an unlicensed activity fee of \$5, an initial licensure fee of \$250, and a biennial renewal fee of \$250.³⁴

Barbering

The term “barbering” in ss. 476.014 through 476.254, F.S, (the Barbers’ Act) includes any of the following practices when done for payment: shaving, cutting, trimming, coloring, shampooing, arranging, dressing, curling, or waving the hair or beard or applying oils, creams, lotions, or other preparations to the face, scalp, or neck, either by hand or by mechanical appliances.³⁵

An applicant for licensure as a barber must pass an examination. To be eligible to take the examination, the applicant must:

- Be at least 16 years of age;
- Pay the application fee; and
- Have held an active valid license in another state for at least one year,³⁶ or have a minimum of 1,200 hours of specified training.³⁷

Alternatively, a person may apply for and receive a “restricted license” to practice barbering, which authorizes the licensee to practice only in areas in which he or she has demonstrated competency pursuant to rules of the Barbers’ Board.³⁸

Nail and Facial Specialists, Hair Braiders, Hair Wrappers, and Body Wrappers

Chapter 477, F.S., governs the licensing and regulation of cosmetologists, hair braiders, hair wrappers, nail specialists, facial specialists, full specialists, body wrappers, and related salons in the state. The Board of Cosmetology, within the DBPR’s Division of Professions, processes license applications, reviews disciplinary cases, and conducts informal administrative hearings relating to licensure and discipline.³⁹

³² *Id.*

³³ Section 469.006(3), F.S.

³⁴ See Fla. Admin. Code R. 61E1-3.001 (2017) at <https://www.flrules.org/gateway/ChapterHome.asp?Chapter=61E1-3> (last visited Feb. 7, 2018).

³⁵ See s. 476.034(2), F.S. The term does not include those services when done for the treatment of disease or physical or mental ailments.

³⁶ Licensure by endorsement may also allow a practitioner holding an active license in another state or country to qualify for licensure in Florida. See s. 476.144(5), F.S.

³⁷ See s. 476.114(2), F.S.; the training must include, but is not limited to the completion of services directly related to the practice of barbering at a licensed school of barbering, a public school barbering program, or a government-operated barbering program in Florida.

³⁸ See s. 476.144(6), F.S.

³⁹ See Department of Business and Professional Regulation, *Cosmetology*, available at <http://www.myfloridalicense.com/DBPR/cosmetology/> (last visited Feb. 7, 2018).

Individuals are prohibited from providing manicures, pedicures, or facials without first becoming licensed as a cosmetologist or registered as a nail specialist, facial specialist, or full specialist.⁴⁰ The application of polish to fingernails and toenails is considered manicuring, even though the individual is not cutting, cleansing, adding, or extending the nails.⁴¹ Therefore, a registration as a specialist or licensure as a cosmetologist is required to apply polish to fingernails and toenails for compensation.

A “specialist” is “any person holding a specialty registration in one or more of the specialties registered under [ch. 477, F.S.]”⁴² The term “specialty” is defined as “the practice of one or more of the following:

- Manicuring, or the cutting, polishing, tinting, coloring, cleansing, adding, or extending of the nails, and massaging of the hands. This term includes any procedure or process for the affixing of artificial nails, except those nails which may be applied solely by use of a simple adhesive.
- Pedicuring, or the shaping, polishing, tinting, or cleansing of the nails of the feet, and massaging or beautifying of the feet.
- Facials, or the massaging or treating of the face or scalp with oils, creams, lotions, or other preparations, and skin care services.”⁴³

A nail specialist may complete manicures and pedicures, and a full specialist may complete manicures, pedicures, and facials.⁴⁴ Manicures and pedicures, as a part of cosmetology services, are required to be provided in a licensed specialty salon or cosmetology salon.⁴⁵ All cosmetology and specialty salons are subject to inspection by the DBPR.⁴⁶

An applicant for a specialist license must:

- Be at least 16 years of age;
- Obtain a certificate of completion from an approved specialty education program; and
- Submit an application for registration to the DBPR with the registration fee.⁴⁷

A “cosmetologist” is a person who is licensed to engage in the practice of cosmetology.⁴⁸ “Cosmetology” is “the mechanical or chemical treatment of the head, face, and scalp for aesthetic rather than medical purposes, including, but not limited to, hair shampooing, hair cutting, hair arranging, hair coloring, permanent waving, and hair relaxing for compensation.

⁴⁰ See Florida Department of Business and Professional Regulation, *Board of Cosmetology Frequently Asked Questions and Answers* (Aug. 2017), available at: http://www.myfloridalicense.com/dbpr/pro/cosmo/documents/cosmo_faq.pdf (last visited Feb. 7, 2018).

⁴¹ See s. 477.013(6)(a) and (b), F.S.

⁴² See s. 477.013(5), F.S.

⁴³ See s. 477.013(6), F.S.

⁴⁴ See s. 477.013(6), F.S.

⁴⁵ See s. 477.0263, F.S. Under s. 477.0135(3), F.S., licensing is not required for a person whose occupation is confined solely to cutting, trimming, polishing, or cleansing fingernails of customers in an active, licensed barbershop, and who did so before October 1, 1985.

⁴⁶ See s. 477.025(9), F.S.

⁴⁷ See s. 477.0201, F.S.

⁴⁸ See s. 477.013(3), F.S.

This term also includes performing hair removal, including wax treatments, manicures, pedicures, and skin care services.”⁴⁹

Certain persons who apply cosmetic products (makeup) are exempt from ch. 477, F.S., under limited conditions, including application of such products in photography studio salons, in connection with certain retail sales, or during the production of qualified films.⁵⁰ In addition, persons who provide makeup in a theme park or entertainment complex to actors and others or the general public are exempt from licensing requirements.⁵¹

An applicant for a cosmetologist license must pass a licensure examination and:

- Be at least 16 years of age;
- Have a high school diploma;
- Submit an application with the applicable fee and examination fee; and
- Be licensed in another state or country for at least one year, or received 1,200 hours training, including completion of an education at an approved cosmetology school or program.⁵²

Architecture or Interior Design Business Organizations

Chapter 481, Part I, F.S., governs the licensing and regulation of architects, interior designers, and related business organizations. The Board of Architecture and Interior Design, under the DBPR’s Division of Professions, processes license applications, reviews disciplinary cases, and conducts informal administrative hearings relating to licensure and discipline.⁵³

The practice or offering of architectural or interior design services to the public through certain business organizations is authorized for:

- Licensees acting through a corporation, limited liability company, or partnership; or
- A corporation, limited liability company, or partnership acting through licensees as agents, employees, officers, or partners.⁵⁴

A certificate of authorization is required to practice or provide architecture or interior design services to the public.⁵⁵ Applicants for an architecture business certificate of authorization or interior design business certificate of authorization must pay an application fee of \$100, an unlicensed activity fee of \$5, and a biennial renewal fee of \$125.⁵⁶ A business entity has no regulatory obligations other than to obtain licensure.

According to the DBPR, during the past four fiscal years through Fiscal Year 2016-2017, the Board of Architecture and Interior Design disciplined licensed architecture businesses only six

⁴⁹ See s. 477.013(4), F.S. A licensed cosmetologist is not required to register separately as a hair braider, hair wrapper, body wrapper, or specialist. See note 40, *supra*.

⁵⁰ See ss. 477.013(11), 477.0135(1)(f), and 477.0135(5), F.S.

⁵¹ See s. 477.0135(6), F.S.

⁵² See ss. 477.019(2) and (4), F.S.

⁵³ See Florida Department of Business and Professional Regulation, *Architecture and Interior Design*, <http://www.myfloridalicense.com/DBPR/architecture-and-interior-design/> (last visited Feb. 7, 2018).

⁵⁴ Section 481.219(1), F.S.; such practice must comply with all the requirements in s. 481.219, F.S.

⁵⁵ Section 481.219(2)-(3), F.S.

⁵⁶ See Fla. Admin. Code R. 61G1-17.001 and R. 61G1-17.002 (2017) at <https://www.flrules.org/gateway/ChapterHome.asp?Chapter=61G1-17> (last visited Feb. 7, 2018).

times in cases that did not also involve discipline against the supervising architect. In most cases, the licensed business was cited for operating without a supervising architect or for failure to include license numbers in advertisements.⁵⁷

The Board of Architecture and Interior Design disciplined licensed interior design businesses only five times during the past four fiscal years through Fiscal Year 2016-2017, in cases that did not also involve discipline against the qualifying interior designer.⁵⁸

Landscape Architecture Business Organization

Chapter 481, Part II, F.S., governs the licensing and regulation of landscape architects and related business organizations in Florida. The Board of Landscape Architecture, under the DBPR's Division of Professions, processes license applications, reviews disciplinary cases, and conducts informal administrative hearings relating to licensure and discipline.⁵⁹

A person may not knowingly practice landscape architecture⁶⁰ unless the person holds a valid license issued pursuant to ch. 481, Part II, F.S.⁶¹ A corporation or partnership is permitted to offer landscape architectural services to the public, subject to the provisions of ch. 481, Part I, F.S., if:

- One or more of the principals of the corporation, or partners in the partnership, is a licensed landscape architect;
- One or more of the officers, directors, or owners of the corporation, or one of more of the partners of the partnership is a licensed landscape architect; and
- The corporation or partnership has been issued a certificate of authorization by the board.⁶²

Applicants for a landscape architecture business certificate of authorization must pay an application fee and initial licensure fee of \$450, an unlicensed activity fee of \$5, and a biennial renewal fee of \$337.50.⁶³ A business entity has no regulatory obligations other than to obtain licensure and notify the DBPR within one month of any change in the information contained in its license application.⁶⁴

⁵⁷ Email from J. Morris, Legislative Affairs Director, DBPR, to Senate Committee on Regulated Industries staff (Jan. 19, 2018) (on file with Senate Committee on Regulated Industries).

⁵⁸ *Id.*

⁵⁹ *Florida Department of Business and Professional Regulation, Landscape Architecture*, <http://www.myfloridalicense.com/DBPR/landscape-architecture/> (last visited Feb. 7, 2018).

⁶⁰ The term "landscape architecture" includes but is not limited to the determination of building siting, drainage, and contouring of land and water forms, and other activities including design in connection with land development for the preservation, conservation, enhancement, or determination of proper land uses, natural features, or naturalistic and aesthetic values. *See* s. 481.303(6)(a)-(d), F.S., relating to the professional services included in landscape architecture.

⁶¹ Section 481.323(1)(a), F.S.

⁶² Section 481.319(1), F.S.

⁶³ *See* Fla. Admin. Code R. 61G10-12.002 (2017) at <https://www.flrules.org/gateway/ruleNo.asp?id=61G10-12.002> (last visited Feb. 7, 2018).

⁶⁴ *See* 481.319(4), F.S.

State Boxing Commission

Chapter 548, F.S., provides for the regulation of professional and amateur boxing, kickboxing,⁶⁵ and mixed martial arts⁶⁶ by the Florida State Boxing Commission (commission), which is assigned to the DBPR for administrative and fiscal purposes.⁶⁷

The commission has exclusive jurisdiction over every boxing, kickboxing, and mixed martial arts match held in Florida,⁶⁸ which involves a professional.⁶⁹ Professional matches held in Florida must meet ch. 548, F.S.'s requirements, and the rules adopted by the commission.⁷⁰ Chapter 548, F.S. does not apply to certain professional or amateur "martial arts," such as karate, aikido, judo, and kung fu; the term "martial arts" is distinct from and does not include "mixed martial arts."⁷¹

However, as to amateur matches, the commission's jurisdiction is limited to the approval, disapproval, suspension of approval, and revocation of approval of all amateur sanctioning organizations for amateur boxing, kickboxing, and mixed martial arts matches held in Florida.⁷² Amateur sanctioning organizations are business entities organized for sanctioning and supervising matches involving amateurs.⁷³ During Fiscal Year 2016-2017, of the 164 amateur events in Florida, the Division of Regulation in the DBPR conducted 26 checks for compliance with health and safety standards and proper supervision of the events.⁷⁴

Under current law, a participant, manager, trainer, second, timekeeper, referee, judge, announcer, physician, matchmaker, or promoter who provides services for a boxing, kickboxing, or mixed martial arts match must be licensed by the commission.⁷⁵

Licensing and Criminal Background

Section 112.011, F.S., outlines general guidelines for considering criminal convictions during licensure determinations. Generally, a person may be denied a professional license based on his or her prior conviction of a crime if the crime was a felony or first-degree misdemeanor that is directly related to the standards determined by the regulatory authority to be necessary and

⁶⁵ The term "kickboxing" means the unarmed combat sport of fighting by striking with the fists, hands, feet, legs, or any combination, but does not include ground fighting techniques. *See* s. 548.002(12), F.S.

⁶⁶ The term "mixed martial arts" means the unarmed combat sport involving the use of a combination of techniques, including, but not limited to, grappling, kicking, striking, and using techniques from martial arts disciplines, including, but not limited to, boxing, kickboxing, Muay Thai, jujitsu, and wrestling. *See* s. 548.002(16), F.S.

⁶⁷ *See* s. 548.003(1), F.S.

⁶⁸ *See* s. 548.006(1), F.S.

⁶⁹ The term "professional" means a person who has "received or competed for a purse or other article of a value greater than \$50, either for the expenses of training or for participating in a match. *See* s. 548.002(19), F.S.

⁷⁰ *See* s. 548.006(4), F.S.

⁷¹ *See* s. 548.007(6), F.S., and *see supra* note 78 for the definition of "mixed martial arts."

⁷² *See* s. 548.006(3), F.S.

⁷³ Section 548.002(2), F.S.

⁷⁴ *See* Department of Business and Professional Regulation, *Florida State Boxing Commission Annual Report, Fiscal Year 2016-2017* at <http://www.myfloridalicense.com/dbpr/os/documents/FY2016-2017BoxingCommissionAnnualReport.pdf> (Message from Secretary) (last visited Feb. 7, 2018).

⁷⁵ The term "participant" means a professional competing in a boxing, kickboxing, or mixed martial arts match. *See* s. 548.002, F.S., for the definitions of "participant," "manager," "second," "judge," "physician," "matchmaker," and "promoter." The terms "trainer," "timekeeper," "referee," and "announcer" are not defined in ch. 548, F.S.

reasonably related to the protection of the public health, safety, and welfare for the specific profession for which the license is sought.⁷⁶ Notwithstanding any law to the contrary, a state agency may not deny an application for a license based solely on the applicant's lack of civil rights.⁷⁷

DBPR

The regulatory boards of the DBPR, or the department if there is no board, may deny a license application for any person who it finds guilty of any of the grounds for discipline set forth in s. 455.227(1), F.S., or set forth in the profession's practice act.⁷⁸ Specifically, the regulatory board, or the department if there is no board, may deny a license application for any person having been:

convicted or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which relates to the practice of, or the ability to practice, a licensee's profession.⁷⁹ (Emphasis added.)

Section 455.227, F.S., does not specifically require the DBPR or the applicable regulatory board to consider the passage of time since the disqualifying criminal offense before denying or granting a license.

Department of Health

The Department of Health (DOH) or an applicable board may deny the licensure of any applicant who has been "convicted of or pled guilty or nolo contendere to, regardless of adjudication, any felony or misdemeanor related to the practice of a health care profession regulated by this state"⁸⁰ or related to certain types of fraud,⁸¹ or for other reasons in the applicable practice act.

There are no statutory provisions of rules that prohibit individuals from applying for licensure while they are still incarcerated or under some form of supervised release.⁸²

Certified Nursing Assistants

The Board of Nursing within the DOH is responsible for licensing and regulating the certified nursing assistants (CNA) under part II of ch. 464, F.S.⁸³ In Fiscal Year 2015-2016, there were 146,495 active certified nursing assistants.⁸⁴

⁷⁶ Section 112.011(1)(b), F.S.

⁷⁷ Section 112.011(1)(c), F.S.

⁷⁸ Section 455.227(2), F.S.

⁷⁹ Section 455.227(1)(c), F.S.

⁸⁰ Sections 456.024(3)(c); 456.072(1)(c), (x), (ii) and (ll); and 456.071(2)(a), F.S.

⁸¹ Section 456.0635, F.S.

⁸² Florida Department of Health, *Agency Analysis of HB 1041*, p. 2 (Jan. 24, 2018) (on file with the Committee on Commerce and Tourism).

⁸³ See s. 489.107, F.S.

⁸⁴ See Florida Department of Health, Division of Medical Quality Assurance, *Annual Report & Long-range Plan, Fiscal Year 2016-2017*, at <http://mqawebteam.com/annualreports/1617/#1/z> (last visited Feb. 7, 2018) at page 13. Of the total 193,637 certified nursing assistants, 42,209 are in-state delinquent, 2,019 are out-of-state delinquent, and are active military.

The “practice of a certified nursing assistant” means:

providing care and assisting persons with tasks relating to the activities of daily living. Such tasks are those associated with personal care, maintaining mobility, nutrition and hydration, toileting and elimination, assistive devices, safety and cleanliness, data gathering, reporting abnormal signs and symptoms, postmortem care, patient socialization and reality orientation, end-of-life care, cardiopulmonary resuscitation and emergency care, residents’ or patients’ rights, documentation of nursing-assistant services, and other tasks that a certified nurse assistant may perform after training beyond that required for initial certification and upon validation of competence in that skill by a registered nurse.⁸⁵

The definition of “practice of a certified nursing assistant” does not restrict a person who is otherwise trained and educated from performing the tasks specified in the definition.⁸⁶

To be certified in Florida, a person must have a high school diploma, or its equivalent; or be at least 18 years of age, and pass a nursing assistant competency examination. Alternatively, a person may be certified in Florida if he or she is certified by another state and has not been found to have committed abuse, neglect, or exploitation in that state.⁸⁷

The qualifications for certification as a CNA do not specifically refer to a person’s criminal background, but an applicant must pass a background screening pursuant to s. 400.215, F.S., which requires the personnel of nursing homes and related healthcare facilities to pass a level two background screening, or s. 408.809, F.S.⁸⁸ The background screening must be completed every 5 years following licensure, employment, or entering into contract in a capacity that requires background screening.⁸⁹

Level two background screening ensures that a subject of the screening has not been arrested for, is not awaiting final disposition of, has not been found guilty of, regardless of adjudication, or not entered a plea of nolo contendere or guilty to, or has been adjudicated delinquent and the record has not been sealed or expunged for, any of the 52 prohibited offenses.⁹⁰ The prohibited offenses include violent crimes, property crimes, and sexual offenses.⁹¹

In addition to the crimes specified under s. 435.04, F.S., a CNA may not have a felony record for certain specified felony financial crimes, including Medicaid fraud and forgery.⁹²

⁸⁵ Section 464.201(5), F.S.

⁸⁶ *Id.*

⁸⁷ Section 464.203, F.S.

⁸⁸ Section 408.809(1), F.S.

⁸⁹ Section 408.809(2), F.S.

⁹⁰ Section 435.04, F.S.

⁹¹ *See* 435.04(2), F.S.

⁹² *See* 408.809(4), F.S.

A level two background screening includes fingerprinting for statewide criminal history records checks through the Florida Department of Law Enforcement (FDLE) and national criminal history checks through the Federal Bureau of Investigation (FBI), and may include local criminal records checks through local law enforcement agencies. Once the background screening is complete, and the FDLE receives the information from the FBI, the criminal history information is transmitted to DOH. The DOH determines if the screening contains any disqualifying information for employment.

If a person is disqualified from employment due to failing the required background screening, the DOH may grant an exemption from disqualification for:

- Felonies for which at least three years have elapsed since the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court for the disqualifying felony;
- Misdemeanors prohibited under any of the statutes cited in this chapter or under similar statutes of other jurisdictions for which the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court;
- Offenses that were felonies when committed but that are now misdemeanors and for which the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court; or
- Findings of delinquency.⁹³

However, if the disqualifying crime committed while the applicant was a delinquent would be considered a felony if committed by an adult, and the record has not been sealed or expunged, the DOH may not grant an exemption until at least 3 years have elapsed since the applicant's completion or lawful release from confinement, supervision, or nonmonetary condition imposed by the court for the offense.⁹⁴

An applicant who seeks an exemption must first pay any court-ordered amount for any fee, fine, fund, lien, civil judgment, application, costs of prosecution, trust, or restitution as part of the judgment and sentence for the disqualifying crime.⁹⁵

However, the DOH may not grant an exemption to an individual who is found guilty of, regardless of adjudication, or who has entered a plea of nolo contendere or guilty to, any felony covered by s. 435.03 or s. 435.04, F.S., solely by reason of any pardon, executive clemency, or restoration of civil rights.⁹⁶

An exemption may also not be granted to anyone who is a sexual predator, career offender, or sexual offender (unless not required to register).⁹⁷ The agency may not grant an exemption from disqualification to persons with a criminal history that includes other violent felonies, crimes

⁹³ Section 435.07(1)(a), F.S.

⁹⁴ *Id.*

⁹⁵ Section 435.07(1)(b), F.S.

⁹⁶ *See* s. 435.07(4)(a), F.S.

⁹⁷ *See* s. 435.07(4)(b), F.S.

against children, and sex-related crimes, such as felony domestic violence, luring or enticing a child, sexual battery, child pornography, and child abuse.⁹⁸

III. Effect of Proposed Changes:

Declaratory Statements

Section 1 amends s. 120.565, F.S., to create a new declaratory statement process that permits a person who desires to become licensed in a state-regulated profession or occupation to obtain a binding determination of whether his or her criminal conviction or sanction will prevent such licensure, registration, or certification in the profession or occupation.

A person may seek the agency's opinion prior to the person possessing the training or education required for the license, registration, or certificate in the profession or occupation. Additionally, he or she may request the agency's determination while still under criminal confinement or supervision.

The petition may include mitigating factors or other information the petitioner believes relevant to establish the petitioner's eligibility, including, but not limited to:

- The time elapsed since completion of or lawful release from confinement, supervision, or nonmonetary condition imposed by the court for a disqualifying offense; and
- The petitioner's standing in his or her community.

The agency's declaratory statement must further indicate:

- If an agency's determination of disqualification as a result of criminal background may be reversed based on evidence of rehabilitation or mitigation; and
- Whether any federal laws or regulations or any conditions imposed by the court on the petitioner may impede his or her licensure, registration, or certification in the profession or occupation.

The agency's conclusion is binding on the agency as to the petitioner, but any subsequent criminal history may form an independent basis for denial of licensure, registration, or certification.

An agency may require a petitioner to submit the following with his or her petition for declaratory statement:

- A fee of not more than \$100;
- A certified copy of each criminal judgment rendered against the petitioner;
- A complete set of fingerprints; and
- A fingerprint processing fee.

The agency must submit the fingerprints to the FDLE for a state criminal history record check and the FDLE must forward the fingerprints to the FBI for a national criminal history record check.

⁹⁸ See s. 435.07(4)(c), F.S.

Licensing Deregulation

Yacht and Ship Broker Branch Office Licenses

Section 2 amends s. 326.004, F.S., to remove the requirement that a yacht or ship broker obtain separate licenses for each branch office. Current provisions related to licensing for yacht brokers and salespeople are retained.

Labor Organizations

Sections 3 through 11 amend Part I of ch. 447, F.S., to eliminate the registration and regulation of labor organizations and their business agents by the DBPR and the requirement that the Public Employees Relations Commission notify the DBPR of registrations and renewals of such organizations. Provisions relating to the right to work and strike, recordkeeping, rights of franchise for labor organizations, civil causes of action, criminal penalties, and recognition of federal regulations are not affected by the bill.

Asbestos Abatement Business Organizations

Sections 15 and 16 amend ch. 469, F.S., to require an applicant seeking to engage in asbestos abatement as a business organization, or in any name other than the applicant's legal name, to apply for licensure under the name of the business organization. However, the issued license must be in the name of the qualifying agent, and the name of the qualified business organization must be noted on the license. In addition, the bill makes conforming changes associated with qualification of business organizations by licensed qualifying agents.

Barbering

Section 17 amends s. 476.034, F.S., to define the terms "restricted barber" and "restricted barbering." Restricted barbers are licensed to perform, for payment by the public, hair cutting and styling, full facial shaves, mustache and beard trimming, and shampooing, conditioning and blow drying hair; restricted barbers may apply only hair tonics and hair spray and may not apply other chemical preparations or solutions to hair.

Section 18 amends s. 476.114, F.S. to reduce the minimum training hours from 1,200 hours to 325 hours for restricted barbers. The bill specifies the content of the training must be in "sanitation, safety, and laws and rules."

The bill provides an applicant for a restricted barber license must also be at least 16 years of age, pay the application fee, and pass an examination. To be eligible to take the examination, an applicant for restricted barbering must have held an active valid license in another state for at least one year,⁹⁹ or have a minimum of 325 hours of training.¹⁰⁰

⁹⁹ Licensure by endorsement may also allow a practitioner holding an active license in another state or country to qualify for licensure in Florida. *See* s. 476.144(5), F.S.

¹⁰⁰ The training must include, but is not limited to the completion of services directly related to the practice of restricted barbering at a licensed school of barbering, a public school barbering program, or a government-operated barbering program in Florida.

Section 19 repeals current law limiting the practice of a restricted license to areas in which the licensee has demonstrated competency.

Nail and Facial Specialists, Hair Braiders, Hair Wrappers, and Body Wrappers

Section 20 amends s. 477.013, F.S., to specify the activities that constitute the practice of a “nail specialty,” a “facial specialty,” and a “full specialty.” A nail specialty, includes:

- Manicuring, or the cutting, polishing, tinting, coloring, cleansing, adding, or extending of the nails, and massaging of the hands, including any procedure for the affixing of artificial nails, except those that are affixed solely by a simple adhesive; and
- Pedicuring, or the shaping, polishing, tinting, or cleansing of the nails of the feet, and massaging or beautifying of the feet.

A facial specialty includes facials, or the massaging or treating of the face or scalp with oils, creams, lotions, or other preparations, and skin care services. A full specialty includes all manicuring, pedicuring, and facial services.

The bill expands the definition of “hair braiding” to include the weaving of natural human hair with commercial hair, and the use of hair extensions or wefts.¹⁰¹ Under current law, the use of hair extensions or wefts is excluded from “hair braiding.”

Section 21 repeals s. 477.0132, F.S., eliminating registration requirements for hair braiding, hair wrapping, and body wrapping, and requirements that those registrants take specified courses approved by the Board of Cosmetology.

The bill repeals the requirements that persons whose practice is confined solely to:

- Hair braiding take an approved two-day, 16-hour course consisting of five hours of HIV/AIDS and other communicable diseases, five hours of sanitation and sterilization, four hours of disorders and diseases of the scalp, and two hours of studies regarding laws affecting hair braiding.
- Hair wrapping take an approved one-day, 6-hour course consisting of education in HIV/AIDS and other communicable diseases, sanitation and sterilization, disorders and diseases of the scalp, and studies regarding laws affecting hair wrapping.
- Body wrapping (unless otherwise licensed or exempt from licensing) take an approved two-day, 12-hour course consisting of education in HIV/AIDS and other communicable diseases, sanitation and sterilization, disorders and diseases of the skin, and studies regarding laws affecting body wrapping.

Additionally, the bill repeals s. 477.0132(2), F.S., which provides that:

- Hair braiding, hair wrapping, and body wrapping are not required to be practiced in a cosmetology salon or specialty salon; and
- Disposable implements must be used, or all implements must be sanitized in a disinfectant approved for hospital use or approved by the federal Environmental Protection Agency,

¹⁰¹ A “weft” of hair is a long curtain of hair that has a seam at the top and is found on wigs and hair extensions. Vogue Wigs, *What is a Weft?*, <https://www.voguewigs.com/what-is-a-weft.html> (last visited Feb. 7, 2018).

when hair braiding, hair wrapping, or body wrapping is practiced outside a cosmetology salon, or specialty salon.

Section 22 amends s. 477.0135, F.S., to eliminate licensure or registration requirements for a person whose occupation or practice is confined solely to hair braiding, hair wrapping, body wrapping, applying polish to fingernails and toenails, or makeup application. The bill also eliminates a current exemption for certain continuing education requirements.

Section 23 deletes s. 477.019(7), F.S., relating to an exemption from continuing education requirements for hair braiders, hair wrappers, and body wrappers.

Section 24 amends s. 477.0201, F.S., on specialist registration, to include registrations for nail, facial, and full specialty practices, and minimum training requirements. As in current law, applicants for any specialist registration must be at least 16 years of age or have received a high school diploma. Training requirements, with a primary focus on sanitation and safety, and completion of services directly related to the particular specialty registration being sought, include a minimum of:

- 150 hours, for a nail specialty practice (current requirement is 240 hours);
- 165 hours, for a facial specialty practice (current requirement is 260 hours); and
- 300 hours for a full specialty practice (current requirement is 500 hours).¹⁰²

Similar to the current law requirement for registration in a specialty within the practice of cosmetology,¹⁰³ completion of services directly related to each specialty must be received from specified types of schools or specialty programs.

Sections 25-27 make conforming changes to ch. 477, F.S., to reflect the deregulation of hair braiders, hair wrappers, and body wrappers.

Architecture or Interior Design Business Organizations

Sections 28 through 31 amend ch. 481, F.S., to remove the requirement that architects and interior designers obtain a separate business license (certificate of authorization) in addition to an individual license. Architects and interior designers must qualify, or associate, their business organizations with their individual license; they must also disclose any fictitious names under which they operate.

Architects and interior designers who act as qualifying agents must inform the DBPR of any change in their relationship with a business, and if the qualifying agent is the business' only qualifying agent, the business must obtain a replacement within 60 days. A business without a qualifying agent may not engage in the practice of architecture or interior design, unless the executive director or chair of the Board of Architecture and Interior Design authorizes another registered architect or interior designer employed by the business organization to temporarily serve as its qualifying agent for no more than 60 days.

¹⁰² See http://www.myfloridalicense.com/dbpr/pro/cosmo/documents/cosmo_faq.pdf at page 3 (Question 8) (last visited Feb. 7, 2018) and Department of Business and Professional Regulation, *SB 526 Bill Analysis*, p. 3 (Nov. 3, 2017) (on file with Senate Committee on Regulated Industries).

¹⁰³ See s. 477.0201(1)(b), F.S.

The bill amends s. 481.219(2)(b), F.S., to provide that the Board of Architecture and Interior Design may deny an application to qualify a business organization if the applicant (or others identified in the application as partners, officers, directors, or stockholders who are also officers or directors) “has been involved in past disciplinary actions or on any grounds for which an individual registration may be denied.”

Landscape Architecture Business Organization

Sections 32 through 37 amend Part II of ch. 481, F.S., to remove the requirement that landscape architects obtain a separate business license (certificate of authorization) in addition to an individual license. A landscape architect must qualify its business organizations by associating it with an individual license, and must disclose operations under a fictitious name.

The bill repeals the Board of Landscape Architecture’s ability to grant a temporary certificate of authorization for a business organization that seeks to work on one project in Florida for a period not to exceed 1 year to an out-of-state corporation, partnership, or firm.

The bill repeals the DBPR’s authority to issue a certificate of authorization to an applicant who wishes to practice as a corporation or partnership that offers landscape architectural services. The bill provides that a corporation or partnership is not required to obtain a certificate of authorization to offer its services to the public, but must:

- Have one or more of the principals of the corporation, or partners in the partnership, and all of the personnel of the business organization who act in its behalf as landscape architects as landscape architects; and
- One or more of the officers, directors, or owners of the corporation, or one or more of the partners of the partnership is a registered landscape architect has applied to be the qualifying agent for the business organization.

Landscape architects who operate under a corporation or partnership must file the names and addresses of specific persons responsible for the business with the DBPR. Such business organizations must also inform the DBPR of any change of the information in its license application, and of the termination of an employee within one month after the termination.

The bill eliminates a duplicate requirement in s. 481.319(5), F.S., for disciplinary action against a corporation or partnership to be administered similar to disciplinary action against a registered landscape architect. Under current law, practicing landscape architecture through a corporation or partnership does not relieve a landscape architect from personal liability for professional acts, unless otherwise agreed to by contract.¹⁰⁴ According to the DBPR, the Board of Landscape Architecture has issued no disciplinary orders against landscape architecture businesses during the past 4 fiscal years through Fiscal Year 2016-2017.¹⁰⁵

¹⁰⁴ See s. 481.319(6), F.S., and s. 558.0035, F.S.

¹⁰⁵ Email from J. Morris, Legislative Affairs Director, DBPR, to Senate Committee on Regulated Industries staff (Jan. 19, 2018) (on file with Senate Committee on Regulated Industries).

State Boxing Commission

Sections 39 and 40 amend s. 548.017, F.S., to eliminate the licensure requirement for persons serving as timekeepers and announcers for a match. The bill also amends s. 548.003(2)(i), F.S., to make conforming changes by deleting a reference to a “knockdown timekeeper.” In Fiscal Year 2016-2017, the Division issued licenses to 13 announcers and six timekeepers.¹⁰⁶

Conforming Revisions

Section 38 amends s. 287.055, F.S., the Consultants’ Competitive Negotiation Act, to conform cross references in the definition of “design-build firm.” The bill substitutes the term “qualified” for “certified,” in references to entities practicing architecture or landscape architecture. *See also Sections 29 and 35.*

Licensing and Criminal Background

Sections 12-14 create a process for reviewing the criminal history of applicants for specified professions or occupations regulated by the DBPR and the DOH.

The bill amends s. 455.213, F.S., dealing with the general licensing provisions of the DBPR, and s. 464.203, F.S., dealing with the certification requirements for certified nursing assistants under the DOH.

The license application review process in the bill applies to the following professions and occupations:

- Certified Nursing Assistants.
- Barbers.
- Cosmetologists and cosmetology specialists (i.e., hair braiders, hair wrappers, and body wrappers).
- Construction Professionals:
 - Electrical contractors;
 - Alarm system contractors;
 - Septic tank contractors;
 - Swimming pool and spa contractors;
 - Sheet metal contractors;
 - Roofing contractors;
 - Air-conditioning contractors;
 - Mechanical contractors;
 - Plumbing contractors;
 - Underground utility and excavation contractors;
 - Solar contractors;
 - Pollutant storage systems contractor; and
 - Other specialty contractors whose scope of work and responsibility is limited to a particular phase of construction, e.g. drywall, glazing, swimming pool excavation, etc.

The process created in the bill:

¹⁰⁶ See Boxing Commission Annual Report, *supra* note 74 at page 7.

- Permits a person to apply for a license while under criminal confinement (incarceration) or supervision.
- Limits the period during which the agency may consider criminal history as an impairment to licensure to 7 years from the date of the criminal conviction.
- Requires each agency to identify by rule the crimes that do not impair a person's qualifications for licensure.
- Requires each agency to identify by rule the crimes that do impair a person's qualifications for licensure.
- Requires an agency to permit applicants who are incarcerated or under supervision to appear by teleconference or video conference at a meeting of a board or the agency for a hearing concerning the person's license application.
- Requires the Department of Corrections to cooperate and coordinate with the board or department, as applicable, to facilitate the appearance of the applicant at the hearing in person, by teleconference, or by video conference, as appropriate.

However, as required under current law, the DOH must deny a certified nursing assistant application, if the applicant has a criminal history of more than seven years from the date of the application and the criminal history includes a violent felony, crime against children, or sexual offense identified in s. 435.07(4), F.S.

Effective Date

Section 41 provides an effective date of July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

According to the Department of Business and Professional Regulation (DBPR), the bill will result in a reduction of license fees, license renewal fees, and unlicensed activity fees

paid by the private sector of approximately \$812,130 in Fiscal Year 2018-2019, \$419,505 in Fiscal Year 2019-2020, and \$925,205 in Fiscal Year 2020-2021.¹⁰⁷

The Division of Condominiums, Timeshares, and Mobile Homes (Yacht and Ship Brokers) of the DBPR estimates that the bill will result in a reduction of license and license renewal fees paid by the private sector of approximately \$4,300 in Fiscal Year 2018-2019, \$4,300 in Fiscal Year 2019-2020, and \$4,300 in Fiscal Year 2020-2021.¹⁰⁸

The DBPR estimates that the bill will result in a reduction of license and license renewal fees paid by the private sector to the Florida State Boxing Commission of approximately \$1,000 in Fiscal Year 2018-2019, \$1,000 in Fiscal Year 2019-2020, and \$1,000 in Fiscal Year 2020-2021.¹⁰⁹

B. Private Sector Impact:

The bill repeals licensing requirements for certain professions. According to the DBPR, the bill will result in a reduction in license fees, license renewal fees, and unlicensed activity fees paid by the private sector of approximately \$812,130 in Fiscal Year 2018-2019, \$419,505 in Fiscal Year 2019-2020, and \$925,205 in Fiscal Year 2020-2021.¹¹⁰

The Division of Condominiums, Timeshares, and Mobile Homes (Yacht and Ship Brokers) of the DBPR estimates that the bill will result in a reduction of license and license renewal fees paid by the private sector of approximately \$4,300 in Fiscal Year 2018-2019, \$4,300 in Fiscal Year 2019-2020, and \$4,300 in Fiscal Year 2020-2021.¹¹¹

The DBPR estimates that the bill will result in a reduction of license and license renewal fees paid by the private sector to the Florida State Boxing Commission of approximately \$1,000 in Fiscal Year 2018-2019, \$1,000 in Fiscal Year 2019-2020, and \$1,000 in Fiscal Year 2020-2021.¹¹²

Persons who submit a petition for a declaratory statement from an agency to determine whether the petitioner's criminal history affects the person's eligibility for a license, registration, or certificate, must pay a filing fee not to exceed \$100 for the petition and the actual cost of state and federal processing related to the criminal background check. However, such individuals may also forego certain unnecessary schooling, training, or application costs, depending on the agency's determination.

¹⁰⁷ See Department of Business and Professional Regulation, *SB 526 Bill Analysis*, p. 7 (Nov. 3, 2017) (on file with Senate Committee on Regulated Industries).

¹⁰⁸ *Id.* at page 6.

¹⁰⁹ *Id.* at page 7.

¹¹⁰ See Department of Business and Professional Regulation, *SB 526 Bill Analysis*, p. 6 (Nov. 3, 2017) (on file with Senate Committee on Regulated Industries).

¹¹¹ *Id.*

¹¹² *Id.*

C. Government Sector Impact:

According to the DBPR, the total revenue reduction to state government by the elimination of professional licensing requirements is anticipated to be \$817,430 in Fiscal Year 2018-2019, \$424,805 in Fiscal Year 2019-2020, and \$930,505 in Fiscal Year 2020-2021. As a result, revenue from the General Revenue service charge¹¹³ is anticipated to be reduced by \$65,394 in Fiscal Year 2018-2019, \$33,984 in Fiscal Year 2019-2020, and \$74,440 in Fiscal Year 2020-2021.¹¹⁴

The Bureau of Education and Testing in the DBPR also indicates that the bill will have minimal impact on its workload, although some examination content may require updating; such updating is a part of the Bureau's standard procedure to address statutory changes.¹¹⁵

A reduction in the license fees collected by the DBPR paid to the State Boxing Commission could increase the amounts required to be transferred from the General Revenue Fund to the Professional Regulation Trust Fund to support operation of the State Boxing Commission. For Fiscal Year 2016-2017, recurring revenue of \$326,527 and non-recurring revenue of \$178,000, (a total transfer of \$505,027) from the General Revenue Fund was used to support the State Boxing Commission's operations.¹¹⁶ Annual transfers of \$326,527 in recurring revenue are projected for each fiscal year from Fiscal Year 2017-2018 through Fiscal Year 2021-2022.¹¹⁷

All license and registration fees paid by labor organizations and labor organization business agents to the DBPR are credited to the General Revenue Fund.¹¹⁸ According to the DBPR, licensure records for Fiscal Year 2016-2017 reflect:

- 329 licensed labor organizations (a \$1 annual fee);
- 502 licensed labor organization business agents (a \$25 one-time fingerprinting fee) paid fees of \$44,207 annually; and
- 62,116 labor organization business agents (a \$25 fee) paid fees of \$1,552,900 annually.¹¹⁹

A reduction in the license fees collected by the DBPR could increase the amounts required to be transferred from the General Revenue Fund to the Division of Florida

¹¹³ A service charge of eight percent is appropriated from revenue income deposited in specified trust funds, representing the estimated pro rata share of the cost of general government. *See* s. 215.20(1), F.S., relating to the service charge. Section 455.116, F.S., lists the seven trust funds in the DBPR, including the Professional Regulation Trust Fund and the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund, which receive revenues from fees paid by licensees in the professions and occupations affected by CS/SB 526.

¹¹⁴ *Id.*

¹¹⁵ *Id.* at page 8.

¹¹⁶ *See* Department of Business and Professional Regulation, *Annual Report, Divisions of Professions, Certified Public Accounting, Real Estate, and Regulation, Fiscal Year 2016-2017*, available at <http://www.myfloridalicense.com/dbpr/os/documents/DivisionAnnualReport.pdf>, at page 68 (last visited Feb. 7, 2018).

¹¹⁷ *Id.*

¹¹⁸ *See* 447.12, F.S.

¹¹⁹ Email from J. Morris, Legislative Affairs Director, DBPR, to Senate Committee on Regulated Industries staff (Dec. 15, 2017) (on file with Senate Committee on Regulated Industries).

Condominiums, Timeshares, and Mobile Homes Trust Fund to support the regulation of yacht and ship brokers. According to the DBPR, for Fiscal Year 2016-2017, license fees of \$865,099.45 were collected from yacht and ship brokers, and \$310,200 was transferred to the General Revenue Fund.¹²⁰

Government agencies that provide occupational or professional licenses may see an increase in workload related to an increase in submissions of petitions for declaratory statements.

VI. Technical Deficiencies:

The bill provides new licensure requirements for restricted barbers, but does not delete an old provision that conflicts.

VII. Related Issues:

It is unclear how an agency should proceed if presented with a petition for declaratory statement as described in the bill by a petitioner whose criminal charges have not yet been resolved by a court action, settlement, or other action. It would be difficult for an agency to render an opinion based on hypothetical information.

This bill contains provisions of CS/SB 526, which were amended into the bill in the Commerce and Tourism Committee meeting on February 6, 2018.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 120.565, 326.004, 400.211, 447.02, 447.09, 447.305, 455.213, 464.203, 469.006, 469.009, 476.034, 476.114, 476.144, 477.013, 477.0135, 477.019, 477.0201, 477.026, 477.0265, 477.029, 481.203, 481.219, 481.221, 481.229, 481.303, 481.311, 481.317, 481.319, 481.321, 481.329, 287.055, 548.003, and 548.017.

This bill repeals the following sections of the Florida Statutes: 447.04, 447.041, 447.045, 447.06, 447.12, 447.16, and 477.0132.

IX. Additional Information:

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

CS by Commerce and Tourism on February 6, 2018:

- Eliminates the current licensing required for business entities engaged in certain regulated professions (architecture and interior design, landscape architecture, and asbestos abatement consulting or contracting), while retaining the license required for individuals engaged in those professions.

¹²⁰ *Id.* The DBPR also noted the account balance for yacht and ship brokers funds as of July 1, 2016 was \$759,772.96; actual revenue and expenses for the period were \$898,592.21 and \$521,442.25, respectively; and the account balance as of June 30, 2017 was \$826,722.92.

- Provides that licensed individuals must apply for licensure and act as qualifying agents for business organizations to be licensed to engage in architecture and interior design, landscape architecture, or asbestos abatement consulting or contracting.
- Allows certain boxing match services to be practiced without a license (announcers and knockdown timekeepers).
- Revises the current license requirements for restricted barbers to specify:
 - The services that may and may not be provided by restricted barbers; and
 - A minimum of 325 training hours.
- Specifies license requirements for specialists in practices defined as “nail specialty,” “facial specialty,” and “full specialty.”
- Eliminates license and registration requirements for those who engage solely in:
 - Hair braiding, hair wrapping, or body wrapping; or
 - The polishing of nails or applying makeup.
- Eliminates registration requirements for labor organizations and licensing of labor organization business agents, while maintaining civil causes of action and criminal penalties.
- Eliminates license requirement for yacht and ship brokers’ branch offices.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/06/2018	.	
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	.	

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

Senate Amendment (with title amendment)

Delete lines 128 - 283

and insert:

Section 2. Subsection (13) of section 326.004, Florida Statutes, is amended to read:

326.004 Licensing.—

(13) Each broker must maintain a principal place of business in this state and may establish branch offices in the state. ~~A separate license must be maintained for each branch~~



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~~office. The division shall establish by rule a fee not to exceed \$100 for each branch office license.~~

Section 3. Subsection (3) of section 447.02, Florida Statutes, is amended to read:

447.02 Definitions.—The following terms, when used in this chapter, shall have the meanings ascribed to them in this section:

~~(3) The term "department" means the Department of Business and Professional Regulation.~~

Section 4. Section 447.04, Florida Statutes, is repealed.

Section 5. Section 447.041, Florida Statutes, is repealed.

Section 6. Section 447.045, Florida Statutes, is repealed.

Section 7. Section 447.06, Florida Statutes, is repealed.

Section 8. Subsections (6) and (8) of section 447.09, Florida Statutes, are amended to read:

447.09 Right of franchise preserved; penalties.—It shall be unlawful for any person:

~~(6) To act as a business agent without having obtained and possessing a valid and subsisting license or permit.~~

~~(8) To make any false statement in an application for a license.~~

Section 9. Section 447.12, Florida Statutes, is repealed.

Section 10. Section 447.16, Florida Statutes, is repealed.

Section 11. Subsection (4) of section 447.305, Florida Statutes, is amended to read:

447.305 Registration of employee organization.—

~~(4) Notification of registrations and renewals of registration shall be furnished at regular intervals by the commission to the Department of Business and Professional~~



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~~Regulation.~~

Section 12. Present subsections (3) through (12) of section 455.213, Florida Statutes, are redesignated as subsections (4) through (13), respectively, subsection (2) of that section is amended, and a new subsection (3) is added to that section, to read:

455.213 General licensing provisions.—

(2) Before the issuance of any license, the department may charge an initial license fee as determined by rule of the applicable board or, if no such board exists, by rule of the department. Upon receipt of the appropriate license fee, except as provided in subsection (4) ~~(3)~~, the department shall issue a license to any person certified by the appropriate board, or its designee, or the department when there is no board, as having met the applicable requirements imposed by law or rule. However, an applicant who is not otherwise qualified for licensure is not entitled to licensure solely based on a passing score on a required examination. Upon a determination by the department that it erroneously issued a license, or upon the revocation of a license by the applicable board, or by the department when there is no board, the licensee must surrender his or her license to the department.

(3) (a) Notwithstanding any other provision of law, the board shall use the process in this subsection for review of an applicant's criminal record to determine his or her eligibility for licensure as a:

1. Barber under chapter 476;

2. Cosmetologist or cosmetology specialist under chapter 477; or



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69 3. Any of the following construction professions under
70 chapter 489:

71 a. Air-conditioning contractor;

72 b. Electrical contractor;

73 c. Mechanical contractor;

74 d. Plumbing contractor;

75 e. Pollutant storage systems contractor;

76 f. Roofing contractor;

77 g. Septic tank contractor;

78 h. Sheet metal contractor;

79 i. Solar contractor;

80 j. Swimming pool and spa contractor;

81 k. Underground utility and excavation contractor; and

82 l. Other specialty contractors.

83 (b) A conviction for a crime more than 5 years before the
84 date of the application may not be grounds for denial of a
85 license specified in paragraph (a). For purposes of this
86 paragraph, the term "conviction" means a determination of guilt
87 that is the result of a plea or trial, regardless of whether
88 adjudication is withheld.

89 (c)1. A person may apply for a license before his or her
90 lawful release from confinement or supervision. The department
91 may not charge an applicant an additional fee for being confined
92 or under supervision. The board may not deny an application for
93 a license solely on the basis of the applicant's current
94 confinement or supervision.

95 2. After a license application is approved, the board may
96 stay the issuance of a license until the applicant is lawfully
97 released from confinement or supervision and the applicant



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notifies the board of such release. The board must verify the applicant's release with the Department of Corrections before it issues a license.

3. If an applicant is unable to appear in person due to his or her confinement or supervision, the board must permit the applicant to appear by teleconference or video conference, as appropriate, at any meeting of the board or other hearing by the agency concerning his or her application.

4. If an applicant is confined or under supervision, the Department of Corrections and the board shall cooperate and coordinate to facilitate the appearance of the applicant at a board meeting or agency hearing in person, by teleconference, or by video conference, as appropriate.

(d) The board shall adopt rules specifying the crimes that, if committed, and regardless of adjudication, do not relate to the practice of the profession or the ability to practice the profession and do not constitute grounds for denial of a license.

(e) The board shall adopt rules specifying the crimes that, if committed, and regardless of adjudication, relate to the practice of the profession or the ability to practice the profession and may constitute grounds for denial of a license.

Section 13. Present subsections (2) through (8) of section 464.203, Florida Statutes, are redesignated as subsections (3) through (9), respectively, and a new subsection (2) is added to that section, to read:

464.203 Certified nursing assistants; certification requirement.—

(2) (a) 1. Except as provided in s. 435.07(4), a conviction



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for a crime more than 7 years before the date of the application
may not be grounds for denial of a certificate to practice as a
certified nursing assistant.

2. Except as provided in s. 435.07(4), a conviction for a
crime more than 7 years before the date of the application may
not be grounds for failure of a required background screening.

3. For purposes of this paragraph, the term "conviction"
means a determination of guilt that is the result of a plea or
trial, regardless of whether adjudication is withheld.

(b)1. A person may apply for a certificate to practice as a
certified nursing assistant before his or her lawful release
from confinement or supervision. The department may not charge
an applicant an additional fee for being confined or under
supervision. The board may not deny an application for a
certificate solely on the basis of the person's current
confinement or supervision.

2. After a certification application is approved, the board
may stay the issuance of a certificate until the applicant
notifies the board of his or her lawful release from confinement
or supervision. The board must verify the applicant's release
with the Department of Corrections before it issues a license.

3. If an applicant is unable to appear in person due to his
or her confinement or supervision, the board must permit the
applicant to appear by teleconference or video conference, as
appropriate, at any meeting of the board or other hearing by the
agency concerning his or her application.

4. If an applicant is confined or under supervision, the
Department of Corrections and the board shall cooperate and
coordinate to facilitate the appearance of the applicant at a



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board meeting or agency hearing in person, by teleconference, or by video conference, as appropriate.

(d) The board shall adopt rules specifying the crimes that, if committed, and regardless of adjudication, do not relate to the practice of the profession or the ability to practice the profession and do not constitute grounds for denial of a certification.

(e) The board shall adopt rules specifying the crimes that, if committed, and regardless of adjudication, relate to the practice of the profession or the ability to practice the profession and may constitute grounds for denial of a certification.

Section 14. Subsection (4) of section 400.211, Florida Statutes, is amended to read:

400.211 Persons employed as nursing assistants; certification requirement.—

(4) When employed by a nursing home facility for a 12-month period or longer, a nursing assistant, to maintain certification, shall submit to a performance review every 12 months and must receive regular inservice education based on the outcome of such reviews. The inservice training must meet all of the following requirements:

(a) Be sufficient to ensure the continuing competence of nursing assistants and must meet the standard specified in s. 464.203(8). ~~s. 464.203(7);~~

(b) Include, at a minimum:

1. Techniques for assisting with eating and proper feeding;
2. Principles of adequate nutrition and hydration;
3. Techniques for assisting and responding to the



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cognitively impaired resident or the resident with difficult behaviors;

4. Techniques for caring for the resident at the end-of-life; and

5. Recognizing changes that place a resident at risk for pressure ulcers and falls. ~~and~~

(c) Address areas of weakness as determined in nursing assistant performance reviews and may address the special needs of residents as determined by the nursing home facility staff.

Costs associated with this training may not be reimbursed from additional Medicaid funding through interim rate adjustments.

Section 15. Paragraphs (a) and (e) of subsection (2), subsection (3), paragraph (b) of subsection (4), and subsection (6) of section 469.006, Florida Statutes, are amended to read:

469.006 Licensure of business organizations; qualifying agents.—

(2)(a) If the applicant proposes to engage in consulting or contracting as a partnership, corporation, business trust, or other legal entity, or in any name other than the applicant's legal name, ~~the legal entity must apply for licensure through a qualifying agent or the individual applicant must apply for licensure under the fictitious name of the business organization.~~

(e) ~~A The license, when issued upon application of a business organization,~~ must be in the name of the qualifying agent business organization, and the name of the business organization ~~qualifying agent~~ must be noted on the license ~~thereon~~. If there is a change in any information that is



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required to be stated on the application, the qualifying agent
~~business organization~~ shall, within 45 days after such change
occurs, mail the correct information to the department.

(3) The qualifying agent must ~~shall~~ be licensed under this
chapter in order for the business organization to be qualified
~~licensed~~ in the category of the business conducted for which the
qualifying agent is licensed. If any qualifying agent ceases to
be affiliated with such business organization, the agent shall
so inform the department. In addition, if such qualifying agent
is the only licensed individual affiliated with the business
organization, the business organization shall notify the
department of the termination of the qualifying agent and has
~~shall have~~ 60 days after ~~from~~ the date of termination of the
qualifying agent's affiliation with the business organization ~~in~~
~~which~~ to employ another qualifying agent. The business
organization may not engage in consulting or contracting until a
qualifying agent is employed, unless the department has granted
a temporary nonrenewable license to the financially responsible
officer, the president, the sole proprietor, a partner, or, in
the case of a limited partnership, the general partner, who
assumes all responsibilities of a primary qualifying agent for
the entity. This temporary license only allows ~~shall only allow~~
the entity to proceed with incomplete contracts.

(4)

(b) Upon a favorable determination by the department, after
investigation of the financial responsibility, credit, and
business reputation of the qualifying agent and the new business
organization, the department shall issue, without any
examination, a new license in the qualifying agent's ~~business~~



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~~organization's~~ name, and the name of the business organization
~~qualifying agent~~ shall be noted thereon.

(6) Each qualifying agent shall pay the department an amount equal to the original fee for licensure ~~of a new business organization.~~ if the qualifying agent for a business organization desires to qualify additional business organizations.⁷ The department shall require the agent to present evidence of supervisory ability and financial responsibility of each such organization. Allowing a licensee to qualify more than one business organization must ~~shall~~ be conditioned upon the licensee showing that the licensee has both the capacity and intent to adequately supervise each business organization. The department may ~~shall~~ not limit the number of business organizations that ~~which~~ the licensee may qualify except upon the licensee's failure to provide such information as is required under this subsection or upon a finding that the ~~such~~ information or evidence ~~as is~~ supplied is incomplete or unpersuasive in showing the licensee's capacity and intent to comply with the requirements of this subsection. A qualification for an additional business organization may be revoked or suspended upon a finding by the department that the licensee has failed in the licensee's responsibility to adequately supervise the operations of the business organization. Failure to adequately supervise the operations of a business organization is ~~shall be~~ grounds for denial to qualify additional business organizations.

Section 16. Subsection (1) of section 469.009, Florida Statutes, is amended to read:

469.009 License revocation, suspension, and denial of



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issuance or renewal.—

(1) The department may revoke, suspend, or deny the issuance or renewal of a license; reprimand, censure, or place on probation any contractor, consultant, or financially responsible officer, ~~or business organization~~; require financial restitution to a consumer; impose an administrative fine not to exceed \$5,000 per violation; require continuing education; or assess costs associated with any investigation and prosecution if the contractor or consultant, or business organization or officer or agent thereof, is found guilty of any of the following acts:

(a) Willfully or deliberately disregarding or violating the health and safety standards of the Occupational Safety and Health Act of 1970, the Construction Safety Act, the National Emission Standards for Asbestos, the Environmental Protection Agency Asbestos Abatement Projects Worker Protection Rule, the Florida Statutes or rules promulgated thereunder, or any ordinance enacted by a political subdivision of this state.

(b) Violating any provision of chapter 455.

(c) Failing in any material respect to comply with the provisions of this chapter or any rule promulgated hereunder.

(d) Acting in the capacity of an asbestos contractor or asbestos consultant under any license issued under this chapter except in the name of the licensee as set forth on the issued license.

(e) Proceeding on any job without obtaining all applicable approvals, authorizations, permits, and inspections.

(f) Obtaining a license by fraud or misrepresentation.

(g) Being convicted or found guilty of, or entering a plea



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of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of asbestos consulting or contracting or the ability to practice asbestos consulting or contracting.

(h) Knowingly violating any building code, lifesafety code, or county or municipal ordinance relating to the practice of asbestos consulting or contracting.

(i) Performing any act which assists a person or entity in engaging in the prohibited unlicensed practice of asbestos consulting or contracting, if the licensee knows or has reasonable grounds to know that the person or entity was unlicensed.

(j) Committing mismanagement or misconduct in the practice of contracting that causes financial harm to a customer.

Financial mismanagement or misconduct occurs when:

1. Valid liens have been recorded against the property of a contractor's customer for supplies or services ordered by the contractor for the customer's job; the contractor has received funds from the customer to pay for the supplies or services; and the contractor has not had the liens removed from the property, by payment or by bond, within 75 days after the date of such liens;

2. The contractor has abandoned a customer's job and the percentage of completion is less than the percentage of the total contract price paid to the contractor as of the time of abandonment, unless the contractor is entitled to retain such funds under the terms of the contract or refunds the excess funds within 30 days after the date the job is abandoned; or

3. The contractor's job has been completed, and it is shown



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that the customer has had to pay more for the contracted job than the original contract price, as adjusted for subsequent change orders, unless such increase in cost was the result of circumstances beyond the control of the contractor, was the result of circumstances caused by the customer, or was otherwise permitted by the terms of the contract between the contractor and the customer.

(k) Being disciplined by any municipality or county for an act or violation of this chapter.

(l) Failing in any material respect to comply with the provisions of this chapter, or violating a rule or lawful order of the department.

(m) Abandoning an asbestos abatement project in which the asbestos contractor is engaged or under contract as a contractor. A project may be presumed abandoned after 20 days if the contractor terminates the project without just cause and without proper notification to the owner, including the reason for termination; if the contractor fails to reasonably secure the project to safeguard the public while work is stopped; or if the contractor fails to perform work without just cause for 20 days.

(n) Signing a statement with respect to a project or contract falsely indicating that the work is bonded; falsely indicating that payment has been made for all subcontracted work, labor, and materials which results in a financial loss to the owner, purchaser, or contractor; or falsely indicating that workers' compensation and public liability insurance are provided.

(o) Committing fraud or deceit in the practice of asbestos



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consulting or contracting.

(p) Committing incompetency or misconduct in the practice of asbestos consulting or contracting.

(q) Committing gross negligence, repeated negligence, or negligence resulting in a significant danger to life or property in the practice of asbestos consulting or contracting.

(r) Intimidating, threatening, coercing, or otherwise discouraging the service of a notice to owner under part I of chapter 713 or a notice to contractor under chapter 255 or part I of chapter 713.

(s) Failing to satisfy, within a reasonable time, the terms of a civil judgment obtained against the licensee, or the business organization qualified by the licensee, relating to the practice of the licensee's profession.

For the purposes of this subsection, construction is considered to be commenced when the contract is executed and the contractor has accepted funds from the customer or lender.

Section 17. Subsections (2) and (3) of section 476.034, Florida Statutes, are amended, and subsections (6) and (7) are added to that section, to read:

476.034 Definitions.—As used in this act:

(2) "Barbering" means any of the following practices when done for remuneration and for the public, but not when done for the treatment of disease or physical or mental ailments: shaving, cutting, trimming, coloring, shampooing, arranging, dressing, curling, or waving the hair or beard or applying oils, creams, lotions, or other preparations to the face, scalp, or neck, either by hand or by mechanical appliances, and includes



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any services defined as restricted barbering.

(3) "Barbershop" means any place of business wherein the practice of barbering or restricted barbering is carried on.

(6) "Restricted barber" means a person who is licensed to engage in the practice of restricted barbering in this state under the authority of this chapter and is subject to the same requirements and restrictions as a barber, except as specifically provided in s. 476.114.

(7) "Restricted barbering" means any of the following practices when done for remuneration and for the public, but not when done for the treatment of disease or physical or mental ailments:

(a) Hair cutting and styling, including the application of hair tonics and hair spray, but not including the application of other chemical preparations or solutions to the hair;

(b) Full facial shaves;

(c) Mustache and beard trimming; and

(d) Shampooing hair, including the application of shampoos and conditioners, and blow drying the hair.

Section 18. Section 476.114, Florida Statutes, is amended to read:

476.114 Examination; prerequisites.—

(1) A person desiring to be licensed as a barber shall apply to the department for licensure and—

~~(2) An applicant~~ shall be eligible for licensure by examination to practice barbering if the applicant:

(a) Is at least 16 years of age;

(b) Pays the required application fee; and

(c)1. Holds an active valid license to practice barbering



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in another state, has held the license for at least 1 year, and does not qualify for licensure by endorsement as provided for in s. 476.144(5); or

2. Has received a minimum of 1,200 hours of training as established by the board, which shall include, but ~~shall~~ not be limited to, the equivalent of completion of services directly related to the practice of barbering at one of the following:

- a. A school of barbering licensed pursuant to chapter 1005;
- b. A barbering program within the public school system; or
- c. A government-operated barbering program in this state.

The board shall establish by rule procedures whereby the school or program may certify that a person is qualified to take the required examination after the completion of a minimum of 1,000 actual school hours. If the person passes the examination, she or he shall have satisfied this requirement; but if the person fails the examination, she or he shall not be qualified to take the examination again until the completion of the full requirements provided by this section.

(2) A person desiring to be licensed as a restricted barber shall apply to the department for licensure and shall be eligible for licensure by examination to practice restricted barbering if the applicant:

- (a) Is at least 16 years of age;
- (b) Pays the required application fee; and
- (c) 1. Holds an active valid license to practice barbering in another state, has held the license for at least 1 year, and does not qualify for licensure by endorsement as provided for in s. 476.144(5); or



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2. Has received a minimum of 325 hours of training in sanitation, safety, and laws and rules, as established by the board, which must include, but not be limited to, the equivalent of completion of services directly related to the practice of restricted barbering at one of the following:

a. A school of barbering licensed pursuant to chapter 1005;

b. A barbering program within the public school system; or

c. A government-operated barbering program in this state.

(3) An applicant who meets the requirements set forth in subparagraphs (1)(c)1. and 2. ~~subparagraphs (2)(c)1. and 2.~~ who fails to pass the examination may take subsequent examinations as many times as necessary to pass, except that the board may specify by rule reasonable timeframes for rescheduling the examination and additional training requirements for applicants who, after the third attempt, fail to pass the examination. Before ~~Prior to~~ reexamination, the applicant must file the appropriate form and pay the reexamination fee as required by rule.

Section 19. Subsections (1) and (6) of section 476.144, Florida Statutes, are amended to read:

476.144 Licensure.—

(1) The department shall license any applicant who the board certifies is qualified to practice barbering or restricted barbering in this state.

(6) A person may apply for a restricted license to practice barbering. The board shall adopt rules specifying procedures for an applicant to obtain a restricted license if the applicant:

(a)1. Has successfully completed a restricted barber course, as established by rule of the board, at a school of



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barbering licensed pursuant to chapter 1005, a barbering program within the public school system, or a government-operated barbering program in this state; or

2.a. Holds or has within the previous 5 years held an active valid license to practice barbering in another state or country or has held a Florida barbering license which has been declared null and void for failure to renew the license, and the applicant fulfilled the requirements of s. 476.114(2)(c)2. for initial licensure; and

b. Has not been disciplined relating to the practice of barbering in the previous 5 years; and

(b) Passes a written examination on the laws and rules governing the practice of barbering in Florida, as established by the board.

~~The restricted license shall limit the licensee's practice to those specific areas in which the applicant has demonstrated competence pursuant to rules adopted by the board.~~

Section 20. Subsections (6) and (9) of section 477.013, Florida Statutes, are amended to read:

477.013 Definitions.—As used in this chapter:

(6) "Specialty" means the practice of one or more of the following:

(a) "Nail specialty" means manicuring, or the cutting, polishing, tinting, coloring, cleansing, adding, or extending of the nails, and massaging of the hands. This term includes any procedure or process for the affixing of artificial nails, except those nails which may be applied solely by use of a simple adhesive; and—



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~~(b)~~ pedicuring, or the shaping, polishing, tinting, or
cleansing of the nails of the feet, and massaging or beautifying
of the feet.

(b)(e) "Facial specialty" means facials, or the massaging
or treating of the face or scalp with oils, creams, lotions, or
other preparations, and skin care services.

(c) "Full specialty" means all services within the
definition of nail specialty and facial specialty, including
manicuring, pedicuring, and facial services.

(9) "Hair braiding" means the weaving or interweaving of
natural human hair or commercial hair, including the use of hair
extensions or wefts, for compensation without cutting, coloring,
permanent waving, relaxing, removing, or chemical treatment ~~and
does not include the use of hair extensions or wefts.~~

Section 21. Section 477.0132, Florida Statutes, is
repealed.

Section 22. Subsections (7) through (11) are added to
section 477.0135, Florida Statutes, to read:

477.0135 Exemptions.—

(7) A license or registration is not required for a person
whose occupation or practice is confined solely to hair braiding
as defined in s. 477.013(9).

(8) A license or registration is not required for a person
whose occupation or practice is confined solely to hair wrapping
as defined in s. 477.013(10).

(9) A license or registration is not required for a person
whose occupation or practice is confined solely to body wrapping
as defined in s. 477.013(12).

(10) A license or registration is not required for a person



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whose occupation or practice is confined solely to applying
polish to fingernails and toenails.

(11) A license or registration is not required for a person
whose occupation or practice is confined solely to makeup
application.

Section 23. Paragraph (b) of subsection (7) of section
477.019, Florida Statutes, is amended to read:

477.019 Cosmetologists; qualifications; licensure;
supervised practice; license renewal; endorsement; continuing
education.—

(7)

~~(b) Any person whose occupation or practice is confined
solely to hair braiding, hair wrapping, or body wrapping is
exempt from the continuing education requirements of this
subsection.~~

Section 24. Present subsections (2) through (6) of section
477.0201, Florida Statutes, are redesignated as subsections (4)
through (8), respectively, new subsections (2) and (3) are added
to that section, and subsection (1) of that section is amended
to read:

477.0201 Specialty registration; qualifications;
registration renewal; endorsement.—

(1) Any person is qualified for registration as a
specialist in a nail ~~any one or more of the specialty practice~~
~~practices~~ within the practice of cosmetology under this chapter
who:

(a) Is at least 16 years of age or has received a high
school diploma.

(b) Has received at least 150 hours of training as



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established by the board, which must focus primarily on sanitation and safety and must include, but not be limited to, the equivalent of completion of services directly related to the practice of a nail ~~a certificate of completion in a specialty~~ pursuant to s. 477.013(6)(a) ~~477.013(6)~~ from one of the following:

1. A school licensed pursuant to s. 477.023.
2. A school licensed pursuant to chapter 1005 or the equivalent licensing authority of another state.
3. A specialty program within the public school system.
4. A specialty division within the Cosmetology Division of the Florida School for the Deaf and the Blind, provided the training programs comply with minimum curriculum requirements established by the board.

(2) Any person is qualified for registration as a specialist in a facial specialty practice within the practice of cosmetology under this chapter who:

(a) Is at least 16 years of age or has received a high school diploma.

(b) Has received at least 165 hours of training as established by the board, which must focus on sanitation and safety and must include, but not be limited to, the equivalent of completion of services directly related to the practice of facial specialty pursuant to s. 477.013(6)(b) from one of the following:

1. A school licensed pursuant to s. 477.023.
2. A school licensed pursuant to chapter 1005 or the equivalent licensing authority of another state.
3. A specialty program within the public school system.



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4. A specialty division within the Cosmetology Division of the Florida School for the Deaf and the Blind, provided the training programs comply with minimum curriculum requirements established by the board.

(3) Any person is qualified for registration as a specialist in a full specialty practice within the practice of cosmetology under this chapter who:

(a) Is at least 16 years of age or has received a high school diploma.

(b) Has received at least 300 hours of training as established by the board, which must focus primarily on sanitation and safety and must include, but not be limited to, the equivalent of completion of services directly related to the practice of full specialty pursuant to s. 477.013(6)(c) from one of the following:

1. A school licensed pursuant to s. 477.023.

2. A school licensed pursuant to chapter 1005 or the equivalent licensing authority of another state.

3. A specialty program within the public school system.

4. A specialty division within the Cosmetology Division of the Florida School for the Deaf and the Blind, provided the training programs comply with minimum curriculum requirements established by the board.

Section 25. Paragraph (f) of subsection (1) of section 477.026, Florida Statutes, is amended to read:

477.026 Fees; disposition.—

(1) The board shall set fees according to the following schedule:

~~(f) For hair braiders, hair wrappers, and body wrappers,~~



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~~fees for registration shall not exceed \$25.~~

Section 26. Paragraph (f) of subsection (1) of section 477.0265, Florida Statutes, is amended to read:

477.0265 Prohibited acts.—

(1) It is unlawful for any person to:

(f) Advertise or imply that skin care services ~~or body wrapping~~, as performed under this chapter, have any relationship to the practice of massage therapy as defined in s. 480.033(3), except those practices or activities defined in s. 477.013.

Section 27. Paragraph (a) of subsection (1) of section 477.029, Florida Statutes, is amended to read:

477.029 Penalty.—

(1) It is unlawful for any person to:

(a) Hold himself or herself out as a cosmetologist or ~~specialist, hair wrapper, hair braider, or body wrapper~~ unless duly licensed or registered, or otherwise authorized, as provided in this chapter.

Section 28. Subsection (5) of section 481.203, Florida Statutes, is amended to read:

481.203 Definitions.—As used in this part:

(5) "Business organization" means a partnership, a limited liability company, a corporation, or an individual operating under a fictitious name ~~"Certificate of authorization" means a certificate issued by the department to a corporation or partnership to practice architecture or interior design.~~

Section 29. Section 481.219, Florida Statutes, is amended to read:

481.219 Business organization; qualifying agents ~~Certification of partnerships, limited liability companies, and~~



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corporations.-

(1) A licensee may ~~The practice of or the offer to practice~~ architecture or interior design ~~by licensees~~ through a business organization that offers ~~corporation, limited liability company, or partnership offering~~ architectural or interior design services to the public, or through ~~by~~ a business organization that offers ~~corporation, limited liability company, or partnership offering~~ architectural or interior design services to the public through such licensees ~~under this part~~ as agents, employees, officers, or partners, ~~is permitted, subject to the provisions of this section.~~

(2) If a licensee or an applicant proposes to engage in the practice of architecture or interior design as a business organization, the licensee or applicant must apply to qualify the business organization ~~For the purposes of this section, a certificate of authorization shall be required for a corporation, limited liability company, partnership, or person practicing under a fictitious name, offering architectural services to the public jointly or separately. However, when an individual is practicing architecture in her or his own name, she or he shall not be required to be certified under this section. Certification under this subsection to offer architectural services shall include all the rights and privileges of certification under subsection (3) to offer interior design services.~~

(a) An application to qualify a business organization must:

1. If the business is a partnership, state the names of the partnership and its partners.

2. If the business is a corporation, state the names of the



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corporation and its officers and directors and the name of each of its stockholders who is also an officer or a director.

3. If the business is operating under a fictitious name, state the fictitious name under which it is doing business.

4. If the business is not a partnership, a corporation, or operating under a fictitious name, state the name of such other legal entity and its members.

(b) The board may deny an application to qualify a business organization if the applicant or any person required to be named pursuant to paragraph (a) has been involved in past disciplinary actions or on any grounds for which an individual registration may be denied.

(3) (a) A business organization may not engage in the practice of architecture unless its qualifying agent is a registered architect under this part. A business organization may not engage in the practice of interior design unless its qualifying agent is a registered architect or a registered interior designer under this part. A qualifying agent who terminates her or his affiliation with a business organization shall immediately notify the department of such termination. If the qualifying agent who terminates her or his affiliation is the only qualifying agent for a business organization, the business organization must be qualified by another qualifying agent within 60 days after the termination. Except as provided in paragraph (b), the business organization may not engage in the practice of architecture or interior design until it is qualified by a qualifying agent.

(b) In the event a qualifying architect or interior designer ceases employment with the business organization, the



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executive director or the chair of the board may authorize another registered architect or interior designer employed by the business organization to temporarily serve as its qualifying agent for a period of no more than 60 days. The business organization is not authorized to operate beyond such period under this chapter absent replacement of the qualifying architect or interior designer who has ceased employment.

(c) A qualifying agent shall notify the department in writing before engaging in the practice of architecture or interior design in her or his own name or in affiliation with a different business organization, and she or he or such business organization shall supply the same information to the department as required of applicants under this part ~~For the purposes of this section, a certificate of authorization shall be required for a corporation, limited liability company, partnership, or person operating under a fictitious name, offering interior design services to the public jointly or separately. However, when an individual is practicing interior design in her or his own name, she or he shall not be required to be certified under this section.~~

(4) All final construction documents and instruments of service which include drawings, specifications, plans, reports, or other papers or documents that involve ~~involving~~ the practice of architecture which are prepared or approved for the use of the business organization ~~corporation, limited liability company, or partnership~~ and filed for public record within the state must ~~shall~~ bear the signature and seal of the licensee who prepared or approved them and the date on which they were sealed.



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(5) All drawings, specifications, plans, reports, or other papers or documents prepared or approved for the use of the business organization ~~corporation, limited liability company, or partnership~~ by an interior designer in her or his professional capacity and filed for public record within the state must ~~shall~~ bear the signature and seal of the licensee who prepared or approved them and the date on which they were sealed.

~~(6) The department shall issue a certificate of authorization to any applicant who the board certifies as qualified for a certificate of authorization and who has paid the fee set in s. 481.207.~~

(6)(7) The board shall allow certify an applicant to qualify one or more business organizations as qualified for a certificate of authorization to offer architectural or interior design services, or to use a fictitious name to offer such services, if provided that:

(a) One or more of the principal officers of the corporation or limited liability company, or one or more partners of the partnership, and all personnel of the corporation, limited liability company, or partnership who act in its behalf in this state as architects, are registered as provided by this part; or

(b) One or more of the principal officers of the corporation or one or more partners of the partnership, and all personnel of the corporation, limited liability company, or partnership who act in its behalf in this state as interior designers, are registered as provided by this part.

~~(8) The department shall adopt rules establishing a procedure for the biennial renewal of certificates of~~



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authorization.

~~(9) The department shall renew a certificate of authorization upon receipt of the renewal application and biennial renewal fee.~~

~~(7)(10) Each qualifying agent approved to qualify a business organization partnership, limited liability company, and corporation certified under this section shall notify the department within 30 days after of any change in the information contained in the application upon which the qualification certification is based. Any registered architect or interior designer who qualifies the business organization shall ensure corporation, limited liability company, or partnership as provided in subsection (7) shall be responsible for ensuring responsible supervising control of projects of the business organization entity and shall notify the department of the upon termination of her or his employment with a business organization qualified partnership, limited liability company, or corporation certified under this section shall notify the department of the termination within 30 days after such termination.~~

~~(8)(11) A business organization is not No corporation, limited liability company, or partnership shall be relieved of responsibility for the conduct or acts of its agents, employees, or officers by reason of its compliance with this section. However, except as provided in s. 558.0035, the architect who signs and seals the construction documents and instruments of service is shall be liable for the professional services performed, and the interior designer who signs and seals the interior design drawings, plans, or specifications is shall be~~



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liable for the professional services performed.

~~(12) Disciplinary action against a corporation, limited liability company, or partnership shall be administered in the same manner and on the same grounds as disciplinary action against a registered architect or interior designer, respectively.~~

~~(9) (13) Nothing in This section may not shall~~ be construed to mean that a certificate of registration to practice architecture or interior design must ~~shall~~ be held by a business organization ~~corporation, limited liability company, or partnership~~. ~~Nothing in This section does not prohibit a business organization from offering prohibits corporations, limited liability companies, and partnerships from joining together to offer~~ architectural, engineering, interior design, surveying and mapping, and landscape architectural services, or any combination of such services, to the public if the business organization, ~~provided that each corporation, limited liability company, or partnership~~ otherwise meets the requirements of law.

~~(10) (14) A business organization that is qualified by a registered architect may use Corporations, limited liability companies, or partnerships holding a valid certificate of authorization to practice architecture shall be permitted to use in their title the term "interior designer" or "registered interior designer" in its title. designer."~~

Section 30. Subsection (10) of section 481.221, Florida Statutes, is amended to read:

481.221 Seals; display of certificate number.—

(10) Each registered architect or interior designer must, ~~and each corporation, limited liability company, or partnership~~



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~~holding a certificate of authorization, shall include her or his~~
~~license its certificate~~ number in any newspaper, telephone
directory, or other advertising medium used by the registered
licensee. Each business organization must include the license
number of the registered architect or interior designer who
serves as the qualifying agent for that business organization in
any newspaper, telephone directory, or other advertising medium
used by the business organization, but is not required to
display the license numbers of other registered architects or
interior designers employed by the business organization
architect, interior designer, corporation, limited liability
company, or partnership. A corporation, limited liability
company, or partnership is not required to display the
certificate number of individual registered architects or
interior designers employed by or working within the
corporation, limited liability company, or partnership.

Section 31. Paragraphs (a) and (c) of subsection (5) of
section 481.229, Florida Statutes, are amended to read:

481.229 Exceptions; exemptions from licensure.—

(5) (a) ~~Nothing contained in~~ This part does not prohibit
~~shall prevent~~ a registered architect or a qualified business
organization ~~partnership, limited liability company, or~~
~~corporation holding a valid certificate of authorization to~~
~~provide architectural services~~ from performing any interior
design service or from using the title "interior designer" or
"registered interior designer."

(c) Notwithstanding any other provision of this part, a
registered architect or business organization qualified any
~~corporation, partnership, or person operating under a fictitious~~



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~~name which holds a certificate of authorization to provide architectural services must shall be qualified, without fee, for a certificate of authorization to provide interior design services upon submission of a completed application for qualification therefor. For corporations, partnerships, and persons operating under a fictitious name which hold a certificate of authorization to provide interior design services, satisfaction of the requirements for renewal of the certificate of authorization to provide architectural services under s. 481.219 shall be deemed to satisfy the requirements for renewal of the certificate of authorization to provide interior design services under that section.~~

Section 32. Section 481.303, Florida Statutes, is reordered and amended to read:

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

(1) "Board" means the Board of Landscape Architecture.

(2) "Business organization" means any partnership, limited liability company, corporation, or individual operating under a fictitious name.

(4)-(2) "Department" means the Department of Business and Professional Regulation.

(7)-(3) "Registered landscape architect" means a person who holds a license to practice landscape architecture in this state under the authority of this act.

(3)-(4) "Certificate of registration" means a license issued by the department to a natural person to engage in the practice of landscape architecture.

~~(5) "Certificate of authorization" means a license issued by the department to a corporation or partnership to engage in~~



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~~the practice of landscape architecture.~~

~~(5)(6)~~ "Landscape architecture" means professional services, including, but not limited to, the following:

(a) Consultation, investigation, research, planning, design, preparation of drawings, specifications, contract documents and reports, responsible construction supervision, or landscape management in connection with the planning and development of land and incidental water areas, including the use of Florida-friendly landscaping as defined in s. 373.185, where, and to the extent that, the dominant purpose of such services or creative works is the preservation, conservation, enhancement, or determination of proper land uses, natural land features, ground cover and plantings, or naturalistic and aesthetic values;

(b) The determination of settings, grounds, and approaches for and the siting of buildings and structures, outdoor areas, or other improvements;

(c) The setting of grades, shaping and contouring of land and water forms, determination of drainage, and provision for storm drainage and irrigation systems where such systems are necessary to the purposes outlined herein; and

(d) The design of such tangible objects and features as are necessary to the purpose outlined herein.

~~(6)(7)~~ "Landscape design" means consultation for and preparation of planting plans drawn for compensation, including specifications and installation details for plant materials, soil amendments, mulches, edging, gravel, and other similar materials. Such plans may include only recommendations for the conceptual placement of tangible objects for landscape design



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projects. Construction documents, details, and specifications for tangible objects and irrigation systems shall be designed or approved by licensed professionals as required by law.

Section 33. Subsection (4) of section 481.311, Florida Statutes, is amended to read:

481.311 Licensure.—

~~(4) The board shall certify as qualified for a certificate of authorization any applicant corporation or partnership who satisfies the requirements of s. 481.319.~~

Section 34. Subsection (2) of section 481.317, Florida Statutes, is amended to read:

481.317 Temporary certificates.—

~~(2) Upon approval by the board and payment of the fee set in s. 481.307, the department shall grant a temporary certificate of authorization for work on one specified project in this state for a period not to exceed 1 year to an out-of-state corporation, partnership, or firm, provided one of the principal officers of the corporation, one of the partners of the partnership, or one of the principals in the fictitiously named firm has obtained a temporary certificate of registration in accordance with subsection (1).~~

Section 35. Section 481.319, Florida Statutes, is amended to read:

481.319 Corporate and partnership practice of landscape architecture; ~~certificate of authorization.~~—

(1) The practice of or offer to practice landscape architecture by registered landscape architects registered under this part through a corporation or partnership offering landscape architectural services to the public, or through a



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corporation or partnership offering landscape architectural services to the public through individual registered landscape architects as agents, employees, officers, or partners, is permitted, subject to the provisions of this section, if:

(a) One or more of the principal officers of the corporation, or partners of the partnership, and all personnel of the corporation or partnership who act in its behalf as landscape architects in this state are registered landscape architects; and

(b) One or more of the officers, one or more of the directors, one or more of the owners of the corporation, or one or more of the partners of the partnership is a registered landscape architect and has applied to be the qualifying agent for the business organization; and

~~(c) The corporation or partnership has been issued a certificate of authorization by the board as provided herein.~~

(2) All documents involving the practice of landscape architecture which are prepared for the use of the corporation or partnership shall bear the signature and seal of a registered landscape architect.

(3) A landscape architect applying to practice in the name of a ~~An applicant~~ corporation must ~~shall~~ file with the department the names and addresses of all officers and board members of the corporation, including the principal officer or officers, duly registered to practice landscape architecture in this state and, also, of all individuals duly registered to practice landscape architecture in this state who shall be in responsible charge of the practice of landscape architecture by the corporation in this state. A landscape architect applying to



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968 practice in the name of a ~~An applicant~~ partnership must ~~shall~~
969 file with the department the names and addresses of all partners
970 of the partnership, including the partner or partners duly
971 registered to practice landscape architecture in this state and,
972 also, of an individual or individuals duly registered to
973 practice landscape architecture in this state who shall be in
974 responsible charge of the practice of landscape architecture by
975 said partnership in this state.

976 (4) Each landscape architect qualifying a partnership or
977 ~~and corporation licensed~~ under this part must ~~shall~~ notify the
978 department within 1 month after ~~of~~ any change in the information
979 contained in the application upon which the license is based.
980 Any landscape architect who terminates her or his ~~or her~~
981 employment with a partnership or corporation licensed under this
982 part shall notify the department of the termination within 1
983 month after such termination.

984 ~~(5) Disciplinary action against a corporation or~~
985 ~~partnership shall be administered in the same manner and on the~~
986 ~~same grounds as disciplinary action against a registered~~
987 ~~landscape architect.~~

988 ~~(5)(6)~~ Except as provided in s. 558.0035, the fact that a
989 registered landscape architect practices landscape architecture
990 through a corporation or partnership as provided in this section
991 does not relieve the landscape architect from personal liability
992 for her or his ~~or her~~ professional acts.

993 Section 36. Subsection (5) of section 481.321, Florida
994 Statutes, is amended to read:

995 481.321 Seals; display of certificate number.—

996 (5) Each registered landscape architect must ~~and each~~



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~~corporation or partnership holding a certificate of~~
~~authorization shall~~ include her or his ~~its~~ certificate number in
any newspaper, telephone directory, or other advertising medium
used by the registered landscape architect, corporation, or
partnership. A corporation or partnership must ~~is not required~~
~~to~~ display the certificate number ~~numbers~~ of at least one
officer, director, owner, or partner who is a individual
registered landscape architect ~~architects~~ employed by or
practicing with the corporation or partnership.

Section 37. Subsection (5) of section 481.329, Florida
Statutes, is amended to read:

481.329 Exceptions; exemptions from licensure.—

(5) This part does not prohibit any person from engaging in
the practice of landscape design, as defined in s. 481.303(6)
~~481.303(7)~~, or from submitting for approval to a governmental
agency planting plans that are independent of, or a component
of, construction documents that are prepared by a Florida-
registered professional. Persons providing landscape design
services may ~~shall~~ not use the title, term, or designation
"landscape architect," "landscape architectural," "landscape
architecture," "L.A.," "landscape engineering," or any
description tending to convey the impression that she or he is a
landscape architect unless she or he is registered as provided
in this part.

Section 38. Paragraph (h) of subsection (2) of section
287.055, Florida Statutes, is amended to read:

287.055 Acquisition of professional architectural,
engineering, landscape architectural, or surveying and mapping
services; definitions; procedures; contingent fees prohibited;



447528

penalties.—

(2) DEFINITIONS.—For purposes of this section:

(h) A “design-build firm” means a partnership, corporation, or other legal entity that:

1. Is certified under s. 489.119 to engage in contracting through a certified or registered general contractor or a certified or registered building contractor as the qualifying agent; or

2. Is certified under s. 471.023 to practice or to offer to practice engineering; qualified ~~certified~~ under s. 481.219 to practice or to offer to practice architecture; or qualified ~~certified~~ under s. 481.319 to practice or to offer to practice landscape architecture.

Section 39. Present paragraphs (j) and (k) of subsection (2) of section 548.003, Florida Statutes, are redesignated as paragraphs (i) and (j), respectively, and present paragraph (i) of that subsection is amended, to read:

548.003 Florida State Boxing Commission.—

(2) The Florida State Boxing Commission, as created by subsection (1), shall administer the provisions of this chapter. The commission has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter and to implement each of the duties and responsibilities conferred upon the commission, including, but not limited to:

~~(i) Designation and duties of a knockdown timekeeper.~~

Section 40. Subsection (1) of section 548.017, Florida Statutes, is amended to read:

548.017 Participants, managers, and other persons required to have licenses.—



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(1) A participant, manager, trainer, second, ~~timekeeper,~~
referee, judge, ~~announcer,~~ physician, matchmaker, or promoter
must be licensed before directly or indirectly acting in such
capacity in connection with any match involving a participant. A
physician approved by the commission must be licensed pursuant
to chapter 458 or chapter 459, must maintain an unencumbered
license in good standing, and must demonstrate satisfactory
medical training or experience in boxing, or a combination of
both, to the executive director before working as the ringside
physician.

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

And the title is amended as follows:

Delete lines 19 - 61

and insert:

s. 326.004, F.S.; deleting the requirement for a yacht
broker to maintain a separate license for each branch
office; deleting the requirement for the Division of
Florida Condominiums, Timeshares, and Mobile Homes to
establish a fee; amending s. 447.02, F.S.; conforming
provisions; repealing s. 447.04, F.S., relating to
licensure and permit requirements for business agents;
repealing s. 447.041, F.S., relating to hearings for
persons or labor organizations denied licensure as a
business agent; repealing s. 447.045, F.S., relating
to confidential information obtained during the
application process; repealing s. 447.06, F.S.,
relating to required registration of labor
organizations; amending s. 447.09, F.S.; deleting



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1084 certain prohibited actions relating to the right of
1085 franchise of a member of a labor organization;
1086 repealing s. 447.12, F.S., relating to registration
1087 fees; repealing s. 447.16, F.S., relating to
1088 applicability; amending s. 447.305, F.S.; deleting a
1089 provision that requires notification of registrations
1090 and renewals to the Department of Business and
1091 Professional Regulation; amending s. 455.213, F.S.;
1092 conforming a cross-reference; requiring the board to
1093 use a specified process for the review of an
1094 applicant's criminal record to determine the
1095 applicant's eligibility for certain licenses;
1096 prohibiting the conviction of a crime before a
1097 specified date from being grounds for the denial of
1098 certain licenses; defining the term "conviction";
1099 authorizing a person to apply for a license before his
1100 or her lawful release from confinement or supervision;
1101 prohibiting additional fees for an applicant confined
1102 or under supervision; prohibiting the board from
1103 basing a denial of a license application solely on the
1104 applicant's current confinement or supervision;
1105 authorizing the board to stay the issuance of an
1106 approved license under certain circumstances;
1107 requiring the board to verify an applicant's release
1108 with the Department of Corrections; providing
1109 requirements for the appearance of certain applicants
1110 at certain meetings; requiring the board to adopt
1111 rules specifying how certain crimes affect an
1112 applicant's eligibility for licensure; amending s.



447528

1113 464.203, F.S.; prohibiting the conviction of a crime
1114 before a specified date from being grounds for the
1115 denial of a certification under certain circumstances;
1116 prohibiting the conviction of a crime before a
1117 specified date from being grounds for the failure of a
1118 background screening; defining the term "conviction";
1119 authorizing a person to apply for certification before
1120 his or her lawful release from confinement or
1121 supervision; prohibiting additional fees for an
1122 applicant confined or under supervision; prohibiting
1123 the board from basing the denial of a certification
1124 solely on the applicant's current confinement or
1125 supervision; authorizing the board to stay the
1126 issuance of an approved certificate under certain
1127 circumstances; requiring the board to verify an
1128 applicant's release with the Department of
1129 Corrections; providing requirements for the appearance
1130 of certain applicants at certain meetings; requiring
1131 the board to adopt rules specifying how certain crimes
1132 may affect an applicant's eligibility for
1133 certification; amending s. 400.211, F.S.; conforming a
1134 cross-reference; amending s. 469.006, F.S.; revising
1135 licensure requirements for asbestos abatement
1136 consulting or contracting as a partnership,
1137 corporation, business trust, or other legal entity;
1138 amending s. 469.009, F.S.; conforming provisions;
1139 amending s. 476.034, F.S.; defining the terms
1140 "restricted barber" and "restricted barbering";
1141 amending s. 476.114, F.S.; providing requirements for



447528

licensure by examination as a restricted barber;
amending s. 476.144, F.S.; requiring the department to
license an applicant who the board certifies is
qualified to practice restricted barbering; amending
s. 477.013, F.S.; revising and providing definitions;
repealing s. 477.0132, F.S., relating to registration
for hair braiding, hair wrapping, and body wrapping;
amending s. 477.0135, F.S.; providing that licensure
or registration is not required for persons whose
occupation or practice is confined solely to hair
braiding, hair wrapping, body wrapping, nail
polishing, and makeup application; amending s.
477.019, F.S.; conforming provisions; amending s.
477.0201, F.S.; providing requirements for
registration as a nail specialist, facial specialist,
or full specialist; amending ss. 477.026, 477.0265,
and 477.029, F.S.; conforming provisions; amending s.
481.203, F.S.; revising a definition; amending s.
481.219, F.S.; revising the process by which a
business organization obtains the requisite license to
perform architectural services or interior design;
requiring that a licensee or an applicant apply to
qualify a business organization to practice
architecture or interior design; providing application
requirements; authorizing the Board of Architecture
and Interior Design to deny an application under
certain circumstances; providing notice requirements;
prohibiting a business organization from engaging in
certain practices until it is qualified by a



447528

1171 qualifying agent; authorizing the executive director
1172 or the chair of the board to authorize a temporary
1173 qualifying agent for a specified timeframe under
1174 certain circumstances; requiring the board to allow an
1175 applicant to qualify one or more business
1176 organizations or to operate using a fictitious name
1177 under certain circumstances; deleting a requirement
1178 for the administration of disciplinary action against
1179 a corporation, limited liability company, or
1180 partnership; conforming provisions to changes made by
1181 the act; amending s. 481.221, F.S.; requiring a
1182 business organization to include the license number of
1183 a certain registered architect or interior designer in
1184 any advertising; providing an exception; conforming
1185 provisions to changes made by the act; amending s.
1186 481.229, F.S.; conforming provisions to changes made
1187 by the act; amending s. 481.303, F.S.; revising
1188 definitions; amending ss. 481.311 and 481.317, F.S.;
1189 conforming provisions; amending s. 481.319, F.S.;
1190 deleting the requirement for a certificate of
1191 authorization; authorizing landscape architects to
1192 practice through a corporation or partnership;
1193 amending s. 481.321, F.S.; revising requirements
1194 related to the display of a certificate number;
1195 amending s. 481.329, F.S.; conforming a cross-
1196 reference; amending s. 287.055, F.S.; conforming a
1197 provision; amending s. 548.003, F.S.; deleting the
1198 requirement that the Florida State Boxing Commission
1199 adopt rules relating to a knockdown timekeeper;



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1200 amending s. 548.017, F.S.; deleting the licensure
1201 requirement for a timekeeper or announcer; providing
1202 an effective date.

By Senator Brandes

24-01276A-18

20181114__

1 A bill to be entitled
 2 An act relating to professional regulation; amending
 3 s. 120.565, F.S.; authorizing a person to seek a
 4 declaratory statement from an agency as to the effect
 5 of the person's criminal background on his or her
 6 eligibility for certain licenses, registrations, or
 7 certificates; specifying that a person may seek a
 8 declaratory statement before meeting any prerequisites
 9 for the license, registration, or certification;
 10 requiring that an agency's conclusion in the
 11 declaratory statement contain certain statements;
 12 providing that the agency's conclusion is binding
 13 except under certain circumstances; requiring a person
 14 seeking a declaratory statement to submit certain
 15 items to the agency and pay certain fees and costs;
 16 providing requirements for the processing of the
 17 fingerprints; requiring the petitioner to pay the
 18 actual cost of processing the fingerprints; amending
 19 s. 455.213, F.S.; conforming a cross-reference;
 20 requiring the board to use a specified process for the
 21 review of an applicant's criminal record to determine
 22 the applicant's eligibility for certain licenses;
 23 prohibiting the conviction of a crime before a
 24 specified date from being grounds for the denial of
 25 certain licenses; defining the term "conviction";
 26 authorizing a person to apply for a license before his
 27 or her lawful release from confinement or supervision;
 28 prohibiting additional fees for an applicant confined
 29 or under supervision; prohibiting the board from

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

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30 basing a denial of a license application solely on the
 31 applicant's current confinement or supervision;
 32 authorizing the board to stay the issuance of an
 33 approved license under certain circumstances;
 34 requiring the board to verify an applicant's release
 35 with the Department of Corrections; providing
 36 requirements for the appearance of certain applicants
 37 at certain meetings; requiring the board to adopt
 38 rules specifying how certain crimes affect an
 39 applicant's eligibility for licensure; amending s.
 40 464.203, F.S.; prohibiting the conviction of a crime
 41 before a specified date from being grounds for the
 42 denial of a certification under certain circumstances;
 43 prohibiting the conviction of a crime before a
 44 specified date from being grounds for the failure of a
 45 background screening; defining the term "conviction";
 46 authorizing a person to apply for certification before
 47 his or her lawful release from confinement or
 48 supervision; prohibiting additional fees for an
 49 applicant confined or under supervision; prohibiting
 50 the board from basing the denial of a certification
 51 solely on the applicant's current confinement or
 52 supervision; authorizing the board to stay the
 53 issuance of an approved certificate under certain
 54 circumstances; requiring the board to verify an
 55 applicant's release with the Department of
 56 Corrections; providing requirements for the appearance
 57 of certain applicants at certain meetings; requiring
 58 the board to adopt rules specifying how certain crimes

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

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may affect an applicant's eligibility for certification; amending s. 400.211, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Subsection (4) is added to section 120.565, Florida Statutes, to read:

120.565 Declaratory statement by agencies.—

(4) (a) Any person may seek a declaratory statement regarding an agency's opinion as to the effect of the petitioner's criminal background on his or her eligibility for a specific occupational or professional license, registration, or certificate issued by the agency based on the applicable statutes and rules for the occupation or profession. The petition may include mitigating factors or other information the petitioner believes relevant to establish the petitioner's eligibility, including, but not limited to, the time elapsed since completion of or lawful release from confinement, supervision, or nonmonetary condition imposed by the court for a disqualifying offense, and the petitioner's standing in his or her community. A person may seek a declaratory statement under this subsection before attaining any education, training, experience, or other prerequisites for the license, registration, or certification.

(b) The agency's conclusion in the declaratory statement must indicate whether:

1. The petitioner is disqualified from obtaining the license, registration, or certification due to the petitioner's

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criminal background, regardless of the petitioner's education, training, experience, or other prerequisites required for the license, registration, or certification.

2. The petitioner is not eligible for a specified occupational or professional license, registration, or certification because of his or her criminal background, but that the conclusion may be reversed upon the petitioner's presentation of evidence of rehabilitation or mitigation identified by the agency in the declaratory statement at any time subsequent to the issuance of the declaratory statement.

3. Federal laws or regulations may impede the petitioner's licensure, registration, or certification in the profession or occupation.

4. Conditions or restrictions imposed by the court on the petitioner for a disqualifying offense may impede the petitioner's licensure, registration, or certification in the profession or occupation.

(c) The agency's conclusion in the declaratory statement shall be binding on the agency as to the petitioner, unless the petitioner's subsequent criminal history constitutes an independent basis for denial of the petitioner's application for a license, registration, or certification in the profession or occupation. The agency's conclusion is subject to judicial review pursuant to s. 120.68.

(d) A person seeking a declaratory statement under this subsection must submit to the agency, in addition to the petition for a declaratory statement:

1. A fee set by the agency not to exceed \$100;

2. A certified copy of each criminal judgment rendered

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117 against the petitioner; and

118 3. A complete set of electronic fingerprints.

119 (e) The agency shall submit the fingerprints to the
 120 Department of Law Enforcement for a state criminal history
 121 record check and the Department of Law Enforcement shall forward
 122 them to the Federal Bureau of Investigation for a national
 123 criminal history record check. The agency shall review the
 124 criminal history record results to determine if the petitioner
 125 meets licensure, registration, or certification requirements.
 126 The petitioner shall pay the actual cost of state and federal
 127 processing in addition to the fee in subparagraph (d)1.

128 Section 2. Present subsections (3) through (12) of section
 129 455.213, Florida Statutes, are redesignated as subsections (4)
 130 through (13), respectively, subsection (2) of that section is
 131 amended, and a new subsection (3) is added to that section, to
 132 read:

133 455.213 General licensing provisions.—

134 (2) Before the issuance of any license, the department may
 135 charge an initial license fee as determined by rule of the
 136 applicable board or, if no such board exists, by rule of the
 137 department. Upon receipt of the appropriate license fee, except
 138 as provided in subsection (4) ~~(3)~~, the department shall issue a
 139 license to any person certified by the appropriate board, or its
 140 designee, or the department when there is no board, as having
 141 met the applicable requirements imposed by law or rule. However,
 142 an applicant who is not otherwise qualified for licensure is not
 143 entitled to licensure solely based on a passing score on a
 144 required examination. Upon a determination by the department
 145 that it erroneously issued a license, or upon the revocation of

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146 a license by the applicable board, or by the department when
 147 there is no board, the licensee must surrender his or her
 148 license to the department.

149 (3) (a) Notwithstanding any other provision of law, the
 150 board shall use the process in this subsection for review of an
 151 applicant's criminal record to determine his or her eligibility
 152 for licensure as a:

153 1. Barber under chapter 476;

154 2. Cosmetologist or cosmetology specialist under chapter
 155 477; or

156 3. Any of the following construction professions under
 157 chapter 489:

158 a. Air-conditioning contractor;

159 b. Electrical contractor;

160 c. Mechanical contractor;

161 d. Plumbing contractor;

162 e. Pollutant storage systems contractor;

163 f. Roofing contractor;

164 g. Septic tank contractor;

165 h. Sheet metal contractor;

166 i. Solar contractor;

167 j. Swimming pool and spa contractor;

168 k. Underground utility and excavation contractor; and

169 l. Other specialty contractors.

170 (b) A conviction for a crime more than 5 years before the
 171 date of the application may not be grounds for denial of a
 172 license specified in paragraph (a). For purposes of this
 173 paragraph, the term "conviction" means a determination of guilt
 174 that is the result of a plea or trial, regardless of whether

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adjudication is withheld.

(c)1. A person may apply for a license before his or her lawful release from confinement or supervision. The department may not charge an applicant an additional fee for being confined or under supervision. The board may not deny an application for a license solely on the basis of the applicant's current confinement or supervision.

2. After a license application is approved, the board may stay the issuance of a license until the applicant is lawfully released from confinement or supervision and the applicant notifies the board of such release. The board must verify the applicant's release with the Department of Corrections before it issues a license.

3. If an applicant is unable to appear in person due to his or her confinement or supervision, the board must permit the applicant to appear by teleconference or video conference, as appropriate, at any meeting of the board or other hearing by the agency concerning his or her application.

4. If an applicant is confined or under supervision, the Department of Corrections and the board shall cooperate and coordinate to facilitate the appearance of the applicant at a board meeting or agency hearing in person, by teleconference, or by video conference, as appropriate.

(d) The board shall adopt rules specifying the crimes that, if committed, and regardless of adjudication, do not relate to the practice of the profession or the ability to practice the profession and do not constitute grounds for denial of a license.

(e) The board shall adopt rules specifying the crimes that,

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if committed, and regardless of adjudication, relate to the practice of the profession or the ability to practice the profession and may constitute grounds for denial of a license.

Section 3. Present subsections (2) through (8) of section 464.203, Florida Statutes, are redesignated as subsections (3) through (9), respectively, and a new subsection (2) is added to that section, to read:

464.203 Certified nursing assistants; certification requirement.—

(2)(a)1. Except as provided in s. 435.07(4), a conviction for a crime more than 7 years before the date of the application may not be grounds for denial of a certificate to practice as a certified nursing assistant.

2. Except as provided in s. 435.07(4), a conviction for a crime more than 7 years before the date of the application may not be grounds for failure of a required background screening.

3. For purposes of this paragraph, the term "conviction" means a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld.

(b)1. A person may apply for a certificate to practice as a certified nursing assistant before his or her lawful release from confinement or supervision. The department may not charge an applicant an additional fee for being confined or under supervision. The board may not deny an application for a certificate solely on the basis of the person's current confinement or supervision.

2. After a certification application is approved, the board may stay the issuance of a certificate until the applicant notifies the board of his or her lawful release from confinement

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233 or supervision. The board must verify the applicant's release
 234 with the Department of Corrections before it issues a license.

235 3. If an applicant is unable to appear in person due to his
 236 or her confinement or supervision, the board must permit the
 237 applicant to appear by teleconference or video conference, as
 238 appropriate, at any meeting of the board or other hearing by the
 239 agency concerning his or her application.

240 4. If an applicant is confined or under supervision, the
 241 Department of Corrections and the board shall cooperate and
 242 coordinate to facilitate the appearance of the applicant at a
 243 board meeting or agency hearing in person, by teleconference, or
 244 by video conference, as appropriate.

245 (d) The board shall adopt rules specifying the crimes that,
 246 if committed, and regardless of adjudication, do not relate to
 247 the practice of the profession or the ability to practice the
 248 profession and do not constitute grounds for denial of a
 249 certification.

250 (e) The board shall adopt rules specifying the crimes that,
 251 if committed, and regardless of adjudication, relate to the
 252 practice of the profession or the ability to practice the
 253 profession and may constitute grounds for denial of a
 254 certification.

255 Section 4. Subsection (4) of section 400.211, Florida
 256 Statutes, is amended to read:

257 400.211 Persons employed as nursing assistants;
 258 certification requirement.—

259 (4) When employed by a nursing home facility for a 12-month
 260 period or longer, a nursing assistant, to maintain
 261 certification, shall submit to a performance review every 12

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262 months and must receive regular inservice education based on the
 263 outcome of such reviews. The inservice training must meet all of
 264 the following requirements:

265 (a) Be sufficient to ensure the continuing competence of
 266 nursing assistants and must meet the standard specified in s.
 267 464.203(8). ~~s. 464.203(7);~~

268 (b) Include, at a minimum:

269 1. Techniques for assisting with eating and proper feeding;

270 2. Principles of adequate nutrition and hydration;

271 3. Techniques for assisting and responding to the
 272 cognitively impaired resident or the resident with difficult
 273 behaviors;

274 4. Techniques for caring for the resident at the end-of-
 275 life; and

276 5. Recognizing changes that place a resident at risk for
 277 pressure ulcers and falls, ~~and~~

278 (c) Address areas of weakness as determined in nursing
 279 assistant performance reviews and may address the special needs
 280 of residents as determined by the nursing home facility staff.

281
 282 Costs associated with this training may not be reimbursed from
 283 additional Medicaid funding through interim rate adjustments.

284 Section 5. This act shall take effect July 1, 2018.



The Florida Senate

Committee Agenda Request

To: Senator Bill Montford
Committee on Commerce and Tourism

Subject: Committee Agenda Request

Date: January 24, 2018

I respectfully request that **Senate Bill #1114**, relating to **Professional Regulation**, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

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

Senator Jeff Brandes
Florida Senate, District 24

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/6/16

Meeting Date

1114

Bill Number (if applicable)

447528

Amendment Barcode (if applicable)

Topic Deregulation of Cosmetology

Name Monica Rodriguez

Job Title _____

Address 201 E Park Avenue

Street

Jalatlaco

City

Fl.

State

32301

Zip

Phone 850 766-6287

Email monica2ballardfl.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Association of Cosmetology & Technical Schools

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/6/2018

Meeting Date

1114

Bill Number (if applicable)

447528

Amendment Barcode (if applicable)

Topic Professional Regulations

Name Vittorio Nastasi

Job Title _____

Address 100 N Duval Street

Street

Tallahassee

City

FL

State

32301

Zip

Phone 850-322-9941

Email snuzzo@jamesmadison.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The James Madison Institute

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Feb 6, 2018

Meeting Date

SB 1114

Bill Number (if applicable)

447528

Amendment Barcode (if applicable)

Topic BARBERING / COSMETOLOGY

Name CURTIS AUSTIN

Job Title EXECUTIVE DIRECTOR

Address P.O. Box 13654

Street

Phone 850 - 577-3139

Tallahassee

City

FL

State

32317-3654

Zip

Email Curtis@FAPSC.ORG

Speaking: ☐ For ☒ Against ☐ Information

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

Representing FLORIDA ASSN OF POSTSECONDARY SCHOOLS; COLLEGE

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/6/18

Meeting Date

SB 1114

Bill Number (if applicable)

447528

Amendment Barcode (if applicable)

Topic Cosmetology

Name Allen Mortham Jr

Job Title Lobbyist

Address 6675 Weeping Willow Way

Street

Tallahassee

City

FL

State

32311

Zip

Phone (850) 566-3760

Email Niles97@aol.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Sunstate Academy

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/6/18

Meeting Date

1114

Bill Number (if applicable)

447528

Amendment Barcode (if applicable)

Topic Professional Regulation

Name JOANNE POWERS

Job Title Summit Salon Academy - Tampa

Address 4802 Gann Hwy suite 144

Street

Phone 813 833 8660

Tampa, FL

City

State

33624

Zip

Email _____

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Summit Salon Academy - Tampa

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/6/18

Meeting Date

1114

Bill Number (if applicable)

447528

Amendment Barcode (if applicable)

Topic Professional Regulation

Name JONI JARRELL

Job Title President

Address 1717 SE 5th St.

Street

Orlando

City

FL

State

34471

Zip

Phone 352 598 8523

Email jarrell@ssacademygames.com

Speaking: ☒ For ☒ Against ☐ Information

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

Representing Summit Salon Academy - Gainesville

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

2/6/18

Meeting Date

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

1114

Bill Number (if applicable)

447528

Amendment Barcode (if applicable)

Topic Professional Regulation

Name JANE FARMER

Job Title Legislative Coordinator

Address 227 S Adams St
Street

Phone 352 359 6835

Tallahassee FL 32301
City State Zip

Email Jake@rf.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Retail Federation

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/6/18

Meeting Date

1114

Bill Number (if applicable)

447528

Amendment Barcode (if applicable)

Topic Professional Regulation

Name LISA MERGEL

Job Title

Address 823 Thomasville Rd

Phone 850 224 7467

Street

Tallahassee

FL

32303

City

State

Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing @ Kanvas Day Spa - Tallahassee

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/6/2018

Meeting Date

1114

Bill Number (if applicable)

Topic professional regulations

Amendment Barcode (if applicable)

Name Vittorio Nastasi

Job Title _____

Address 100 N Duval Street

Phone 850-322-9941

Street

Tallahassee

FL

32301

Email snuzzo@jamesmadison.org

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The James Madison Institute

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/6/18
Meeting Date

1114
Bill Number (if applicable)

Topic Occupational Licensing

Amendment Barcode (if applicable)

Name Jorge Charnizo

Job Title Attorney

Address 108 South Monroe Street

Phone (850) 681-0024

Tallahassee, FL 32301
City State Zip

Email jorge@flapartners.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Opportunity Solutions Project

Appearing at request of Chair: ☒ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

2-6-18

Meeting Date

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

SB 1114

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Andrew Hasek

Job Title Analyst

Address 200 W College Ave

Phone _____

Street

Tallahassee

FL

City

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Americans for Prosperity

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

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

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

S-001 (10/14/14)

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 1314

INTRODUCER: Commerce and Tourism Committee and Senator Brandes

SUBJECT: Florida Capital Formation Act

DATE: February 6, 2018

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1314 creates the Institute for Commercialization of Florida Technology (institute) to increase the availability of seed and early stage investment capital in Florida without requiring an ongoing state expenditure for such support.

The institute will replace the Institute for Commercialization of Public Research (ICPR). The institute will differ from the ICPR in several ways. Namely, the institute will:

- Be operated by a private fund manager who will be paid from fees based on the institute's investment activities, rather than a professional staff;
- No longer partner with publicly supported universities or research institutes to support their commercialization efforts; and
- Not be supported by or function under the Department of Economic Opportunity (department).

Like the ICPR, however, the institute will partner with innovation and target industry businesses to foster investment funding, especially in seed-stage, startup, and early stage companies; advise companies about successful management, operations, and development processes; and provide opportunities to attract further investment.

As part of its annual report, the institute will be subject to an independent audit of its reported net profits.

II. Present Situation:

Venture Capital and Early Stage Business Investments

Venture capital (VC) is money provided by investors who choose to fund young companies that have the potential to develop into profitable businesses. VC is an important source of equity for startup companies because its investment does not typically require security (such as a guarantee of repayment) from the business.¹

VC investments are typically made in lieu of traditional bank loans because the start-up or expansion-oriented companies they fund have a higher level of investment risk. As a result, the investor may eventually share in the risk of a failed business, or the reward of a successful one. VC investments are also characterized by a higher level of equity participation in the business by the investor, including mentorship or networking to assist the company with management and other obstacles.²

VC investment in a technology or idea that has not yet been developed into a fully-fledged product or business is also known as “seed investing” or “early-stage investing.”³

As of September 2017, there were approximately 38 VC firms in Florida.⁴ Although the VC industry has grown in the last 20 years, it has done so only in limited geographic regions—generally limiting the investment of VC in businesses in or near those regions.⁵

Institute for the Commercialization of Public Research

In 2007, the Legislature passed the Florida Capital Formation Act, to address the need to increase the availability of seed capital and early stage venture equity capital for emerging Florida companies.⁶ In part, the act created the ICPR, a private-public partnership that operates as a non-profit corporation. The department’s Division of Strategic Business Development provides support for, and works closely with, the ICPR.⁷ The ICPR also operates with the support of mentors, advisors, and donors.⁸

¹ National Venture Capital Association, *Funding Innovation: How Venture Funded Startups Grow, Transform and Impact the U.S. Economy*, available at <https://nvca.org/ecosystem/funding-innovation/> (last visited Feb. 5, 2018).

² See note 1, *supra* National Venture Capital Association.

³ Florida Office of Economic and Demographic Research, *Return-on-Investment of the Florida Microfinance Loan and Microfinance Guarantee Programs*, p. 37, (Jan. 2018), available at <http://edr.state.fl.us/Content/returnoninvestment/MicrofinanceLoanandGuaranteeProgams.pdf> (last visited Feb. 5, 2018).

⁴ Florida Trend, *Business FLORIDA: Your 2018 Florida Opportunity Guide, Florida’s Venture Capital Firms*, (Sept. 22, 2017) available at <http://www.floridatrend.com/article/17615/floridas-venture-capital-firms--2015> (last visited Feb. 5, 2018).

⁵ Cromwell Schmisser, *Program Evaluation of the US Department of Treasury State Small Business Credit Initiative* p. 61 (Oct. 2016), available at https://www.treasury.gov/resource-center/sb-programs/Documents/SSBCI_pe2016_Full_Report.pdf (last visited Feb. 5, 2018).

⁶ Chapter 2007-189, L.O.F., codified as ss. 288.9621-288.9625, F.S.

⁷ Section 20.60, F.S.; Florida Department of Economic Opportunity, *Long Range Program Plan Fiscal Year 2018-2019 through 2022-2023*, p 19 (September 29, 2017) available at <http://floridafiscalportal.state.fl.us/Document.aspx?ID=17087&DocType=PDF> (last visited Feb. 5, 2018).

⁸ Florida Department of Economic Opportunity, *Long Range Program Plan Fiscal Year 2018-2019 through 2022-2023*, see note 7, *supra* at p. 42.

The ICPR assists in the commercialization of products developed by research and development activities of innovation businesses, publicly supported universities and colleges, research institutes, and other publicly supported organizations within Florida. Specifically, the ICPR administers company support services and seed capital funding programs to help early-stage businesses or ideas for businesses grow and thrive in Florida.⁹

The ICPR has two primary locations, one at the University of Florida in Gainesville and the other at Florida Atlantic University in Boca Raton. A board of directors governs the ICPR and is responsible for managing the ICPR's funds, presenting the ICPR's annual report, and overseeing the ICPR's general affairs.¹⁰ The board of directors is composed of the executive director of the department; the president of the university where the ICPR is located, or when the ICPR is located at multiple universities, the presidents' agreed upon designee; and three directors appointed by the Governor.

The ICPR matches commercially viable technologies with management talent and capital. Additionally, the ICPR focuses on technologies and companies that originate from publicly supported organizations across the state and companies in Florida's target industries.¹¹

The ICPR accepts business partners through an application process that requires a recommendation from a publicly supported organization and a review of the business' plans and technology information.

Florida Technology Seed Capital Fund¹²

The ICPR also administers the Florida Technology Seed Capital Fund (the Fund) as a corporate subsidiary. The Fund was preceded by the Florida Research Commercialization matching Grant Program and the ICPR's Seed Capital Accelerator Program (SCAP), which expired in 2013 by effect of law.¹³

A company is eligible to receive investment from the Fund only after undergoing a peer-reviewed process undertaken by the Fund's investor advisor board, which examines:¹⁴

- The company's overall health and ability for growth, including its intellectual property position, management capability, paths to market or commercialization, growth-potential, and ability to leverage additional funding;
- Whether the company was identified by a publicly funded research institution;

⁹ See note 7, *supra*, Fla. Dept. of Economic Opportunity at 21; Florida Institute for Commercialization of Public Research, *Who We Are*, <http://www.florida-institute.com/who-we-are> (last visited Feb. 5, 2018).

¹⁰ Section 288.9625, F.S. Florida Institute for Commercialization of Public Research, *Who We Are: Board of Directors*, available at <http://www.florida-institute.com/about/board-of-directors> (last visited Feb. 5, 2018).

¹¹ Section 288.106(2)(q), F.S.

¹² Ch. 2007-189, L.O.F., s. 288.9625, F.S., Florida Institute for Commercialization of Public Research, *Company Funding*, available at <http://www.florida-institute.com/programs/company-funding> (last visited Feb. 5, 2018).

¹³ See s. 288.9552, F.S. (2011), ch. 2010-147, Laws of Fla.

¹⁴ Section 288.9625(3)-(4), F.S.

- If the company is a target industry business, as defined in s. 288.106(2), F.S., relating to the Innovation Incentive Program;¹⁵
- If the company was identified by a private-sector lead investor who has performed industry-standard due diligence; and
- The company's proposal, and found it satisfactory.

Through the Fund, the ICPR provides seed funding in amounts of \$50,000 to \$300,000 to qualified startups, either as debt or equity. As of the end of fiscal year 2015, the ICPR funded 39 companies.¹⁶

Economic Impact

The ICPR reports that, in fiscal year 2017, it contributed to the creation of 2,214 jobs in Florida and generated a total economic impact of \$340 million.¹⁷ Since 2007, the Legislature has appropriated an estimated \$33 million in state funds to the ICPR for operating costs, grants, loans, and seed stage funds.¹⁸ The ICPR did not receive any funding in fiscal year 2017.¹⁹

III. Effect of Proposed Changes:

Institute for Commercialization of Florida Technology

CS/SB 1314 creates the Institute for Commercialization of Florida Technology (institute) as a successor to the ICPR. The institute differs from the ICPR in several ways. Namely, the institute: (1) will be operated by a private fund manager rather than a professional staff; (2) will no longer partner with publicly supported universities or research institutes to support their commercialization efforts; and (3) will not be supported by or function under the department.

Section 3 amends s. 288.9622, F.S., to evince legislative intent to permit the use of a private fund manager in the effort to reduce the operational costs of the Fund and the SCAP in order to increase the availability of investment capital for Florida's emerging businesses. It is the goal of the Legislature to operate these entities without requiring ongoing state expenditures.

¹⁵ An innovation business is "a business expanding or locating in this state that is likely to serve as a catalyst for the growth of an existing or emerging technology cluster or will significantly impact the regional economy in which it is to expand or locate."

¹⁶ Florida Institute for Commercialization of Public Research, *New Study Unveils Economic Impacts of Institute for Commercialization of Public Research*, available at <http://www.florida-institute.com/news/new-study-unveils-economic-impacts-of-institute-commercialization-of-public-research-0> (last visited Feb. 5, 2018). *See also*, Daszkal Bolton, note 14, *supra*.

¹⁷ Washington Economics Group, Inc., *The FY-2017 Economic Development Impacts of the Florida Institute for the Commercialization of Public Research* (Aug. 21, 2017), on file with the Committee on Commerce and Tourism. *See also*, Florida Institute for Commercialization of Public Research, *Institute for Commercialization of Public Research Delivers \$970 Million Impact to Florida Seven-Year Impacts Increased Significantly as Companies Continued to Grow*, available at <http://www.florida-institute.com/news/institute-commercialization-of-public-research-delivers-970-million-impact-florida-seven-year> (last visited Feb. 5, 2018).

¹⁸ Florida Office of Economic and Demographic Research, *Return-on-Investment of the Florida Microfinance Loan and Microfinance Guarantee Programs* p. 43-45 (Jan. 2018), available at <http://edr.state.fl.us/Content/returnoninvestment/MicrofinanceLoanandGuaranteeProgams.pdf> (last visited Feb. 5, 2018).

¹⁹ Nancy Dahlberg, Miami Herald, *Tech Funders, Startups Already Feeling Sting of State Budget Cuts*, (Jul. 12, 2017), available at <http://www.miamiherald.com/news/business/article160608399.html> (last visited Feb. 5, 2018).

The institute's mandate is to assist in the commercialization of products developed by innovation businesses, and to advise them about how to restructure existing management, operations, product development, or service development to attract further business opportunities.

Board of Directors

Section 5 reorganizes the Board of Directors (Board) to consist of three members instead of five and provides for succession of directors whose terms have ended. The Board's duties include oversight of the private fund manager's activities; performance of duties as outlined by the institute's bylaws; and provision of an annual report of the institute's activities to the Governor, President of the Senate, and Speaker of the House. Current law requires the Board to manage the ICPR's affairs and to report to the president of the University where the ICPR is located.

The Board must have expertise in selecting and supervising early stage investment managers or in fiduciary management of investment funds and other pertinent areas of expertise.

The directors may not receive compensation for their service, but may be reimbursed for expenses as approved by the private fund manager pursuant to s. 112.061, F.S. Additionally, the directors may not have a financial interest in any investment in any of the institute's portfolio companies, and are subject to any restriction on conflicts of interest as specified in the institute's organizational documents.

Private Fund Manager

Eligibility

Section 5 provides that the private fund manager (fund manager) must be a for-profit limited liability company or a for-profit corporation that was formed and is governed and operated in accordance with ch. 605 or 607, F.S. Additionally, the fund manager may not be a public corporation or instrumentality of the state, is not subject to ch. 287, F.S., regarding procurement of goods and services; and is not governed by code of ethics provisions in part III of ch. 112, F.S.

The fund manager must be experienced in the field, and must specifically have:

- Expertise and experience in the management and operation of early stage companies in Florida;
- Experience with early stage business ventures investments in Florida;
- Working knowledge and understanding of the institute's investment portfolio and relevant industries of those companies; and
- Individuals in its employ who have knowledge of the institute's investment portfolio and its companies, as well as financial, technical, and business expertise to manage the technology fund's activity.

Duties

Current law directs the Board and professional staff to manage the ICPR; the bill grants management duties of the institute to a fund manager.

Section 5 provides for the fund manager's duties as they relate to the institute; **section 6** provides for the duties as they relate to the Fund. They are substantially the same duties.

The fund manager is required to:

- Manage the investment-related affairs of the institute, including management of the assets of the institute's accelerator program and technology fund investment portfolios;
- Conduct activities on the institute's behalf in accordance with law; and
- Issue an annual report to the Board by November 1 each year. The annual report is a public record, and must include information on any assistance provided to an innovation business; a description of the benefits that accrue to the state as a result of the institute's activity; and independently audited financial statements, including statements of the expenditures for personnel, management fees, administration, and operational costs.

The fund manager is permitted, but not required, to:

- Negotiate terms of investment, sale, and liquidation with portfolio and nonportfolio companies;
- Execute contracts and contract amendments with portfolio and nonportfolio companies;
- Seek new qualified companies to participate in the Fund;
- Receive and remit investment capital from the sale or liquidation of any part of the institute's investment portfolio, loan proceeds, or other investment returns;
- Mentor, assist with the development of marketing information or business plans, and assist with attracting capital investment and other resources to a portfolio company in order to foster its growth, marketing, or business success;
- Market the Fund and accelerator program to potential investors;
- Facilitate meetings between prospective investors and the institute's portfolio companies; and
- Collaborate with publicly supported organizations that may be able to provide further resources or special knowledge to the institute's portfolio companies.

The fund manager is paid reasonable fees consistent with the standard practices of the fund management industry, consisting of:

- An operational management fee, including reimbursement of expenses that is paid from the proceeds of loans repaid to the accelerator program, or other capital, proceeds, and returns available in the Fund;
- A portfolio fee paid from proceeds of each sale or asset liquidation from the institute's investment portfolio; and
- A closing fee paid from the investment amount paid by the Fund to a company at the closing of each investment.

Current law prohibits the ICPR from charging for its services unless they are provided to a private company, as compared to a state university or its affiliated organizations.

Portfolio Companies and Organizations

Section 5 outlines the institute's mission, which is to develop partnerships with, in particular, "innovation businesses" as defined in s. 288.1089, F.S., relating to the Innovation Incentive Program. **Section 6** provides that the institute must also strive to invest in target industry

businesses, as defined in s. 288.106(2)(q), F.S., which represent diverse and stable markets. Unlike the ICPR, the institute will also be able to invest in businesses outside these fields.

The institute may select a company or organization for partnership with the institute or for funding from the Fund only after the fund manager, using processes modeled on the investment industry's standard practices, has evaluated whether the company:

- Has a strong intellectual property position and an identifiable method to commercialization of its technology or product;
- Is capable of creating jobs and providing additional capital;
- Will be able to garner additional funding;
- Is a target industry business as defined in s. 288.106(2), F.S., which requires that the business show capacity for future growth and economic stability; contribute toward an expansion or diversification of Florida's economy and be independent from Florida's unique markets or resources; and have an overall positive economic impact on the state, especially by paying relatively high wages to its workers; and
- Was identified by a private-sector lead investor who performed industry-standard due diligence in selecting the company.

Additionally, the company or organization must be based in Florida.

Applicant companies who wish to partner with the institute or receive funding from the Fund are subjected to a substantially similar review process.

Although portfolio companies that receive funding from the current Fund are limited to initial investments of \$50,000-\$300,000, the bill does not impose any such limits on investment under the amended Fund.

Partnership with Florida's Universities, Colleges, and Publicly-Supported Research Institutions

The institute, unlike the ICPR, is required neither to be located at a Florida University or research center, nor to assist such institutions with the commercialization of their developing technology.

Disassociation from the Department

Section 1 amends s. 20.60, F.S. to remove management of the ICPR and promotion of the commercialization of products, services, or ideas developed in public universities or institutions from the department's duties and purposes.

Section 5 amends s. 288.9625 to remove the requirement that the ICPR's articles of incorporation be approved by the department.

Public Records and Meetings Exemption

Section 7 amends s. 288.9627, F.S., to transfer the public records and meetings exemption that previously applied to the ICPR to the institute.

This section makes the following materials held by the institute exempt from disclosure pursuant to s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution:

- Documents and materials that related to a business' methods of manufacture or production, potential trade secrets, or patentable material that is provided to the institute by a proprietor;
- Information that would identify an anonymous investor or potential investor;
- Information received from another person, state, nation, or the Federal Government, which is confidential or exempt pursuant to the originator's laws; and
- Proprietary confidential business information.

Additionally, the bill makes exempt from Florida's public meetings laws those portions of the institute's meetings wherein information that is confidential and exempt according to Florida law is discussed.

Miscellaneous

Section 2 makes conforming changes to s. 288.9621, F.S.

Section 4 provides definitions for terms used in the Florida Capital Formation Act.

Section 8 provides an effective date of July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Depending on the financial performance of the Fund and the institute, there may be a reduction in the funds available for investment in private businesses that seek investment capital.

C. Government Sector Impact:

Although the ICPR did not receive any legislative appropriation in fiscal year 2017-2018, the bill may result in a reduction in appropriations to the successor institute for its management and related expenses, by permitting the institute to fund itself through its activities.

University and other publicly funded research institutes may see a reduction in funds available for the commercialization of their technology because of the privatization of the institute.

The ICPR's staff and related expenses will no longer be necessary. According to an independent audit of the ICPR completed in fiscal year 2016, the total program expenses were \$3,732,937.²⁰ The fund manager will require expenditures pursuant to statute, but these will be made from profits of the institute, rather than state appropriation.

VI. Technical Deficiencies:

It is unclear whether the duties outlined in s. 288.9625(5), F.S., apply to the Board of Directors or the fund manager.

VII. Related Issues:

The bill refers to the SCAP or "Accelerator Program." The Accelerator Program expired in 2013, and therefore does not require any ongoing operational funding. The Accelerator Program, however, does have outstanding loans that will not be due until December 2019, and therefore may require actions by the fund manager for purposes of collection and reinvestment of the funds.²¹

The bill provides that the institute must create the Fund; the Legislature could directly create the Fund.

The bill requires that a company or organization be "based in" Florida to receive assistance from the institute. This term may need to be defined to provide clarity in interpretation.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 20.60, 288.9621, 288.9622, 288.9623, 288.9625, 288.96255, and 288.9627.

²⁰ Daszkal Bolton, *Institute for Commercialization of Public Research, Inc.: Consolidated Financial Statements with Supplemental Schedule and Information* (Jun. 30, 2016), available at https://flauditor.gov/pages/nonprofit_forprofit%20rpts/2016%20institute%20for%20commercialization%20of%20public%20research.pdf (last visited Feb. 5, 2018).

²¹ See note 21, Daszkal Bolton, *supra* at p. 21.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

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

CS by Commerce and Tourism on February 6, 2018:

The CS clarifies the terms for directors appointed before July 1, 2018, and the succession of any director appointed thereafter.

B. Amendments:

None.



363924

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/06/2018	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 265 - 278
and insert:

(a)(e) The board of directors shall consist of three
directors appointed pursuant to the procedures and requirements
of this section ~~by the Governor~~ to 3-year staggered terms, to
which the directors may be reappointed.

(b) For any director appointed before July 1, 2018, the
term of service for that director may continue through the end



363924

11 of his or her current term. The vacancy created by the
12 expiration of such term must be filled pursuant to the
13 procedures and requirements of this section.

14 (c) The bylaws of the institute shall be amended
15 accordingly by the board of directors to reflect the
16 requirements of this section.

By Senator Brandes

24-00987A-18

20181314__

1 A bill to be entitled
 2 An act relating to the Florida Capital Formation Act;
 3 amending s. 20.60, F.S.; deleting the requirement that
 4 the Department of Economic Opportunity manage certain
 5 activities related to the commercialization of
 6 specified products, services, and ideas; specifying
 7 that the Institute for Commercialization of Florida
 8 Technology is not an appropriate direct-support
 9 organization; amending s. 288.9621, F.S.; including s.
 10 288.96255, F.S., in the Florida Capital Formation Act;
 11 amending s. 288.9622, F.S.; revising legislative
 12 intent; amending s. 288.9623, F.S.; defining terms;
 13 amending s. 288.9625, F.S.; redesignating the
 14 Institute for the Commercialization of Public Research
 15 as the Institute for Commercialization of Florida
 16 Technology; deleting provisions regarding the
 17 institute's responsibilities; requiring that the
 18 investment-related affairs of the institute be managed
 19 by the private fund manager and overseen by the board
 20 of directors; restructuring the board of directors and
 21 the selection process for the board of directors;
 22 specifying term limits of the board members under
 23 certain circumstances; requiring the board of
 24 directors to amend the bylaws of the institute under
 25 certain circumstances; providing that a director is
 26 subject to restrictions on certain conflicts of
 27 interest; prohibiting a director from having a
 28 financial interest in certain investments; authorizing
 29 a director to be reimbursed for certain expenses;

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

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30 granting the institute certain powers; requiring the
 31 institute to indemnify certain persons; delegating
 32 certain duties to the board of directors; revising to
 33 whom the board must provide a copy of the annual
 34 report and who may require and receive supplemental
 35 data relative to the institute's operation; specifying
 36 that certain requirements be met before the private
 37 fund manager is authorized to make an investment in a
 38 company, on behalf of the institute; deleting
 39 provisions relating to certain duties of the
 40 institute; deleting provisions relating to certain
 41 fees charged by the institute and the prohibition on
 42 using capital in support of certain entities;
 43 specifying that the annual report is considered a
 44 public record subject to certain exemptions; revising
 45 the requirements of the institute's annual report;
 46 listing requirements and prohibitions for the private
 47 fund manager; stating the purpose of the institute's
 48 use of the private fund manager; requiring the private
 49 fund manager to assume the management of certain
 50 assets; authorizing the private fund manager to act on
 51 behalf of the institute for certain purposes;
 52 requiring that the private fund manager be paid
 53 certain fees; authorizing the private fund manager to
 54 undertake certain activities on behalf of the
 55 institute; requiring the private fund manager to issue
 56 an annual report to the board of directors by a
 57 specific date; specifying that the annual report is
 58 considered a public record subject to certain

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

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exemptions; requiring that the report contain certain information; amending s. 288.96255, F.S.; requiring that certain proceeds be returned to the Florida Technology Seed Capital Fund after the payment of certain costs and fees; requiring the institute to employ a private fund manager; requiring the private fund manager to perform specific duties; requiring that the private fund manager receive certain fees and costs at a specified time; requiring the private fund manager to use a certain process to evaluate a proposal; requiring the private fund manager to consider certain factors when approving a company for investment; deleting specific requirements for the investment of funds; authorizing the private fund manager, in addition to the institute, to perform certain tasks; amending s. 288.9627, F.S.; conforming provisions to changes made by this act; providing an effective date.

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

Section 1. Paragraph (e) of subsection (4) and paragraph (b) of subsection (9) of section 20.60, Florida Statutes, are amended to read:

20.60 Department of Economic Opportunity; creation; powers and duties.—

(4) The purpose of the department is to assist the Governor in working with the Legislature, state agencies, business leaders, and economic development professionals to formulate and

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implement coherent and consistent policies and strategies designed to promote economic opportunities for all Floridians. To accomplish such purposes, the department shall:

(e) Manage the activities of public-private partnerships and state agencies in order to avoid duplication and promote coordinated and consistent implementation of programs in areas including, but not limited to, tourism; international trade and investment; business recruitment, creation, retention, and expansion; minority and small business development; rural community development; ~~commercialization of products, services, or ideas developed in public universities or other public institutions~~; and the development and promotion of professional and amateur sporting events.

(9) The executive director shall:

(b) Serve as the manager for the state with respect to contracts with Enterprise Florida, Inc., ~~the Institute for the Commercialization of Public Research~~, and all applicable direct-support organizations. To accomplish the provisions of this section and applicable provisions of chapter 288, and notwithstanding the provisions of part I of chapter 287, the director shall enter into specific contracts with Enterprise Florida, Inc., ~~the Institute for the Commercialization of Public Research~~, and other appropriate direct-support organizations. Such contracts may be for multiyear terms and must ~~shall~~ include specific performance measures for each year. For purposes of this section, the Florida Tourism Industry Marketing Corporation and the Institute for Commercialization of Florida Technology ~~are not is not an~~ appropriate direct-support organizations ~~organization~~.

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Section 2. Section 288.9621, Florida Statutes, is amended to read:

288.9621 Short title.—Sections 288.9621-288.9625 Sections ~~288.9621-288.9625~~ may be cited as the "Florida Capital Formation Act."

Section 3. Section 288.9622, Florida Statutes, is amended to read:

288.9622 Findings and intent.—

(1) The Legislature finds and declares that there is a need to increase the availability of seed capital and early stage investment venture equity capital for emerging companies in the state, including, without limitation, businesses enterprises in life sciences, information technology, advanced manufacturing processes, aviation and aerospace, and homeland security and defense, as well as other industries of strategic importance to this state strategic technologies.

(2) It is the intent of the Legislature that ss. 288.9621-288.9625 ~~ss. 288.9621-288.9625~~ serve to mobilize private investment in a broad variety of ~~venture capital~~ partnerships in diversified industries and geographies; retain private sector investment criteria focused on rate of return; allow the use the services of highly qualified private fund managers experienced in the seed and early stage development industry in this state; and outline the use, qualifications, and activities of the private management by a private fund manager of the assets of the Seed Capital Accelerator Program and the Florida Technology Seed Capital Fund investment portfolio of the Institute for Commercialization of Florida Technology venture capital industry regardless of location; facilitate the organization of the

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~~Florida Opportunity Fund as an investor in seed and early stage businesses, infrastructure projects, venture capital funds, and angel funds; and precipitate capital investment and extensions of credit to and in the Florida Opportunity Fund.~~

(3) It is the intent of the Legislature to mobilize investment venture equity capital ~~for investment~~ in such a manner as to result in a significant potential to create new businesses and jobs in this state which that are based on high growth potential technologies, products, or services and which that will further diversify the economy of this state.

(4) It is the intent of the Legislature to reduce the ongoing operational cost and burden of managing the Florida Technology Seed Capital Fund and the Seed Capital Accelerator Program to this state by engaging a private asset management entity in this state which is familiar with the seed and early stage investment industry in this state. This entity would be responsible for the management of the assets of the Seed Capital Accelerator Program and the Florida Technology Seed Capital Fund investment portfolio without requiring ongoing budget expenditures by this state that an institute be created to mentor, market, and attract capital to such commercialization ventures throughout the state.

Section 4. Section 288.9623, Florida Statutes, is amended to read:

288.9623 Definitions.—As used in ss. 288.9621-288.9625, ~~the term ss. 288.9621-288.9625:~~

(1) "Accelerator program" means the Seed Capital Accelerator Program managed by the institute.

(2) ~~(1)~~ "Board" means the board of directors of the Florida

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Opportunity Fund.

~~(3)(2)~~ "Fund" means the Florida Opportunity Fund.

(4) "Institute" means the Institute for Commercialization of Florida Technology.

(5) "Investment portfolio" means individual or collective investment assets held under the technology fund.

(6) "Net profits" means the total gross proceeds received from the sale or liquidation of an asset of the investment portfolio less any costs, legal fees, professional fees, consulting fees, government fees, brokerage fees, taxes, management fees pursuant to s. 288.9625(12)(b), disbursement to private investors pursuant to s. 288.96255(6), or other fees, costs, and expenses incurred in the sale or liquidation of any of the investment portfolio assets.

(7) "Portfolio companies" means the companies who are part of the Florida Technology Seed Capital Fund investment portfolio.

(8) "Private fund manager" means the private entity, or its designee, selected to manage the investment portfolio on behalf of the institute.

(9) "Technology fund" means the Florida Technology Seed Capital Fund managed by the institute.

Section 5. Section 288.9625, Florida Statutes, is amended to read:

288.9625 Institute for the Commercialization of Florida Technology Public Research.—There is established at a public university or research center in this state the Institute for the Commercialization of Florida Technology Public Research.

(1) The institute shall be a nonprofit ~~not-for-profit~~

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corporation registered, incorporated, and operated in accordance with chapter 617.

(2) The purpose of the institute is to assist in the commercialization of products developed by the research and development activities of an innovation business, including, but not limited to, those as defined in s. 288.1089, a publicly supported college, university, or research institute, or any other publicly supported organization in this state. The institute shall fulfill its purpose in the best interests of the state. The institute:

(a) Is a corporation primarily acting as an instrumentality of the state pursuant to s. 768.28(2), for the purposes of sovereign immunity;

(b) Is not an agency within the meaning of s. 20.03(11);

(c) Is subject to the open records and meetings requirements of s. 24, Art. I of the State Constitution, chapter 119, and s. 286.011;

(d) Is not subject to the ~~provisions of~~ chapter 287;

(e) Is ~~Shall be~~ governed by the code of ethics for public officers and employees as set forth in part III of chapter 112; and

(f) May create corporate subsidiaries. ~~+~~

~~(g) Shall support existing commercialization efforts at state universities; and~~

~~(h) May not supplant, replace, or direct existing technology transfer operations or other commercialization programs, including incubators and accelerators.~~

(3) The articles of incorporation of the institute must be approved in a written agreement with the department. The

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233 ~~agreement and the articles of incorporation shall:~~

234 (a) Provide that the institute shall provide equal
235 employment opportunities for all persons regardless of race,
236 color, religion, gender, national origin, age, handicap, or
237 marital status;

238 (b) Provide that the institute is subject to the public
239 records and meeting requirements of s. 24, Art. I of the State
240 Constitution;

241 (c) Provide that all officers, directors, and employees of
242 the institute are ~~shall be~~ governed by the code of ethics for
243 public officers and employees as set forth in part III of
244 chapter 112;

245 (d) Provide that members of the board of directors of the
246 institute are responsible for the prudent use of all public and
247 private funds and that they will ensure that the use of funds is
248 in accordance with all applicable laws, bylaws, and contractual
249 requirements; and

250 (e) Provide that the fiscal year of the institute is from
251 July 1 to June 30.

252 (4) The investment-related affairs of the institute shall
253 be managed by the private fund manager, and overseen by a board
254 of directors who shall serve without compensation. Each director
255 shall have only one vote. The chair of the board of directors
256 shall be selected by a majority vote of the directors, a quorum
257 being present. ~~The board of directors shall consist of the~~
258 ~~following five members:~~

259 ~~(a) The executive director of the department, or the~~
260 ~~director's designee.~~

261 ~~(b) The president of the university where the institute is~~

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262 ~~located or the president's designee unless multiple universities~~
263 ~~jointly sponsor the institute, in which case the presidents of~~
264 ~~the sponsoring universities shall agree upon a designee.~~

265 (a)(e) The board of directors shall consist of three
266 directors appointed by the Governor to 3-year staggered terms,
267 to which the directors may be reappointed.

268 (b) If there is any change to the number of directors by an
269 amendment to the Florida Capital Formation Act:

270 1. The term and service for a director appointed by the
271 Governor must continue through the end of his or her current
272 term as of the effective date of the amendment;

273 2. The term and service for a director not appointed by the
274 Governor and who has served on the board of directors in excess
275 of 3 years must cease and terminate as of the effective date of
276 the amendment; and

277 3. The bylaws of the institute shall be amended accordingly
278 by the board of directors.

279 (c) Upon vacancy, or within 90 days before an anticipated
280 vacancy by the expiration of a term of a director, the private
281 fund manager shall submit a list of three eligible nominees,
282 which may include the incumbent director, to replace the
283 outgoing director. The board of directors, voting along with the
284 private fund manager, may appoint a director from the nominee
285 list or may request and appoint a director from a new list of
286 three nominees that were not included on the previous list.

287 (d) The persons appointed as replacement directors must
288 include persons who have expertise in the area of the selection
289 and supervision of early stage investment managers or in the
290 fiduciary management of investment funds and other areas of

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291 expertise as considered appropriate.

292 (e) Directors are subject to any restrictions on conflicts
 293 of interest specified in the organizational documents and may
 294 not have a financial interest in any venture capital investment
 295 in any portfolio company.

296 (f) Directors may be reimbursed for all reasonable,
 297 necessary, and actual expenses as determined and approved by the
 298 private fund manager pursuant to s. 112.061.

299 (g) The institute shall have all powers granted under its
 300 organizational documents and shall indemnify its directors and
 301 the private fund manager to the broadest extent permissible
 302 under the laws of this state.

303 (5) The board of directors shall oversee the private fund
 304 manager to ensure consistency with the Florida Capital Formation
 305 Act, to perform those duties as may be delegated to it in the
 306 bylaws of the institute, and to provide a copy of the
 307 institute's annual report to the Governor, the President of the
 308 Senate, and the Speaker of the House of Representatives, and the
 309 president of the university at which the institute is located.

310 (6) The department, the president and the board of trustees
 311 of the university where the institute is located, the Auditor
 312 General, and the Office of Program Policy Analysis and
 313 Government Accountability may require and receive from the
 314 institute or its independent auditor any detail or supplemental
 315 data relative to the operation of the institute.

316 (7) To the extent funds for investment are available in the
 317 technology fund, the private fund manager, on behalf of the
 318 institute, may make an investment in a company or organization
 319 if all of the following requirements are met:

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320 (a) Before providing assistance, the institute accepted To
 321 be eligible for assistance, the company or organization
 322 attempting to commercialize its product based on the guidelines
 323 under s. 288.96255(4) must be accepted by the institute before
 324 receiving the institute's assistance.

325 (b) The company or organization is based in this state
 326 institute shall receive recommendations from any publicly
 327 supported organization that a company that is commercializing
 328 the research, technology, or patents from a qualifying publicly
 329 supported organization should be accepted into the institute.

330 (c) The institute shall thereafter review the business
 331 plans and technology information of each such recommended
 332 company. If accepted, the institute shall mentor the company,
 333 develop marketing information on the company, and use its
 334 resources to attract capital investment into the company, as
 335 well as bring other resources to the company which may foster
 336 its effective management, growth, capitalization, technology
 337 protection, or marketing or business success.

338 ~~(8) The institute shall:~~

339 ~~(a) Maintain a centralized location to showcase companies~~
 340 ~~and their technologies and products;~~

341 ~~(b) Develop an efficient process to inventory and publicize~~
 342 ~~companies and products that have been accepted by the institute~~
 343 ~~for commercialization;~~

344 ~~(c) Routinely communicate with private investors and~~
 345 ~~venture capital organizations regarding the investment~~
 346 ~~opportunities in its showcased companies;~~

347 ~~(d) Facilitate meetings between prospective investors and~~
 348 ~~eligible organizations in the institute;~~

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349 ~~(e) Hire full-time staff who understand relevant~~
 350 ~~technologies needed to market companies to the angel investors~~
 351 ~~and venture capital investment community; and~~
 352 ~~(f) Develop cooperative relationships with publicly~~
 353 ~~supported organizations all of which work together to provide~~
 354 ~~resources or special knowledge that is likely to be helpful to~~
 355 ~~institute companies.~~
 356 (8)(9) Except as provided under s. 288.96255, the institute
 357 may not develop or accrue any ownership, royalty, patent, or
 358 other such rights over or interest in companies or products in
 359 the institute except in connection with financing provided
 360 directly to client companies and shall maintain the
 361 confidentiality of proprietary information.
 362 ~~(10) The institute may not charge for services provided to~~
 363 ~~state universities and affiliated organizations, community~~
 364 ~~colleges, or state agencies; however, the institute may deliver~~
 365 ~~and charge for services to private companies and affiliated~~
 366 ~~organizations if providing a service does not interfere with the~~
 367 ~~core mission of the institute. The institute may not use its~~
 368 ~~capital in support of private companies or affiliated~~
 369 ~~organizations whose products were not developed by research and~~
 370 ~~development activities of a publicly supported college,~~
 371 ~~university, or research institute, or any other organization.~~
 372 (9)(11) By December 1 of each year, the institute shall
 373 issue an annual report concerning its activities to the
 374 Governor, the President of the Senate, and the Speaker of the
 375 House of Representatives. The annual report shall be considered
 376 a public record, as provided in paragraph (3)(b), subject to any
 377 appropriate exemptions under s. 288.9627. The annual report must

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378 ~~shall~~ include the following:
 379 (a) Information on any assistance provided by the institute
 380 to an innovation business, as defined in s. 288.1089; ~~a publicly~~
 381 ~~supported college, university, or research institute; or any~~
 382 ~~other publicly supported organization in the state.~~
 383 (b) A description of the benefits to this state resulting
 384 from the institute, including the number of businesses created,
 385 associated industries started, the number of jobs created, and
 386 the growth of related projects.
 387 (c) Independently audited financial statements, including
 388 statements that show receipts and expenditures during the
 389 preceding fiscal year for personnel, management fees,
 390 administration, and operational costs of the institute.
 391 (10) The private fund manager:
 392 (a) Must be a for-profit limited liability company or a
 393 for-profit corporation formed, governed, and operated in
 394 accordance with chapter 605 or chapter 607, respectively.
 395 (b) Shall conduct activities on behalf of the institute
 396 which are consistent with the purposes set forth in this
 397 section.
 398 (c) Must have expertise and experience in the management
 399 and operation of early stage companies in this state.
 400 (d) Must have experience with investment in early stage
 401 ventures in this state and have a working knowledge and
 402 understanding of the investment portfolio and the relevant
 403 industries of the portfolio companies in this state.
 404 (e) Shall employ personnel and professionals who have
 405 knowledge of the investment portfolio and portfolio companies of
 406 the institute, as well as financial, technical, and business

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expertise to manage the technology fund activity.

(f) May not be a public corporation or instrumentality of the state.

(g) Is not a corporation primarily acting as an instrumentality of the state pursuant to s. 768.28(2), for the purposes of sovereign immunity.

(h) Is not an agency within the meaning of s. 20.03(11).

(i) Is not subject to chapter 287.

(j) May not be governed by the code of ethics for public officers and employees as set forth in part III of chapter 112.

(11) The purpose of the institute's use of a private fund manager is to alleviate the state's burden of the continued and future operational and management costs related to the technology fund and accelerator program, while allowing the institute, through the activities of the private fund manager, to continue to foster greater private-sector investment funding, to encourage seed-stage investments in startup and early stage companies, and to advise companies about how to restructure existing management, operations, product development, or service development to attract advantageous business opportunities.

(12) The private fund manager shall assume the management of the assets of the accelerator program and the technology fund investment portfolios associated with the institute.

(a) The private fund manager has the authority on behalf of the institute to:

1. Negotiate investment, sale, and liquidation terms with portfolio and nonportfolio companies;

2. Develop and execute contracts, or amendments thereto, with portfolio and nonportfolio companies;

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3. Seek new qualified companies for the investment of funds from the technology fund;

4. Receive, on behalf of the institute, investment capital from the sale or liquidation of any portion of the investment portfolio, loan proceeds, or other investment returns, and remit such capital, proceeds, and returns to the technology fund pursuant to s. 288.96255, except as otherwise provided in this section and s. 288.96255; and

5. Perform additional duties set forth in s. 288.96255.

(b) The private fund manager shall be paid reasonable fees consistent with industry fund management practices and consisting of:

1. An operational management fee, including the reimbursement of expenses, paid from the proceeds of the repayment of loans from the accelerator program or other capital, proceeds, and returns available in the technology fund;

2. A portfolio fee paid from the proceeds of each sale or liquidation of assets or portions of the assets of the investment portfolio; and

3. A closing fee paid from the investment amount paid by the technology fund to a company at the closing of each investment.

(13) The private fund manager may undertake the following activities on behalf of the institute:

(a) Mentor, assist with the development of marketing information, and assist with attracting capital investment, as well as bring other resources to the company which may foster its effective management, growth, capitalization, technology protection, or marketing or business success;

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(b) Communicate with private investors and venture capital organizations regarding investment opportunities in the portfolio companies of the technology fund and accelerator program;

(c) Facilitate meetings between prospective investors and the companies; and

(d) Develop cooperative relationships with publicly supported organizations that work together to provide resources or special knowledge likely to be helpful to portfolio companies.

(14) By November 1 of each year, the private fund manager shall issue an annual report to the board of directors of the institute concerning the activities the private fund manager conducted which relate to existing accelerator program and technology fund investments in order for the board to be in compliance with its report obligations under subsection (9). The annual report provided by the private fund manager shall be considered a public record, as provided in paragraph (3) (b), subject to any appropriate exemptions under s. 288.9627. The annual report, at a minimum, must include:

(a) A description of the benefits to this state resulting from the assets of the accelerator program and technology fund, including the number of jobs created, the amount of capital the companies raised, and other benefits relating to increased research expenditures and company growth.

(b) Independently audited financial statements related to the receipt and calculation of the net profits of the investment portfolio.

Section 6. Subsection (1) and subsections (3) through (7)

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of section 288.96255, Florida Statutes, are amended to read:

288.96255 Florida Technology Seed Capital Fund; creation; duties.-

(1) The Institute for ~~the~~ Commercialization of Florida Technology Public Research shall create the Florida Technology Seed Capital Fund as a corporate subsidiary. The purpose of the technology fund is to foster greater private-sector investment funding, to encourage seed-stage investments in start-up companies, and to advise companies about how to restructure existing management, operation, or production to attract advantageous business opportunities. The net profits of the proceeds of each sale or liquidation of assets or portions of the assets of the investment portfolio must a sale of the equity held by the fund shall be returned to the technology fund for reinvestment after payment of the applicable costs, professional fees, expenses, fees pursuant to s. 288.9625(12) (b), and disbursement to private investors pursuant to paragraph (6) (e).

(3) The institute shall employ a private fund manager pursuant to s. 288.9625 ~~professionals who have both technical and business expertise~~ to manage the investment portfolio and technology fund activity. The private fund manager institute shall establish an investor advisory board comprised of venture capital professionals and early-stage investors from this and other states who shall advise the institute and guide the fund management of the technology fund and make funding recommendations, provided that capital for investment is available in the technology fund. The private fund manager shall receive reasonable fees consistent with industry practices for performing due diligence and an investment closing fee paid out

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of the technology fund at the closing of each investment in addition to reasonable attorney fees, other fees prescribed in s. 288.9625(12)(b), and other costs in connection with making an investment. ~~Administrative costs paid out of the fund shall be determined by the investor advisory board.~~

(4) The private fund manager institute shall use a thorough and detailed process that is modeled after investment industry practices the best practices of the investment industry to evaluate a proposal. In order to approve a company for investment, the private fund manager, on behalf of the institute, must consider if:

(a) The company has a strong intellectual property position, a capable management team, readily identifiable paths to market or commercialization, significant job-growth potential, the ability to provide other sources of capital to leverage the state's investment, and the potential to attract additional funding;

(b) The private fund manager has had an opportunity to complete due diligence to its satisfaction ~~company has been identified by a publicly funded research institution;~~

(c) The ~~start-up~~ company is a target industry business as defined in s. 288.106(2); and

(d) ~~The company has been identified by~~ An approved private-sector lead investor who has demonstrated due diligence typical of start-up investments in evaluating the potential of the company has identified the company. ~~and~~

~~(e) The advisory board and fund manager have reviewed the company's proposal and recommended it.~~

(5) ~~(a) Seed Funds~~ from the technology fund may be invested

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if the institute approves a company and the initial seed-stage investment. ~~The initial seed-stage investment must be at least \$50,000, but no more than \$300,000. The initial seed-stage investment requires a one-to-one, private-sector match of investment.~~

~~(b) Additional seed funds may be invested in a company if approved by the institute. The cumulative total of investment in a single company may not exceed \$500,000. Any additional investment amount requires a two-to-one, private-sector match of investment.~~

(6) The institute or private fund manager may:

(a) Provide a company with value-added support services in the areas of business plan development and strategy, the preparation of investor presentations, and other critical areas identified by the private fund manager institute to increase its chances for long-term viability and success;

(b) Encourage appropriate investment funds to become preapproved to match investment funds;

(c) Market the attractiveness of the state as an early-stage investment location; ~~and~~

(d) Collaborate with state economic-development organizations, national associations of seed and angel funds, and other innovation-based associations to create an enhanced state entrepreneurial ecosystem; ~~and-~~

(e) Transfer any portion of the assets of the investment portfolio, on behalf of the institute, into a private fund or special purpose vehicle, receive additional private investment in the private fund or special purpose vehicle, manage the private fund or special purpose vehicle, and distribute to the

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technology fund and the private investors the respective proportion of any net profits from the sale or liquidation of the assets of such private fund or special purpose vehicle.

~~(7) The institute shall annually evaluate the activities and results of the funding, taking into consideration that seed investment horizons span from 3 to 7 years.~~

Section 7. Section 288.9627, Florida Statutes, is amended to read:

288.9627 Exemptions from public records and public meetings requirements for the Institute for the Commercialization of Florida Technology Public Research.—

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

(a) "Institute for the Commercialization of Florida Technology Public Research" or "institute" means the institute established by s. 288.9625.

(b)1. "Proprietary confidential business information" means information that has been designated by the proprietor when provided to the institute as information that is owned or controlled by a proprietor; that is intended to be and is treated by the proprietor as private, the disclosure of which would harm the business operations of the proprietor and has not been intentionally disclosed by the proprietor unless pursuant to a private agreement that provides that the information will not be released to the public except as required by law or legal process, or pursuant to law or an order of a court or administrative body; and that concerns:

a. Trade secrets as defined in s. 688.002.

b. Financial statements and internal or external auditor reports of a proprietor corporation, partnership, or person

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requesting confidentiality under this statute, unless publicly released by the proprietor.

c. Meeting materials related to financial, operating, investment, or marketing information of the proprietor corporation, partnership, or person.

d. Information concerning private investors in the proprietor corporation, partnership, or person.

2. "Proprietary confidential business information" does not include:

a. The identity and primary address of the proprietor's principals.

b. The dollar amount and date of the financial commitment or contribution made by the institute.

c. The dollar amount, on a fiscal-year-end basis, of cash repayments or other fungible distributions received by the institute from each proprietor.

d. The dollar amount, if any, of the total management fees and costs paid on an annual fiscal-year-end basis by the institute.

(c) "Proprietor" means a corporation, partnership, or person that has applied for or received assistance, financial or otherwise, from the institute and that controls or owns the proprietary confidential business information.

(2) PUBLIC RECORDS EXEMPTION.—

(a) The following records held by the institute are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. Materials that relate to methods of manufacture or production, potential trade secrets, or patentable material

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received, generated, ascertained, or discovered during the course of research or through research projects conducted by universities and other publicly supported organizations in this state and that are provided to the institute by a proprietor.

2. Information that would identify an investor or potential investor who desires to remain anonymous in projects reviewed by the institute for assistance.

3. Any information received from a person from another state or nation or the Federal Government which is otherwise confidential or exempt pursuant to the laws of that state or nation or pursuant to federal law.

4. Proprietary confidential business information for 7 years after the termination of the institute's financial commitment to the company.

(b) At the time any record made confidential and exempt by this subsection, or portion thereof, is legally available or subject to public disclosure for any other reason, that record, or portion thereof, shall no longer be confidential and exempt and shall be made available for inspection and copying.

(3) PUBLIC MEETINGS EXEMPTION.—

(a) That portion of a meeting of the institute's board of directors at which information is discussed which is confidential and exempt under subsection (2) is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

(b) Any exempt portion of a meeting shall be recorded and transcribed. The board of directors shall record the times of commencement and termination of the meeting, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. An exempt portion of any

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meeting may not be off the record.

(c) A transcript and minutes of exempt portions of meetings are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(4) REQUEST TO INSPECT OR COPY A RECORD.—

(a) Records made confidential and exempt by this section may be released, upon written request, to a governmental entity in the performance of its official duties and responsibilities.

(b) Notwithstanding the provisions of paragraph (2)(a), a request to inspect or copy a public record that contains proprietary confidential business information shall be granted if the proprietor of the information fails, within a reasonable period of time after the request is received by the institute, to verify the following to the institute through a written declaration in the manner provided by s. 92.525:

1. That the requested record contains proprietary confidential business information and the specific location of such information within the record;

2. If the proprietary confidential business information is a trade secret, a verification that it is a trade secret as defined in s. 688.002;

3. That the proprietary confidential business information is intended to be and is treated by the proprietor as private, is the subject of efforts of the proprietor to maintain its privacy, and is not readily ascertainable or publicly available from any other source; and

4. That the disclosure of the proprietary confidential business information to the public would harm the business operations of the proprietor.

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697 (c)1. Any person may petition a court of competent
698 jurisdiction for an order for the public release of those
699 portions of any record made confidential and exempt by
700 subsection (2).

701 2. Any action under this subsection must be brought in Palm
702 Beach County or Alachua County, and the petition or other
703 initial pleading shall be served on the institute and, if
704 determinable upon diligent inquiry, on the proprietor of the
705 information sought to be released.

706 3. In any order for the public release of a record under
707 this subsection, the court shall make a finding that:

708 a. The record or portion thereof is not a trade secret as
709 defined in s. 688.002;

710 b. A compelling public interest is served by the release of
711 the record or portions thereof which exceed the public necessity
712 for maintaining the confidentiality of such record; and

713 c. The release of the record will not cause damage to or
714 adversely affect the interests of the proprietor of the released
715 information, other private persons or business entities, or the
716 institute.

717 (5) PENALTIES.—Any person who willfully and knowingly
718 violates this section commits a misdemeanor of the first degree,
719 punishable as provided in s. 775.082 or s. 775.083.

720 Section 8. This act shall take effect July 1, 2018.



The Florida Senate

Committee Agenda Request

To: Senator Bill Montford
Committee on Commerce and Tourism

Subject: Committee Agenda Request

Date: January 12, 2018

I respectfully request that **Senate Bill #1314**, relating to **Florida Capital Formation Act**, be placed on the:

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

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

Senator Jeff Brandes
Florida Senate, District 24

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/6/18

Meeting Date

1314

Bill Number (if applicable)

Topic FLORIDA CAPITAL FORMATION

Amendment Barcode (if applicable)

Name Lawrence Tinker

Job Title ENTREPRENEUR IN RESIDENCE

Address 410 N MONROE ST. F202

Street

Tallahassee

City

State

FL

Zip

32303

Phone 770-598-2740

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA INSTITUTE for the Commercialization of

Public Research

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

APPEARANCE RECORD

2/6/18

Meeting Date

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

SB 1314

Bill Number (if applicable)

Topic ~~The~~ Florida Capital Formation Act

Amendment Barcode (if applicable)

Name Dr. Jackson Streeter

Job Title CEO - Institute for the Commercialization of Public Research

Address 2714 SW 106th St

Street

Phone (619) 813 6018

City Gainesville FL 32609

State

Zip

Email Jackson.Streeter@Florida-Institute.com

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

Representing Institute

Appearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

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 1606

INTRODUCER: Senators Taddeo and Gibson

SUBJECT: Film and Television Production

DATE: February 5, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	McKay	CM	Pre-meeting
2.			ATD	
3.			AP	

I. Summary:

SB 1606 creates section 288.1259, F.S. establishing the Florida Motion Picture Capital Corporation (corporation) and the Florida Motion Picture Capital Account (account). The purpose of the corporation is to attract feature film and television productions to the state by using the account to assist with financing. The bill dictates the composition of the corporations' board, its financing application and approval process, formation and guidelines for the account, and production eligibility qualifications. The state cannot be held liable for any claims against the corporation or account.

The corporation is set up to receive both public and private funds, but there is no appropriation of state funds in this bill.

This bill has an effective date of July 1, 2018.

II. Present Situation:

Office of Film and Entertainment

The Office of Film and Entertainment (OFE) within the Department of Economic Opportunity (DEO) develops, markets, promotes, and provides services to Florida's entertainment industry, including serving as a liaison between the industry and government entities and facilitating access to filming locations. The Commissioner of Film and Entertainment must meet certain qualifications and is selected through a national search. The OFE is assisted by the Florida Film and Entertainment Advisory Council (council), which is composed of 17 members, of which seven members are appointed by the Governor, and five members each are appointed by the President of the Senate and the Speaker of the House of Representatives.

The OFE gathers statistical information related to the state's entertainment industry; provides information and services to businesses, communities, organizations, and individuals engaged in entertainment industry activities; administers field offices outside the state; and coordinates with regional offices maintained by counties and regions of the state. The OFE is also required to develop a 5-year strategic plan to guide its activities, which is updated on an annual basis and aligns with the DEO's Strategic Plan for Economic Development. The OFE's mission is to build, support, and market the entertainment industry in Florida.

Entertainment Industry Incentive Programs

In 2003, the Legislature created the Entertainment Industry Financial Incentive Program,¹ a 6-year program that began July 1, 2010, and sunset June 30, 2016. The program provided tax credits for qualified expenditures related to filming and production activities in Florida. These tax credits could be applied against the corporate income tax or sales and use taxes. Additionally these tax credits could be transferred or sold one time.²

Over the 6-year period, a total of \$296 million in tax credits were authorized. Annual limitations for tax credits were set at:

- \$53.5 million in Fiscal Year 2010-11;
- \$74.5 million in Fiscal Year 2011-12; and
- \$42 million in each Fiscal Year 2012-13, 2013-14, 2014-15, and 2015-16.³

The OFE reports that all of the tax credits authorized for the 6-year period have been certified (allocated to certified productions).⁴

Entertainment industry qualified production companies are eligible for several exemptions from taxes under ch. 212, F.S. A qualified production company can obtain a certificate to avoid paying tax at the point of sale, rather than claiming a refund after paying the tax.⁵ Qualified production companies are exempt from paying sales tax for the following:

- *Lease or rental of real property* that is used as an integral part of an activity or service performed directly in connection with the production of a qualified motion picture (the term "activity or service" includes photography, casting, location scouting, and designing sets).⁶
- *Fabrication labor* when a producer uses his or her own equipment and personnel to produce a qualified motion picture.⁷

¹ Section 288.1254, F.S. See ch. 2003-81, L.O.F. In 2010, the incentive program was changed from a cash reimbursement type program to the current form. See ch. 2010-147, L.O.F.

² Also, tax credits may be relinquished to the Department of Revenue for 90 percent of the amount of the relinquished tax credit.

³ Section 288.1254(7), F.S. In 2012, an additional year was added to the program. See s. 15, ch. 2012-32, L.O.F.

⁴ Office of Economic and Demographic Research, The Florida Legislature, *Return on Investment for the Entertainment Industry Incentive Programs* (January, 2015).

⁵ Section 288.1258, F.S. See also Department of Revenue, Film in Florida Sales Tax Exemption, available at http://dor.myflorida.com/dor/taxes/film_in_florida.html (last visited February 5, 2018).

⁶ Section 212.031(1)(a)9., F.S.

⁷ Section 212.06(1)(b), F.S., provides a definition of the term "qualified motion picture" for purposes of ch. 212, F.S.

- *Purchase or lease of motion picture and video equipment and sound recording equipment used in Florida for motion picture or television production or for the production of master tapes or master records.*⁸
- *Sale, lease, storage, or use of blank master tapes, records, films, and video tapes.*⁹

The OFE reviews and approves applications for the exemptions and the Department of Revenue (DOR) issues certificates of exemption to the production companies.

III. Effect of Proposed Changes:

SB 1606 creates the Florida Motion Picture Capital Corporation (corporation) and the Florida Motion Picture Account (account). The corporation is set up to receive public and private funds, to be used to finance feature film and television productions in the state.

Board of Directors

The bill:

- Requires the formation of a board of directors, granting it powers and duties;
- Requires the board to be made up of seven members populated as follows;
 - Two members with experience in fund management of feature film and television production;
 - Three members that are recognized leaders in the production of feature film and television in the state;
 - One member representing the businesses that supply productions; and
 - One member representing the state's feature film and television workforce;
- Requires minority and gender representation to be considered in the board member appointment process;
- Requires that the initial board be nominated by the following entities:
 - The presidents of the Florida Venture Forum¹⁰ and the Florida Chamber of Commerce each shall nominate one member;
 - The Governor, President of the Senate, and Speaker of the House each shall nominate a member;
 - The Secretary of the "department" shall nominate a member; and
 - The chair of the Congress of Motion Picture Associations¹¹ of Florida shall nominate a member;
- Requires the three year terms of members to be staggered;
- Allows board members to be reappointed;
- Requires board vacancies to be filled within 30 days of the vacancy; and
- Holds board members responsible to the Code of Ethics for Public Officers and Employees as set forth in part III of chapter 112, F.S.

Definitions and Exclusions

⁸ Section 212.08(5)(f), F.S.

⁹ Section 212.08(12), F.S.

¹⁰ The Florida Venture Forum is a membership organization that assists entrepreneurs with education, strategic planning, and networking in order to improve their fund raising. <http://www.flventure.org/> (last visited February 5, 2018).

¹¹ Congress of Motion Picture Associations represents individuals that work in the feature film and television industry. <http://compassflorida.org/> (last visited February 5, 2018).

The bill:

- Defines high-wage jobs, in-state expenditures, television, and productions; and
- Excludes commercials, infomercials, political advertisements, reality shows, music videos, game shows, award shows, sporting events, educational programming, pornographic productions, and gambling-related productions from benefiting from the financing available through the corporation;

Board Bylaws Requirement

The bill authorizes the corporation to provide financing according to adopted bylaws that must:

- Favor applications that will generate the greatest economic impact to the state;
- Disallow financing to exceed the in-state expenditures of a production;
- Require that the corporation's investment in a production share the highest priority with other preferred shareholders;
- Require that financing must be less than one-half of the cost of the production's total shares;
- Limit financing for each accepted production to 12.5 percent of the total funds available in the account or less;
- Limit the corporation from having any creative and managerial rights over the productions it funds;
- Require the corporation to establish variable limits on returns, accounting for time value, and reduce returns in exchange for an early buyout;
- Require the corporation to establish an application process and have two application periods per fiscal year; and
- Limit funds for one production to 40 percent or less of the total funds available in the account, per application period.

Florida Motion Picture Capital Account

The Florida Motion Picture Capital Account shall be under the exclusive control of the board.

The account is approved to accept state, federal, and local public funding as well as private funding. The account funds may be invested when not allocated and the dividends redeposited into the account. The corporation shall keep their operating expense as low as possible.

Appropriations explicitly made for operating costs and net financial investment returns made be used to fund the corporation's operating costs.

The state cannot be held liable for any claims against the account or corporation.

The President of the Florida Motion Picture Capital Corporation

The President shall be appointed by the board and have financing of feature film and television experience. The president serves at the pleasure of the board, administering corporation programs and submitted annual budgets. The president may hire a staff. The president's salary and benefits will be determined by the board.

Funding Application Requirements

The bill requires productions applying for funding to have:

- A bonded third-party collection account management firm;
- A sales estimate from an established, qualified sales agency;
- An insurance package rated "A" or higher by A.M. Best Company;

- Proof of funds and their remaining budget in escrow;
- A lead producer with experience on five feature films, or a completion bond;
- A budget, script, and filming schedule approved by a production expert as selected by the board;
- Right of the board to inspect and audit weekly cost reports and general ledger; and
- Contingency funds of at least five percent of the productions total budget.

Funding Preferences and Release

The bill requires funding preference to be given to:

- Productions that will generate the greatest comparative economic impact for the state;
- Productions whose proposed financing has corporation funds as the smallest percentage of their overall financing;
- Productions that will have in-state expenditures begin the soonest;
- Productions by companies with a verifiable track record of success;
- Productions by companies based in this state or that are produced, written, or directed by a Florida resident;
- Productions that are expected to significantly increase tourism;
- Productions with recognized creative talent; and
- Productions that have local funding matches.

After funding of a production has been approved the corporation must release the funds in the following manner:

- Fifty percent of funds on the first day of principle photography;
- Twenty-five percent of funds upon completion of principal photography; and
- Twenty-five percent of funds after final picture lock, as the term is understood in the industry.

Public Notice of Financing

When the corporation executes a contract it must notify the department, unidentified in the bill, and maintain a copy of that notice on their website as long as the financing is outstanding. The notice must include a description of the production, name of the production company, names of the creative talent, and the transportation coordinator.

The bill takes effect July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

It is unclear what, if any, impact this may have on state agencies including the unidentified department referred to in the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill details, in lines 260 – 279, how the initial board of directors are to be nominated. It does not then clarify if those specifications are to be followed continuously, and if not, what guidelines should be followed. It appears that lines 280-284 are intended to apply only to subsequent board appointments, but the language could be clearer.

There is no clear funding of the account. The account is not limited to receiving funds only from the private sector and the bill appears to anticipate receiving state appropriations.

The bill refers to the department without identifying which department, except in the title.

There are no audits required of the corporation or account, leaving little to no oversight from the state.

The bill does not require the Public Records Act, in ch. 119, F.S., to apply to the corporation or account. In SB 1604, a linked bill, financing applicants are afforded public records exemptions. The Legislature may wish to consider whether an entity that may be receiving and spending state funds should be subject to the Public Records Act.

The board is given the ability to set the salary and benefits of the president without any standards or limits, lines 342-343, and potentially using state funds.

VIII. Statutes Affected:

This bill creates section 288.1259 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.

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

By Senator Taddeo

40-01128-18

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1 A bill to be entitled
 2 An act relating to film and television production;
 3 creating s. 288.1259, F.S.; defining terms;
 4 establishing the Florida Motion Picture Capital
 5 Corporation to encourage the use of this state as a
 6 site for scripted productions by providing financing
 7 to certain productions; providing powers of the
 8 corporation; requiring the board of directors to adopt
 9 specified criteria for evaluating a financing
 10 application; requiring the production to use a bonded
 11 third-party collection account management firm;
 12 requiring that certain presales or sales estimates
 13 meet a specified minimum value; requiring a production
 14 to carry an insurance package meeting certain
 15 standards; requiring a production to provide certain
 16 proof of funds within a specified period; requiring
 17 the lead producer or production company to have a
 18 specified sales record or provide a completion bond;
 19 requiring that certain items be evaluated and approved
 20 by a production expert selected by the board;
 21 requiring the production budget to include a certain
 22 amount of contingency funds; providing for the release
 23 of corporation funds according to a specified
 24 schedule; requiring the board to approve the
 25 expenditure of certain contingency funds; requiring
 26 the board to release corporation funds to a production
 27 in a specified manner; requiring the production
 28 company to allow the board to inspect and audit
 29 certain reports and ledgers within a certain

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

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30 timeframe; requiring the board to give preference to
 31 productions that meet specified criteria; authorizing
 32 the corporation to charge certain fees; requiring the
 33 board to be composed of certain members; providing for
 34 the appointment of the initial board, terms for the
 35 board, and guidelines for the board; prohibiting a
 36 board member from discussing certain pending
 37 applications with applicants outside of a board
 38 meeting for a specified period; requiring a board
 39 member to serve without compensation; authorizing the
 40 board members to be reimbursed for certain expenses;
 41 requiring the board to adopt bylaws, rules, and
 42 policies before the expenditure of funds; requiring
 43 the board to hold regularly scheduled meetings;
 44 requiring the board to create the Florida Motion
 45 Picture Capital Account and maintain exclusive control
 46 of the account; authorizing the board to deposit funds
 47 with certain institutions and to invest certain funds
 48 in permissible securities; requiring that certain
 49 dividend payments be redeposited in the account for a
 50 specified purpose; requiring that the corporation's
 51 operating expenses be kept to a minimum and funded by
 52 appropriations and certain net returns; requiring that
 53 a claim against the account be solely paid from the
 54 account; requiring the board to appoint a president
 55 who meets specified criteria; providing the powers and
 56 duties of the president; requiring the corporation to
 57 provide certain notice of financing contracts or
 58 agreements to the Department of Economic Opportunity

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and on the corporation's website for a specified period of time; requiring that the notice include specified information; providing an effective date.

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

Section 1. Section 288.1259, Florida Statutes, is created to read:

288.1259 Florida Motion Picture Capital Corporation.—

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

(a) "Account" means the Florida Motion Picture Capital Account.

(b) "Board" means the corporation's board of directors.

(c) "Corporation" means the Florida Motion Picture Capital Corporation.

(d) "High-wage jobs" are jobs that pay at least 120 percent of the median wage for the arts, design, entertainment, sports, and media occupations category as determined by the most recent State Occupational Employment and Wage Estimates for this state published by the United States Department of Labor's Bureau of Labor Statistics.

(e) "In-state expenditures" means the costs of tangible property used in this state and services performed by residents of this state for a scripted production, including preproduction and postproduction, but excluding costs for development, marketing, and distribution.

(f) "President" means the chief executive officer of the corporation.

(g) "Scripted production" or "production" means a feature

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film at least 70 minutes in length, whether produced for theatrical, television, or direct-to-video release; a television series created to run multiple seasons having an order for distribution of at least five episodes; or a miniseries, which is produced predominately from a written screenplay or teleplay. The term does not include a commercial, an infomercial, or a political advertisement; a reality show; a game show; an awards show; a music video; an industrial or educational film; a weather or market program; a sporting event or sporting event broadcast; a gala; a production that solicits funds; a home shopping program; a political program; a documentary; a gambling-related production; a concert production; a local, regional, or Internet-distributed-only news show or current-events show; a sports news or sports recap show; a video game; a pornographic production; or any production deemed obscene under chapter 847.

(h) "Television" includes broadcast, cable, and Internet television.

(2) CORPORATION.—The Florida Motion Picture Capital Corporation is created as a nonprofit corporation, to be incorporated under chapter 617 and approved by the Department of State. The corporation shall be organized on a nonstock basis. The purpose of the corporation is to encourage the use of this state as a site for scripted productions by providing financing to such productions.

(3) POWERS AND LIMITATIONS.—

(a) The corporation is authorized to provide financing to scripted productions in this state pursuant to the criteria, bylaws, rules, and policies adopted by the board, which must

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include the following:

1. The corporation shall provide financing to productions that it estimates will generate the greatest economic impact to this state.

2. The amount of financing provided to a production must not exceed the amount of the production's in-state expenditures for that production.

3. The financing provided to a production must rank and remain pari passu with the highest class of ownership in the production, such that, in the event of liquidation or bankruptcy, the corporation's investment shares the highest priority with other preferred shareholders.

4. Any financing provided under this section must be less than one-half of the cost of the production's total shares or other ownership interest.

5. The amount of financing provided to any one production must not exceed 12.5 percent of the sum of the remaining amount of uncommitted funds in the account plus the amounts of all outstanding investments in other productions.

6. The corporation may not have any voting rights, creative control, or management authority over a production receiving financing under this section.

7. The corporation shall limit the return on its investments by establishing variable limits on returns that account for time value and reduce returns in exchange for a production's early buyout of financing positions. For a production exercising an early buyout, the corporation shall limit its return on investment to the minimum that is actuarially measurable and credible and sufficiently related to

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actual and expected losses to ensure the corporation's self-sufficiency and preservation of the state appropriations provided for the investment.

8. The corporation shall establish an application process and conduct at least two application periods per fiscal year, providing no more than 40 percent of the total funds in the Florida Motion Picture Capital Account for the fiscal year to productions in any one application period.

(b) The board shall adopt objective criteria for evaluating applications for financing scripted productions in this state.

1. The criteria must require:

a. The production to use a bonded third-party collection account management firm to ensure that the corporation receives all funds due from sales proceeds in accordance with a waterfall agreement included in the corporation's investment terms.

b. Presales or sales estimates from a sales agency that has sold at least \$50 million in feature films which are based on the cast and script of the production and which reflect a value of at least 1.5 times the exposure of the corporation.

c. The production to carry an insurance package from an insurance company rated "A" or higher by A.M. Best Company which must include general liability insurance, workers' compensation, and key cast and director insurance that covers the costs of disruption or replacement downtime in the event of illness or other loss of services from such individuals. If at least 75 percent of the production's filming schedule occurs after June 1 and before November 30, the production's insurance package must include hurricane coverage.

d. The production to provide proof of funds for the

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175 remaining budget within 60 days after application approval and
 176 place the remaining budget in escrow before the release of
 177 corporation funds.

178 e. That the lead producer or production company has
 179 completed, sold, and delivered at least five feature films, or
 180 the production must provide a completion bond.

181 f. That the production's budget, script, and filming
 182 schedule have been evaluated and approved by a production expert
 183 selected by the board.

184 g. The production budget to include contingency funds in an
 185 amount equal to at least 5 percent of the total budget. Up to 40
 186 percent of the contingency funds may be expended during
 187 production without the approval of the board. The remaining
 188 contingency funds may only be expended with prior approval of
 189 the board.

190 h. The board to release corporation funds to a production
 191 in the following manner:

192 (I) Fifty percent of corporation funds shall be released on
 193 the first day of principal photography.

194 (II) Twenty-five percent of corporation funds shall be
 195 released upon completion of principal photography.

196 (III) Twenty-five percent of corporation funds shall be
 197 released after final picture lock, as that term is generally
 198 understood in the production industry.

199 i. The production company to provide the board with the
 200 right to inspect and audit the weekly cost reports and general
 201 ledger of the production throughout preproduction, production,
 202 and postproduction.

203 2. Preference shall be given to:

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204 a. Productions that will generate the greatest comparative
 205 economic impact for this state. The corporation shall make a
 206 determination of each project's comparative economic impact to
 207 this state by comparing the project budgets submitted during the
 208 application period and determining which projects create the
 209 greatest number of high-wage jobs for state residents and
 210 propose the most significant in-state expenditures as a
 211 percentage of total production expenditures.

212 b. Productions in which the proposed financing by the
 213 corporation is lowest as a percentage of the production's total
 214 shares or other ownership interest.

215 c. Productions with the quickest deployment, in which the
 216 production's in-state expenditures will begin soonest after the
 217 corporation commits to financing.

218 d. Productions by companies with a verifiable track record
 219 in producing successful productions.

220 e. Productions by production companies based in this state
 221 or by producers, writers, or directors who are residents of this
 222 state.

223 f. Productions expected to significantly increase tourism
 224 to the state by using a screenplay or teleplay based on a
 225 Florida story or including recognizable locations in this state.

226 g. Productions whose development demonstrates the
 227 likelihood of success, including, but not limited to, having a
 228 recognized director, actor, or other creative talent attached to
 229 the production.

230 h. Productions in which the corporation's financing is
 231 matched from local sources, including, but not limited to,
 232 county or municipal agencies, local film commissions, or other

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community resources.

(c) The corporation may charge fees, including, but not limited to, application fees from productions seeking financing under this section, but such fees may not exceed the reasonable estimated cost of the activity for which the fee is charged, such as the cost of processing an application.

(4) BOARD OF DIRECTORS; POWERS AND DUTIES.-

(a)1. The board shall consist of seven members who are permanent residents of this state. Minority and gender representation must be considered when making appointments to the board. The board shall be composed of the following:

a. Two members who have experience in investment banking and funds management focused on feature film and television production.

b. Three members who have recent experience and are recognized leaders in the production of feature films or television in this state. Such members may include, but are not limited to, producers, directors, production managers or supervisors, or similar persons in positions of production leadership.

c. One member who represents businesses that provide supplies for feature film and television production in this state, such as small businesses through which productions buy or rent equipment, house and feed cast and crew, purchase supplies and raw materials, or build production infrastructure.

d. One member who represents this state's feature film and television workforce.

2. The initial board shall be appointed as follows:

a. The Florida Venture Forum and the Florida Chamber of

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Commerce shall each appoint one member pursuant to sub-paragraph 1.a.

b. The Governor, the President of the Senate, and the Speaker of the House of Representatives shall each appoint one member pursuant to sub-subparagraph 1.b.

c. The department shall appoint one member pursuant to sub-paragraph 1.c.

d. The Congress of Motion Picture Associations of Florida shall appoint one member pursuant to sub-subparagraph 1.d.

To establish staggered terms, the initial members appointed by the Florida Chamber of Commerce and the Congress of Motion Picture Associations of Florida shall be appointed to 1-year terms; the initial members appointed by the President of the Senate and the Speaker of the House of Representatives shall be appointed to 2-year terms; and the initial members appointed by the Governor, the department, and the Florida Venture Forum shall be appointed to 3-year terms.

3. Board members shall serve for a term of 3 years and are eligible for reappointment. Vacancies shall be filled by the board within 30 days after the date of the vacancy. A vacancy that occurs before the scheduled expiration of the term of a member shall be filled for the remainder of the unexpired term.

(b) Board members are subject to the Code of Ethics for Public Officers and Employees as set forth in part III of chapter 112. A board member must abstain from voting and comply with the disclosure requirements of s. 112.3143 if there appears to be a possible conflict under s. 112.311, s. 112.313, or s. 112.3143. This paragraph does not prohibit any principal by whom

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a board member is retained, as defined in s. 112.3143(1)(a),
 from applying for or receiving financing under this section.

(c) A board member must, with respect to an application for
 financing which is currently pending before the corporation or
 which the board member knows or reasonably expects will be
 submitted to the corporation within 180 days, refrain from
 commenting on or discussing the application outside of a board
 meeting with the applicant or any person retained by the
 applicant.

(d) Board members shall serve without compensation but may
 be reimbursed in accordance with s. 112.061 for all necessary
 expenses in the performance of their duties, including attending
 board meetings and conducting board business.

(e) The board shall:

1. Before the expenditure of funds from the Florida Motion
 Picture Capital Account, adopt bylaws, rules, and policies that
 are necessary to carry out the corporation's responsibilities
 under this section.

2. Hold regularly scheduled meetings, at least once per
 application period, in order to carry out the objectives and
 responsibilities of the board.

(5) ACCOUNT.—

(a) The board shall create the Florida Motion Picture
 Capital Account for the purpose of receiving state, federal,
 county, municipal, and private financial resources, and the
 returns from productions financed by allocations from those
 resources, and for the purposes of this section. The account
 shall be under the exclusive control of the board.

(b) Appropriations provided to the corporation for

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financing productions shall be deposited into the account.

(c) The board may deposit the funds of the account with
 state or federally chartered financial institutions in this
 state and may invest any funds not allocated to a production
 during a fiscal year in permissible securities as described in
 s. 560.210(1).

(d) Dividend payments received from the investments made by
 the corporation shall be redeposited into the account to be used
 for the purposes of this section.

(e) The corporation shall keep its operating expenses to
 the minimum amount necessary. Such operating expenses shall be
 funded by appropriations provided for that purpose and from net
 returns from financing provided under this section.

(f) Any claims against the account shall be paid solely
 from the account. Under no circumstances shall the credit of the
 state be pledged other than funds appropriated by law to the
 account, nor shall the state be liable or obligated in any way
 for claims on the account or against the corporation.

(6) PRESIDENT OF THE CORPORATION.—

(a) The board shall appoint a president. The president must
 be knowledgeable about private and public financing of feature
 film and television projects.

(b) The president shall serve at the pleasure of the board
 and shall receive a salary and benefits as fixed by the board.

(c) The president shall administer the programs of the
 corporation and perform such duties as delegated by the board.

(d) The president shall provide support staff to the board
 as requested.

(e) The president shall submit an annual budget to be

40-01128-18

20181606__

approved by the board.

(7) PUBLIC NOTICE OF FINANCING.—The corporation shall notify the department upon final execution of each contract or agreement by which the corporation provides financing to a production. The corporation shall also publish and maintain a copy of the notice on the corporation's website while the financing remains outstanding. To provide adequate notice to the businesses and workforce that supply feature film and television production in this state, the notice must include, but need not be limited to, a brief description of the production, the name of the production company, and, to the extent available, the names of the director, cinematographer, production designer, costume designer, and transportation coordinator.

Section 2. This act shall take effect July 1, 2018.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on General
Government
Banking and Insurance
Environmental Preservation and Conservation
Military and Veterans Affairs, Space, and
Domestic Security
Transportation

SENATOR ANNETTE TADDEO
40th District

MEMORANDUM

To: Senator Bill Montford, Chair of the Commerce and Tourism Committee
From: Senator Annette Taddeo
Subject: Committee Agenda Request
Date: January 17, 2018

I respectfully request that **Senate Bill 1606**, relating to Film and Television Production be placed on the:

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

A handwritten signature in black ink, appearing to be "AT", is written over a horizontal line.

Senator Annette Taddeo
Florida Senate, District 40

REPLY TO:

- ☐ 10689 North Kendall Drive, Suite 212, Miami, Florida 33176 (305) 596-3003
- ☐ 224 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5040

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-6-18

Meeting Date

SB 1606

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Andrew Hosek

Job Title Analyst

Address 200 W College Ave
Street

Phone _____

Tallahassee FL
City State Zip

Email _____

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Americans for Prosperity

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2.6.18

Meeting Date

1606

Bill Number (if applicable)

Topic Film & Television Production

Amendment Barcode (if applicable)

Name Sarah Busk

Job Title _____

Address 204 S. Monroe St

Phone 850 222-8900

Street FLH FL 32301

City _____ State _____ Zip _____

Email sjb@cardenaspartners.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Film Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/6/18

Meeting Date

SB 1606

Bill Number (if applicable)

Topic Film & Television

Amendment Barcode (if applicable)

Name Rebecca DeLaRosa

Job Title Legislative Affairs Director

Address 301 N Olive Ave., 1101.3

Phone 850-284-7235

Street

City

State

Zip

Email rdelarosa@pbccgov.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Palm Beach County

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

APPEARANCE RECORD

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

2/6/18

Meeting Date

SB 1606

Bill Number (if applicable)

Topic SB 1606 Florida Motion Picture Corp

Amendment Barcode (if applicable)

Name Tyler MartinovichJob Title Film Commissioner Tampa BayAddress 261 N Franklin St suite 2900

Street

Phone 813-220-6557Tampa

City

FL

State

33602

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)Representing Film Tampa BayAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☐ Yes ☒ No

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

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APPEARANCE RECORD

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2/6/18
Meeting Date

1606
Bill Number (if applicable)

Topic Florida Motion Picture Capital Corp.

Amendment Barcode (if applicable)

Name CHRIS RANONE

Job Title Chair

Address 403 Shamrock Road
Street

Phone 904/806-6369

St. Augustine Florida 32086
City State Zip

Email chrisranone@aol.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing COMPASS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2-6-18

1606

Meeting Date

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name Jess McCarty

Job Title Assistant County Attorney

Address 111 NW 1st Street, Suite 2810

Phone 305-979-7110

Street

Miami

FL

33128

Email jmm2@miamidade.gov

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Miami-Dade County

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/6/18

Meeting Date

1606

Bill Number (if applicable)

Topic Film & Television Production

Amendment Barcode (if applicable)

Name Sydney Ridley

Job Title Lobbyist

Address 123 S Adams St

Phone 813 563 4100

Street

TLH

City

FL

State

32861

Zip

Email ridley@sastrategy.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Feld Entertainment

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

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 1604

INTRODUCER: Senator Taddeo

SUBJECT: Public Records/Florida Motion Picture Capital Corporation

DATE: February 5, 2018

REVISED: _____

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

I. Summary:

SB 1604 excludes certain information provided in financing applications to the Florida Motion Picture Capital Corporation created in SB 1606 from the public record requirement codified in ch. 119, F.S. Personal financial records, trade secrets, and proprietary information of individuals applying for production financing would be considered confidential and exempt. The public necessity statement claims that applicants are more likely to apply to the Florida Motion Picture Capital Corporation if in doing so they would not be putting their competitive advantage at risk.

The bill provides a statement of public necessity as required by the Florida Constitution. The bill's effect date is contingent upon, and concurrent with, passage of SB 1606, which will take effect on July 1, 2018.

The bill provides that the exemption is subject to the Open Government Sunset Review Act, and stands repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

Because the bill creates a new public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business

¹ FLA. CONST., art. I, s. 24(a).

of any public body, officer or employee of the state, including all three branches of state government, local governmental entities and any person acting on behalf of the government.²

In addition to the Florida Constitution, the Florida Statutes provides that the public may access legislative and executive branch records.³ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁴ The Public Records Act states that:

[i]t is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁵

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may create an exemption to public records requirements.⁹ An exemption must pass by a two-thirds vote of the House and the Senate.¹⁰ In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹ A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.¹²

² *Id.*

³ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

⁶ 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.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So.2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”¹³ Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as “exempt” are not required to be made available for public inspection, but may be released at the discretion of the records custodian under certain circumstances.¹⁴

Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSR) prescribes a legislative review process for newly created or substantially amended public records.¹⁵ The OGSR 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.¹⁶ In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

The OGSR 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.¹⁷ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁸
- 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;¹⁹ or
- It protects trade or business secrets.²⁰

The OGSR also requires specified questions to be considered during the review process.²¹ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

¹³ 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).

¹⁴ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁵ Section 119.15, F.S. According to s. 119.15(4)(b), F.S., a substantially amended exemption is one that is expanded to include more information or to include meetings. The OGSR 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.

¹⁶ Section 119.15(3), F.S.

¹⁷ Section 119.15(6)(b), F.S.

¹⁸ Section 119.15(6)(b)1., F.S.

¹⁹ Section 119.15(6)(b)2., F.S.

²⁰ Section 119.15(6)(b)3., F.S.

²¹ 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?

If the Legislature expands an exemption, then a public necessity statement and a two-thirds vote for passage are required.²² 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 otherwise provided for by law.²³

Trade Secrets

A “trade secret” in accordance with s. 812.081(1)(c), F.S., is

“Trade secret” means the whole or any portion or phase of any formula, pattern, device, combination of devices, or 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 includes any scientific, technical, or commercial information, including financial information, and includes 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.²⁴

III. Effect of Proposed Changes:

SB 1604 excludes certain information provided in financing applications to the Florida Motion Picture Capital Corporation from the public record requirement codified in ch. 119, F.S. Personal financial records, trade secrets, and proprietary information of individuals applying for production financing would be considered confidential and exempt. The public necessity statement claims that applicants are more likely to apply to the Florida Motion Picture Capital Corporation if in doing so they would not be putting their competitive advantage at risk.

The bill provides a statement of public necessity as required by the Florida Constitution. The bill’s effect date is contingent upon, and concurrent with, passage of SB 1606, which will take effect on July 1, 2018.

• Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²² FLA. CONST., art. I, s. 24(c).

²³ Section 119.15(7), F.S.

²⁴ Section 812.081(1)(c), F.S.

The bill provides that the exemption is subject to the Open Government Sunset Review Act, and stands repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

Because the bill creates a new public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Voting Requirement

Article I, Section 24(c) of the Florida Constitution requires a two-thirds vote of the Legislature for public records exemptions to pass.

Breadth of Exemption

Article I, Section 24(c) of the Florida Constitution requires a newly created public records exemption to be no broader than necessary to accomplish the state purpose of the law. The bill provides that personal financial records, trade secrets, and proprietary information is confidential and exempt from s. 119.07(1), F.S.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

SB 1606 is not correctly identified within the bill.

VII. Related Issues:

The linked substantive bill, SB 1606, does not explicitly subject to the corporation it creates to the Public Records Act in chapter 119, F.S.

VIII. Statutes Affected:

This bill amends s. 288.1259, F.S., as created in SB 1606.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

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

None.

B. Amendments:

None.

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

By Senator Taddeo

40-01129-18

20181604__

A bill to be entitled

An act relating to public records; amending s. 288.1259, F.S.; providing an exemption from public records requirements for certain application information submitted to the Florida Motion Picture Capital Corporation; providing for legislative review and repeal of the exemption; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Subsection (8) is added to section 288.1259, Florida Statutes, as created by SB ___, to read:

288.1259 Florida Motion Picture Capital Corporation.—

(8) APPLICATIONS; PUBLIC RECORDS EXEMPTION.—Personal financial records, trade secrets, and proprietary information of persons applying for financing for a production are confidential and 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, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that personal financial records, trade secrets, and proprietary information of persons applying for financing by the Florida Motion Picture Capital Corporation in a production be exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. If the personal financial

Page 1 of 2

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

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20181604__

records, trade secrets, and proprietary information of persons applying for financing were subject to disclosure, a chilling effect on participation would result. There is a strong likelihood that productions would choose not to apply for financing from the Florida Motion Picture Capital Corporation. Since productions are required to make in-state expenditures as a condition of receiving such financing, the chilling effect caused by such disclosure would undermine the public purpose of the Florida Motion Picture Capital Corporation to encourage this state to be used as a site for scripted productions and would consequently result in productions being produced outside of the state.

Section 3. This act shall take effect on the same date that SB ___ or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

Page 2 of 2

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2-6-18

Meeting Date

1604

Bill Number (if applicable)

Topic FILM & TELEVISION PRODUCTION

Amendment Barcode (if applicable)

Name LAURA YOUMANS

Job Title ASSOCIATE DIR. OF PUBLIC POLICY

Address 100 N. MONROE ST

Phone _____

Street

TAL

City

FL

State

32301

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA ASSOCIATION OF COUNTIES

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

2-6-2018

Meeting Date

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

SB1606

SB1604

Bill Number (if applicable)

Topic FCA FILM CAPITAL CORP.

Amendment Barcode (if applicable)

Name JACK HEBERT

Job Title

Address 2801 EXEC. DR. #100

Street

CLEARWATER, FL 33762

City

State

Zip

Phone 727-560-3323

Email jack@themallardgroup.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing AMERICAN ADVERTISING FEDERATION, 4TH DIST.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

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: SM 1658

INTRODUCER: Senator Farmer

SUBJECT: Income Inequality

DATE: February 5, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Denton	McKay	CM	Pre-meeting
2.			RC	

I. Summary:

SM 1658 requests Congress to adopt budgetary and other measures to reduce income inequality. These requests include measures to:

- Modernize and reform personal and corporate income taxes;
- Increase the minimum wage to represent a living wage;
- Adequately fund essential federal government responsibilities identified by the memorial;
- Increase funding to programs that support the unemployed and others in need;
- Increase funding to various education programs and public schools;
- Enact strong legislation to contain health care costs;
- Increase funding to repair and enhance the infrastructure of the United States;
- Adequately fund federal agencies to ensure effective regulation of financial institutions and investment firms; and
- Appoint a special study commission to examine the adequacy of consumer protection.

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

Copies of the memorial will be provided to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and each member of the Florida delegation to the United States Congress upon passage.

II. Present Situation:

United States Economy

The United States economy is the largest in the world with a gross domestic product (GDP) of 18.6 trillion dollars.¹ Despite a dip after the Great Recession, the United States' GDP is on a steady upward trajectory.² In recent years, “the median household income was \$59,039 in 2016, an increase in real terms of 3.2 percent from the 2015 median of \$57,230” which represents the “second consecutive annual increase in median household income.”³ When averaged across all households, income is even higher at \$79,663 in 2016;⁴ in comparison, the mean household income was \$65,527 in 2006.⁵

Wealth Disparity

The most recent Federal Reserve Study of Consumer Finances found that in 2016 the top 1 percent of income earners controlled 38.3 percent of the total wealth, while in 1986 the top 1 percent only controlled approximately 30 percent. In 1989, the bottom 90 percent controlled approximately 34 percent of total wealth; in 2016, that number has dropped to 22.8 percent.⁶ If the share of income going to the bottom 90 percent had not changed since 1989, the “income for the typical household would [be] 18 percent higher, or about \$9,000 per year.”⁷

The Gini index, a statistical measure of income inequality that ranges from 0 (perfect equality) to 1 (complete inequality), has steadily increased from 0.362 in 1967 to a peak of 0.482 in 2013 before dipping slightly to the most recent 0.481 in 2016.⁸ Another way to measure income dispersion is the equivalence-adjusted income estimate, which not only measures income but also takes into account the number of people living in a household and adjusts for economies of scale. According to the US Census Bureau, “for both 2015 and 2016, the Gini index was lower when based on an equivalence adjusted income estimate than on the traditional money-income estimate, suggesting a more equal income distribution.”⁹

¹ The World Bank, *GDP Ranking*, <http://databank.worldbank.org/data/download/GDP.pdf> (last visited Feb. 5, 2018)

² The World Bank, *United States*, <https://data.worldbank.org/country/united-states> (last visited Feb. 5, 2018)

³ United States Census Bureau, *Income and Poverty in the United States: 2016*, <https://www.census.gov/content/dam/Census/library/publications/2017/demo/P60-259.pdf> (last visited Feb. 5, 2018)

⁴ United States Census Bureau, *American Fact Finder*, 2012-2016 American Community Survey 5-Year Estimates, https://factfinder.census.gov/bkmk/table/1.0/en/ACS/16_5YR/S1902 (last visited Feb. 5, 2018)

⁵ United States Census Bureau, *American Fact Finder*, 2012-2016 American Community Survey 5-Year Estimates, https://factfinder.census.gov/bkmk/table/1.0/en/ACS/06_EST/S1902 (last visited Feb. 5, 2018)

⁶ Board of Governors of the Federal Reserve System, “Changes in U.S. Family Finances from 2013 to 2016; Evidence from the Survey of Consumer Finances,” *Federal Reserve Bulletin*, Vol. 103, No. 3, (September 2017), page 11, *accessible at* <https://www.federalreserve.gov/publications/files/scf17.pdf> (last visited Feb. 5, 2018)

⁷ Jason Furman, “Structural Challenges and Opportunities in the U.S. Economy (lecture, London School of Economics, November 5, 2014), *accessible at* https://obamawhitehouse.archives.gov/sites/default/files/docs/2014-11-05-lse_jason_furman.pdf (last visited Feb. 5, 2018)

⁸ United States Census Bureau, *Income and Poverty in the United States: 2016*, Table A-2, <https://www.census.gov/content/dam/Census/library/publications/2017/demo/P60-259.pdf> (last visited Feb. 5, 2018)

⁹ United States Census Bureau, *Income and Poverty in the United States: 2016*, page 9, <https://www.census.gov/content/dam/Census/library/publications/2017/demo/P60-259.pdf> (last visited Feb. 5, 2018)

Recovery from Great Recession

The United States' GDP reached pre-recession levels again by 2011, within 3 years of the crash, and since then has steadily continued to grow. While economist Emmanuel Saez's 2012 research asserted that "top 1% incomes are close to full recovery while bottom 99% incomes have hardly started to recover"¹⁰ from the Great Recession, his 2015 update to this research found that "real incomes of bottom 99% have now recovered about two thirds of the losses experienced during the Great Recession."¹¹ While in 2012 the top 1 percent of earners had captured 95 percent of all income gains since 2009,¹² that number had dropped to 52 percent in 2015.¹³

III. Effect of Proposed Changes:

Policies Requested in Memorial

SM 1658 requests Congress to adopt budgetary and other measures to reduce income inequality.

Tax Reforms

The memorial requests Congress to:

- Modernize and reform personal income taxes to close tax loopholes;
- Simplify the preparation of tax returns;
- Make the payment of taxes less regressive;
- Reform corporate income taxes to ensure that all corporations pay a minimum tax;
- Eliminate offshore tax havens and special interest exemptions; and
- Close tax loopholes.

Minimum Wage

The memorial requests Congress to increase the minimum wage in incremental steps over time so that it represents a living wage.

Public Funding

The memorial requests Congress to:

- Adequately fund essential federal government responsibilities, including public safety, the courts, health care, and programs that ensure the well-being of children and the elderly;
- Provide substantially increased funding to programs that support the unemployed and others in need, including:
 - Unemployment compensation programs;
 - Job training programs;
 - The Temporary Assistance for Needy Families program;
 - Affordable housing programs; and
 - Food and nutritional assistance programs;

¹⁰ Emmanuel Saez, *Striking It Richer: The Evolution of Top Incomes in the United States (Updated with 2015 Preliminary Estimates)* (June 30, 2016) <https://eml.berkeley.edu/~saez/saez-UStopincomes-2015.pdf> (last visited Feb. 5, 2018)

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

- Provide increased funding for early childhood education programs, public schools, and vocational and technical education programs; and
- Provide funding over a multiyear period to repair and enhance the infrastructure of the United States, including, but not limited to, public roads, highways, bridges, and buildings.

Health Care

The memorial requests Congress to enact strong legislations to contain health care costs, including prescription drug costs.

Consumer Protection

The memorial requests Congress to:

- Ensure that action is taken to identify, prosecute, and punish those who commit health care fraud;
- Ensure that federal law is sufficient and federal agencies are adequately funded to ensure effective regulation of financial institutions and investment firms and to punish those who intentionally deceive the public;
- Appoint a special study commission to examine the adequacy of consumer protection, including consumer credit, subprime automobile loans, title loans, residential mortgages, telemarketing, consumer products, and employment law; and
- Ensure that federal laws relating to consumer protection are strongly enforced.

Impact of Memorial

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

Copies of the memorial will be provided to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and each member of the Florida delegation to the United States Congress upon passage.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

None.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

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

None.

B. Amendments:

None.

By Senator Farmer

34-01501A-18

20181658__

Senate Memorial

A memorial to the Congress of the United States, requesting Congress to adopt budgetary and other measures to reduce income inequality.

WHEREAS, every United States resident should have the opportunity to achieve his or her maximum potential, and

WHEREAS, for more than three decades, there has been a huge transfer of income from the middle class to a small percentage of the upper class, weakening the economic and social well-being of many residents, and

WHEREAS, according to research published on September 3, 2013, by Emmanuel Saez at the University of California, Berkeley, in 1976 the top 1 percent of earners took home 9 percent of the total income, but in 2012 the top 1 percent of earners took home 22.5 percent of the total income, and

WHEREAS, Emmanuel Saez's research also concluded that between 1976 and 2012, the total income taken home by the top 10 percent of earners increased from 33 percent to more than 50 percent, and between 2009 and 2012, a period of economic recovery, the top 1 percent of earners captured 95 percent of all income gains, and

WHEREAS, according to a November 5, 2014, report by the Council of Economic Advisers within the Executive Office of the President, if the percentage of income earned by the bottom 90 percent of earners was the same in 2013 as it was in 1973, the median annual household income adjusted for family size would have been 18 percent higher, and

WHEREAS, according to the Federal Reserve's 2016 Survey of

Page 1 of 4

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

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Consumer Finances, the top 1 percent of households controlled 38.3 percent of the nation's total wealth, an increase from 36.3 percent in 2013, and the top 10 percent of households controlled 77.2 percent of the nation's total wealth, leaving the bottom 90 percent of households controlling only 22.8 percent of the nation's total wealth, and

WHEREAS, since the 1970s, increases in income inequality are widely viewed to be the result of stagnant wage growth, technological change, globalization, declines in labor union memberships, oversized executive salaries, and reductions in employment and retirement benefits, and

WHEREAS, children born into low-income families are less likely to have access to early childhood education, more likely to attend poorly funded schools that deliver inferior K-12 education, and less likely to attend or complete college, and

WHEREAS, increasing income inequality limits job creation, educational attainment, health conditions, and future opportunities for young persons, and

WHEREAS, federal, state, and local governments have insufficient tax revenue to adequately fund their essential responsibilities, including health care, education, and child and elderly welfare, to ensure the well-being of all residents, and

WHEREAS, the wide income disparity and the unprecedented transfer of wealth pose a significant threat to the United States' economy and democracy, contribute to a breakdown of residents' trust in the fair functioning of the economy, undermine residents' well-being, and threaten the middle class with a less secure and prosperous future, NOW, THEREFORE,

Page 2 of 4

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

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

That the Congress of the United States is requested to:

(1) Modernize and reform personal income taxes to close tax loopholes, simplify the preparation of tax returns, and make the payment of taxes less regressive.

(2) Reform corporate income taxes to ensure that all corporations pay a minimum tax, eliminate offshore tax havens and special interest exemptions, and close tax loopholes.

(3) Increase the minimum wage in incremental steps over time so that it represents a living wage.

(4) Adequately fund essential federal government responsibilities, including public safety, the courts, health care, and programs that ensure the well-being of children and the elderly.

(5) Provide substantially increased funding to programs that support the unemployed and others in need, including, but not limited to, unemployment compensation programs, job training programs, the Temporary Assistance for Needy Families program, affordable housing programs, and food and nutritional assistance programs.

(6) Provide increased funding for early childhood education programs, public schools, and vocational and technical education programs to help secure a more prosperous future for young persons.

(7) Enact strong legislation to contain health care costs, including prescription drug costs, and ensure that action is taken to identify, prosecute, and punish those who commit health

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20181658__

care fraud.

(8) Provide funding over a multiyear period to repair and enhance the infrastructure of the United States, including, but not limited to, public roads, highways, bridges, and buildings.

(9) Ensure that federal law is sufficient and federal agencies are adequately funded to ensure effective regulation of financial institutions and investment firms and to punish those who intentionally deceive the public.

(10) Appoint a special study commission to examine the adequacy of consumer protection, including consumer credit, subprime automobile loans, title loans, residential mortgages, telemarketing, consumer products, and employment law and to ensure that federal laws relating to consumer protection are strongly enforced.

BE IT FURTHER RESOLVED that the Secretary of State dispatch copies of this memorial to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and each member of the Florida delegation to the United States Congress.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Agriculture
Appropriations Subcommittee on Higher Education
Appropriations Subcommittee on Pre-K - 12 Education
Education
Environmental Preservation and Conservation

SENATOR GARY M. FARMER, JR.

34th District

January 23, 2018

Chair Bill Montford
Commerce and Tourism Committee
404 South Monroe Street
Tallahassee, FL 32399-1100
Sent via email to Montford.bill.web@flsenate.gov

Chair Montford,

I respectfully request that you place SB 1658 relating to Income Inequality on the agenda of the Commerce and Tourism Committee at your earliest convenience.

Should you have any questions or concerns, please feel free to contact me or my office. Thank you in advance for your consideration.

Thank you,

A handwritten signature in black ink, appearing to read "Gary M. Farmer, Jr.", written in a cursive style.

Senator Gary Farmer
District 34

CC:

Todd McKay, Staff Director
Gabriela Denton, Committee Administrative Assistant
Marilyn Barnes, Legislative Assistant to Senator Montford
Melissa Durham, Legislative Assistant to Senator Montford
Varna Mitchell, Legislative Assistant to Senator Montford
Taylor Peck, Legislative Assistant to Senator Montford

REPLY TO:

- ☐ Broward College Campus, 111 East Las Olas Boulevard, Suite 913, Fort Lauderdale, Florida 33301 (954) 467-4227
- ☐ 216 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5034

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

Feb 6, 2018

Meeting Date

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

SM 1658

Bill Number (if applicable)

Topic Income Inequality

Name Richard Polangin

Job Title Gov't Affairs Director

Address 1300 N Duval St

Street

Tallahassee FL 32303

City

State

Zip

Phone 850 224-4206

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Alliance for Retired Americans

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

APPEARANCE RECORD

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

2/6/18

Meeting Date

1658

Bill Number (if applicable)

Topic Income Inequality

Amendment Barcode (if applicable)

Name Carolyn Johnson

Job Title Policy Director

Address 136 S Barrough St

Phone _____

Street

Tallahassee

City

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-6-18

Meeting Date

SM 1658

Bill Number (if applicable)

Topic

Income Inequality

Amendment Barcode (if applicable)

Name

Barbara DeVane

Job Title

Ms

Address

625 E. Brevard St

Street

Phone

850-351-4280

Tallahassee

City

FL

State

32308

Zip

Email

barbaradevane1@yahoo.com

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

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

Representing

FL NDW

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/6/18

Meeting Date

1658

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Tim NungesserJob Title Legislative DirectorAddress 110 East Jefferson Street

Street

Phone 850-445-5367TallahasseeFL32301

City

State

Zip

Email tim.nungesser@nfib.orgSpeaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)Representing National Federation of Independent BusinessAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

APPEARANCE RECORD

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

2/6/18

1658

Meeting Date

Bill Number (if applicable)

Topic Income Inequality

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N Adams St

Phone 224-7173

Street

Tallahassee

FL

32301

Email bbevis@aif.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/CS/SB 822

INTRODUCER: Commerce and Tourism Committee; Regulated Industries Committee; and Senator Hutson

SUBJECT: Beverage Law

DATE: February 6, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>McSwain</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Anderson</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 822 amends the “tied house evil” law in s. 561.42, F.S., which prohibits an alcoholic beverage manufacturer or distributor from having a financial interest, directly or indirectly, in the establishment or business of an alcoholic beverage vendor, and also prohibits a manufacturer or distributor from giving gifts, loans, property, or rebates to the vendor.

The bill exempts from the “tied house evil” prohibitions a written agreement between a manufacturer or importer of malt beverages and an alcoholic beverage vendor for brand naming rights, including the right to advertise cooperatively. The agreement must be negotiated at arm’s length for no more than fair market value.

Such agreement must be with a vendor who operates a theme park complex; may not involve the sale or distribution of malt beverages; may not permit the vendor to give preferential treatment to the alcoholic beverage brand or brands of the manufacturer or importer; may not limit, directly or indirectly, the sale of alcoholic beverages from another manufacturer or importer, or distributor; and must be registered with the Division of Alcoholic Beverages and Tobacco (division) in the Department of Business and Professional Regulation (DBPR) within 10 days of its execution.

The bill defines a “theme park” as a complex comprising at least 25 contiguous acres owned and controlled by the same business entity, which contains permanent exhibitions and a variety of

recreational activities and has a minimum of 1 million visitors annually through a controlled entrance to and exit from the theme park complex.

The manufacturer or importer of malt beverages who is a party to a brand naming rights agreement is prohibited from, directly or indirectly, soliciting or receiving from any of its distributors any portion of the payment it owes to the vendor pursuant to the naming rights agreement. The bill also prohibits a brand naming rights agreement from, directly or indirectly, obligating or placing responsibility, financial or otherwise, upon a distributor.

The bill imposes civil penalties for violations made during a 36 month period. The division has the authority to revoke or suspend beverages licenses after four or more violations within a 36 month period. For the first, second, and third violations within a 36 month period the division can impose a \$5,000 to \$100,000 penalty. The comparative value of the agreement in violation will be taken into account when assigning the civil penalties, as well as the number of violations within the previous 36 months.

The bill provides an effective date of July 1, 2018.

II. Present Situation:

In Florida, alcoholic beverages are regulated by the Beverage Law,¹ which regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors.² The division administers and enforces the Beverage Law.³

“Alcoholic beverages” are defined in s. 561.01, F.S., as “distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume.” “Malt beverages” are brewed alcoholic beverages containing malt.⁴

Section 561.14, F.S., specifies the license and registration classifications used in the Beverage Law.

- “Manufacturers” are those “licensed to manufacture alcoholic beverages and distribute the same at wholesale to licensed distributors and to no one else within the state, unless authorized by statute.”⁵
- “Distributors” are those “licensed to sell and distribute alcoholic beverages at wholesale to persons who are licensed to sell alcoholic beverages.”⁶
- “Importers” are those licensed to sell, or to cause to be sold, shipped, and invoiced, alcoholic beverages to licensed manufacturers or licensed distributors, and to no one else in this state; provided that ss. 564.045 and 565.095, F.S., relating to primary American source of supply licensure, are in no way violated by such imports.⁷

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

² See s. 561.14, F.S.

³ Section 561.02, F.S.

⁴ Section 563.01, F.S.

⁵ Section 561.14(1), F.S.

⁶ Section 561.14(2), F.S.

⁷ Section 561.01(5), F.S.

- “Vendors” are those “licensed to sell alcoholic beverages at retail only” and may not “purchase or acquire in any manner for the purpose of resale any alcoholic beverages from any person not licensed as a vendor, manufacturer, bottler, or distributor under the Beverage Law.”⁸

Three-Tier System

In the United States, the regulation of alcohol since the repeal of Prohibition has traditionally been based upon a “three-tier system.” The system requires separation of the manufacture, distribution, and sale of alcoholic beverages. The manufacturer creates the beverages, and the distributor obtains the beverages from the manufacturer to deliver to the vendor. The vendor makes the ultimate sale to the consumer.⁹ A manufacturer, distributor, or exporter may not be licensed as a vendor to sell directly to consumers.¹⁰

Generally, in Florida, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.¹¹ Licensed manufacturers, distributors, and registered exporters are prohibited from also being licensed as vendors.¹² Manufacturers are also generally prohibited from having an interest in a vendor and from distributing directly to a vendor.¹³

Tied House Evil Prohibitions

States have enacted statutes designed to prevent or limit the control of retail alcoholic beverage vendors by manufacturers, wholesalers, and importers, or to prohibit “tied-house arrangements,” such legislation is referred to as “tied house” or “tied house evil” statutes.¹⁴

Section 561.42, F.S., Florida’s “tied house evil” statute, regulates the permitted and prohibited relationships and interactions of manufacturers and distributors with vendors in order to prevent a manufacturer or distributor from having a financial interest, directly or indirectly, in the establishment or business of a licensed vendor, and to prevent a manufacturer or distributor from giving a vendor gifts, loans, property, or rebates.¹⁵ The prohibitions also apply to an importer, primary American source of supply,¹⁶ brand owner or registrant, broker, and sales agent (or sales person thereof).

The tied house evil statute also prohibits any distributor or vendor from receiving any financial incentives from any manufacturer. It further prohibits manufacturers or distributors from assisting retail vendors by gifts or loans of money or property or by the giving of rebates. These prohibitions do not, however, apply to any bottles, barrels, or other containers necessary for the

⁸ Section 561.14(3), F.S.

⁹ Section 561.14, F.S.

¹⁰ Section 561.22(1), F.S.

¹¹ Section 561.14(3), F.S. However, see the exceptions provided in ss. 561.221 and 565.03, F.S.

¹² Section 561.22, F.S.

¹³ Sections 563.022(14) and 561.14(1), F.S.

¹⁴ 45 AM. JUR. 2d *Intoxicating Liquors*, s. 94 (2017).

¹⁵ Section 561.42(1), F.S.

¹⁶ See s. 564.045, F.S.

legitimate transportation of such beverages, to advertising materials, or to the extension of credit for liquors sold, if made strictly in compliance with the provisions of s. 561.42, F.S.¹⁷

Section 561.42, F.S., also prohibits licensed manufacturers and distributors from:

- Making further sales to vendors that the division has certified as not having fully paid for all liquors previously purchased;¹⁸
- Directly or indirectly giving, lending, renting, selling, or in any other manner furnishing to a vendor any outside sign, printed, painted, electric, or otherwise;¹⁹
- Providing neon or electric signs, window painting and decalcomanias, posters, placards, and other advertising material herein authorized to be used or displayed by the vendor in the interior of the licensed premises;²⁰ and
- Providing expendable retail advertising specialties, unless sold to the vendor at not less than the actual cost to the industry member who initially purchased them.²¹

III. Effect of Proposed Changes:

CS/CS/SB 822 creates s. 561.42(16), F.S., to provide an exemption from the tied house evil prohibitions to permit a manufacturer or importer of malt beverages and vendor to enter into a written agreement for brand naming rights, including the right to advertise cooperatively. The agreement must be negotiated at arm's length for no more than fair market value. The bill defines "at arm's length" agreement for this section of law.²²

Such written agreement:

- Must be with a vendor who operates a theme park complex;
- May not involve the sale or distribution of malt beverages;
- May not permit the vendor to give preferential treatment to the alcoholic beverage brand or brands of the manufacturer or importer;
- May not limit, directly or indirectly, the sale of alcoholic beverages from another manufacturer, importer, or distributor; and
- Must be registered with the division within 10 days of its execution.

¹⁷ Section 564.42(1). Section 561.42(2), F.S., permits distributors to extend credit for the sale of liquors to any vendor up to, but not including, the 10th day after the calendar week within which such sale was made.

¹⁸ Section 561.42(4), F.S.

¹⁹ Section 561.42(10), F.S.

²⁰ Section 561.42(12), F.S.

²¹ Section 561.42(14)(a), F.S.

²² "Arm's length" is not defined by the bill. Black's Law Dictionary defines the term "arm's-length transaction" as a "transaction between two unrelated and unaffiliated parties", and as a "transaction between two parties, however closely related they may be, conducted as if the parties were strangers, so that no conflict of interest arises". BLACKS LAW DICTIONARY (14th ed. 2014), when defining forms of the term "transaction".

"Arms length" or "arms-length" is used eight times in the Florida Statutes; where used, those terms are not defined. *See* s. 155.40(4)(b), F.S., (in defining "fair market value" in connection with the sale or lease of county, district, or municipal hospitals); s. 193.114(1)(n), F.S., (as to property tax assessment rolls); s. 212.14(4), F.S., (as to the security required for sales tax dealer registrations); s. 215.4401, F.S., (in connection with the real estate investment portfolio of the State Board of Administration); s. 287.055(2)(l), F.S., (in defining "negotiate" under the "Consultants' Competitive Negotiation Act"); s. 400.462(11), F.S., (in defining "fair market value" in connection with home health agency regulation); s. 456.053(3)(g), F.S., (in defining "fair market value" in connection with financial arrangements between health care providers); and s. 718.117, F.S., (in defining "fair market value" in connection with condominium terminations).

The bill defines a “theme park” as a complex comprising at least 25 contiguous acres owned and controlled by the same business entity, which contains permanent exhibitions and a variety of recreational activities and has a minimum of 1 million visitors annually through a controlled entrance to and exit from the theme park complex.²³

The bill imposes civil penalties for violations made during a 36 month period. The division has the authority to revoke or suspend beverages licenses after four or more violations within a 36 month period. For the first, second, and third violations within a 36 month period the division can impose a \$5,000 to \$100,000 penalty. The comparative value of the agreement in violation will be taken into account when assigning the civil penalties, as well as the number of violations within the previous 36 months.

The bill also prohibits a manufacturer or importer of malt beverages who is a party to a brand naming rights agreement from, directly or indirectly, soliciting or receiving from any of its distributors any portion of the payment due from the manufacturer or importer of malt beverages to the vendor pursuant to the naming rights agreement.

A brand naming rights agreement may not, directly or indirectly, obligate or place responsibility, financial or otherwise, upon a distributor.

This bill also clarifies tied house evil prohibitions on vendor assistance.

The bill provides an effective date of July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

²³ This definition of “theme park” is similar to the definition of the term “theme park or entertainment complex” in s. 509.013(9), F.S., which relates to public lodging and public food services establishments. Comparable terms are also defined in the Beverage Law. Section 561.01(18), F.S., defines the term “entertainment/resort complex;” s. 565.02(6), F.S., defines the term “theme park complex;” and s. 565.02(7), F.S., defines the term “marine exhibition complex.” Each of these definitions also provide that the locations must be comprised of at least 25 contiguous acres owned and controlled by the same business entity, which contains permanent exhibitions and a variety of recreational activities and have a minimum of 1 million visitors annually. However, the definitions in ss. 561.01(18), 565.02(6), and 565.02(7), F.S., have additional requirements not included in s. 509.013(9), F.S., or in SB 822, including the requirement that the 1 million annual visitors pay admission fees.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 561.42 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

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

CS by Commerce and Tourism Committee on February 6, 2019:

The committee substitute clarifies tied house evil prohibitions. The CS also adds penalties for manufacturers, vendors, and importers who violate provisions in the newly added subsection of 561.42(16). The civil penalties are issued for the first, second, third, and fourth violations within a three year period. The term “at-arms-length” agreement is defined for the purposes of this section.

CS by Regulated Industries Committee on January 10, 2018:

The committee substitute prohibits a brand naming rights agreement from, directly or indirectly, obligating or placing responsibility, financial or otherwise, upon a distributor.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/06/2018	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Present subsection (13) of section 561.42,
Florida Statutes, is redesignated as subsection (14),
subsections (1), (8), (11), and (12) and paragraph (b) of
present subsection (14) of that section are amended, and a new
subsection (13) and subsection (16) are added to that section,
to read:



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561.42 Tied house evil; financial aid and assistance to vendor by manufacturer, distributor, importer, primary American source of supply, brand owner or registrant, or any broker, sales agent, or sales person thereof, prohibited; procedure for enforcement; exception.-

(1) A ~~No~~ manufacturer, distributor, importer, primary American source of supply, or brand owner or registrant of any of the beverages herein referred to, whether licensed or operating in this state or out-of-state, nor any broker, sales agent, or sales person thereof, may not ~~shall~~ have any financial interest, directly or indirectly, in the establishment or business of any vendor licensed under the Beverage Law; nor may ~~shall~~ such manufacturer, distributor, importer, primary American source of supply, brand owner or brand registrant, or any broker, sales agent, or sales person thereof, directly or indirectly assist any vendor by furnishing, supplying, selling, renting, lending, buying for, or giving to any vendor any vehicles, equipment, furniture, fixtures, signs, supplies, credit, fees, slotting fees of any kind, advertising or cooperative advertising, services, any gifts or loans of money or property of any description, or by the giving of any rebates of any kind whatsoever. A ~~No~~ licensed vendor may not ~~shall~~ accept, directly or indirectly, any vehicles, equipment, furniture, fixtures, signs, supplies, credit, fees, slotting fees of any kind, advertising or cooperative advertising, services, gifts any gift or loans loan of money or property of any description, or any rebates of any kind whatsoever from any such manufacturer, distributor, importer, primary American source of supply, brand owner or brand registrant, or any



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broker, sales agent, or sales person thereof; provided, however, that this does not apply to any bottles, barrels, or other containers necessary for the legitimate transportation of such beverages or to advertising materials and does not apply to the extension of credit, for liquors sold, made strictly in compliance with ~~the provisions of~~ this section. A brand owner is a person who is not a manufacturer, distributor, importer, primary American source of supply, brand registrant, or broker, sales agent, or sales person thereof, but who directly or indirectly owns or controls any brand, brand name, or label of alcoholic beverage. Nothing in this section shall prohibit the ownership by vendors of any brand, brand name, or label of alcoholic beverage.

(8) The division may adopt rules and require reports to enforce, and may impose administrative sanctions for any violation of, the limitations established under the Beverage Law on vehicles, equipment, furniture, fixtures, signs, supplies, credit, fees, advertising or cooperative advertising, services, gifts or loans of money or property ~~in this section on credits,~~ coupons, and other forms of assistance.

(11) A vendor may display in the interior of his or her licensed premises, including the window or windows thereof, neon, electric, or other signs, including window painting and decalcomanias applied to the surface of the interior or exterior of such windows; signs that require a power source; ~~and~~ posters, placards, and other advertising material advertising the brand or brands of alcoholic beverages sold by him or her, whether visible or not from the outside of the licensed premises, but a ~~no~~ vendor may not ~~shall~~ display in the window or



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windows of his or her licensed premises more than one neon, electric, or similar sign that requires a power source, advertising the product of any one brand of alcoholic beverage manufacturer.

(12) Any manufacturer, distributor, importer, primary American source of supply, or brand owner or registrant, or any broker, sales agent, or sales person thereof, may give, lend, furnish, or sell to a vendor who sells the products of such manufacturer, distributor, importer, primary American source of supply, or brand owner or registrant any of the following: neon, ~~or~~ electric, or similar signs requiring a power source; signs, window painting and decalcomanias applied to the surface of the interior or exterior of windows; or, posters, placards, and other advertising material herein authorized to be used or displayed by the vendor in the interior of his or her licensed premises. As used in subsection (11) and this subsection, the term "decalcomania" means a picture, design, print, engraving, or label made to be transferred onto a glass surface.

(13) Any manufacturer, distributor, importer, primary American source of supply, or brand owner or registrant, or any broker, sales agent, or sales person thereof, who regularly sells merchandise to vendors, or any vendor who purchases merchandise from such a manufacturer, distributor, importer, primary American source of supply, or brand owner or registrant, or any broker, sales agent, or sales person thereof, does not violate subsection (1) if:

(a) Such sale or purchase is not less than the fair market value of the merchandise;

(b) Such sale or purchase is not combined with any sale or



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purchase of alcoholic beverages;

(c) Such sale or purchase is separately itemized from the sale or purchase of alcoholic beverages; and

(d) Both the seller and purchaser maintain records of any such sale or purchase, including the price and any conditions associated with such sale or purchase of the merchandise.

For purposes of this subsection, the term "merchandise" means commodities, supplies, fixtures, furniture, or equipment. The term does not include alcoholic beverages or a motor vehicle or trailer requiring registration under chapter 320.

(15) ~~(14)~~ The division shall adopt reasonable rules governing promotional displays and advertising, which rules shall not conflict with or be more stringent than the federal regulations pertaining to such promotional displays and advertising furnished to vendors by distributors, manufacturers, importers, primary American sources of supply, or brand owners or registrants, or any sales agent or sales person thereof; however:

(b) Without limitation in total dollar value of such items provided to a vendor, a manufacturer, distributor, importer, brand owner, or brand registrant of malt beverage, or any sales agent or sales person thereof, may rent, loan without charge for an indefinite duration, or sell durable retailer advertising specialties such as clocks, pool table lights, and the like, which bear advertising matter. If sold, such items may not be sold at a price less than the actual cost to the industry member who initially purchased the items.

(16) (a) Notwithstanding any other provision of this



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section, a manufacturer or importer of malt beverages and a
vendor may enter into a written agreement for brand-naming
rights and associated cooperative advertising, negotiated at
arm's length for no more than fair market value if:

1. The vendor operates places of business where consumption
on the premises is permitted, the premises are located within a
theme park complex consisting of at least 25 contiguous acres
owned and controlled by the same business entity, and the
complex contains permanent exhibitions and a variety of
recreational activities and has a minimum of 1 million visitors
annually through a controlled entrance to and exit from the
theme park complex;

2. Such agreement does not involve, either in whole or in
part, the sale or distribution of malt beverages between the
manufacturer or importer, or the manufacturer's or importer's
distributor, and a vendor;

3. The vendor, as a result of such agreement, does not give
preferential treatment to the alcoholic beverage brand or brands
of the manufacturer or importer with whom the vendor has entered
into such agreement;

4. Such agreement does not limit, either directly or
indirectly, the sale of alcoholic beverages of another
manufacturer or importer, or distributor; and

5. Within 10 days after execution of such agreement, the
vendor files with the division a description of the agreement
which includes the location, dates, and the name of the
manufacturer or importer that entered into the agreement.

As used in this paragraph, the term "negotiated at arm's length"



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means the negotiation of a business transaction by independent parties acting in each party's own individual self-interest and conducted as if the parties were strangers, so that no conflict of interest may arise.

(b) A manufacturer or importer of malt beverages which is a party to a brand-naming rights agreement may not, either directly or indirectly, solicit or receive from any of its distributors any portion of the payment due from the manufacturer or importer of malt beverages to the vendor pursuant to such agreement. Such agreement exists solely between the manufacturer and the vendor and does not, directly or indirectly, in any way obligate or place responsibility, financial or otherwise, upon a distributor.

(c) Notwithstanding s. 561.29(3) and (4), a manufacturer of malt beverages, an importer of malt beverages, or a vendor who violates this subsection is subject to:

1. A civil penalty of at least \$5,000, but not more than \$25,000, for a first violation.

2. A civil penalty of at least \$25,000, but not more than \$50,000, for a second violation occurring within 36 months after the date of the first violation.

3. A civil penalty of at least \$50,000, but not more than \$100,000, for a third or subsequent violation occurring within 36 months after the date of the first violation.

4. At the discretion of the division, in lieu of or in addition to a civil penalty imposed under subparagraph 3., suspension or revocation of the alcoholic beverage license for a fourth or subsequent violation occurring within 36 months after the date of the first violation.



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A violation occurring more than 36 months after a first violation is deemed a first violation under this paragraph. When imposing a civil penalty within the ranges provided in subparagraphs 1.-3., the division shall consider the comparative financial value of the brand-naming rights agreement as a factor in assigning the amount of the civil penalty.

Section 2. This act shall take effect July 1, 2018.

===== 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 the Beverage Law; amending s.
561.42, F.S.; prohibiting certain entities and persons
from directly or indirectly assisting any vendor in
certain ways; prohibiting a licensed vendor from
accepting certain items and services; authorizing the
Division of Alcoholic Beverages and Tobacco to impose
administrative sanctions for a violation of certain
limitations established in the Beverage Law;
prohibiting a vendor from displaying certain signs in
the window or windows of his or her licensed premises;
authorizing certain entities and persons to give,
lend, furnish, or sell certain advertising material to
certain vendors; defining the term "decalcomania";
providing exemptions relating to tied house evil for
certain sales and purchases of merchandise; providing



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conditions for the exemptions; defining the term
"merchandise"; prohibiting a manufacturer or importer
of malt beverages from soliciting or receiving any
portion of certain payments from its distributors;
defining the term "negotiated at arm's length";
specifying that a brand-naming rights agreement does
not obligate or place responsibility upon a
distributor; providing civil penalties for violations
by manufacturers or importers of malt beverages or
vendors; providing applicability; requiring the
division to consider the comparative financial value
of a brand-naming rights agreement when determining
the amount of a civil penalty; providing an effective
date.

By the Committee on Regulated Industries; and Senator Hutson

580-02003-18

2018822c1

A bill to be entitled

An act relating to the Beverage Law; amending s. 561.42, F.S.; providing an exemption from provisions relating to the tied house evil for specified financial transactions between a manufacturer or importer of malt beverages and a licensed vendor; providing conditions for the exemption; prohibiting the manufacturer or importer of malt beverages from soliciting or receiving any portion of certain payments from its distributors; specifying that a brand naming rights agreement does not obligate or place responsibility upon a distributor; providing an effective date.

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

Section 1. Subsection (15) is added to section 561.42, Florida Statutes, to read:

561.42 Tied house evil; financial aid and assistance to vendor by manufacturer, distributor, importer, primary American source of supply, brand owner or registrant, or any broker, sales agent, or sales person thereof, prohibited; procedure for enforcement; exception.—

(15)(a) Notwithstanding any other provision of this section, a manufacturer or importer of malt beverages and a vendor may enter into a written agreement for brand naming rights, including the right to advertise cooperatively, negotiated at arm's length for no more than fair market value if:

Page 1 of 3

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

580-02003-18

2018822c1

1. The vendor operates places of business where consumption on the premises is permitted, the premises are located within a theme park complex consisting of at least 25 contiguous acres owned and controlled by the same business entity, and the complex contains permanent exhibitions and a variety of recreational activities and has a minimum of 1 million visitors annually through a controlled entrance to and exit from the theme park complex;

2. Such agreement does not involve, either in whole or in part, the sale or distribution of malt beverages between the manufacturer or importer, or its distributor, and a vendor;

3. The vendor does not give preferential treatment to the alcoholic beverage brand or brands of the manufacturer or importer with whom the vendor has entered into such agreement;

4. Such agreement does not limit, either directly or indirectly, the sale of alcoholic beverages of another manufacturer or importer, or distributor; and

5. Within 10 days after the execution of such agreement, the vendor files with the division a description of the agreement which includes the location, dates, and the name of the manufacturer or importer that entered into the agreement.

(b) A manufacturer or importer of malt beverages which is a party to a brand naming rights agreement may not, either directly or indirectly, solicit or receive from any of its distributors any portion of the payment due from the manufacturer or importer of malt beverages to the vendor pursuant to such agreement. Such agreement exists solely between the manufacturer and the vendor and does not, directly or indirectly, in any way obligate or place responsibility,

Page 2 of 3

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

580-02003-18

2018822c1

59 financial or otherwise, upon a distributor.

60 Section 2. This act shall take effect July 1, 2018.



The Florida Senate

Committee Agenda Request

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

Subject: Committee Agenda Request

Date: January 25, 2018

I respectfully request that **Senate Bill #822**, relating to Beverage Law, be placed on the:

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

A handwritten signature in blue ink, appearing to read "Travis Hutson", is written over a horizontal line.

Senator Travis Hutson
Florida Senate, District 7

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/6/18

Meeting Date

822

Bill Number (if applicable)

536536

Amendment Barcode (if applicable)

Topic Beverage Law

Name Kelly Mallette

Job Title _____

Address 104 West Jefferson Street
Street

Phone (850) 224-3427

Tallahassee, FL 32301
City State Zip

Email kelly@r/backpa.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Gold Coast / Fl. Distributing / Reyes

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/6/18

Meeting Date

Bill Number (if applicable)

536536

Amendment Barcode (if applicable)

Topic Theme Parks

Name Mitch Rubin

Job Title Executive Director

Address 215 S. Monroe St #340
Street

Phone (850) 224-2337

Tallahassee, FL 32301
City State Zip

Email MRubin2505@aol.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Beer Wholesalers Assn

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

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

February 6, 2018

Meeting Date

822

Bill Number (if applicable)

536536

Amendment Barcode (if applicable)

Topic Alcoholic Beverages

Name Josh Aubuchon

Job Title Attorney

Address 315 South Calhoun
Street

Phone 224-7000

Tallahassee
City

FL
State

32301
Zip

Email _____

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Brewers Guild

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

SB 822

Bill Number (if applicable)

Topic BEVERAGE LAW

536536

Amendment Barcode (if applicable)

Name BETH THIBODAN

Job Title VP, GOVERNMENT AFFAIRS

Address 9205 SOUTH PARK CENTER LOOP

Phone _____

Street

ORLANDO

FL

32819

City

State

Zip

Email beth.thibodan@seaworld.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing SEAWORLD / BUSCH GARDENS

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-6-18
Meeting Date

822
Bill Number (if applicable)

536 536
Amendment Barcode (if applicable)

Topic Beverage Law

Name Melanie Becker

Job Title Director Government Affairs

Address 1000 Universal Studios Plaza
Street

Phone 407 363 8974

Orlando 32819
City State Zip

Email Melanie.becker@universal

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Universal Orlando

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-6-18

Meeting Date

822

Bill Number (if applicable)

536536 DE

Amendment Barcode (if applicable)

Topic

Beverage Law

Name

Natalie King

Job Title

VP / COO

Address

235 W Brandon Blvd 640

Phone

813 924 8218

Street

Brandon FL 33511

City

State

Zip

Email

Natalie@draconer.com

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

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

Representing

Pepsi Distributing

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-6-18

Meeting Date

822

Bill Number (if applicable)

Topic Beverage law

Amendment Barcode (if applicable)

Name Jon Costello

Job Title lobbyist

Address 119 S. Monroe

Phone 681-6788

Tallahassee FL 32301

City

State

Zip

Email jon@reup4law.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Miller Coors

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/6/18

Meeting Date

822

Bill Number (if applicable)

Topic Beverage Law

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N Adams St

Phone 224-7173

Street

Tallahassee

FL

32301

Email bbevis@aif.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

08/06/18

Meeting Date

878

Bill Number (if applicable)

Topic Beverage Law

Amendment Barcode (if applicable)

Name Samantha Padgett

Job Title General Counsel

Address 230 S. Adams St.

Street

Phone 850-284-2850

Tallahassee

City

FL

State

32301

Zip

Email Spadgett@fla.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Restaurant & Lodging ASSO.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

7/6/18
Meeting Date

SB 822
Bill Number (if applicable)

Topic Beverage Law

Amendment Barcode (if applicable)

Name Beth Thibodaux

Job Title VP, Government Affairs

Address 9205 SouthPark Center Loop
Street

Phone _____

Orlando, FL 32819
City State Zip

Email beth.thibodaux@seaworld.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing SEA WORLD / BUSCH GARDENS

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-6-18
Meeting Date

822
Bill Number (if applicable)

Topic Baldrige Law

Amendment Barcode (if applicable)

Name Melanie Becker

Job Title Director Government Affairs

Address 1000 Universal Studios Plaza
Street

Phone 407 363 8974

Orlando 32819
City State Zip

Email Melanie.becker@universal
orlando.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Universal Orlando

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

APPEARANCE RECORD

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

2-6-18
Meeting Date

822
Bill Number (if applicable)
536536
Amendment Barcode (if applicable)

Topic Beverage Law

Name Jon Costello

Job Title lobbyist

Address 119 S Monroe
Street

Phone 681-6788

City

State

Zip

Email jon@rcuphlan.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Miller Coors

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

APPEARANCE RECORD

2-6-18

Meeting Date

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

822

Bill Number (if applicable)

536536

Amendment Barcode (if applicable)

Topic Beverage Law

Name Samantha Padgett

Job Title General Counsel

Address 730 S. Adams St.

Street

Tallahassee, FL 32301

City

State

Zip

Phone 850-528-5006

Email spadgett@fla.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FRLA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

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 1828

INTRODUCER: Senator Rodriguez

SUBJECT: Employment Discrimination

DATE: February 5, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Little	McKay	CM	Pre-meeting
2.			JU	
3.			RC	

I. Summary:

SB 1828 prohibits an employer from taking any retaliatory personnel action against an employee who leaves his or her place of employment due to a mandatory evacuation order issued by the President of the United States, the Governor, or a political subdivision of the state.

Employers are prohibited from discharging, suspending, demoting, or taking other adverse action against an employee who:

- Left the employee's place of employment to evacuate under a mandatory evacuation order.
- Evacuated because the employee's residence or place of employment was included in the mandatory evacuation zone.
- Returns to work within 14 days after the mandatory evacuation order is lifted, or another time agreed upon between the employee and employer.

Under the bill, an employee who is the object of a prohibited retaliatory personnel action may pursue a civil cause of action against the employer. A court is authorized to order relief and reasonable attorneys fees and costs to the prevailing party.

The bill does not apply to specified emergency personnel, individuals necessary to provide for the safety and well-being of the general public, and individuals employed at a nursing home facility, hospice, an assisted living facility, or a hospital.

The bill takes effect on July 1, 2018.

II. Present Situation:

Mandatory Evacuation Orders

Chapter 252, Florida Statutes (F.S.), confers certain emergency powers upon the Governor, the Division of Emergency Management, and the governing bodies of each political subdivision of the state with respect to emergencies that occur within the state.¹

With respect to the Governor, s. 252.36(2), F.S., provides for declaration of a state of emergency by executive order or proclamation if the Governor finds an emergency or the threat of an emergency has occurred or is about to occur. The law provides that the state of emergency continues until the Governor finds the emergency conditions no longer exist and terminates the state of emergency. However, a state of emergency may not exist for more than 60 days unless the Governor renews it.²

The Governor may also compel evacuation from any stricken or threatened area in the state if he or she determines it necessary to preserve life or facilitate emergency mitigation, response and recovery; and may prescribe routes, modes of transportation, and destinations in connection with evacuation.³ Counties may also order evacuations of their jurisdictional areas pursuant to authority delegated by the Governor and through each county's emergency management director.⁴

Hurricane Irma

During the 2017 hurricane season, Florida experienced one of the most powerful storms ever recorded in the Atlantic Ocean. In early September, Floridians watched news coverage of Hurricane Irma as it quickly developed into a Category 5 hurricane and trajectories began to show the powerful storm heading on a northward path, directly through the middle of the state.⁵

In preparation for the storm, on September 4, 2017, Governor Rick Scott declared a state of emergency in all 67 counties in Florida.⁶ The following day, the President of the United States approved a pre-landfall emergency declaration for the State of Florida.⁷ As the storm

¹ Section 252.32(1)(b), F.S.

² The Legislature may terminate a state of emergency at any time by concurrent resolution.

³ Section 252.36(5)(e) and (f), F.S.

⁴ See s. 252.36(8) and s. 252.38(1), F.S. See also Florida Attorney General Advisory Legal Opinion, AGO 95-24, dated April 3, 1995, explaining that counties may issue emergency evacuation orders in the absence of a directive from the Governor, where there is a Declaration of Emergency that expressly does not preclude such issuance.

⁵ *Maps: Tracking Hurricane Irma's Path Over Florida*, N.Y. TIMES, Sept. 11, 2018, available at <https://www.nytimes.com/interactive/2017/09/05/us/hurricane-irma-map.html>

⁶ See Office of Governor Rick Scott, *Executive Order No. 17-235*, available at <https://www.flgov.com/wp-content/uploads/2017/09/SLG-BIZHUB17090402490.pdf> (last visited Feb. 5, 2018).

⁷ Federal Emergency Management Agency, *President Donald J. Trump Signs Emergency Declaration for Florida*, available at <https://www.fema.gov/news-release/2017/09/05/president-donald-j-trump-signs-emergency-declaration-florida> (last visited Feb. 5, 2018).

approached, mandatory evacuation orders were issued throughout the state and a record number of 6.5 million people evacuated.⁸

Worker Protections in Florida

In Florida, there is no specific government agency responsible for administering and enforcing worker protection laws. Hour and wage laws are overseen by the federal Wage and Hour Division through local offices across the state. Complaints of discrimination or harassment in the workplace are typically handled by the Florida Commission on Human Regulations and the Equal Employment Opportunity Commission. The Florida Department of Financial Services regulates issues arising under workers' compensation claims, while the Department of Economic Opportunity (DEO) handles issues pertaining to unemployment insurance.⁹

Although current law does not directly prohibit an employer from firing or punishing an employee who does not show up to work due to a mandatory evacuation order, existing provisions may offer a remedy to an employee under such circumstances.

Reemployment Assistance Program

Florida's "Reemployment Assistance Program"¹⁰ provides reemployment benefits to individuals who become unemployed through no fault of their own. To receive benefits, such individuals must apply to the DEO, which is responsible for determining claimant eligibility, and the calculation and payment of reemployment assistance benefits.¹¹ Key eligibility requirements for reemployment benefits involve a claimant's earnings during a certain period of time, the manner in which the claimant became unemployed, and the claimant's efforts to find new employment.¹²

Reemployment assistance benefits are funded through a tax imposed on employers as a cost of doing business in the state of Florida. The rate at which employers pay reemployment assistance taxes is based on the employer's annual experience rating. One factor that can negatively affect an employer's tax rate is the number of employees that qualify for reemployment assistance benefits during the previous year. An employer with a high number of employees eligible for reemployment assistance benefits will likely be required to pay a higher tax rate.¹³

⁸ Mandatory evacuations were ordered for Monroe County and portions of Brevard, Broward, Citrus, Collier, Dixie, Duval, Flagler, Glades, Hendry, Hernando, Indian River, Lee, Martin, Miami-Dade, Orange, Palm Beach, Pasco, Pinellas, Sarasota, Seminole, St. Lucie, Sumter, and Volusia counties. Additionally, voluntary evacuation notices were issued for Alachua, Baker, Bay, Bradford, Charlotte, Columbia, Desoto, Hardee, Highlands, Hillsborough, Lake, Manatee, Okeechobee, Osceola, and Polk counties. See Office of Governor Rick Scott, *Gov. Scott Issues Updates on Hurricane Irma Preparedness*, September 7, 2017, available at <https://www.flgov.com/2017/09/07/gov-scott-issues-updates-on-hurricane-irma-preparedness-5/> (last visited Feb. 5, 2018).

⁹ The roles of Florida's agencies are specified under ch. 20, F.S.

¹⁰ The state's unemployment compensation program was rebranded in 2012. See Chapter 2012-30, Laws of Fla.

¹¹ Section 20.60(5)(c), F.S. and s. 443.171, F.S.

¹² Section 443.151(3) (a), F.S.

¹³ Florida Department of Revenue, *Employer Guide to Reemployment Tax*, available at http://floridarevenue.com/Forms_library/current/rt800002.pdf (last visited Feb. 5, 2018).

Disaster Unemployment Assistance

Upon an official declaration by the President of the United States of a major disaster, Disaster Unemployment Assistance (DUA) is made available to individuals who have become unemployed as a result of the major disaster and would not ordinarily be eligible under Florida's Reemployment Assistance Program. After Hurricane Irma, DUA benefits were made available to Floridians in 48 affected counties.¹⁴ Eligible individuals were authorized to receive DUA benefits for up to 26 weeks.¹⁵

Florida Whistleblower's Act

Florida's Whistleblower's Act (FWA) protects employees from certain retaliatory personnel actions taken by an employer. Sections 448.101-448.105, F.S., prohibit employers from taking any retaliatory personnel action against an employee who has "objected to, or refused to participate in, any activity, policy, or practice of the employer which is in violation of a law, rule, or regulation." The FWA applies to private employers with 10 or more employees and provide an employee with a civil cause of action as a remedy for relief.¹⁶

An employee who is the object of retaliatory personnel action for not coming to work due to a mandatory evacuation order may be able to bring a civil action against the employer under the FWA. To prevail, a court would need to find:

- The employer's request to attend work under a mandatory evacuation order was a violation of a law, rule, or regulation;
- The employee refused to violate such law, rule, or regulation; and
- The employer took retaliatory personnel action against the employee.¹⁷

Other Worker Protections

The federal Fair Labor Standards Act (FLSA) requires covered employees to comply with minimum wage, overtime pay, recordkeeping, and child labor standards. Employers that do not comply with the FLSA or take prohibited adverse action against an employee who reports information pertaining to a violation of the FLSA may be subject to a suit for relief. Remedies for an employee under the FLSA include reinstatement, payment of lost wages, and damages.¹⁸

¹⁴ DUA benefits were available to residents of Alachua, Baker, Bradford, Brevard, Broward, Charlotte, Citrus, Clay, Collier, Columbia, DeSoto, Dixie, Duval, Flagler, Gilchrist, Glades, Hardee, Hendry, Hernando, Highlands, Hillsborough, Indian River, Lafayette, Levy, Lake, Lee, Manatee, Marion, Martin, Miami-Dade, Monroe, Nassau, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Putnam, St. Johns, St. Lucie, Sarasota, Seminole, Sumter, Suwannee, Union and Volusia Counties. DEO, *Disaster Unemployment Assistance*, available at <http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/claimants/disaster-unemployment-assistance> (last visited Feb 5, 2018).

¹⁵ FEMA, *Federal Aid Programs for the State of Florida*, available at <https://www.fema.gov/news-release/2017/09/10/federal-aid-programs-state-florida> (last visited Feb. 5, 2018).

¹⁶ Similarly, provisions under s. 112.3187, F.S., protect public employees from adverse personnel action if the employee discloses information pertaining to an employer's alleged violation of law.

¹⁷ However, a nursing home employee that sought a FWA civil action under similar circumstances was unsuccessful in her attempt to establish that a mandatory evacuation order was a law, rule, or regulation. *See Gillyard v. Delta Health Group, Inc.*, 757 So.2d 601, (Fla. 5th DCA 2000) (holding that it would be absurd to interpret s. 448.102(3), F.S., as prohibiting employees from attending work at a nursing home during a mandatory evacuation order).

¹⁸ USDOL Wage and Hour Division, *Handy Reference Guide to the FLSA*, available at <https://www.dol.gov/whd/regs/compliance/hrg.htm> (last visited Feb. 5, 2018).

The federal Family and Medical Leave Act (FMLA) entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons.¹⁹ If a declared emergency or mandatory evacuation order causes an employee's absence from work for the purpose of caring for a family member, an employer subject to the FMLA may be required to allow the employee's absence. In addition to penalties being imposed by the United States Department of Labor (USDOL), an employer that violates the FMLA may be subject to a civil action brought by the employee.²⁰

The Occupational Safety and Health Administration (OSHA) is an agency under the USDOL, and is responsible for establishing health and safety standards in the workplace.²¹ Employers that fail to meet these standards may be subject to inspection and penalties. Employees who report unsafe workplace issues to the OSHA are protected from retaliatory action taken by employers under whistleblower provisions. Generally, a mandatory evacuation order is issued when there are hazardous circumstances that constitute an emergency. The OSHA may pursue an investigation or action against an employer who required an employee to attend work despite a mandatory evacuation order and unsafe circumstances. Additionally, an employee may be protected from retaliatory action against the employer if the employee requests the involvement of the OSHA at the workplace.

III. Effect of Proposed Changes:

The bill prohibits an employer from taking any retaliatory personnel action against an employee²² who leaves a place of employment due to a mandatory evacuation order.²³ The term "retaliatory personnel action" includes "the discharge, suspension, or other demotion by an employer of an employee or any other adverse employment action taken by an employer against an employee in the terms and conditions of employment."

Specifically, the employer may not take retaliatory personnel action against an employee who:

- Left the employee's place of employment to evacuate under a mandatory evacuation order.
- Evacuated because the employee's residence or place of employment was included in the mandatory evacuation zone.
- Returns to work within 14 days after the mandatory evacuation order is lifted, or another time agreed upon between the employee and employer.

An employee who has been the object of a prohibited retaliatory personnel action may bring a civil action against the employer in the county in which the alleged retaliatory personnel action occurred, in which the complainant resides, or in which the employer has its principal place of

¹⁹ 29 U.S.C. § 2601.

²⁰ Information under this subheading obtained from: United States Department of Labor, Wage and Hour Division, *Fact Sheet # 77B: Protection for Individuals under the FMLA*, <http://www.dol.gov/whd/regs/compliance/whdfs77b.htm> (last visited Feb. 5, 2018).

²¹ For more information on the Occupational Safety and Health Administration, see <https://www.osha.gov/about.html> (last visited Feb. 5, 2018).

²² The bill defines "employee" and "employer" as having the same meanings as described in the federal FLSA and its implementing regulations.

²³ The bill defines "mandatory evacuation order" as "an official statement issued by the President of the United States, the Governor, or a political subdivision of this state to mandate the evacuation of all or part of the population of an area stricken or threatened by an emergency."

business. The civil action for relief must be brought within 2 years after discovering that such action was taken or within 4 years after the action was taken, whichever is earlier. However, the bill provides that an employee may not recover if he or she failed to notify the employer about the applicable evacuation order or if the retaliatory personnel action was predicated upon another ground.

In addition to an award of reasonable attorneys fees, costs, and expenses, the bill authorizes the court to order the following forms of relief:

- An injunction restraining continued retaliatory personnel actions prohibited by the bill;
- Reinstatement of the employee to the same position held before the retaliatory personnel action, or to an equivalent position;
- Reinstatement of full fringe benefits and seniority rights;
- Compensation for lost wages, benefits, and other remuneration; and
- Any other compensatory damages allowable by law.

The bill does not apply to individuals who are:

- Employed as emergency personnel²⁴ if the employer provides adequate emergency shelter for those individuals;
- Necessary to provide for the safety and well-being of the general public, including a person necessary for the restoration of vital services;²⁵ and
- Employed at a nursing home facility, hospice, assisted living facility, or hospital.

The bill takes effect on July 1, 2018.

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:

The State Constitution prohibits the state from passing any law impairing the obligation of contracts.²⁶ Article I, Section 6 of the State Constitution also creates a constitutional

²⁴ Emergency personnel includes law enforcement officers, firefighters, emergency medical technicians or paramedics, and other individuals who are required, in the course and scope of their employment, to provide services for the benefit of the general public during an emergency.

²⁵ The bill limits the term “vital services” to include only the utility and roadway services necessary immediately after an emergency.

²⁶ Article I, s. 10, FLA. CONST.

right to collectively bargain for public sector employees. The Florida Supreme Court has held that public employees maintain the same rights to collectively bargain as do private employees.²⁷

Typically, collective bargaining agreements still allow an employer the right to exercise control and discretion over its employees, including the right to take disciplinary actions for proper cause.²⁸ Some collective bargaining agreements contain a “force majeure” clause, setting forth the employer’s rights and duties in emergency situations. For instance, an agreement may contain a provision affording the employer the right to cease operations and go out of business completely if a natural disaster forces the business to close. To the extent that the bill interferes with the terms and conditions of employment in existing employment contracts or collective bargaining agreements, the bill may implicate an employer’s right to contract under the State Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The fiscal impact dependent on the number of mandatory evacuation orders issued, the number of counties affected by such an order, and the duration of the order. The fiscal impact is therefore indeterminate.

C. Government Sector Impact:

The fiscal impact dependent on the number of mandatory evacuation orders issued, the number of counties affected by such an order, and the duration of the order. The fiscal impact is therefore indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Lines 43-52 prohibit an employer from discriminating against an employee whose actions meet specified criteria. The bill does not clearly identify whether an employee must meet all of the listed criteria or only one of the listed criteria in order to be protected from retaliatory personnel action. Additionally, the bill provides that an employee cannot recover in a civil action if the employee does not give notice to the employer. However, the notice requirement is not listed in lines 43-52.

²⁷ See *Hillsborough Cnty. Gov’tl Emps. Ass’n, Inc. v. Hillsborough Cnty. Aviation Auth.*, 522 So.2d 358 (Fla. 1988); *City of Tallahassee v. Public Employees Relations Comm’n*, 410 So.2d 487 (Fla. 1981); *Dade Cnty. Classroom Teachers Ass’n v. Legislature of Fla.*, 269 So.2d 684 (Fla. 1972).

²⁸ See generally Chapter 447, F.S.

The bill does not provide definitions for the following terms: “full fringe benefits,” “seniority rights,” and “a person who is necessary to provide for the safety and well-being of the general public.”

VIII. Statutes Affected:

This bill creates section 448.077 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.

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



394594

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment

Delete line 50

and insert:

(c) Returns to work within 72 hours after the mandatory



107004

LEGISLATIVE ACTION

Senate

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House

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

Senate Substitute for Amendment (394594)

Delete lines 46 - 52

and insert:

(a) Is unavailable for work because the employee evacuated in compliance with a mandatory evacuation order;

(b) Provided the employer with written notice prior to the expiration of the mandatory evacuation order; and

(c) Returns to work within 72 hours after the mandatory evacuation order is lifted.

By Senator Rodriguez

37-00744A-18

20181828__

A bill to be entitled

An act relating to employment discrimination; creating s. 448.077, F.S.; providing definitions; prohibiting an employer from taking retaliatory personnel action against an employee who has left a place of employment to evacuate under an mandatory evacuation order; providing exceptions; providing employee remedies and relief; providing for attorney fees and costs; providing applicability; providing an effective date.

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

Section 1. Section 448.077, Florida Statutes, is created to read:

448.077 Employment discrimination on basis of participation in mandatory evacuation prohibited.—

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

(a) "Emergency" has the same meaning as defined in s. 252.34.

(b) "Mandatory evacuation order" means an official statement issued by the President of the United States, the Governor, or a political subdivision of this state to mandate the evacuation of all or part of the population of an area stricken or threatened by an emergency.

(c) "Emergency personnel" means a law enforcement officer as defined in s. 943.10, a firefighter as defined in s. 633.102, an emergency medical technician or paramedic as defined in s. 401.23, or other individuals who are required, in the course and scope of their employment, to provide services for the benefit

37-00744A-18

20181828__

of the general public during an emergency.

(d) "Employee" has the same meaning as established under the federal Fair Labor Standards Act and its implementing regulations.

(e) "Employer" has the same meaning as established under the federal Fair Labor Standards Act and its implementing regulations.

(f) "Retaliatory personnel action" means the discharge, suspension, or demotion by an employer of an employee or any other adverse employment action taken by an employer against an employee in the terms and conditions of employment.

(g) "Vital services" means only the utility and roadway services necessary immediately after an emergency.

(2) DISCRIMINATION PROHIBITED.—An employer may not take any retaliatory personnel action against an employee if the employee:

(a) Left the employee's place of employment to evacuate under a mandatory evacuation order.

(b) Evacuated because the employee's residence or place of employment was included in the mandatory evacuation zone.

(c) Returns to work within 14 days after the mandatory evacuation order is lifted or by a time agreed upon between the employee and employer.

(3) EMPLOYEE'S REMEDY; RELIEF.—

(a)1. An employee who has been the object of a retaliatory personnel action in violation of subsection (2) may institute a civil action in a court of competent jurisdiction for relief as set forth in paragraph (b) within 2 years after discovering that the alleged retaliatory personnel action was taken, or within 4

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59 years after the personnel action was taken, whichever is
60 earlier.

61 2. Any civil action authorized under this subsection may be
62 brought in the county in which the alleged retaliatory personnel
63 action occurred, in which the complainant resides, or in which
64 the employer has its principal place of business.

65 3. An employee may not recover in any action brought
66 pursuant to this subsection if he or she failed to notify the
67 employer about the applicable evacuation order or if the
68 retaliatory personnel action was predicated upon a ground other
69 than the employee's exercise of a right protected by this
70 section.

71 (b) In any action brought pursuant to paragraph (a), the
72 court may order relief as follows:

73 1. An injunction restraining continued violation of this
74 section.

75 2. Reinstatement of the employee to the same position held
76 before the retaliatory personnel action, or to an equivalent
77 position.

78 3. Reinstatement of full fringe benefits and seniority
79 rights.

80 4. Compensation for lost wages, benefits, and other
81 remuneration.

82 5. Any other compensatory damages allowable by law.

83 (4) ATTORNEY FEES AND COSTS.—A court may award reasonable
84 attorney fees, court costs, and expenses to the prevailing
85 party.

86 (5) APPLICABILITY.—This section does not apply to:

87 (a) Individuals employed as emergency personnel if the

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88 employer provides adequate emergency shelter for those
89 individuals.

90 (b) A person who is necessary to provide for the safety and
91 well-being of the general public, including a person necessary
92 for the restoration of vital services.

93 (c) Individuals employed at a nursing home facility, as
94 defined in s. 400.021; hospice, as defined in s. 400.601;
95 assisted living facility, as defined in s. 429.02; or hospital,
96 as defined in s. 395.002.

97 Section 2. This act shall take effect July 1, 2018.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on Finance and Tax
Appropriations Subcommittee on General Government
Commerce and Tourism
Community Affairs
Ethics and Elections
Appropriations Subcommittee on Civil and Criminal Justice
Rules

SENATOR JOSE JAVIER RODRIGUEZ

Deputy Democratic Whip
37th District

January 16th, 2018

Chairman Montford
Committee on Commerce and Tourism
310 Knott Building
404 S. Monroe St.
Tallahassee, FL 32399-1100
Sent via email to montford.bill@flsenate.gov

Chairman Montford,

I respectfully request that you place SB 1828 relating to employment discrimination on the agenda of the Committee on Commerce and Tourism at your earliest convenience.

Should you have any questions or concerns, please feel free to contact me or my office. Thank you in advance for your consideration.

Regards,

A handwritten signature in blue ink, appearing to read "JR", with a stylized flourish at the end.

Senator José Javier Rodríguez
District 37, Miami

CC: Todd McKay, Staff Director
Gabriela Denton, Administrative Assistant

REPLY TO:

- ☐ 2100 Coral Way, Suite 505, Miami, Florida 33145 (305) 854-0365
- ☐ 220 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5037

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

2.6.19

Meeting Date

Topic Employment Discrimination

Bill Number 1828

Name William Large

Amendment Barcode 394594
(if applicable)

Job Title President

(if applicable)

Address 210 S. Monroe Street

Phone 850.222.0170

Street

Tallahassee FL 32301

City

State

Zip

E-mail William@justice.org

Speaking: ☐ For ☐ Against ☐ Information

Representing Florida Justice Reform Institute

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

02.06.18

Meeting Date

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

1828

Bill Number (if applicable)

Topic Employment Discrimination

Amendment Barcode (if applicable)

Name Jeffrey Slanker

Job Title _____

Address 123 North Monroe Street

Phone 850-205-1996

Street

Tallahassee

FL

32301

City

State

Zip

Email jslanker@sniffenlaw.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Justice Reform Institute

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/6/18

Meeting Date

1828

Bill Number (if applicable)

Topic Employment Discrimination

Amendment Barcode (if applicable)

Name Carolyn Johnson

Job Title Policy Director

Address 136 S Bronough Street

Phone 521-1200

Street

Tallahassee

FL

32301

Email cjohnson@flchamber.com

City

State

Zip

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/6/18
Meeting Date

1828

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Tim Nungesser

Job Title Legislative Director

Address 110 East Jefferson Street

Phone 850-445-5367

Street

Tallahassee

FL

32301

City

State

Zip

Email tim.nungesser@nfib.org

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

Representing National Federation of Independent Business

Appearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

2-6-18

Meeting Date

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

1828

Bill Number (if applicable)

Topic

EMPLOYMENT DISCRIMINATION

Amendment Barcode (if applicable)

Name

CAM FENTRISS

Job Title

LEGISLATIVE COUNSEL

Address

1400 VILLAGE SQ # 3-243

Phone

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Street

TALLAHASSEE

FL

32312

Email

CFENTRISS@AOL.COM

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☐

In Support

☐

Against

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

☒ CONCERNS

☒ CONCERNS

Representing

FLA. ROOFING & SHEET METAL CONTRACTORS ASSN

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

2/6/18

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

SB 1828

Meeting Date

Bill Number (if applicable)

Topic Employment Discrimination

Amendment Barcode (if applicable)

Name JAKE FARMER

Job Title Legislative Coordinator

Address 227 S Adams street

Phone 352 359 6835

Tallahassee FL 32301

Email Jake@frf.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA RETAIL FEDERATION

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

Commece
9am

Duplicate

2/6/18

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

1828

Meeting Date

Bill Number (if applicable)

Topic Employment Discrimination

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N Adams St

Phone 224-7173

Street

Tallahassee

FL

32301

Email bbevis@aif.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

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

SENATOR BILL MONTFORD

3rd District

February 5, 2018

The Honorable President Negron
404 S. Monroe Street
Tallahassee, FL 32399-1100

President Negron:

This is a formal request that I be excused from tomorrow's Commerce and Tourism Committee meeting and from any votes on committee matters taken during my absence.

Your indulgence is greatly appreciated.

Respectfully submitted,

A handwritten signature in cursive script that reads "Bill Montford".

Bill Montford, State Senator
District Three

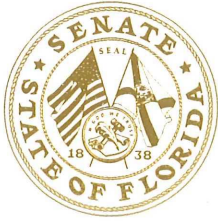
REPLY TO:

- ☐ 410 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5003
- ☐ 20 East Washington Street, Suite D, Quincy, Florida 32351 (850) 627-9100
- ☐ 105 North Jefferson Street, Perry, Florida 32347 (850) 223-0902

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR AUDREY GIBSON
6th District

COMMITTEES:
Military and Veterans Affairs, Space, and
Domestic Security, *Chair*
Appropriations
Appropriations Subcommittee on
Transportation, Tourism, and Economic
Development
Commerce and Tourism
Judiciary
Regulated Industries

JOINT COMMITTEE:
Joint Legislative Auditing Committee

February 6, 2018

Senator Bill Montford, Chair
Commerce and Tourism
310 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399

Chair Montford:

I respectfully request be excused from this week's committee meeting, because I am sick with the flu.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Audrey Gibson".

Audrey Gibson
State Senator
Senate District 6

101 E. Union Street, Suite 104, Jacksonville, Florida 32202 (904) 359-2553
405 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5006

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

CourtSmart Tag Report

Room: EL 110 **Case No.:**
Caption: Senate Commere and Tourism Committee

Type:
Judge:

Started: 2/6/2018 9:04:47 AM
Ends: 2/6/2018 10:29:16 AM **Length:** 01:24:30

9:04:50 AM	Roll Call
9:05:07 AM	Pledge
9:05:31 AM	Senator Young in Chair
9:05:54 AM	SB's 1658 and SB 1828 TP'd
9:06:03 AM	SB 762 by Senator Mayfield
9:06:24 AM	SB 762 by Senator Mayfield
9:06:43 AM	Questions
9:06:51 AM	amendment 689278
9:07:25 AM	Amendment adopted
9:07:31 AM	Back on bill as amended
9:07:45 AM	Robert reyes waives in support
9:07:51 AM	John Mixon waives in support
9:07:58 AM	Senator Mayfield closing
9:08:18 AM	CS/SB 762 passes as CS
9:08:50 AM	Recording Paused
9:10:02 AM	Recording Resumed
9:10:29 AM	Tab 3 SB 1114 by Sen. Brandes - Professional Regulation
9:10:39 AM	
9:11:24 AM	Questions on bill
9:12:08 AM	Amendment 447528 late filed
9:12:26 AM	Senator Passidomo objected to late filed amendment
9:13:11 AM	Senator Brandes explaining late filed amendment 447528
9:14:18 AM	Senator Passidomo with questions
9:14:45 AM	Senator Brandes responding
9:15:53 AM	Lisa Mergel waives in oppisition
9:16:29 AM	Joni Jarrell, President, Summitt Salon Academy Gainesville
9:19:20 AM	Joanne Powers, Summitt Salon Academy- Tampa
9:23:00 AM	Allen Mortham Jr Waives in Opposition
9:23:34 AM	Curtis Austin, Executive Director, Florida Assoociation of Postsecondary Schools and Colleges
9:26:24 AM	Vittorio Nastasi waives in support
9:26:45 AM	Senator Passidomo in debate
9:27:30 AM	Senator Rodriguez in debate
9:28:15 AM	Senator Young in debate
9:28:44 AM	Senator Brandes closing on amendment
9:30:13 AM	Amendment 447528 passes
9:30:22 AM	Back on bill as amended
9:30:53 AM	Jorge Chamizo waives in support
9:31:11 AM	Senator Brandes closes
9:31:39 AM	CS/SB 1114 passes favorable
9:32:28 AM	Tab 5 SB 1606 by Senator Taddeo, Film and Television Productions
9:33:28 AM	Senator Taddeo explaining bill
9:34:43 AM	Senator Passidomo with questions
9:35:09 AM	Senator Taddeo responding
9:36:31 AM	Senator Passidomo with follow up
9:36:55 AM	Senator Taddeo responding
9:38:17 AM	Senator Passidom with follow up
9:38:40 AM	Senator Taddeo responding
9:39:49 AM	Senator Stargel with a question
9:40:21 AM	Senator Taddeo responding
9:41:26 AM	Senator Taddeo responding
9:41:38 AM	Senator Stargel with follow up
9:42:04 AM	Senator Taddeo responding

9:42:11 AM Senator Stargel
 9:42:35 AM Senator Taddeo responding
 9:44:11 AM Chris Ranung, Chair, Compass
 9:46:42 AM Chair Young reading cards waiving in support
 9:46:56 AM Andrew Hosek, Americas for Prosperity
 9:50:27 AM Sidney Rudkey, Waives in support
 9:50:41 AM Senator Passidomo in debate
 9:52:28 AM Senator Stargel in debate
 9:53:40 AM Senator Rodriguez in debate
 9:55:09 AM Senator Gainer in debate
 9:55:56 AM Senator Taddeo TP'd SB 1606
 9:56:06 AM SB 1604 Tp'd
 9:57:02 AM Tab 4 SB 1314 by Senator Brandes
 9:57:41 AM Amendment barcode 363924
 9:57:51 AM Amendment 363924 adopted
 9:58:07 AM Senator Roriguez in questions
 9:58:16 AM Senator Brandes responding
 9:59:11 AM Dr. Jackson Streeter, CEO Institute for the Commerralization of Public Research
 9:59:32 AM Debate on bill
 9:59:42 AM Senator Brandes waives
 9:59:48 AM Roll call on SB 1314
 9:59:58 AM CS/SB 1314 reported favorably
 10:00:09 AM Recording Paused
 10:09:10 AM Recording Resumed
 10:09:16 AM Back in Meeting
 10:09:29 AM CS/SB 822 by Senator Hutson, Beverage Law
 10:10:10 AM Strike all amendment 536536
 10:10:22 AM Senator Hutson explaining amendment
 10:10:48 AM
 10:10:52 AM questions
 10:11:09 AM Appearance cards
 10:11:30 AM Josh Aubuchon - Florida Brewers
 10:12:47 AM Debate on bill as amended
 10:13:00 AM Debate on bill as amended
 10:13:05 AM Amendment adopted
 10:13:13 AM Debate on bill as amended
 10:13:22 AM
 10:14:10 AM Senator Rodriguez in debate
 10:14:37 AM Senator Stargel in debate
 10:14:58 AM Close on bill
 10:15:09 AM CS/SB 822 passes
 10:15:22 AM Recording Paused
 10:25:44 AM Recording Resumed
 10:27:05 AM Senator Rodriguez moves to take up SB 1828 by Senaotr Rodriguez - - Employment Discrimination
 10:27:13 AM Motion failes
 10:27:27 AM Senator Rodriguez moves to take up SB 1658 by Sen. Farmer, Income Inequality
 10:27:31 AM Motion failes
 10:27:39 AM Tab 2 - SB 894 by Senator Garcia - Mortgage Lending
 10:27:47 AM Senator Garcia explains bill
 10:28:31 AM Courtney Larkin, Florida Office of Financial Regulation
 10:28:39 AM Senator Garcia waives close
 10:28:55 AM SB 894 passes favorably
 10:29:06 AM Meeting Adjourned