

Tab 1	SB 388 by Hutson; (Identical to H 00423) Beverage Law					
550448	A	S	RCS	RI, Hutson	Delete L.13 - 40:	03/16 04:49 PM

Tab 2	SB 400 by Perry; (Similar to H 00689) Alcoholic Beverages					
822540	A	S	RCS	RI, Gibson	Delete L.100 - 101:	03/16 04:49 PM
477952	A	S	WD	RI, Grimsley	Delete L.310 - 319:	03/16 04:49 PM
174852	A	S	RCS	RI, Perry	Delete L.310 - 319:	03/16 04:49 PM
201078	A	S	RS	RI, Brandes	btw L.329 - 330:	03/16 04:49 PM
323682	SA	S	RCS	RI, Brandes	btw L.329 - 330:	03/16 04:49 PM
193132	ASA	S	RCS	RI, Brandes	Delete L.7:	03/16 04:49 PM

Tab 3	SB 514 by Stargel; (Identical to H 00741) Fees of the Department of Business and Professional Regulation					
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Tab 4	SB 716 by Passidomo; (Similar to CS/H 00927) Real Estate Appraisers					
933304	D	S	RCS	RI, Passidomo	Delete everything after	03/16 04:50 PM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

REGULATED INDUSTRIES
Senator Hutson, Chair
Senator Hukill, Vice Chair

MEETING DATE: Wednesday, March 15, 2017

TIME: 4:00—6:00 p.m.

PLACE: 301 Senate Office Building

MEMBERS: Senator Hutson, Chair; Senator Hukill, Vice Chair; Senators Benacquisto, Bracy, Brandes, Braynon, Gibson, Perry, Steube, Thurston, and Young

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 388 Hutson (Identical H 423)	Beverage Law; Prohibiting the possession or use by certain licensees of specified wine or fortified wine coupons; providing an exemption from provisions relating to the tied house evil for specified financial transactions between a manufacturer of beer or malt beverages and a licensed vendor, etc. RI 03/15/2017 Fav/CS CM RC	Fav/CS Yeas 10 Nays 0
2	SB 400 Perry (Similar H 689, Compare H 141)	Alcoholic Beverages; Authorizing the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation to appoint division personnel; revising the entities that may issue a certificate indicating an alcoholic beverage license applicant's place of business meets all of the sanitary requirements of the state, etc. RI 02/22/2017 Temporarily Postponed RI 03/15/2017 Fav/CS AGG AP	Fav/CS Yeas 10 Nays 0
3	SB 514 Stargel (Identical H 741, Compare H 1123, S 1442)	Fees of the Department of Business and Professional Regulation; Revising the amount of the additional delinquency fee a board or the department must impose under certain circumstances; revising the surcharge rate assessed on certain permits, etc. RI 03/15/2017 Favorable AGG AP	Favorable Yeas 9 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Regulated Industries

Wednesday, March 15, 2017, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 716 Passidomo (Similar CS/H 927)	Real Estate Appraisers; Revising authorized methods of instruction and certain requirements for specified real estate practice courses; requiring the Department of Business and Professional Regulation to transmit a specified roster to a certain appraisal committee; revising which persons are included in a specified requirement for information in an application for appraisal management company registration; authorizing the board to deny an application for renewal of an appraisal management company's registration on specified grounds, etc.	Fav/CS Yeas 9 Nays 0
		RI 03/15/2017 Fav/CS AGG AP	

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 Regulated Industries

BILL: CS/SB 388

INTRODUCER: Regulated Industries Committee and Senator Hutson

SUBJECT: Beverage Law

DATE: March 15, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	McSwain	RI	Fav/CS
2.			CM	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 388 amends the “tied house evil” statute in s. 561.42, F.S., which prohibits a manufacturer or distributor from having a financial interest, directly or indirectly, in the establishment or business of a licensed vendor, and prohibits a manufacturer or distributor from giving gifts, loans or property, or rebates to retail vendors.

The bill exempts from the tied house evil prohibitions certain financial transactions negotiated at arm’s length for fair market value between a manufacturer of beer or malt beverages and a licensed alcoholic beverage vendor.

Such a financial transaction may not involve the sale or distribution of beer or malt beverages, may not limit the sale of beer or malt beverages from another manufacturer, must be with a vendor who operates a theme park, and must be registered with the Division of Alcoholic Beverages and Tobacco (division) in the Department of Business and Professional Regulation (DBPR).

The bill provides an effective date of July 1, 2017.

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
- “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

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.

⁸ Section 561.14(3), F.S.

⁹ Section 561.14, F.S.

¹⁰ Section 561.22(1), F.S.

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

The three-tier system is deeply rooted in the perceived evils of the “tied house” in which a bar is owned or operated by a manufacturer or the manufacturer exercises undue influence over the retail vendor.¹⁴

Section 561.42, F.S., known as the “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 or 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 legitimate transportation of such beverages, to advertising materials, or to the extension of credit,¹⁷ for liquors sold, made strictly in compliance with the provisions of s. 561.42, F.S.¹⁸

Section 561.42, F.S., also prohibits licensed manufactures and distributors from:

- Making further sales to vendors that the division has certified as not having fully paid for all liquors previously purchased;¹⁹
- Directly or indirectly giving, lending, renting, selling, or in any other manner furnishing to a vendor any outside sign, printed, painted, electric, or otherwise;²⁰
- 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 his or her licensed premises;²¹ and

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 Erik D. Price, *Time to Untie the House? Revisiting the Historical Justifications of Washington’s Three-Tier System Challenged by Costco v. Washington State Liquor Control Board*, (June 2004) available at: http://www.lanepowell.com/wp-content/uploads/2009/04/pricce_001.pdf (last visited March 9, 2017).

¹⁵ Section 561.42(1), F.S.

¹⁶ See s. 564.045, F.S.

¹⁷ 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(1), F.S.

¹⁹ Section 561.42(4), F.S.

²⁰ Section 561.42(10), F.S.

²¹ Section 561.42(12), F.S.

- 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.²²

III. Effect of Proposed Changes:

CS/SB 388 creates s. 561.42(15), F.S., to exempt from the tied house evil prohibitions certain financial transactions negotiated at arm's length for fair market value between a manufacturer of malt beverages and a vendor licensed under the Beverage Law.

Such financial transactions:

- May not involve the sale or distribution of beer or malt beverages;
- May not limit the sale of beer or malt beverages from another manufacturer;
- Must be with a vendor who operates a theme park; and
- Must be registered with the division.

The bill defines a "theme park" as a complex 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 has a minimum of 1 million visitors annually.²³

The bill provides an effective date of July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

²² Section 561.42(14)(a), F.S.

²³ This definition of "theme park" is identical 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.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 561.42, Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

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

CS by Regulated Industries on March 15, 2017:

The committee substitute (CS):

- Does not amend s. 561.42(13), F.S., to prohibit the possession or use of wine and fortified wine coupons or cross-merchandising coupons.
- Amends s. 561.42(15), F.S., to require that, to be exempt from the tied-house evil law, an arms-length financial transaction between a manufacturer of beer or malt beverages and a vendor may not involve the sale or distribution of beer or malt beverages, may not limit the sale of beer or malt beverages from another manufacturer, must be with a vendor who operates a theme park, and must be registered with the division.

B. Amendments:

None.

The Florida Senate
COMMITTEE VOTE RECORD

COMMITTEE: Regulated Industries
ITEM: SB 388
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Wednesday, March 15, 2017
TIME: 4:00—6:00 p.m.
PLACE: 301 Senate Office Building

FINAL VOTE		SENATORS	3/15/2017 Amendment 550448		1			
Yea	Nay		Hutson		Yea	Nay	Yea	Nay
X		Benacquisto						
X		Bracy						
X		Brandes						
X		Braynon						
X		Gibson						
X		Perry						
X		Steube						
X		Thurston						
X		Young						
		Hukill, VICE CHAIR						
X		Hutson, CHAIR						
10	0		RCS	-				
Yea	Nay	TOTALS	Yea	Nay	Yea	Nay	Yea	Nay

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



550448

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/16/2017	.	
	.	
	.	
	.	

The Committee on Regulated Industries (Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete lines 13 - 40

and insert:

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



550448

11 enforcement; exception.-

12 (15) This section does not apply to a financial
13 transaction negotiated at arm's length for fair market value
14 between a manufacturer of beer or malt beverages, as defined in
15 s. 563.01, and a vendor licensed under the Beverage Law if:

16 (a) Such financial transaction does not involve, either all
17 or in part, the direct sale or distribution of beer or malt
18 beverages between the manufacturer and licensed vendor;

19 (b) Such financial transaction does not limit, either
20 directly or indirectly, the sale of alcoholic beverages from
21 another manufacturer during or in connection with any sponsored
22 events;

23 (c) The vendor operates places of business where
24 consumption on the premises is permitted, which premises are
25 located within a theme park complex comprised of at least 25
26 contiguous acres owned and controlled by the same business
27 entity and which contains permanent exhibitions and a variety of
28 recreational activities and has a minimum of 1 million visitors
29 annually; and

30 (d) The financial transaction is registered with the
31 division with a summary of the transaction that includes a
32 description of any sponsored events, activities, or cooperative
33 advertising.

34
35 ===== T I T L E A M E N D M E N T =====

36 And the title is amended as follows:

37 Delete lines 3 - 8

38 and insert:

39 561.42, F.S.; providing an exemption from provisions



550448

40 relating to the tied house evil for specified
41 financial transactions between a manufacturer of beer
42 or malt beverages and a licensed vendor; providing
43 conditions for the exception; providing an

By Senator Hutson

7-00499-17

2017388__

1 A bill to be entitled
2 An act relating to the Beverage Law; amending s.
3 561.42, F.S.; prohibiting the possession or use by
4 certain licensees of specified wine or fortified wine
5 coupons; providing an exemption from provisions
6 relating to the tied house evil for specified
7 financial transactions between a manufacturer of beer
8 or malt beverages and a licensed vendor; providing an
9 effective date.

10
11 Be It Enacted by the Legislature of the State of Florida:

12
13 Section 1. Subsection (13) of section 561.42, Florida
14 Statutes, is amended, and subsection (15) is added to that
15 section, to read:

16 561.42 Tied house evil; financial aid and assistance to
17 vendor by manufacturer, distributor, importer, primary American
18 source of supply, brand owner or registrant, or any broker,
19 sales agent, or sales person thereof, prohibited; procedure for
20 enforcement; exception.—

21 (13) A licensee under the Beverage Law may not possess or
22 use, in physical or electronic format, any type of malt
23 beverage, wine, or fortified wine coupon or malt beverage, wine,
24 or fortified wine cross-merchandising coupon in this state,
25 where:

26 (a) The coupon is produced, sponsored, or furnished,
27 whether directly or indirectly, by an alcoholic beverage
28 manufacturer, distributor, importer, brand owner, or brand
29 registrant or any broker, sales agent, or sales person thereof;
30 and

31 (b) The coupon is or purports to be redeemable by a vendor
32 or other person who sells malt beverages, wine, or fortified

7-00499-17

2017388__

33 wine to consumers in the state.

34 (15) This section does not apply to a financial transaction
35 negotiated at arm's length for fair market value between a
36 manufacturer of beer or malt beverages, as defined in s. 563.01,
37 and a vendor licensed under the Beverage Law if such financial
38 transaction does not involve, either all or in part, the direct
39 sale or distribution of beer or malt beverages between the
40 manufacturer and licensed vendor.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

March 15

388

Meeting Date

Bill Number (if applicable)

Topic Beverage Law

Amendment Barcode (if applicable)

Name Jon Johnson

Job Title Managing Partner

Address PO Box 10805

Phone 8502241900

Street

Tallahassee

FL

32302

Email jon@teamjtb.com

City

State

Zip

Speaking: [] For [] Against [] Information

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

Representing SeaWorld Parks and Entertainment

Appearing at request of Chair: [] Yes [x] 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)

8-15-17

Meeting Date

388

Bill Number (if applicable)

Topic Beverage Law

Amendment Barcode (if applicable)

Name Jon Costello

Job Title consultant

Address 118 S Murray

Phone 766-8654

Street

Tallahassee FL 32301

City

State

Zip

Email jon@ruthledge-ccengr.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.

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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)

3/15/17
Meeting Date

388
Bill Number (if applicable)

Topic Malt Beverages/Tied House Amendment Barcode (if applicable)

Name Mitch Rubin

Job Title Ex Director

Address 215 S. Monroe St #340
Street
Tallahassee, FL 32301
City State Zip

Phone (850) 224-2337

Email Mitch@FBWA.com

Speaking: For Against Information

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

Representing Florida Beer Wholesalers Assn

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

3/15/2017
Meeting Date

SB 388
Bill Number (if applicable)

Topic Alcohol

Amendment Barcode (if applicable)

Name Eric Criss

Job Title President

Address 110 S. Monroe St
Street

Phone 850.491.3903

Tallahassee FL 32301
City State Zip

Email eric@floridabeer.org

Speaking: For Against Information

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

Representing Beer Industry of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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)

3-15-17

Meeting Date

388

Bill Number (if applicable)

Topic Beverage Law

Amendment Barcode (if applicable)

Name Melanie Becker

Job Title Director of Government Relations

Address 1000 Universal Studios Plaza

Phone 407 310 2561

Street

Orlando

FL

32819

City

State

Zip

Email melanie.becker@universalorlando.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)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3.15.17

Meeting Date

388

Bill Number (if applicable)

Topic Beverage Law

Amendment Barcode (if applicable)

Name Mac Stipanovich

Job Title Sr. Counsel

Address 101 N. Monroe Street

Phone 850 815 8141

Street

Tallahassee

FL

32301

City

State

Zip

Email mac.stipanovich@bipec.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.

APPEARANCE RECORD

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

MARCH 15, 2017
Meeting Date

SB 388
Bill Number (if applicable)

Topic BEVERAGE LAW

Amendment Barcode (if applicable)

Name RICHARD TURNER

Job Title GENERAL COUNSEL

Address 230 S. ADAMS
Street
Tallahassee FL 32309
City State Zip

Phone 850.224-2250

Email RTURNER@FRLA.ORG

Speaking: For Against Information

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

Representing FLORIDA RESTAURANT & LODGING 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.

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 Regulated Industries

BILL: CS/SB 400

INTRODUCER: Regulated Industries Committee and Senator Perry

SUBJECT: Alcoholic Beverages

DATE: March 15, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	McSwain	RI	Fav/CS
2.	_____	_____	AGG	_____
3.	_____	_____	AP	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 400 provides Select Exempt Service status to the following employees of the Division of Alcoholic Beverages and Tobacco (division) in the Department of Business and Professional Regulation (DBPR): chiefs, assistant chiefs, regional managers (including majors), and district or office managers (including captains).

The bill adds the Agency for Health Care Administration as one of the agencies from which an applicant for an alcoholic beverage license for consumption on premises must obtain a certificate that the applicant's place of business meets all sanitary requirements.

Existing law requires that a caterer licensed to sell beer, wine, and distilled spirits must derive at least 51 percent of its gross revenue from the sale of food and nonalcoholic beverages. The bill provides that the percentage is based on a caterer's "gross food and nonalcoholic beverage revenue" instead of "gross revenue." A caterer must comply with the 51 percent requirement for each catered event.

Regarding a caterer's license to sell beer, wine and, distilled spirits, the bill expands the types of records that must be maintained to demonstrate compliance with its license. It requires that a caterer maintain all records and receipts for each catered event, including all contracts, customers' names, locations, dates, food purchases and sales, alcoholic beverage purchases and sales, nonalcoholic beverage purchases and sales, and any other records required by rule of the DBPR.

The bill also:

- Repeals the fee for a temporary license issued in connection with an application to transfer an alcoholic beverage to the purchaser of a licensed business or to change the type or series of a license;
- Repeals the wine container limits, which under current law are limited to containers that hold no more than one gallon, unless it is in a reusable container that holds 5.16 gallons;
- Permits the sale of cider in 32 ounce, 64 ounce, or one gallon growlers in the same manner and with the same restrictions applicable to malt beverages;
- Repeals the requirement that a restaurant patron must purchase and consume a full course meal in order to be able to take home a partially consumed bottle of wine, but retains the requirement that the restaurant patron purchase a meal with the bottle of wine; and
- Reduces the annual license tax for a craft distillery from \$4,000 to \$1,000.

The bill will reduce net revenue available to the Alcoholic Beverage and Tobacco Trust Fund (AB&T TF) by \$138,814 and revenue from the General Revenue service charge by \$11,105. *See* Section V.

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

II. Present Situation:

Division of Alcoholic Beverages and Tobacco

The division¹ administers and enforces the Beverage Law,² which regulates the manufacture, distribution, and sale of wine, beer, and liquor. The division is also responsible for the administration and enforcement of tobacco products under ch. 569, F.S.

State Employment

Parts I – V of ch. 110, F.S., provide the system of personnel management in the state. Part I contains general state employment provisions; part II addresses the Career Service System; part III deals with the Senior Management Service System; part IV relates to volunteers; and part V establishes the Select Exempt Service System.

The terms “career service” and “career service employee” are not defined in the statutes. A “career service employee” who has satisfactorily completed at least a one-year probationary period may only be suspended or dismissed for cause. Cause includes negligence, inefficiency or inability to perform assigned duties, insubordination, willful violation of the provisions of law or agency rules, conduct unbecoming a public employee, misconduct, habitual drug abuse, or conviction of any crime.³ Career service employees are entitled a grievance process⁴ and the

¹ Section 561.02, F.S. Section 561.01(6), F.S., provides that the “Beverage Law” means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.

² *See* s. 561.14, F.S.

³ Section 110.227(1), F.S.

⁴ Section 110.227(4), F.S.

right to appeal a suspension, reduction in pay, demotion, involuntary transfer of more than 50 miles by highway, or dismissal.⁵

Section 110.205(2), F.S., lists the personnel positions that are exempt from the career service classification, including all members, officers, and employees of the Legislature. The career service classification also does not include assistant division directors, deputy division directors, and bureau chief positions in any department, and those positions determined by a department to have managerial responsibilities comparable to those positions.⁶ Each department head may exempt a maximum of 20 policymaking or managerial positions from the Career Service System.⁷

Select Exempt Service is a separate system of personnel administration for positions that are exempt from the Career Service System and have duties and responsibilities that are managerial/policymaking, professional, or nonmanagerial/nonpolicymaking.⁸ Employees in the Select Exempt Service serve at the pleasure of the agency head and are subject to suspension, dismissal, reduction in pay, demotions, transfer, or other personnel action at the discretion of the agency head.⁹

Alcoholic Beverage License Applications – Sanitation Safety Certificate

Section 561.17(2), F.S., requires that alcoholic beverage licenses for consumption on the premises include a certificate from the Division of Hotels and Restaurants of the DBPR, the Department of Agriculture and Consumer Services, the Department of Health, or the county health department that the place of business meets all of the sanitary requirements of the state.

Caterers and Food Service Establishments

Section 561.20(1), F.S., limits, by county, the number of alcoholic beverage licenses that may be issued for the sale of distilled spirits, to one license per 7,500 residents within the county. These limited alcoholic beverage licenses are known as “quota” licenses. New quota licenses are created and issued when there is an increase in the population of a county. The licenses can also be issued when a county initially changes its status from a county that does not permit the sale of intoxicating liquor to one that permits such sale. The quota license is the only alcoholic beverage license that is limited in number; all other types of alcoholic beverage licenses are available without limitation.

The limitation on the number of quota licenses per county does not apply to a food service establishment that has 2,500 square feet, is equipped to serve 150 persons at one time, and derives at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages, during the first 60-day operating period and each 12-month operating

⁵ Sections 110.227(5) and (6), F.S.,

⁶ Section 110.205(2)(m), F.S.

⁷ Section 110.205(2)(n), F.S., provides that policymaking or managerial positions are defined by the Department of Management Services and approved by the Administration Commission. Created in 14.202, F.S., the Administration Commission is part of the Executive Office of the Governor and is composed of the Governor and Cabinet.

⁸ Section 110.602, F.S.

⁹ Section 110.604, F.S.

period thereafter. This type of license is known as a “special restaurant license” or an “SRX license.” A food service establishment holding an SRX license issued after January 1, 1958, may not operate a package store under the license and may not sell intoxicating beverages after the hours of serving or consumption of food have elapsed. Failure by a licensee to satisfy the requirements as to the percentages of food and nonalcoholic beverages results in revocation of the special license. A licensee whose license is revoked is ineligible to have an interest in a subsequent application for a license for 120 days after the revocation.¹⁰

The annual fee for an SRX license varies from \$624 to \$1,820, depending upon the population of the county in which the food service establishment is located.

In addition, the limitation on the number of quota licenses per county does not apply to a caterer licensed by the Division of Hotels and Restaurants under ch. 509, F.S., who derives at least 51 percent of its gross revenue from the sale of food and nonalcoholic beverages, and sells or serves beer, wine, and distilled spirits only for consumption on the premises of a catered event at which the licensee provides prepared food. Current law does not specify the period during which the 51 percent requirement applies. In contrast, the quota license exception for restaurants requires that a restaurant derive at least 51 percent of its gross food and beverage revenue from the sale of food and non-alcoholic beverages for the initial 60-day operating period and each subsequent 12-month period.¹¹

A caterer must also prominently display its license at any catered event at which the caterer is selling or serving alcoholic beverages.¹²

The annual fee is \$1,820 for a caterer’s alcoholic beverage license to sell or serve beer, wine, and distilled spirits on the premises of events at which the caterer provides prepared food.¹³

A caterer is required to maintain for three years all records required by the rule of the DBPR to demonstrate compliance with its license requirements.

Temporary License Application Fees

An alcoholic beverages licensee may sell its licensed business and transfer its alcoholic beverages license to the purchaser of the business.¹⁴ Section 561.331(1), F.S., provides the process for license transfers. The applicant for a transfer is entitled as a matter of right to receive a temporary license of the same type and series as that held by the seller of the business if the application does not on its face disclose a reason for denying the application. The temporary license is valid until the application is denied or 14 days after the initial approval of temporary license. The fee for a temporary license transferred to the purchaser of a business is \$100.

However, before the license is transferred, the purchaser of a beer, wine, or beer and wine license must pay a transfer fee of 10 percent of the annual license tax to the division. The fee to transfer

¹⁰ Section 565.02(1)(b) – (f), F.S.

¹¹ Section 561.20(2)(a)4., F.S.

¹² Section 561.20(2)(a)5., F.S.

¹³ See ss. 561.20(2)(a)5., and 565.02(1)(b), F.S.

¹⁴ Section 561.32, F.S.

a quota license is assessed on the average annual value of gross sales of alcoholic beverages for the license in the three years immediately preceding transfer. The fee is levied at the rate of 4 mills (four one-thousandths of a dollar), but the transfer fee may not exceed \$5,000. An applicant may elect to pay \$5,000 in lieu of the 4-mill assessment.¹⁵

An alcoholic beverage licensee may receive a temporary license upon an application to change the location of a license if the application does not on its face disclose a reason to deny the application. There is no temporary license fee to change the location of a license.¹⁶

An alcoholic beverages licensee may also apply to change the type or series of an alcoholic beverage license. The division may issue the temporary licenses if the application does not on its face disclose a reason to deny the application. These temporary licenses are valid until the application is denied or 14 days after the initial temporary license approval.¹⁷ If the fee for the new license is greater than the fee of the license held by the applicant, the temporary license fee is \$100 or one-fourth of the difference between the license fees, whichever is greater. A fee for the temporary license is not required if the license fee is the same as or less than the license fee for the license then held by the applicant.¹⁸

Wine and Cider Containers

Section 564.05, F.S., prohibits the sale of wine in an individual container that hold more than one gallon of wine. However, wine may be sold in a reusable container that holds 5.16 gallons. Distributors and manufacturers may sell wine to other distributors and manufacturers in containers of any size. Any person who violates the prohibition in s. 564.05, F.S., commits a second degree misdemeanor.¹⁹

Section 564.055, F.S., prohibits the sale of cider²⁰ at retail in any individual container that holds more than 32 ounces of cider. However, cider may be packaged and sold in bulk, in kegs or barrels, or in any individual container that holds one gallon or more of cider, regardless of container type.

¹⁵ Section 561.331(1), F.S.

¹⁶ Section 561.331(2), F.S.

¹⁷ Section 561.331(3), F.S.

¹⁸ *Id.*

¹⁹ Section 775.082, F.S., provides that the penalty for a misdemeanor of the second degree is a term of imprisonment not exceeding 60 days. Section 775.083, F.S., provides that the penalty for a misdemeanor of the second degree is a fine not to exceed \$500.

²⁰ Section 564.06(4), F.S., provides that “cider” is “made from the normal alcoholic fermentation of the juice of sound, ripe apples or pears, including but not limited to flavored, sparkling, or carbonated cider and cider made from condensed apple or pear must, that contain not less than one-half of 1 percent of alcohol by volume and not more than 7 percent of alcohol by volume.” “Must” is the expressed juice of a fruit before and during fermentation. *See* <https://www.merriam-webster.com/dictionary/must> (last visited March 16, 2017).

Growlers

Malt beverages must be sold or offered for sale in containers that hold no more than 32 ounces, but malt beverages may be packaged and sold in bulk, in kegs or barrels, or in any individual container that contains one gallon or more of cider, regardless of individual container type.²¹

However, malt beverages may also be sold or offered for sale in a “growler,” which is a 32 ounce, 64 ounce, or 128 ounce malt beverage container that is filled or refilled at the point of sale. Growlers must identify or be imprinted or labeled with certain information, including the percentage of alcohol by volume, and have an unbroken seal or be incapable of being immediately consumed.²²

Restaurants - Off-Premises Consumption of Wine

Restaurants licensed to sell wine on the premises may permit patrons to remove one bottle of wine for consumption off the licensed premises under the following conditions:

- The patron must have purchased a full-course meal consisting of a salad or vegetable, entrée, a beverage, and bread and consumed a portion of the bottle of wine with the meal;
- Before the partially-consumed bottle of wine is removed from the premises, the bottle must be securely resealed by the licensee, or the licensee’s employee, and placed in a bag or other container that is secured in such a manner that it is visibly apparent if the container has been opened or tampered with after having been sealed;
- A dated receipt for the wine and meal must be attached to the container; and
- The container must be placed in a locked glove compartment, trunk, or other area behind the last upright seat of a motor vehicle that does not have a trunk.²³

Craft Distilleries

Section 565.01, F.S., defines the terms “liquor,” “distilled spirits,” “spirituous liquors,” “spirituous beverages,” or “distilled spirituous liquors” to mean “that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced.”

A “distillery” is a manufacturer of distilled spirits,²⁴ and a “craft distillery” is a licensed distillery that produces 75,000 or fewer gallons of distilled spirits per calendar year on its premises. A distillery must notify the division in writing of its decision to qualify as a craft distillery.²⁵

Distilleries and craft distilleries pay the same amount of state license tax. All distilleries engaged solely in the business of manufacturing distilled spirits, or engaged in the business of blending and rectifying²⁶ distilled spirits must pay a state license tax of \$4,000 for each plant or branch

²¹ Section 563.06(6), F.S.

²² Section 563.06(7), F.S.

²³

²⁴ Section 565.03(1)(c), F.S.

²⁵ Section 565.03(1)(b), F.S.

²⁶ Merriam-Webster defines rectify as the purification (of alcohol) especially by repeated or fractional distillation, *available at* <http://www.merriam-webster.com/dictionary/rectify> (last visited February 15, 2017).

operating in Florida. Persons who engage in the business of distilling spirits may also rectify and blend spirituous liquors without paying an additional license tax.²⁷

A craft distillery may sell to consumers branded products²⁸ distilled on the licensed premises. The products must be in factory-sealed containers filled at the distillery and sold for off-premises consumption.²⁹ The sales must occur at the distillery's souvenir gift shop located on private property contiguous to the licensed distillery premises, and included on the sketch submitted with the license application.³⁰ The craft distillery is not required to obtain, in addition to its manufacturer's license, a vendor's license in order to sell distilled spirits to consumers. Sales must be in face-to-face transactions with consumers³¹ who are making a purchase of no more than:

- Two individual containers of each branded product;
- Three individual containers of a single branded product and up to one individual container of a second branded product; or
- Four individual containers of a single branded product.³²

There are 17 distilleries currently designated as craft distilleries, and an additional 21 licensed distilleries that produce fewer than 75,000 gallons of distilled spirits a year.³³

III. Effect of Proposed Changes:

Division Personnel

The bill amends s. 561.11(2), F.S., dealing with the power and authority of the division, to provide Select Exempt Service status to chief, assistant chiefs, regional managers (including majors), and district or office managers (including captains).

Alcoholic Beverage License Applications – Sanitation Safety Certificate

The bill amends s. 561.17(2), F.S., to add the Agency for Health Care Administration as one of the agencies from which an applicant for a consumption on premises license must obtain a certificate that its place of business meets all sanitary requirements.

Caterers

The bill revises the method used to calculate the percentage of food and nonalcoholic beverages sold by a caterer licensed to sell beer, wine, and distilled spirits by amending s. 561.20(2)(a)5.,

²⁷ Section 565.03(3), F.S.

²⁸ Section 565.03(1)(a), F.S., defines “branded product” to mean “any distilled spirits product manufactured on site, which requires a federal certificate and label approval by the Federal Alcohol Administration Act or federal regulations.”

²⁹ Section 565.03(1)(c), F.S.

³⁰ *Id.*

³¹ Section 565.03(1)(c)4., F.S.

³² Section 565.03(1)(c)1., F.S.

³³ See 2017 Agency Legislative Bill Analysis issued by the DBPR for SB 400, dated February 15, 2017 (on file with Senate Committee on Regulated Industries) at page 11.

F.S. It provides that the percentage is based on a caterer's gross food and nonalcoholic beverages revenue. A caterer must comply with the 51 percent requirement for each catered event.

The bill expands the types of records that a caterer must maintain to demonstrate compliance with its license. A caterer must maintain all records and receipts for each catered event, including all contracts, customers' names, locations, dates, food purchases and sales, alcoholic beverage purchases and sales, nonalcoholic beverage purchases and sales, and any other records required by rule of the DBPR.

Temporary License Application Fees

The bill amends s. 561.331(1), F.S., to repeal the \$100 fee for a temporary alcoholic beverage license issued in connection with the transfer of a license to the purchaser of a licensed business. It also repeals the fees in s. 561.331(3), F.S., for a temporary license issued in connection with an application to change the type or series of a license.

Wine Containers

The bill repeals the wine container size limits in s. 565.055, F.S.

Cider Containers

The bill amends s. 564.055, F.S., to permit cider to be packaged, filled, refilled, or sold in 32 ounce, 64 ounce, and one gallon growlers in the same manner and under the same restrictions authorized for malt beverages under s. 563.06(7), F.S.

Restaurants - Off-Premises Consumption of Wine

The bill amends s. 564.09, F.S., to repeal the requirement that a restaurant patron must purchase and consume a full course meal in order to be able to take home a partially consumed bottle of wine. The bill retains the requirement that the restaurant patron purchase a meal with the bottle of wine.

Craft Distilleries

The bill amends s. 565.03(2)(a)1., F.S., to reduce the annual license tax for a craft distillery from \$4,000 to \$1,000 if the craft distillery is distilling and bottling all of its distilled products in containers approved for sale.

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:

SB 400 repeals the \$100 license fee for a temporary alcoholic beverage license issued in connection with the transfer of a license to the purchaser of a licensed business. The bill also repeals the fee for a temporary license issued in connection with an application to change the type or series of license. This temporary license fee is \$100 or one-fourth of the difference between the license fees, whichever is greater, if the fee for the new license is greater than the fee for the license held by the applicant. A fee for the temporary license is not required if the license fee is the same as or less than the license fee for the license then held by the applicant.

The bill reduces the annual license tax for a craft distillery from \$4,000 to \$1,000 if the craft distillery is distilling and bottling all of its distilled products in containers approved for sale.

C. Government Sector Impact:

Division Personnel. SB 400 provides Select Exempt Service status to specified employees of the division. The DBPR states that 11 positions are affected by this change, resulting in increased personnel costs of between \$5,499.12 and \$19,800 annually, depending on the type of health coverage (single or family) selected by the affected employees. The DBPR also anticipates a minimal, unspecified increase in costs related to annual leave payouts at each affected employee's time of separation. The DBPR states that it can absorb all of these costs with existing resources.³⁴

Temporary License Application Fees. The DBPR states that the revenue from temporary licenses issued in connection with an application for a more expensive license type or series varies by year based on individual licensee circumstances and business discretion. Temporary license fees and transfer fees were \$191,600 for FY 2014-15 and \$251,300 for FY 2015-16.³⁵

Current law requires that 24 percent of the license tax collected in a county for a manufacturer's license or the vendor's license authorized in the bill be returned to the appropriate county tax collector.³⁶ Thirty-eight percent of the license taxes collected

³⁴ See 2017 Agency Legislative Bill Analysis issued by the DBPR for SB 400, dated February 15, 2017 (on file with Senate Committee on Regulated Industries) at page 10.

³⁵ *Id.*

³⁶ Section 561.342(1), F.S.

within a municipality for those types of licenses are returned to the appropriate municipal officer.³⁷ The state receives the remaining revenue from those licenses, and that revenue is credited to the AB&T TF for the operation of the division and the DBPR.

Assuming issuance of the same number of temporary licenses as the division issued in FY 2015-16, the bill may reduce annual license tax revenue returned to counties and municipalities by up to \$60,312 and \$95,494, respectively, with a reduction in payments to the AB&T TF of \$95,494.

Craft Distilleries. The bill reduces the annual license tax for a craft distillery from \$4,000 to \$1,000 if the craft distillery is distilling and bottling all of its distilled products in containers approved for sale. The DBPR states that there are 17 distilleries currently designated as a craft distillery, and an additional 21 licensed distilleries that produce fewer than the 75,000 gallons of distilled spirits a year required to qualify as a craft distillery, for a total of 38 distilleries that may be affected by the fee reduction.³⁸ The DBPR anticipates that the fee reduction will result in a \$114,000 revenue reduction if the 21 distilleries that are currently not designated as craft distillery become designated as such.

The DBPR anticipates the reduction may cause license taxes returned to counties and municipalities to be reduced annually by up to \$27,360 and \$43,320, respectively, and the reduction in payments to the AB&T TF to be \$43,320.

Total Revenue Impact. In total, the bill will reduce net revenue to the AB&T TF by \$138,814. The bill also will result in a decrease in General Revenue of approximately \$11,105, due to the 8 percent service charge for General Revenue.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 561.11, 561.17, 561.20, 561.331, 564.055, and 565.03.

This bill repeals section 564.05 of the Florida Statutes.

³⁷ Section 561.342(2), F.S.

³⁸ See 2017 Agency Legislative Bill Analysis issued by the DBPR for SB 400, dated February 15, 2017 (on file with Senate Committee on Regulated Industries) at page 10.

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

CS by Regulated Industries on March 15, 2017:

The committee substitute (CS):

- Retains current law in s. 561.20(2)(a)4., F.S., which provides that the minimum square footage for a food service establishment to qualify for a special license is 2,500 square feet and the minimum equipped serving capacity is 150 persons.
- Amends s. 561.331(3), F.S., to provide that a temporary license may be issued in connection with an application to change the type or series of a license without the assessment of any additional fee or tax.
- Repeals the wine containers size limitations in s. 565.05, F.S.
- Amends s. 564.055, F.S., to permit cider to be packaged, filled, refilled, or sold in 32 ounce, 64 ounce, and one gallon growlers in the same manner and under the same restrictions authorized for malt beverages under s. 563.06(7), F.S.
- Amends s. 564.09, F.S., to repeal the requirement that a restaurant patron must purchase and consume a full course meal in order to be able to take home a partially consumed bottle of wine. The CS retains the requirement that the restaurant patron must purchase a meal with the bottle of wine.

B. Amendments:

None.

**The Florida Senate
COMMITTEE VOTE RECORD**

COMMITTEE: Regulated Industries
ITEM: SB 400
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Wednesday, March 15, 2017
TIME: 4:00—6:00 p.m.
PLACE: 301 Senate Office Building

FINAL VOTE		SENATORS	2/22/2017 Temporarily Postponed 1		3/15/2017 Amendment 822540 2 Gibson		3/15/2017 Amendment 477952 3 Grimsley		
			Yea	Nay	Yea	Nay	Yea	Nay	
X		Benacquisto							
X		Bracy							
X		Brandes							
X		Braynon							
X		Gibson							
X		Perry							
X		Steube							
X		Thurston							
X		Young							
		Hukill, VICE CHAIR							
X		Hutson, CHAIR							
10	0					RCS	-	-	WD
Yea	Nay	TOTALS	Yea	Nay	Yea	Nay	Yea	Nay	Nay

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

The Florida Senate
COMMITTEE VOTE RECORD

COMMITTEE: Regulated Industries
ITEM: SB 400
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Wednesday, March 15, 2017
TIME: 4:00—6:00 p.m.
PLACE: 301 Senate Office Building

Table with columns for Senators and Amendments (Amendment 174852, Amendment 201078, Amendment 323682, Amendment 193132) and rows for individual senators and a Totals row.

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

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

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

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



822540

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/16/2017	.	
	.	
	.	
	.	

The Committee on Regulated Industries (Gibson) recommended the following:

Senate Amendment

Delete lines 100 - 101

and insert:

4. A food service establishment that has 2,500 square feet of service area, is equipped to serve meals to 150



477952

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/16/2017	.	
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The Committee on Regulated Industries (Grimsley) recommended the following:

Senate Amendment

Delete lines 310 - 319
and insert:
series is made without the assessment of any additional fee or tax. If the department issues a notice of intent to deny the license application for failure of the applicant to disclose the information required by s. 561.15(2) or (4), the temporary license for transfer, change of location, or change of type of series expires and shall not be extended during any proceeding



477952

11 for administrative or judicial review pursuant to chapter 120.
12 ~~If the fee for the type or series or~~



174852

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/16/2017	.	
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The Committee on Regulated Industries (Perry) recommended the following:

Senate Amendment

Delete lines 310 - 319
and insert:
series is made without the assessment of any additional fee or tax. If the department issues a notice of intent to deny the license application for failure of the applicant to disclose the information required by s. 561.15(2) or (4), the temporary license for transfer, change of location, or change of type of series expires and shall not be extended during any proceeding



174852

11 for administrative or judicial review pursuant to chapter 120.
12 ~~If the fee for the type or series or~~



201078

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
03/16/2017	.	
	.	
	.	
	.	

The Committee on Regulated Industries (Brandes) recommended the following:

Senate Amendment (with title amendment)

Between lines 329 and 330

insert:

Section 5. Section 564.09, Florida Statutes, is amended to read:

564.09 Restaurants; off-premises consumption of wine.—
Notwithstanding any other provision of law, a restaurant licensed to sell wine on the premises may permit a patron to remove one unsealed bottle of wine for consumption off the



201078

11 premises if the patron has purchased a ~~full-course~~ meal
12 ~~consisting of a salad or vegetable, entree, a beverage, and~~
13 ~~bread~~ and consumed a portion of the bottle of wine ~~with such~~
14 ~~meal~~ on the restaurant premises. A partially consumed bottle of
15 wine that is to be removed from the premises must be securely
16 resealed by the licensee or its employees before removal from
17 the premises. The partially consumed bottle of wine shall be
18 placed in a bag or other container that is secured in such a
19 manner that it is visibly apparent if the container has been
20 subsequently opened or tampered with, and a dated receipt for
21 the bottle of wine and ~~full-course~~ meal shall be provided by the
22 licensee and attached to the container. If transported in a
23 motor vehicle, the container with the resealed bottle of wine
24 must be placed in a locked glove compartment, a locked trunk, or
25 the area behind the last upright seat of a motor vehicle that is
26 not equipped with a trunk.

27
28 ===== T I T L E A M E N D M E N T =====

29 And the title is amended as follows:

30 Between lines 18 and 19

31 insert:

32 amending s. 564.09, F.S.; revising provisions
33 authorizing a restaurant to allow a patron to remove a
34 resealed wine container from a restaurant for off-
35 premises consumption;



323682

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/16/2017	.	
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	.	

The Committee on Regulated Industries (Brandes) recommended the following:

1 **Senate Substitute for Amendment (201078) (with title**
2 **amendment)**

3
4 Between lines 329 and 330
5 insert:

- 6 Section 5. Section 564.05, Florida Statutes, is repealed.
7 Section 6. Section 564.055, Florida Statutes, is repealed.
8 Section 7. Section 564.09, Florida Statutes, is amended to
9 read:



323682

10 564.09 Restaurants; off-premises consumption of wine.-
11 Notwithstanding any other provision of law, a restaurant
12 licensed to sell wine on the premises may permit a patron to
13 remove one unsealed bottle of wine for consumption off the
14 premises if the patron has purchased a ~~full-course~~ meal
15 ~~consisting of a salad or vegetable, entree, a beverage, and~~
16 ~~bread~~ and consumed a portion of the bottle of wine ~~with such~~
17 ~~meal~~ on the restaurant premises. A partially consumed bottle of
18 wine that is to be removed from the premises must be securely
19 resealed by the licensee or its employees before removal from
20 the premises. The partially consumed bottle of wine shall be
21 placed in a bag or other container that is secured in such a
22 manner that it is visibly apparent if the container has been
23 subsequently opened or tampered with, and a dated receipt for
24 the bottle of wine and ~~full-course~~ meal shall be provided by the
25 licensee and attached to the container. If transported in a
26 motor vehicle, the container with the resealed bottle of wine
27 must be placed in a locked glove compartment, a locked trunk, or
28 the area behind the last upright seat of a motor vehicle that is
29 not equipped with a trunk.

30
31 ===== T I T L E A M E N D M E N T =====

32 And the title is amended as follows:

33 Between lines 18 and 19
34 insert:

35 repealing ss. 564.05 and 564.055, F.S., relating to
36 limitations on the size of individual wine and cider
37 containers, respectively; amending s. 564.09, F.S.;

38 revising provisions authorizing a restaurant to allow



323682

39
40

a patron to remove a resealed wine container from a
restaurant for off-premises consumption;



193132

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/16/2017	.	
	.	
	.	
	.	

The Committee on Regulated Industries (Brandes) recommended the following:

1 **Senate Amendment to Substitute Amendment (323682) (with**
2 **title amendment)**

3
4 Delete line 7
5 and insert:

6 Section 6. Section 564.055, Florida Statutes, is amended to
7 read

8 564.055 Cider containers.—Notwithstanding any other law to
9 the contrary, cider, as defined in s. 564.06(4), may be sold by
10 vendors at retail in any size individual container containing no



193132

11 more than 32 ounces of cider; however, this section does not
12 prohibit cider from being packaged and sold in bulk, in kegs or
13 barrels, or in any individual container that contains 1 gallon
14 or more of cider, regardless of container type. In addition,
15 cider may be packaged, filled, refilled, or sold in 32 ounce, 64
16 ounce, and 1 gallon growlers in the same manner and under the
17 same restrictions as authorized for malt beverages pursuant to
18 s. 563.06(7).

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

And the title is amended as follows:

Delete lines 35 - 37

and insert:

repealing s. 564.05, F.S.; relating to limitations on
the size of individual wine containers; amending s.
564.055; F.S.; authorizing the packaging, filling,
refilling, or sale, of cider in growlers amending s.
564.09, F.S.;

By Senator Perry

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1 A bill to be entitled
2 An act relating to alcoholic beverages; amending s.
3 561.11, F.S.; authorizing the Division of Alcoholic
4 Beverages and Tobacco of the Department of Business
5 and Professional Regulation to appoint division
6 personnel; requiring specified personnel to have
7 Selected Exempt Service status; amending s. 561.17,
8 F.S.; revising the entities that may issue a
9 certificate indicating an alcoholic beverage license
10 applicant's place of business meets all of the
11 sanitary requirements of the state; amending s.
12 561.20, F.S.; revising who may be issued a special
13 license in counties otherwise subject to limits on the
14 number of licenses issued; revising the requirements
15 for retaining certain business records; amending s.
16 561.331, F.S.; requiring certain temporary beverage
17 licenses to be issued by the district supervisor of a
18 district without assessing additional fees or taxes;
19 amending s. 565.03, F.S.; specifying the state license
20 tax for craft distilleries; providing an effective
21 date.

22
23 Be It Enacted by the Legislature of the State of Florida:

24
25 Section 1. Subsection (2) of section 561.11, Florida
26 Statutes, is amended to read:

27 561.11 Power and authority of division.—

28 (2) The division shall have full power and authority to
29 provide for the continuous training, appointment, and upgrading

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30 of all division personnel in their respective positions with the
31 division. Notwithstanding any other law, chiefs, assistant
32 chiefs, regional managers, including majors, and district or
33 office managers, including captains, shall have Selected Exempt
34 Service status in the state personnel designation. The ~~This~~
35 training shall include the attendance of division personnel at
36 workshops, seminars, or special schools established by the
37 division or other organizations when attendance at such
38 educational programs shall in the opinion of the division be
39 deemed appropriate to the particular position that ~~which~~ the
40 employee holds.

41 Section 2. Subsection (2) of section 561.17, Florida
42 Statutes, is amended to read:

43 561.17 License and registration applications; approved
44 person.—

45 (2) All applications for alcoholic beverage licenses for
46 consumption on the premises shall be accompanied by a
47 certificate of the Division of Hotels and Restaurants of the
48 Department of Business and Professional Regulation or the
49 Department of Agriculture and Consumer Services or the
50 Department of Health or the Agency for Health Care
51 Administration or the county health department that the place of
52 business wherein the business is to be conducted meets all of
53 the sanitary requirements of the state.

54 Section 3. Paragraph (a) of subsection (2) of section
55 561.20, Florida Statutes, is amended to read:

56 561.20 Limitation upon number of licenses issued.—

57 (2) (a) The limitation of the number of licenses as provided
58 in this section does not prohibit the issuance of a special

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59 license to:

60 1. Any bona fide hotel, motel, or motor court of not fewer
61 than 80 guest rooms in any county having a population of less
62 than 50,000 residents, and of not fewer than 100 guest rooms in
63 any county having a population of 50,000 residents or greater;
64 or any bona fide hotel or motel located in a historic structure,
65 as defined in s. 561.01(21), with fewer than 100 guest rooms
66 which derives at least 51 percent of its gross revenue from the
67 rental of hotel or motel rooms, which is licensed as a public
68 lodging establishment by the Division of Hotels and Restaurants;
69 provided, however, that a bona fide hotel or motel with no fewer
70 than 10 and no more than 25 guest rooms which is a historic
71 structure, as defined in s. 561.01(21), in a municipality that
72 on the effective date of this act has a population, according to
73 the University of Florida's Bureau of Economic and Business
74 Research Estimates of Population for 1998, of no fewer than
75 25,000 and no more than 35,000 residents and that is within a
76 constitutionally chartered county may be issued a special
77 license. This special license shall allow the sale and
78 consumption of alcoholic beverages only on the licensed premises
79 of the hotel or motel. In addition, the hotel or motel must
80 derive at least 60 percent of its gross revenue from the rental
81 of hotel or motel rooms and the sale of food and nonalcoholic
82 beverages; provided that ~~the provisions of~~ this subparagraph
83 shall supersede local laws requiring a greater number of hotel
84 rooms;

85 2. Any condominium accommodation of which no fewer than 100
86 condominium units are wholly rentable to transients and which is
87 licensed under ~~the provisions of~~ chapter 509, except that the

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88 license shall be issued only to the person or corporation which
89 operates the hotel or motel operation and not to the association
90 of condominium owners;

91 3. Any condominium accommodation of which no fewer than 50
92 condominium units are wholly rentable to transients, which is
93 licensed under ~~the provisions of~~ chapter 509, and which is
94 located in any county having home rule under s. 10 or s. 11,
95 Art. VIII of the State Constitution of 1885, as amended, and
96 incorporated by reference in s. 6(e), Art. VIII of the State
97 Constitution, except that the license shall be issued only to
98 the person or corporation that ~~which~~ operates the hotel or motel
99 operation and not to the association of condominium owners;

100 4. A food service establishment that has 1,800 ~~2,500~~ square
101 feet of service area, is equipped to serve meals to 100 ~~150~~
102 persons at one time, and derives at least 51 percent of its
103 gross food and beverage revenue from the sale of food and
104 nonalcoholic beverages during the first 60-day operating period
105 and each 12-month operating period thereafter. A food service
106 establishment granted a special license on or after January 1,
107 1958, pursuant to general or special law may not operate as a
108 package store and may not sell intoxicating beverages under such
109 license after the hours of serving or consumption of food have
110 elapsed. Failure by a licensee to meet the required percentage
111 of food and nonalcoholic beverage gross revenues during the
112 covered operating period shall result in revocation of the
113 license or denial of the pending license application. A licensee
114 whose license is revoked or an applicant whose pending
115 application is denied, or any person required to qualify on the
116 special license application, is ineligible to have any interest

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117 in a subsequent application for such a license for a period of
118 120 days after the date of the final denial or revocation;

119 5. Any caterer, deriving at least 51 percent of its gross
120 food and beverage revenue from the sale of food and nonalcoholic
121 beverages, licensed by the Division of Hotels and Restaurants
122 under chapter 509. This subparagraph does not apply to a
123 culinary education program, as defined in s. 381.0072(2), which
124 is licensed as a public food service establishment by the
125 Division of Hotels and Restaurants and provides catering
126 services. Notwithstanding any other ~~provision of~~ law to the
127 contrary, a licensee under this subparagraph shall sell or serve
128 alcoholic beverages only for consumption on the premises of a
129 catered event at which the licensee is also providing prepared
130 food, and shall prominently display its license at any catered
131 event at which the caterer is selling or serving alcoholic
132 beverages. The caterer must ensure that each catered event meets
133 the 51 percent food and nonalcoholic beverage requirement. A
134 licensee under this subparagraph shall purchase all alcoholic
135 beverages it sells or serves at a catered event from a vendor
136 licensed under s. 563.02(1), s. 564.02(1), or licensed under s.
137 565.02(1) subject to the limitation imposed in subsection (1),
138 as appropriate. A licensee under this subparagraph may not store
139 any alcoholic beverages to be sold or served at a catered event.
140 Any alcoholic beverages purchased by a licensee under this
141 subparagraph for a catered event that are not used at that event
142 must remain with the customer; provided that if the vendor
143 accepts unopened alcoholic beverages, the licensee may return
144 such alcoholic beverages to the vendor for a credit or
145 reimbursement. Regardless of the county or counties in which the

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146 licensee operates, a licensee under this subparagraph shall pay
147 the annual state license tax set forth in s. 565.02(1)(b). A
148 licensee under this subparagraph must maintain for a period of 3
149 years all records and receipts for each catered event, including
150 all contracts, customers' names, locations, dates, food
151 purchases and sales, alcoholic beverage purchases and sales,
152 nonalcoholic beverage purchases and sales, and any other records
153 required by the department by rule to demonstrate compliance
154 with the requirements of this subparagraph, ~~including licensed~~
155 ~~vendor receipts for the purchase of alcoholic beverages and~~
156 ~~records identifying each customer and the location and date of~~
157 ~~each catered event~~. Notwithstanding any ~~provision of law to the~~
158 contrary, any vendor licensed under s. 565.02(1) subject to the
159 limitation imposed in subsection (1), may, without any
160 additional licensure under this subparagraph, serve or sell
161 alcoholic beverages for consumption on the premises of a catered
162 event at which prepared food is provided by a caterer licensed
163 under chapter 509. If a licensee under this subparagraph also
164 possesses any other license under the Beverage Law, the license
165 issued under this subparagraph shall not authorize the holder to
166 conduct activities on the premises to which the other license or
167 licenses apply that would otherwise be prohibited by the terms
168 of that license or the Beverage Law. Nothing in this section
169 shall permit the licensee to conduct activities that are
170 otherwise prohibited by the Beverage Law or local law. The
171 Division of Alcoholic Beverages and Tobacco is hereby authorized
172 to adopt rules to administer the license created in this
173 subparagraph, to include rules governing licensure,
174 recordkeeping, and enforcement. The first \$300,000 in fees

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175 collected by the division each fiscal year pursuant to this
176 subparagraph shall be deposited in the Department of Children
177 and Families' Operations and Maintenance Trust Fund to be used
178 only for alcohol and drug abuse education, treatment, and
179 prevention programs. The remainder of the fees collected shall
180 be deposited into the Hotel and Restaurant Trust Fund created
181 pursuant to s. 509.072; or

182 6. A culinary education program as defined in s.
183 381.0072(2) which is licensed as a public food service
184 establishment by the Division of Hotels and Restaurants.

185 a. This special license shall allow the sale and
186 consumption of alcoholic beverages on the licensed premises of
187 the culinary education program. The culinary education program
188 shall specify designated areas in the facility where the
189 alcoholic beverages may be consumed at the time of application.
190 Alcoholic beverages sold for consumption on the premises may be
191 consumed only in areas designated pursuant to s. 561.01(11) and
192 may not be removed from the designated area. Such license shall
193 be applicable only in and for designated areas used by the
194 culinary education program.

195 b. If the culinary education program provides catering
196 services, this special license shall also allow the sale and
197 consumption of alcoholic beverages on the premises of a catered
198 event at which the licensee is also providing prepared food. A
199 culinary education program that provides catering services is
200 not required to derive at least 51 percent of its gross revenue
201 from the sale of food and nonalcoholic beverages.

202 Notwithstanding any other provision of law to the contrary, a
203 licensee that provides catering services under this sub-

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204 subparagraph shall prominently display its beverage license at
205 any catered event at which the caterer is selling or serving
206 alcoholic beverages. Regardless of the county or counties in
207 which the licensee operates, a licensee under this sub-
208 subparagraph shall pay the annual state license tax set forth in
209 s. 565.02(1)(b). A licensee under this sub-subparagraph must
210 maintain for a period of 3 years all records required by the
211 department by rule to demonstrate compliance with the
212 requirements of this sub-subparagraph.

213 c. If a licensee under this subparagraph also possesses any
214 other license under the Beverage Law, the license issued under
215 this subparagraph does not authorize the holder to conduct
216 activities on the premises to which the other license or
217 licenses apply that would otherwise be prohibited by the terms
218 of that license or the Beverage Law. Nothing in this
219 subparagraph shall permit the licensee to conduct activities
220 that are otherwise prohibited by the Beverage Law or local law.
221 Any culinary education program that holds a license to sell
222 alcoholic beverages shall comply with the age requirements set
223 forth in ss. 562.11(4), 562.111(2), and 562.13.

224 d. The Division of Alcoholic Beverages and Tobacco may
225 adopt rules to administer the license created in this
226 subparagraph, to include rules governing licensure,
227 recordkeeping, and enforcement.

228 e. A license issued pursuant to this subparagraph does not
229 permit the licensee to sell alcoholic beverages by the package
230 for off-premises consumption.

231
232 However, any license heretofore issued to any such hotel, motel,

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233 motor court, or restaurant or hereafter issued to any such
234 hotel, motel, or motor court, including a condominium
235 accommodation, under the general law shall not be moved to a new
236 location, such license being valid only on the premises of such
237 hotel, motel, motor court, or restaurant. Licenses issued to
238 hotels, motels, motor courts, or restaurants under the general
239 law and held by such hotels, motels, motor courts, or
240 restaurants on May 24, 1947, shall be counted in the quota
241 limitation contained in subsection (1). Any license issued for
242 any hotel, motel, or motor court under ~~the provisions of this~~
243 law shall be issued only to the owner of the hotel, motel, or
244 motor court or, in the event the hotel, motel, or motor court is
245 leased, to the lessee of the hotel, motel, or motor court; and
246 the license shall remain in the name of the owner or lessee so
247 long as the license is in existence. Any special license now in
248 existence heretofore issued under ~~the provisions of this law~~
249 cannot be renewed except in the name of the owner of the hotel,
250 motel, motor court, or restaurant or, in the event the hotel,
251 motel, motor court, or restaurant is leased, in the name of the
252 lessee of the hotel, motel, motor court, or restaurant in which
253 the license is located and must remain in the name of the owner
254 or lessee so long as the license is in existence. Any license
255 issued under this section shall be marked "Special," and nothing
256 herein provided shall limit, restrict, or prevent the issuance
257 of a special license for any restaurant or motel which shall
258 hereafter meet the requirements of the law existing immediately
259 prior to the effective date of this act, if construction of such
260 restaurant has commenced prior to the effective date of this act
261 and is completed within 30 days thereafter, or if an application

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262 is on file for such special license at the time this act takes
263 effect; and any such licenses issued under this proviso may be
264 annually renewed as now provided by law. Nothing herein prevents
265 an application for transfer of a license to a bona fide
266 purchaser of any hotel, motel, motor court, or restaurant by the
267 purchaser of such facility or the transfer of such license
268 pursuant to law.

269 Section 4. Subsections (1) and (3) of section 561.331,
270 Florida Statutes, are amended to read:

271 561.331 Temporary license upon application for transfer,
272 change of location, or change of type or series.—

273 (1) Upon the filing of a properly completed application for
274 transfer pursuant to s. 561.32, which application does not on
275 its face disclose any reason for denying an alcoholic beverage
276 license, by any purchaser of a business that ~~which~~ possesses a
277 beverage license of any type or series, the purchaser of such
278 business and the applicant for transfer are entitled as a matter
279 of right to receive a temporary beverage license of the same
280 type and series as that held by the seller of such business. The
281 temporary license will be valid for all purposes under the
282 Beverage Law until the application is denied or until 14 days
283 after the application is approved. Such temporary beverage
284 license shall be issued by the district supervisor of the
285 district in which the application for transfer is made without
286 the assessment of any additional fee or tax ~~upon the payment of~~
287 ~~a fee of \$100~~. A purchaser operating under ~~the provisions of~~
288 this subsection is subject to the same rights, privileges,
289 duties, and limitations of a beverage licensee as are provided
290 by law, except that purchases of alcoholic beverages during the

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291 term of such temporary license shall be for cash only. However,
292 such cash-only restriction does not apply if the entity holding
293 a temporary license pursuant to this section purchases alcoholic
294 beverages as part of a single-transaction cooperative purchase
295 placed by a pool buying agent or if such entity is also the
296 holder of a state beverage license authorizing the purchase of
297 the same type of alcoholic beverages as authorized under the
298 temporary license.

299 (3) Upon the filing of a properly completed application to
300 change the type or series of a beverage license by any qualified
301 licensee having a beverage license of any type or series, which
302 application does not on its face disclose any reason for denying
303 an alcoholic beverage license, the licensee is entitled as a
304 matter of right to receive a temporary beverage license of the
305 type or series applied for, which temporary license is valid for
306 all purposes under the Beverage Law until the application is
307 denied or until 14 days after the application is approved. Such
308 temporary license shall be issued by the district supervisor of
309 the district in which the application for change of type or
310 series is made. If the department issues a notice of intent to
311 deny the license application for failure of the applicant to
312 disclose the information required by s. 561.15(2) or (4), the
313 temporary license for transfer, change of location, or change of
314 type of series expires and shall not be extended during any
315 proceeding for administrative or judicial review pursuant to
316 chapter 120. Such temporary license shall be issued by the
317 district supervisor of the district in which the application for
318 change of location is made without the assessment of any
319 additional fee or tax ~~If the fee for the type or series or~~

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320 ~~license applied for is greater than the fee for the license then~~
321 ~~held by the applicant, the applicant for such temporary license~~
322 ~~must pay a fee in the amount of \$100 or one-fourth of the~~
323 ~~difference between the fees, whichever amount is greater. A fee~~
324 ~~is not required for an application for a temporary license of a~~
325 ~~type or series for which the fee is the same as or less than the~~
326 ~~fee for the license then held by the applicant. The holder of a~~
327 ~~temporary license under this subsection is subject to the same~~
328 ~~rights, privileges, duties, and limitations of a beverage~~
329 ~~licensee as are provided by law.~~

330 Section 5. Paragraph (a) of subsection (2) of section
331 565.03, Florida Statutes, is amended to read:

332 565.03 License fees; manufacturers, distributors, brokers,
333 sales agents, and importers of alcoholic beverages; vendor
334 licenses and fees; craft distilleries.-

335 (2) (a) A distillery authorized to do business under the
336 Beverage Law shall pay an annual state license tax for each
337 plant or branch operating in the state, as follows:

338 1. If engaged in the business of manufacturing distilled
339 spirits, not including craft distilleries, a state license tax
340 of \$4,000.

341 2. If engaged in the business of manufacturing distilled
342 spirits as a craft distillery, a state license tax of \$1,000.

343 ~~3.2.~~ If engaged in the business of rectifying and blending
344 spirituous liquors and nothing else, a state license tax of
345 \$4,000.

346 Section 6. This act shall take effect July 1, 2017.

SB 400

BY SENATOR KEITH PERRY



DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO

Position Classification Equity

Section 1 proposes to reclassify numerous positions in field offices as *Selected Exempt Service* status in order to provide consistency across the Division at the state headquarters level and with other state law enforcement agencies that carry out comparable duties.

Section 2

Proposes to add the ***Agency for Health Care Administration*** to the existing list of state agencies that can issue a certificate that verifies an establishment for which a *consumption on premises* license is sought meets all of the applicable sanitary requirements of the state.

Proposed Reduction of Square Footage & Service Capacity Qualifications for Special Food Service Establishment Licenses

Section 3 proposes to reduce the current statutory requirement for 2500 square feet and 150 patron capacity, to 1800 SF and 100 patrons for certain consumption on premises licenses.

Clarification and Amendment of Special License Requirements for Caterer Licenses

Section 3 also proposes to remove non-food and non-beverage items from the *51% gross revenue calculation*, making it easier for caterers to conduct business.

Elimination of Temporary License Fee

Section 4 proposes to eliminate the fees associated with the issuance of a temporary license, which usually occurs during the transferal of ownership...

Making it easier for new owners / permanent license applicants to continue to operate during the transition without burdensome extra fees.

Reduction in Craft Distillery Fees

Section 5 proposes to substantially reduce the annual license fee for Craft Distilleries –

From \$4,000 to \$1,000

Effective Date of July 1, 2017

Amendments...

Amendment Barcoded 174852

Technical –

- This addresses Section 4 of the bill, lines 310-319 - the portion addressing temporary licenses.
- For the sake of clarity, some words are deleted and a more efficient clause is proposed to be at a more appropriate part of the section:

DELETE

This portion of bill as filed:

316 | chapter 120. Such temporary license shall be issued by the
317 | district supervisor of the district in which the application for
318 | change of location is made without the assessment of any
319 | additional fee or tax ~~If the fee for the type or series or~~

And Insert:

3 Delete lines 310 - 319

4 and insert:

5 series is made without the assessment of any additional fee or

6 tax. If the department issues a notice of intent to deny the

THE FLORIDA SENATE

APPEARANCE RECORD

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

MARCH 15, 2017
Meeting Date

SB 400
Bill Number (if applicable)

Topic Alcoholic Beverages

Amendment Barcode (if applicable)

Name RICHARD TURNER

Job Title GENERAL COUNSEL

Address 230 S. ADAMS
Street

Phone 850 224-2250

TALLAHOSSEE FL 32309
City State Zip

Email RTURNER@FRLA.ORG

Speaking: For Against Information

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

Representing FLORIDA RESTAURANT & LODGING 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.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-15-17

Meeting Date

SB400

Bill Number (if applicable)

822.540

Amendment Barcode (if applicable)

(a. b50 ->

Topic _____

Name Gary Rutledge

Job Title _____

Address 041 Forest Lair

Street

Phone 681-6788

City

Tallahassee

State

FL

3

Zip

Email Gary.Rutledge@bwin.com

Speaking: For Against Information

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

Representing Responsible Vectors

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-15
Meeting Date

400
Bill Number (if applicable)

Topic Alcoholic Beverages

Amendment Barcode (if applicable)

Name JASON JUNGER

Job Title _____

Address 301 S. Bronough St.
Street
TLH FL
City State Zip

Phone 5779090

Email junger@grayrobinson.com

Speaking: For Against Information

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

Representing FLA DISTILLERS GUILD

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
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 Regulated Industries

BILL: SB 514

INTRODUCER: Senator Stargel

SUBJECT: Fees of the Department of Business and Professional Regulation

DATE: March 15, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	McSwain	RI	Favorable
2.			AGG	
3.			AP	

I. Summary:

SB 514 provides, notwithstanding the professional practice acts administered by the Department of Business and Professional Regulation (DBPR), for a \$25 delinquency fee that must be imposed on a delinquent status licensee. Under current law, the delinquency fee for a profession regulated by the DBPR may not exceed the amount of the biennial renewal fee for an active status license.

The bill reduces from 1.5 percent to 1.0 percent, the surcharge assessed on building permit fees which is transferred to the DBPR to administer and carry out the purposes of the Florida Building Code. Under current law, the surcharge is allocated to fund the Florida Building Commission, the Florida Building Code Compliance and Mitigation Program, and the Florida Fire Prevention Code informal interpretations managed by the State Fire Marshal.

The bill has a negative fiscal impact to state government and to the revenue from the General Revenue service charge. See Section V, Fiscal Impact Statement.

The bill provides for an effective date of July 1, 2017.

II. Present Situation:

Department of Business and Professional Regulation

Section 20.165, F.S., establishes the organizational structure of the DBPR; the DBPR has 12 divisions:

- 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.

Fifteen boards and programs exist within the Division of Professions,¹ two boards are within the Division of Real Estate,² and one board exists in the Division of Certified Public Accounting.³ The Florida State Boxing Commission is assigned to the DBPR for administrative and fiscal accountability purposes only.⁴ The DBPR also administers the Child Labor Law and Farm Labor Contractor Registration Law pursuant to parts I and III of ch. 450, F.S.

Chapter 455, F.S., applies to the regulation of professions constituting “any activity, occupation, profession, or vocation regulated by the DBPR in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.”⁵

Under Florida law, regulation of professions is undertaken “only for the preservation of the health, safety, and welfare of the public under the police powers of the state.”⁶ 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.⁷

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.⁸

¹ Section 20.165(4)(a), F.S., establishes the following boards and programs which are noted with the implementing statutes: Board of Architecture and Interior Design, part I of ch. 481; Florida Board of Auctioneers, part VI of ch. 468; Barbers’ Board, ch. 476; Florida Building Code Administrators and Inspectors Board, part XII of ch. 468; Construction Industry Licensing Board, part I of ch. 489; Board of Cosmetology, ch. 477; Electrical Contractors’ Licensing Board, part II of ch. 489; Board of Employee Leasing Companies, part XI of ch. 468; Board of Landscape Architecture, part II of ch. 481; Board of Pilot Commissioners, ch. 310; Board of Professional Engineers, ch. 471; Board of Professional Geologists, ch. 492; Board of Veterinary Medicine, ch. 474; Home Inspection Services Licensing Program, part XV of ch. 468; and Mold-related Services Licensing Program, part XVI of ch. 468, F.S.

² See s. 20.165(4)(b), F.S. Florida Real Estate Appraisal Board, created under part II of ch. 475, F.S., and Florida Real Estate Commission, created under part I of ch. 475, F.S.

³ See s. 20.165(4)(c), F.S., which establishes the Board of Accountancy, created under ch. 473, F.S.

⁴ Section 548.003(1), F.S.

⁵ Section 455.01(6), F.S.

⁶ Section 455.201(2), F.S.

⁷ *Id.*

⁸ Section 455.201(4)(b), F.S.

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 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.¹⁰

In Fiscal Year 2015-2016, the Division of Certified Public Accounting had 39,216 licensees, the Division of Real Estate had 349,668 licensees, and the Board of Professional Engineers had 61,396 licensees.¹¹ In Fiscal Year 2015-2016, there were 434,001 licensees in the Division of Professions,¹² including:

- Architects and interior designers;
- Asbestos consultants and contractors;
- Athlete agents;
- Auctioneers;
- Barbers;
- Building code administrators and inspectors;
- Community association managers;
- Construction industry contractors;
- Cosmetologists;
- Electrical contractors;
- Employee leasing companies;
- Geologists;
- Home inspectors;
- Landscape architects;
- Harbor pilots;
- Mold-related services;
- Talent agencies; and
- Veterinarians.¹³

The Division of Florida Condominiums, Timeshares, and Mobile Homes (FCTMH) within the DBPR provides consumer protection for Florida residents living in regulated communities through education, complaint resolution, mediation and arbitration, and developer disclosure.¹⁴ The FCTMH has limited regulatory authority over the following business entities and individuals:

- Condominium Associations;
- Cooperative Associations;

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. Sections 455.01(4) and (5), F.S.

¹¹ See Department of Business and Professional Regulation, *Annual Report, Fiscal Year 2015-2016*, at http://www.myfloridalicense.com/dbpr/os/documents/ProfessionsAnnualReportFY2015-2016_Final.pdf, (last visited Mar. 10, 2017) at page 21.

¹² Of the total 415,207 licensees in the Division of Professions, 23,183 are inactive. *Id.* at page 22.

¹³ *Id.* at pages 21-22.

¹⁴ Department of Business and Professional Regulation, *Division of Florida condominiums, Timeshares, and Mobile Homes*, <http://www.myfloridalicense.com/dbpr/lsc/index.html> (last visited Mar. 10, 2017).

- Florida Mobile Home Parks and related associations;
- Vacation Units and Timeshares;
- Yacht and Ship Brokers and related business entities; and
- Homeowner's Associations (jurisdiction is limited to arbitration of election and recall disputes).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 administrative rule¹⁶ the amount of license fees for each profession, based on estimates of the required revenue to implement the regulatory laws affecting the profession.¹⁷

A licensee may practice a profession only if the licensee has an active status license.¹⁸ Generally, most licensees who practice a profession without an active status license¹⁹ are subject to the imposition of discipline, fines, or assessments as described in s. 455.227, F.S. At least 90 days before the end of a licensure cycle, the DBPR must provide a licensure renewal notification to an active or inactive licensee, and a notice of pending cancellation of licensure to a delinquent status licensee.²⁰

Each board, or the department when there is no board (board),²¹ must permit a licensee to choose active or inactive status at the time of licensure renewal, and impose a fee for an inactive status license that does not exceed the fee for an active status license.²² An inactive status licensee may change to active status at any time, if the licensee meets all requirements for active status, including payment of all required fees, and meeting all continuing education requirements. Failure of a licensee to renew a license before its expiration causes the license to become delinquent in the license cycle following expiration (delinquency cycle).²³

A delinquent status licensee must re-apply for active or inactive status during the delinquency cycle. Failure by a delinquent status licensee to become active or inactive before the expiration of the delinquency cycle renders the license void, with no further action by the board.²⁴

¹⁵ *Id.*

¹⁶ The administrative rules of the DBPR and of each Board are available through the DBPR's website at <http://www.myfloridalicense.com/dbpr/divisions.html> (last visited Mar. 10, 2017).

¹⁷ Section 455.219(1), F.S.

¹⁸ Section 455.271(1), F.S.

¹⁹ Section 455.271, F.S., on inactive and delinquent status of licenses, does not apply to a business establishment registered, permitted, or licensed by the department to do business or to a person licensed, permitted, registered, or certified pursuant to ch. 310, F.S. on Pilots, Piloting, and Pilotage, or ch. 475, F.S., on Real Estate Brokers, Sales Associates, Schools, and Appraisers.

²⁰ *See* s. 455.273, F.S.

²¹ Whenever a board for a profession does not exist, the DBPR is generally authorized by law to act instead. *See e.g.*, ss. 455.219 and 455.271, F.S., for multiple references to actions of "the board, or the department when there is no board."

²² The status or a change in status of a licensee does not alter the board's right to impose discipline or to enforce discipline previously imposed on a licensee for acts or omissions committed by the licensee while holding a license, whether active, inactive, or delinquent. *See* s. 455.271(11), F.S.

²³ *Id.*

²⁴ *Id.*

The DBPR may, at its discretion, reinstate a license that has become void (excepting those public accountancy licenses issued under ch. 473, F.S.) if the DBPR determines that the individual failed to comply because of illness or economic hardship. The individual must apply to the DBPR for reinstatement, pay all required fees, including a reinstatement fee, meet all continuing education requirements, and otherwise be eligible for renewal of licensure.²⁵

Section 477.271(7), F.S., provides that each board must impose an additional delinquency fee, not to exceed the biennial renewal fee for an active status license, when a delinquent status licensee applies for active or inactive status.

Florida Building Code and Building Permit Surcharge

Each fee for a building permit issued in the state includes a surcharge calculated at 1.5 percent of the permit fee amount, for administration and enforcement of the Florida Building Code²⁶ by the DBPR.

The minimum amount for a building permit fee is \$2, and the governmental authority responsible for collecting a building permit fee must collect and remit the surcharge to the DBPR each quarter for the preceding quarter.²⁷ Ten percent is retained by the governmental authority, to fund “the participation of building departments in the national and state building code adoption processes and to provide education related to enforcement of the Florida Building Code.”²⁸

All funds remitted to the DBPR from the surcharge are allocated to fund the Florida Building Commission and the Florida Building Code Compliance and Mitigation Program (the Compliance and Mitigation Program).²⁹ Section 553.721, F.S., provides that the Compliance and Mitigation Program must be allocated \$925,000 each fiscal year and must fund the recommendations made by the Building Code System Uniform Implementation Evaluation Workgroup, dated April 8, 2013, from existing resources, not to exceed \$30,000 in the 2016-2017 fiscal year.³⁰

Funds collected from the surcharge also are used to fund Florida Fire Prevention Code informal interpretations managed by the State Fire Marshal; the amount used for this purpose is limited to \$15,000 each fiscal year.³¹ The funds collected from the surcharge may not be used to fund research on techniques for mitigation of radon in existing buildings.³²

²⁵ *Id.*

²⁶ Part IV of ch. 553, F.S. is cited as the “Florida Building Codes Act.”

²⁷ *See* s. 553.721(1)(a), F.S.

²⁸ *Id.*

²⁹ Pursuant to s. 553.841(2), F.S., the DBPR administers the Compliance and Mitigation Program to develop, coordinate, and maintain education and outreach to persons required to comply with the Florida Building Code (code) and related provisions and ensure consistent education, training, and communication of the code’s requirements, including methods for design and construction compliance and mitigation of storm-related damage. The Compliance and Mitigation Program must also operate a clearinghouse through which design, construction, and building code enforcement licensees, suppliers, and consumers in Florida “may find others in order to exchange information relating to mitigation and facilitate repairs in the aftermath of a natural disaster.”

³⁰ *See* s. 553.721(1)(a), F.S.

³¹ *Id.*

³² *Id.*

III. Effect of Proposed Changes:

Section 1 of the bill requires that a \$25 delinquency fee be imposed on delinquent status professional licensees, in lieu of the delinquency fee authorized under current law, which may not exceed the amount of the biennial renewal fee for an active status license.

Section 2 of the bill reduces from 1.5 percent to 1.0 percent, the surcharge assessed on permit fees assessed for the DBPR to administer and carry out the purposes of the Florida Building Code.

The bill provides for an effective date of July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The DBPR indicates that SB 514 will reduce professional licensure expenditures due to delinquency fees, which will be limited to \$25 for each delinquent licensee, and that expenditures associated with the payment of fees for a building permit will be reduced.³³

C. Government Sector Impact:

The DBPR estimates that the bill will reduce total revenues to state government by \$9,871,245, with a resulting reduction from the General Revenue service charge of \$791,699, during Fiscal Years 2017-2018 through 2019-2020, as follows:

- The revenue reduction to state government from the reduction in the building permit surcharge percentage from 1.5 percent to 1.0 percent will be \$7,831,065 during Fiscal

³³ See 2017 Agency Legislative Bill Analysis (AGENCY: Department of Business and Professional Regulation) for SB 514, dated Feb. 28, 2017, (on file with Senate Committee on Regulated Industries) at page 4.

Years 2017-2018 through 2019-2020; as a result, revenue from the General Revenue service charge will be reduced in total by \$626,484 in those fiscal years.³⁴

- The revenue reduction associated with the reduction in delinquency fees on delinquent licensees will be \$2,040,180 during Fiscal Years 2017-2018 through Fiscal Year 2019-2020; as a result, revenue from the General Revenue service charge will be reduced in total by \$163,215 in those fiscal years.³⁵

The DBPR also indicates it will experience an annual non-operating expense reduction of \$789,699 (\$263,233 annually) during Fiscal Years 2017-2018 through 2019-2020 due to smaller transfers to the General Revenue Fund for the General Revenue service charge.³⁶

In addition, the DBPR reports that the bill will reduce the amount of the building permit surcharge funds retained by local building departments because of the lower rate for the building permit surcharge.

The DBPR indicates that the cost of modifications to software to address fee configurations for each affected profession could be minimized by authorizing such changes to occur as part of a profession's renewal cycle, but that such modifications can be accomplished using existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 455.271 and 553.721.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

³⁴ See 2017 Agency Legislative Bill Analysis (AGENCY: Department of Business and Professional Regulation) for SB 514, dated Feb. 28, 2017, (on file with Senate Committee on Regulated Industries) at page 4.

³⁵ *Id.* at page 4.

³⁶ *Id.*

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 Stargel

22-00502-17

2017514__

1 A bill to be entitled

2 An act relating to fees of the Department of Business
3 and Professional Regulation; amending s. 455.271,
4 F.S.; revising the amount of the additional
5 delinquency fee a board or the department must impose
6 under certain circumstances; amending s. 553.721,
7 F.S.; revising the surcharge rate assessed on certain
8 permits; providing an effective date.

9
10 Be It Enacted by the Legislature of the State of Florida:

11
12 Section 1. Subsection (7) of section 455.271, Florida
13 Statutes, is amended to read:

14 455.271 Inactive and delinquent status.—

15 (7) Notwithstanding the professional practice acts
16 administered by the department, each board, or the department
17 when there is no board, shall, by rule, impose an additional
18 delinquency fee of \$25, ~~not to exceed the biennial renewal fee~~
19 ~~for an active status license,~~ on a delinquent status licensee
20 when such licensee applies for active or inactive status.

21 Section 2. Section 553.721, Florida Statutes, is amended to
22 read:

23 553.721 Surcharge.—In order for the Department of Business
24 and Professional Regulation to administer and carry out the
25 purposes of this part and related activities, there is created a
26 surcharge, ~~to be~~ assessed at the rate of 1.0 ~~1.5~~ percent of the
27 permit fees associated with enforcement of the Florida Building
28 Code as defined by the uniform account criteria and specifically
29 the uniform account code for building permits adopted for local
30 government financial reporting pursuant to s. 218.32. The
31 minimum amount collected on any permit issued shall be \$2. The
32 unit of government responsible for collecting a permit fee

22-00502-17

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33 pursuant to s. 125.56(4) or s. 166.201 shall collect the
34 surcharge and electronically remit the funds collected to the
35 department on a quarterly calendar basis for the preceding
36 quarter and continuing each third month thereafter. The unit of
37 government shall retain 10 percent of the surcharge collected to
38 fund the participation of building departments in the national
39 and state building code adoption processes and to provide
40 education related to enforcement of the Florida Building Code.
41 All funds remitted to the department pursuant to this section
42 shall be deposited in the Professional Regulation Trust Fund.
43 Funds collected from the surcharge shall be allocated to fund
44 the Florida Building Commission and the Florida Building Code
45 Compliance and Mitigation Program under s. 553.841. Funds
46 allocated to the Florida Building Code Compliance and Mitigation
47 Program shall be \$925,000 each fiscal year. The Florida Building
48 Code Compliance and Mitigation Program shall fund the
49 recommendations made by the Building Code System Uniform
50 Implementation Evaluation Workgroup, dated April 8, 2013, from
51 existing resources, not to exceed \$30,000 in the 2016-2017
52 fiscal year. Funds collected from the surcharge shall also be
53 used to fund Florida Fire Prevention Code informal
54 interpretations managed by the State Fire Marshal and shall be
55 limited to \$15,000 each fiscal year. The State Fire Marshal
56 shall adopt rules to address the implementation and expenditure
57 of the funds allocated to fund the Florida Fire Prevention Code
58 informal interpretations under this section. The funds collected
59 from the surcharge may not be used to fund research on
60 techniques for mitigation of radon in existing buildings. Funds
61 used by the department as well as funds to be transferred to the

22-00502-17

2017514__

62 Department of Health and the State Fire Marshal shall be as
63 prescribed in the annual General Appropriations Act. The
64 department shall adopt rules governing the collection and
65 remittance of surcharges pursuant to chapter 120.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/15/2017

Meeting Date

SB514

Bill Number (if applicable)

Topic MORRIS

Amendment Barcode (if applicable)

Name JO MORRIS

Job Title LEGISLATIVE AFFAIRS DIRECTOR

Address 2601 BLAIRSTONE RD

Phone

Street

TLH

City

FL

State

32399

Zip

Email

Speaking: For Against Information

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

Representing DBPR

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

Tallahassee, Florida 32399-1100

SENATOR KELLI STARGEL

22nd District

COMMITTEES:

Appropriations Subcommittee on Finance and Tax,
Chair
Appropriations Subcommittee on Health and
Human Services, *Vice Chair*
Appropriations
Children, Families, and Elder Affairs
Communications, Energy, and Public Utilities
Military and Veterans Affairs, Space, and Domestic
Security

February 9, 2017

The Honorable Travis Hutson
Senate Regulated Industries Committee, Chair
314 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chair Hutson:

I respectfully request that SB 514, related to *Fees of the Department of Business and Professional Regulation*, be placed on the committee agenda at your earliest convenience.

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

Sincerely,

A handwritten signature in cursive script that reads "Kelli Stargel".

Kelli Stargel
State Senator, District 22

Cc: Ross McSwain/ Staff Director
Lynn Koon/ AA

REPLY TO:

- 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803
- 322 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5022

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: CS/SB 716

INTRODUCER: Regulated Industries Committee and Senator Passidomo

SUBJECT: Real Estate Appraisers

DATE: March 15, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi/Kraemer</u>	<u>McSwain</u>	<u>RI</u>	<u>Fav/CS</u>
2.	_____	_____	<u>AGG</u>	_____
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 716 revises Florida law to implement registration and supervision systems for appraisal management companies, to meet minimum requirements for such companies established by federal rule. An appraisal management company is an entity that serves as an intermediary and provides certain prescribed services to creditors.¹ Implementation of a registration system for appraisal management companies satisfying federal requirements will allow eligible persons and appraisal management companies licensed in Florida to continue to perform appraisal services for federally related transactions.

¹ See the Supplementary Information section in the published Federal Register Notice at <https://www.asc.gov/documents/othercorrespondence/final%20rule%20for%20minimum%20requirements%20for%20amcs.pdf> (last visited Mar. 10, 2017) at page 32658, 12 U.S.C. 3350(1) and 12 C.F.R. 225.191(d).

Under 12 C.F.R. §34.211, an “appraisal management company” is a person, other than a department or division that does not provide appraisal management services to only one entity, that (i) provides appraisal management services to creditors or to secondary mortgage market participants, including affiliates; (ii) provides such services in connection with valuing consumer’s principal dwelling as security for a consumer credit transaction or incorporating such transactions into securitizations; (iii) within a given 12-month period, oversees an appraiser panel of 15 or more state-certified or state-licensed appraisers in a state or 25 or more state-certified or state-licensed appraisers in two or more states.

“Appraisal management services” include one or more of the following: (1) recruiting, selecting, and retaining appraisers; (2) contracting with state-certified or state-licensed appraisers; (3) managing the process of having an appraisal performed, including performing administrative services; and (4) reviewing and verifying the work of appraisers.

The bill:

- Defines the terms “appraisal panel,” “covered transaction,” “evaluation,” “secondary mortgage market participant,” and “order file” to conform to the final federal rule that establishes standards for appraisal management companies;
- Requires, as part of the implementation of a federally-compliant registration system for appraisal management companies, that the Department of Business and Professional Regulation (DBPR) collect data and required fees, and transmit a roster no less than annually, listing the persons or companies that hold a valid state registration as an appraisal management company to a federal appraisal subcommittee, consisting of federal financial institution regulatory agencies.
- Removes the board’s authority to qualify a person who is otherwise disqualified for licensure, if it appears to the board, because of lapse of time and subsequent good conduct and reputation, or other reason deemed sufficient, that the interest of the public is not likely to be endangered by the granting of registration.
- Allows the board to deny the renewal of the registration of an appraisal management company based on disciplinary action against the licensee, rather than limiting denial to the initial application for licensure.
- Permits an appraiser to perform an evaluation of real property in connection with a federally regulated real estate financial transaction, and requires that the appraiser comply with the standards for evaluation imposed by the federal financial institutions regulatory agency and other standards as prescribed by the board.
- Grants authority to the board to adopt rules to establish standards of practice for nonfederal transactions; and
- Requires that the board mandate compliance with the Ethics and Competency Rules of the standards adopted by the Appraisal Standards Board of the Appraisal Foundation for all appraisals other than those in a federal transaction.

Additionally, the bill allows distance learning courses for real estate practice coursework required for initial licensure as a real estate broker or sales associate, repeals duplicative postlicensure education requirements for trainee appraisers, and removes obsolete language.

CS/SB 716 has no significant fiscal impact to state government; however, the DBPR indicates it will require additional non-operating budget authority to transfer certain fees to the federal Appraisal Subcommittee.

The bill takes effect October 1, 2017.

II. Present Situation:

The Florida Real Estate Commission (commission) within the Division of Real Estate in the Department of Business and Professional Regulation (DBPR) administers and enforces the laws governing real estate brokers and may adopt rules to implement the provisions of part I of ch. 475, F.S. The Florida Real Estate Appraisal Board (board) administers and enforces the laws governing real estate appraisers and may adopt rules to implement the provisions of part II of ch. 475, F.S.

The Appraisal Foundation is a private, non-profit educational organization formed to promote professionalism in the valuation industry.² The Appraisal Standards Board within the Appraisal Foundation establishes the standards of the profession, known as the Uniform Standards of Professional Appraisal Practice (USPAP).³ The USPAP, and the rules created by the commission and the board, govern real estate brokers, appraisers, and appraisal management companies in Florida.

Real Estate Brokerage Registration Requirements

Section 475.15, F.S., requires a partnership, limited liability partnership, limited liability company, or corporation that acts as a real estate broker to register with the commission and renew the licenses or registrations of its members, officers, and directors for each license period. For a limited partnership, only the general partners must be licensed brokers or registered brokerage corporations. The registration of a corporation, limited liability company, limited liability partnership, or partnership is canceled automatically during the period of time the entity does not have at least one real estate broker member who has an active license or registration.

Real Estate Broker Education Requirement Exemption

Section 475.17, F.S., sets forth the qualifications for practice for a real estate broker. In part, an applicant must complete a pre-licensing course.⁴ The commission may require licensees to meet postlicensure education requirements in order to maintain valid sales associate's or broker's licenses.⁵ The required education courses must be provided by an accredited college, university, or community college, by a career center, by a registered real estate school, or by a commission-approved sponsor.⁶ The schools or sponsors may provide the instruction through classroom courses, distance learning courses, or both. For a person who cannot attend the courses as offered, courses must be made available by correspondence or other suitable means.⁷ A person who has received a 4-year, or higher, degree in real estate from an accredited institution of higher education is exempt from pre-licensure education course requirements as well as postlicensure education requirements.⁸

Real Estate Brokers – Inactive License

Section 475.183, F.S., deals with the activation of licenses that are voluntarily or involuntarily inactive. Licenses that have been involuntarily inactive for more than two years automatically expire, and become null and void without any further action by the commission or the DBPR.

²See https://www.appraisalfoundation.org/imis/TAF/About_Us/TAF/About_Us.aspx?hkey=52dedd0a-de2f-4e2d-9efb-51ec94884a91 (last visited Mar. 9, 2017).

³ The *Uniform Standards of Professional Appraisal Practice* (USPAP), was adopted by Congress in 1989, and is the generally recognized ethical and performance standards for the appraisal profession in the United States. Compliance with the USPAP is required for state-licensed and state-certified appraisers involved in federally-related real estate transactions. See https://www.appraisalfoundation.org/imis/TAF/Standards/Appraisal_Standards/Uniform_Standards_of_Professional_Appraisal_Practice/TAF/USPAP.aspx (last visited Mar. 9, 2017).

⁴ Section 475.17(2)(a), F.S.

⁵ Sections 475.17(3)(a), and (4)(a), F.S.

⁶ *Id.*

⁷ Sections 475.17(2), and (5), F.S.

⁸ Section 475.17(6), F.S.

The DBPR must provide notice to the licensee 90 days prior to expiration of a license. The commission adopted a \$45 late fee for the late renewal of an involuntarily inactive license.⁹

The Appraisal Subcommittee Fee

The Appraisal Subcommittee (ASC) was created in 1989,¹⁰ pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). The ASC is an independent agency, within the Federal Financial Institutions Examination Council, that oversees the states' appraisal regulatory programs including Florida's appraiser regulatory program.¹¹

The ASC maintains a database of state certified and licensed real estate appraisers called the National Registry.¹² State appraiser regulatory agencies submit appraiser information to the registry. An appraiser must be listed on the National Registry to be eligible to perform appraisals in connection with federally related transactions, including mortgage transactions. The ASC requires an annual \$40 fee from certified or licensed appraisers to support the ASC National Registry.¹³ The state agency that oversees appraisers is required to collect the fee from appraisers and transmit it to the ASC annually. Real estate appraisers in Florida are regulated by the Florida Real Estate Appraisal Board within the Division of Real Estate in the DBPR.¹⁴

Real Estate Appraisers

A "certified general appraiser" is a person who is certified by the DBPR as qualified to issue appraisal reports for any type of real property.¹⁵

A "certified residential appraiser" is a person who is certified by the DBPR as qualified to issue appraisal reports for residential real property of one to four residential units, without regard to transaction value or complexity, or real property as may be authorized by federal regulation.¹⁶

A "licensed appraiser" is a person who is licensed by the DBPR as qualified to issue appraisal reports for residential real property of one to four residential units or on such real estate or real property as may be authorized by federal regulation.¹⁷

⁹ Section 475.183(2)(b), F.S., and *See* Fla. Admin. Code R. 61J2-1.011(5)(c) (2017), at <https://www.flrules.org/gateway/ChapterHome.asp?Chapter=61J2-1> (last visited Mar. 9, 2017)).

¹⁰ Appraisal Subcommittee, Federal Financial Institutions Examination Council, *ASC History*, at <https://www.asc.gov/About-the-ASC/ASCHistory.aspx> (last visited Mar. 9, 2017). *See also* s. 475.611(1)(b), F.S.

¹¹ <https://www.asc.gov/Legal-Framework/DoddFrank.aspx>

¹² *See* <https://www.asc.gov/National-Registry/NationalRegistry.aspx> (last visited Mar. 9, 2017).

¹³ 12 U.S.C. s. 3332(a) and 3338(a)(4). The notice published in the Federal Register on June 9, 2015 and the final rule to implement minimum requirements the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) for appraisal management companies may be reviewed at <https://www.asc.gov/documents/othercorrespondence/final%20rule%20for%20minimum%20requirements%20for%20amcs.pdf> (last visited Mar. 9, 2017).

¹⁴ Section 475.613(2), F.S.

¹⁵ Section 475.611(1)(k), F.S.

¹⁶ Section 475.611(1)(l), F.S.

¹⁷ Section 475.611(1)(q), F.S.

The ASC and the Appraisal Foundation have adopted standard designation for appraisers, including “state certified general appraiser” and “state certified appraiser.” As of July 1, 2003, the DBPR may not issue licenses for the category of licensed appraiser.¹⁸ In 2013, the Legislature removed the term “licensed appraiser” from the definition of “supervisory appraiser,” and the reference to “licensed” appraisers from the supervisory requirements for trainee real estate appraisers. These changes conformed Florida law to federally recognized standards that allow only a “certified” appraiser to act as a supervisor for a trainee appraiser.¹⁹ Under current law, only a certified appraiser may supervise a “registered trainee appraiser.”²⁰

Real Estate Appraisers – Retention of Records

Florida law and the USPAP have different record retention requirements. All registered, licensed, or certified appraisers and registered appraisal management companies must retain the following documents for five years:²¹

- Original or true copies of any contracts to engage the services of the appraiser or appraisal management company;
- Appraisal reports; and
- Supporting data assembled and formulated by the appraiser or company in preparing appraisal reports or engaging in appraisal management services.

These records must be available for inspection or copying by the DBPR. However, the DBPR may only inspect or copy the records of an appraisal management company in connection with a pending investigation or complaint. The DBPR is able to inspect any appraiser or appraisal office for the purposes of determining if any of the provisions of chs. 475 or 455, F.S., or any rule is being violated.²² However, the DBPR does not have the authority to inspect the offices of appraisal management companies.²³

The USPAP requires an appraiser to create a work file that must include:

- The name of the client and the identity, by name or type, of any other intended users;
- True copies²⁴ of any written reports, documented on any type of media;
- Summaries of all oral reports or testimony, or a transcript of testimony, including the appraiser’s signed and dated certification;
- All other data, information, and documentation necessary to support the appraiser’s opinions and calculations and to show compliance with USPAP, or reference to the location(s) of such other documentation; and

¹⁸ *Id.*

¹⁹ Chapter 2013-144, Laws of Fla. *See* the Real Property Appraiser Qualification Criteria at https://www.appraisalfoundation.org/imis/TAF/Standards/Qualification_Criteria/Qualification_Criteria_RP_/TAF/AQB_RP_AQC.aspx?hkey=5ec61b8d-751b-4a97-90b1-9b3dae5 (last visited Mar. 9, 2017).

²⁰ Section 475.611(1)(r), F.S.

²¹ Section 475.629, F.S., requires documents to be retained for five years or the period required by the USPAP, whichever is longer. The USPAP also requires a 5-year retention period; however, USPAP is not a publicly available document, but a copy may be purchased.

²² Section 475.6295, F.S.

²³ *Id.*

²⁴ A true copy is a replica of the report transmitted to the client. A photocopy or an electronic copy of the entire report transmitted to the client satisfies that requirement of a true copy.

- A work file in support of a Restricted Appraisal Report must be sufficient for the appraiser to produce an Appraisal Report.

Registered Trainee Appraiser

A “registered trainee appraiser” is a person who is registered with the DBPR as qualified to perform appraisal services only under the direct supervision of a certified appraiser.²⁵ A registered trainee appraiser may accept appraisal assignments only from his or her primary or secondary supervisory appraiser. Registrations are renewed biennially.²⁶

Section 475.6175, F.S., authorizes the board to prescribe postlicensure education requirements for a registered trainee appraiser. The continuing education must consist of one or more courses that total no more than the total educational hours required to qualify as a state certified residential appraiser. Florida Administrative Code Rule 61J1-4.009 requires a registered trainee appraiser to complete 30 hours of postlicensure education.

Real Estate Appraisers – Nonresident Licenses and Certifications

Florida requires out-of-state licensees to meet all of the requirements for appraiser licensure. However, s. 475.631, F.S., allows the board to enter into agreements with other states that have similar licensure requirements. These agreements allow Florida certified appraisers to become licensed in another state without having to meet all of that state’s requirements and vice versa.²⁷

Dodd-Frank Wall Street Reform and Consumer Protection Act

Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) to “promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ‘too big to fail,’ to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.”²⁸

The Dodd-Frank Act became effective on July 1, 2013,²⁹ amended the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), and requires states to have policies in place for issuing a reciprocal certification or license to an appraiser from another state when:

- The appraiser licensing and certification program of the other state complies with FIRREA,³⁰ and

²⁵ Section 475.611(1)(r), F.S.

²⁶ See Fla. Admin. Code R. 61J1-2.002 (1995)

²⁷ See Fla. Admin. Code R. 61J1-3.004 (2017), at <https://www.flrules.org/gateway/ChapterHome.asp?Chapter=61J1-3> (last visited Mar. 9, 2017)). If the board determines that other states do not offer comparable nonresident licensure or certification to Florida certified appraisers that Florida offers to those states, the board must require certified appraisers or licensees of that jurisdiction to meet the education, experience, and examination requirements of other nonresident licensure or certification. See s. 475.631(1), F.S.

²⁸ See <https://www.asc.gov/Legal-Framework/DoddFrank.aspx> (last visited Mar. 9, 2017)

²⁹ Appraisal Subcommittee, Federal Financial Institutions Examination Council, *The Dodd-Frank Wall Street Reform and Consumer Protection Act*, at <https://www.asc.gov/Legal-Framework/DoddFrank.aspx> (last visited Mar. 9, 2017).

³⁰ Written agreements between states are not required by FIRREA.

- The appraiser holds a valid certification from a state with requirements for certification or licensing that meet or exceed the certification and licensure standards established by the state where the individual seeks appraisal licensure (i.e., reciprocity).³¹

The minimum requirements for the registration and supervision of appraisal management companies are also mandated by the Dodd-Frank Act.³² The affected federal agencies³³ adopted a final rule on June 9, 2015. Under Dodd-Frank, states must require that appraisal management companies:

- Register with and be subject to supervision by the state agency that certifies and licenses appraisers in the state in which the appraiser operates.
- Verify that only state-certified or state-licensed appraisers are used for federally related transactions.
- Require that appraisals comply with the USPAP.
- Require that appraisals are conducted in accordance with statutory valuation independence standards pursuant to the Truth in Lending Act and its regulations.

An appraisal management company that is a subsidiary owned and controlled by an insured depository institution and regulated by a federal financial institutions regulatory agency is subject to all of those minimum requirements, except the requirement to register with the state.³⁴

Section 1124 of the Dodd-Frank Act does *not* compel a state to establish an appraisal management company registration and supervision program and no penalty is imposed on a state that does not establish an appraisal management company regulatory structure. However, if a state does not establish a regulatory structure for appraisal management companies by August 10, 2018 (i.e., 36 months after the effective date of the final rule), s. 1124 of the Dodd-Frank Act bars appraisal management companies from providing appraisal management services for federally related transactions, unless the appraisal management company is owned and controlled by a federally regulated financial institution.³⁵ However, appraisal management companies that are below the minimum statutory panel size threshold will continue to be eligible to provide appraisal management services for federally related transactions.³⁶

³¹ 12 U.S.C. s. 3351(b); and Appraisal Subcommittee Policy Statement 5 (June 1, 2013) at <https://www.asc.gov/Documents/PolicyStatements/ASC%20Policy%20Statements%2006.01.13.pdf> (last visited March 9, 2017).

³² See

<https://www.asc.gov/documents/othercorrespondence/final%20rule%20for%20minimum%20requirements%20for%20amcs.pdf> (last visited Mar. 10, 2017).

³³ The final rule adopted on June 9, 2015 may be reviewed at

<https://www.asc.gov/documents/othercorrespondence/final%20rule%20for%20minimum%20requirements%20for%20amcs.pdf> (last visited Mar. 9, 2017).

³⁴ *Id.*

³⁵ *Id.*

³⁶ See the Supplementary Information section in the published Federal Register Notice at

<https://www.asc.gov/documents/othercorrespondence/final%20rule%20for%20minimum%20requirements%20for%20amcs.pdf> (last visited Mar. 10, 2017) at page 32658, 12 U.S.C. 3350(1) and 12 C.F.R. 225.191(d).

The minimum statutory panel threshold is an appraisal management company that oversees fewer than 15 state-licensed appraisers in a state or fewer than 25 appraisers in two or more states in a calendar year or 12-month period under state law.

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 475.451(6), F.S., to allow schools teaching real estate practice, to provide instruction in a classroom or by distance learning courses approved pursuant to s. 475.17(2), F.S., and to remove obsolete language authorizing video taped instruction. The bill also requires real estate practice coursework for initial licensure as a broker; such coursework is currently required for licensure as a sales associate.

Section 2 of the bill amends s. 475.611, F.S., to conform the terms “appraisal panel,”³⁷ “covered transaction,” “evaluation,” “secondary mortgage market participant,” and “order file” to the final federal rule that establishes standards for appraisal management companies.³⁸

An “evaluation” means a valuation permitted by a regulatory agency for federal financial institutions, when no appraisal is required because a federal exemption applies. The bill provides that an “evaluation” may not be referred to or construed as an “appraisal.”

Section 3 of the bill creates s. 475.612(7), F.S., to permit an appraiser to perform an evaluation of real property in connection with a federally regulated real estate financial transaction. The bill also requires an appraiser providing services in a federally related transaction to comply with the standards for evaluation imposed by the federal financial institutions regulatory agency and other standards as prescribed by the Florida Real Estate Appraisal Board (board). An evaluation may not be referred to as an appraisal.

Section 4 of the bill repeals s. 475.6175, F.S., concerning postlicensure education requirements for trainee appraisers. Currently, s. 475.618, F.S., requires the Department of Business and Professional Regulation (DBPR) to renew a registration, license, or certification of an appraiser upon receipt of a renewal application, proper fee, and proof of the licensee having satisfactorily completed a continuing education course or courses required by the board. According to the DBPR, education required for initial licensure and continuing education coursework currently provided by real estate schools is duplicative of postlicensure education coursework.³⁹

Section 5 of the bill amends s. 475.621, F.S., to require that the DBPR collect data and required fees, and transmit a roster to the “appraisal subcommittee,” no less than annually, listing the persons or companies that hold a valid state registration as an appraisal management company. Under part II, ch. 475, F.S., the “appraisal subcommittee” is defined as the designees of the heads of the federal financial institutions regulatory agencies established by the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. ss. 3301 et seq.), as amended.⁴⁰ The bill authorizes the DBPR to collect from appraisal management companies seeking to perform

³⁷ These definitions are nearly identical in the bill and in the final rule; however, in the definition of “appraiser panel” in the bill, the word “mortgage” is omitted from the phrase “secondary mortgage market” that is used in the final rule. See line 133 of the bill, and s. 323.9(e) of the final rule at <https://www.asc.gov/documents/othercorrespondence/final%20rule%20for%20minimum%20requirements%20for%20amcs.pdf> (last visited Mar. 10, 2017) at page 32679.

³⁸ See 12 C.F.R. Part 323, § 323.9(e), (h), and (k), respectively.

³⁹ See *2017 Agency Legislative Bill Analysis (AGENCY: Department of Business and Professional Regulation)* for SB 716, dated Feb. 27, 2017 (on file with Senate Committee on Regulated Industries) at page 3.

⁴⁰ See s. 475.611(1)(g), F.S.

appraisal management services in covered transactions (i.e., consumer credit transactions secured by the consumer's principal dwelling) an annual fee established by the board.

Section 6 of the bill amends s. 475.6235(5), F.S., to remove the authority of the board to qualify a person for licensure, if it appears to the board, because of lapse of time and subsequent good conduct and reputation, or other reason deemed sufficient, that the interest of the public is not likely to be endangered by the granting of registration. In current law, the board may qualify a person for registration, licensure, or certification as an appraiser who possesses the authority, directly or indirectly, to direct the management or policies of an appraisal management company, through ownership, contract or otherwise, and if the person has:

- Been denied registration, licensure, or certification as an appraiser or has been disbarred;
- Has had a registration, license, or certificate to practice or conduct any regulated profession, business, or vocation revoked or suspended by this or any other state, any nation, any possession or district of the United States, or any court or lawful agency thereof because of any conduct or practices that would have warranted a like result under part II of ch. 475, F.S.; or
- Has been guilty of conduct or practices in this state or elsewhere that would have been grounds for disciplining his or her registration, license, or certification under part II of ch. 475, F.S., had the person then been a registered trainee appraiser or a licensed or certified appraiser.

Additionally, the bill amends s. 475.6235(8)(b), F.S., to revise the types of entities to which s. 475.6235, F.S., does not apply by deleting reference to appraisal management companies owned and controlled by a financial institution defined in s. 655.005, F.S., and substituting a reference to "federally regulated appraisal management company" (which is defined in new paragraph (r) of s. 475.611, F.S., created in this bill).

Section 7 of the bill amends s. 475.6245, F.S., to allow the board also to deny the renewal of the license of an appraisal management company based on disciplinary action against the licensee, rather than just allowing denial of the initial application for licensure.

Section 8 of the bill amends s. 475.628 (2), F.S., to authorize the board to adopt rules to establish standards of practice, other than the standards adopted by the Appraisal Standards Board of the Appraisal Foundation, for nonfederal transactions, and to require that the board mandate compliance with the Ethics and Competency Rules of the standards adopted by the Appraisal Standards Board of the Appraisal Foundation, for all appraisals other than those in federal transactions.

Section 9 of the bill re-enacts s. 475.629, F.S., on retention of records to incorporate the amendments made by the bill to s. 475.611, F.S., to include additional definitions.

Section 10 provides an effective date of October 1, 2017.

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

SB 716, according to the Department of Business and Professional Regulation (DBPR), will not increase the fees payable to and retained by the state.⁴¹ The federal Appraisal Subcommittee (ASC) charges a fee for each person (panelist) who serves on an appraiser panel⁴² and performs services for the appraisal management company.⁴³

According to the DBPR, the fee charged by the ASC will range from \$25 to \$50 per panelist, and is a pass-through payment that the state must collect and transmit to the ASC.⁴⁴ The DBPR indicates a similar process is already in place for individual appraisers, including an annual charge of \$40 to each appraiser.⁴⁵

The DBPR indicates that the number of persons required to submit a set of fingerprints will increase because the number of persons for whom information must be submitted for licensure of an appraisal management company is expanded by the bill.

B. Private Sector Impact:

The DBPR reports that the ASC charges a fee for each person (panelist) who serves on an appraiser panel, ranging from \$25 to \$50.⁴⁶

⁴¹ See 2017 Agency Legislative Bill Analysis (AGENCY: Department of Business and Professional Regulation) for SB 716, dated Feb. 27, 2017 (on file with Senate Committee on Regulated Industries) at page 5.

⁴² See s. 475.511(1)(i), F.S.

⁴³ See

<https://www.asc.gov/documents/othercorrespondence/final%20rule%20for%20minimum%20requirements%20for%20amcs.pdf> (last visited Mar. 10, 2017) at page 32658.

⁴⁴ See 2017 Agency Legislative Bill Analysis (AGENCY: Department of Business and Professional Regulation) for SB 716, dated Feb. 27, 2017 (on file with Senate Committee on Regulated Industries) at pages 5-6.

⁴⁵ *Id.*

⁴⁶ *Id.*

C. Government Sector Impact:

The bill has no significant fiscal impact to state government; however, the DBPR indicates it will require additional non-operating budget authority to transfer certain fees to the ASC.⁴⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 475.451, 475.611, 475.612, 475.621, 475.6235, 475.6245, and 475.628.

This bill re-enacts section 475.629 of the Florida Statutes.

This bill repeals section 475.6175 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

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

CS by Regulated Industries on March 15, 2017:

The committee substitute :

- Amends the definition of the term “appraisal panel” in s. 565.611(1)(i), F.S., to replace the term “appraisers engaged by the appraisal management company” with the term “appraisers employed by, contracted with, or otherwise retained by the appraisal management company;”
- Defines the term “evaluation” in s. 475.611(1)(q), F.S.;
- Revises the definition of “secondary mortgage market participant” in s. 475.611(1)(w), F.S., to include an underwriter or issuer of a mortgage-backed security;
- Creates s. 475.612(7), F.S., to permit an appraiser to perform an evaluation of real property in connection with federally regulated real estate financial transactions.
- Requires an appraiser providing services in a federally related transaction to comply with the standards for evaluation imposed by the federal financial institutions regulatory agency and other standards as prescribed by the board. An evaluation may not be referred to as an appraisal.
- Does not amend s. 475.6235(2)(f)5., F.S., to revise the required disclosure in an application for registration of an appraisal management company, to include each

⁴⁷ *Id.* at page 5 and 7.

- person who, directly or indirectly, owns or controls 10 percent or more of an ownership interest in the appraisal management company;
- Does not amend s. 475.6235(5), F.S., to remove the authority of the Florida Real Estate Appraisal Board (board) to disqualify certain persons with management responsibilities from registration, licensure, or certification as an appraiser, if they have been denied registration, licensure, or certification as an appraiser, have been disbarred, or had a license revoked or suspended in Florida or elsewhere for conduct that would have warranted a similar result or been grounds for discipline.
 - Does not authorize the board to discipline an appraisal management company for failure to pay an appraiser in accordance with the federal Truth in Lending Act;
 - Does not re-enact s. 475.626(1)(b), F.S., on violations and penalties to incorporate the amendments made by the bill to s. 475.6245, F.S.; and
 - Amends s. 475.628 (2), F.S., to authorize the board to adopt rules to establish standards of practice, other than the standards adopted by the Appraisal Standards Board of the Appraisal Foundation, for nonfederal transactions.
 - Requires the board to mandate compliance with the Ethics and Competency Rules of the standards adopted by the Appraisal Standards Board of the Appraisal Foundation for all appraisals other than those in a federal transaction.

B. Amendments:

None.

**The Florida Senate
COMMITTEE VOTE RECORD**

COMMITTEE: Regulated Industries
ITEM: SB 716
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Wednesday, March 15, 2017
TIME: 4:00—6:00 p.m.
PLACE: 301 Senate Office Building

FINAL VOTE		SENATORS	3/15/2017 1 Amendment 933304					
			Passidomo		Yea	Nay	Yea	Nay
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay
		Benacquisto						
X		Bracy						
VA		Brandes						
X		Braynon						
X		Gibson						
X		Perry						
VA		Steube						
X		Thurston						
X		Young						
		Hukill, VICE CHAIR						
X		Hutson, CHAIR						
9	0	TOTALS	RCS	-				
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay

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



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/16/2017	.	
	.	
	.	
	.	

The Committee on Regulated Industries (Passidomo) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (6) of section 475.451, Florida Statutes, is amended to read:

475.451 Schools teaching real estate practice.—

(6) Any course prescribed by the commission as a condition precedent to a person ~~any person's~~ becoming initially licensed as a sales associate or broker may be taught by a ~~in any~~ real



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11 estate school in a classroom or via distance learning pursuant
12 to s. 475.17(2) through the use of a video tape of instruction
13 by a currently permitted instructor from any such school ~~or may~~
14 ~~be taught by distance learning pursuant to s. 475.17(2). The~~
15 ~~commission may require that any such video tape course have a~~
16 ~~single session of live instruction by a currently permitted~~
17 ~~instructor from any such school; however, this requirement shall~~
18 ~~not exceed 3 classroom hours.~~ All other prescribed courses,
19 except the continuing education course required by s. 475.182,
20 shall be taught by a currently permitted school instructor
21 personally in attendance at such course or by distance learning
22 pursuant to s. 475.17. The continuing education course required
23 by s. 475.182 may be taught by distance learning pursuant to s.
24 475.17 or by an equivalent correspondence course; however, any
25 such correspondence course shall be required to have a final
26 examination, prepared and administered by the school or course
27 provider issuing the correspondence course. The continuing
28 education requirements provided in this chapter do not apply to
29 an attorney who is otherwise qualified under this chapter and
30 who is a member in good standing of The Florida Bar.

31 Section 2. Subsections (1) and (2) of section 475.611,
32 Florida Statutes, are amended to read:

33 475.611 Definitions.—

34 (1) As used in this part, the term:

35 (a) "Appraisal" or "appraisal services" means the services
36 provided by certified or licensed appraisers or registered
37 trainee appraisers, and includes:

38 1. "Appraisal assignment" denotes an engagement for which a
39 person is employed or retained to act, or could be perceived by



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40 third parties or the public as acting, as an agent or a
41 disinterested third party in rendering an unbiased analysis,
42 opinion, review, or conclusion relating to the nature, quality,
43 value, or utility of specified interests in, or aspects of,
44 identified real property.

45 2. "Analysis assignment" denotes appraisal services that
46 relate to the employer's or client's individual needs or
47 investment objectives and includes specialized marketing,
48 financing, and feasibility studies as well as analyses,
49 opinions, and conclusions given in connection with activities
50 such as real estate brokerage, mortgage banking, real estate
51 counseling, or real estate consulting.

52 3. "Appraisal review assignment" denotes an engagement for
53 which an appraiser is employed or retained to develop and
54 communicate an opinion about the quality of another appraiser's
55 appraisal, appraisal report, or work. An appraisal review may or
56 may not contain the reviewing appraiser's opinion of value.

57 (b) "Appraisal Foundation" or "foundation" means The
58 Appraisal Foundation established on November 20, 1987, as a not-
59 for-profit corporation under the laws of Illinois.

60 (c) "Appraisal management company" means a person who
61 performs appraisal management services regardless of the use of
62 the term "appraisal management company," "appraiser
63 cooperative," "appraiser portal," "mortgage technology company,"
64 or other term.

65 (d) "Appraisal management services" means the coordination
66 or management of appraisal services for compensation by:

67 1. Employing, contracting with, or otherwise retaining one
68 or more licensed or certified appraisers to perform appraisal



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69 services for a client; or

70 2. Acting as a broker or intermediary between a client and
71 one or more licensed or certified appraisers to facilitate the
72 client's employing, contracting with, or otherwise retaining the
73 appraisers.

74 (e) "Appraisal report" means any communication, written or
75 oral, of an appraisal, appraisal review, appraisal consulting
76 service, analysis, opinion, or conclusion relating to the
77 nature, quality, value, or utility of a specified interest in,
78 or aspect of, identified real property, and includes any report
79 communicating an appraisal analysis, opinion, or conclusion of
80 value, regardless of title. However, in order to be recognized
81 in a federally related transaction, an appraisal report must be
82 written.

83 (f) "Appraisal review" means the act or process of
84 developing and communicating an opinion about the quality of
85 another appraiser's appraisal, appraisal report, or work.

86 (g) "Appraisal subcommittee" means the designees of the
87 heads of the federal financial institutions regulatory agencies
88 established by the Federal Financial Institutions Examination
89 Council Act of 1978 (12 U.S.C. ss. 3301 et seq.), as amended.

90 (h) "Appraiser" means any person who is a registered
91 trainee real estate appraiser, a licensed real estate appraiser,
92 or a certified real estate appraiser. An appraiser renders a
93 professional service and is a professional within the meaning of
94 s. 95.11(4)(a).

95 (i) "Appraiser panel" means a network, list, or roster of
96 licensed or certified appraisers approved by an appraisal
97 management company to perform appraisals as independent



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98 contractors for the appraisal management company. An appraiser
99 is an independent contractor for purposes of this paragraph if
100 the appraiser is treated as an independent contractor by the
101 appraisal management company for federal income tax purposes.
102 The term "appraiser panel" includes:

103 1. Appraisers accepted by the appraisal management company
104 for consideration for future appraisal assignments in covered
105 transactions or secondary mortgage market participants in
106 connection with covered transactions.

107 2. Appraisers employed by, contracted with, or otherwise
108 retained by the appraisal management company to perform one or
109 more appraisals in covered transactions or for secondary
110 mortgage market participants in connection with covered
111 transactions ~~group of appraisers selected by an appraisal~~
112 ~~management company to perform appraisal services for clients on~~
113 ~~behalf of the company.~~

114 (j) "Board" means the Florida Real Estate Appraisal Board
115 established under this section.

116 (k) "Certified general appraiser" means a person who is
117 certified by the department as qualified to issue appraisal
118 reports for any type of real property.

119 (l) "Certified residential appraiser" means a person who is
120 certified by the department as qualified to issue appraisal
121 reports for residential real property of one to four residential
122 units, without regard to transaction value or complexity, or
123 real property as may be authorized by federal regulation.

124 (m) "Client" means a person who contracts with an appraiser
125 or appraisal management company for the performance of appraisal
126 services.



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127 (n) "Covered transaction" means a consumer credit
128 transaction secured by the consumer's principal dwelling.

129 (o) ~~(n)~~ "Department" means the Department of Business and
130 Professional Regulation.

131 (p) ~~(e)~~ "Direct supervision" means the degree of supervision
132 required of a supervisory appraiser overseeing the work of a
133 registered trainee appraiser by which the supervisory appraiser
134 has control over and detailed professional knowledge of the work
135 being done. Direct supervision is achieved when a registered
136 trainee appraiser has regular direction, guidance, and support
137 from a supervisory appraiser who has the competencies as
138 determined by rule of the board.

139 (q) "Evaluation" means a valuation permitted by any
140 appraisal regulation of a federal financial institutions
141 regulatory agency for transactions that do not require an
142 appraisal because they qualify for an applicable exemption under
143 federal law. The board shall adopt rules, as necessary, to
144 define evaluations and the applicable exemptions under federal
145 law.

146 (r) "Federally regulated appraisal management company"
147 means an appraisal management company that is owned and
148 controlled by an insured depository institution, as defined in
149 12 U.S.C. s. 1813, and regulated by the Office of the
150 Comptroller of the Currency, the Board of Governors of the
151 Federal Reserve System, or the Federal Deposit Insurance
152 Corporation.

153 (s) ~~(p)~~ "Federally related transaction" means any real
154 estate-related financial transaction which a federal financial
155 institutions regulatory agency or the Resolution Trust



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156 Corporation engages in, contracts for, or regulates, and which
157 requires the services of a state-licensed or state-certified
158 appraiser.

159 (t)~~(q)~~ "Licensed appraiser" means a person who is licensed
160 by the department as qualified to issue appraisal reports for
161 residential real property of one to four residential units or on
162 such real estate or real property as may be authorized by
163 federal regulation. After July 1, 2003, the department shall not
164 issue licenses for the category of licensed appraiser.

165 (u) "Order file" means the documentation necessary to
166 support the performance of appraisal management services.

167 (v)~~(r)~~ "Registered trainee appraiser" means a person who is
168 registered with the department as qualified to perform appraisal
169 services only under the direct supervision of a certified
170 appraiser. A registered trainee appraiser may accept appraisal
171 assignments only from her or his primary or secondary
172 supervisory appraiser.

173 (w) "Secondary mortgage market participant" means a
174 guarantor, insurer, underwriter, or issuer of mortgage-backed
175 securities. The term includes an individual investor in a
176 mortgage-backed security only if such investor also serves in
177 the capacity of a guarantor, an insurer, an underwriter, or an
178 issuer for the mortgage-backed security.

179 (x)~~(s)~~ "Signature" means personalized evidence indicating
180 authentication of work performed by an appraiser and the
181 acceptance of responsibility for the content of an appraisal,
182 appraisal review, or appraisal consulting service or conclusions
183 in an appraisal report.

184 (y)~~(t)~~ "Subsidiary" means an organization that is owned and



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185 controlled by a financial institution that is regulated by a
186 federal financial institution regulatory agency.

187 (z)~~(u)~~ "Supervisory appraiser" means a certified
188 residential appraiser or a certified general appraiser
189 responsible for the direct supervision of one or more registered
190 trainee appraisers and fully responsible for appraisals and
191 appraisal reports prepared by those registered trainee
192 appraisers. The board, by rule, shall determine the
193 responsibilities of a supervisory appraiser, the geographic
194 proximity required, the minimum qualifications and standards
195 required of a certified appraiser before she or he may act in
196 the capacity of a supervisory appraiser, and the maximum number
197 of registered trainee appraisers to be supervised by an
198 individual supervisory appraiser.

199 (aa)~~(v)~~ "Training" means the process of providing for and
200 making available to a registered trainee appraiser, under direct
201 supervision, a planned, prepared, and coordinated program, or
202 routine of instruction and education, in appraisal professional
203 and technical appraisal skills as determined by rule of the
204 board.

205 (bb)~~(w)~~ "Uniform Standards of Professional Appraisal
206 Practice" means the most recent standards approved and adopted
207 by the Appraisal Standards Board of The Appraisal Foundation.

208 (cc)~~(x)~~ "Valuation services" means services pertaining to
209 aspects of property value and includes such services performed
210 by certified appraisers, registered trainee appraisers, and
211 others.

212 (dd)~~(y)~~ "Work file" means the documentation necessary to
213 support an appraiser's analysis, opinions, and conclusions.



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214 (2) Wherever the word "operate" or "operating" appears in
215 this part with respect to a registered trainee appraiser,
216 registered appraisal management company, licensed appraiser, or
217 certified appraiser; in any order, rule, or regulation of the
218 board; in any pleading, indictment, or information under this
219 part; in any court action or proceeding; or in any order or
220 judgment of a court, it shall be deemed to mean the commission
221 of one or more acts described in this part as constituting or
222 defining a registered trainee appraiser, registered appraisal
223 management company, licensed appraiser, or certified appraiser,
224 not including, however, any of the exceptions stated therein. A
225 single act is sufficient to bring a person within the meaning of
226 this subsection, and each act, if prohibited herein, constitutes
227 a separate offense.

228 Section 3. Subsection (7) is added to section 475.612,
229 Florida Statutes, to read:

230 475.612 Certification, licensure, or registration
231 required.—

232 (7) Notwithstanding any other law, an appraiser may perform
233 an evaluation of real property in connection with a real estate-
234 related financial transaction, as defined by rule of the board,
235 where the transaction is regulated by a federal financial
236 institutions regulatory agency. The appraiser shall comply with
237 the standards for evaluations imposed by the federal financial
238 institutions regulatory agency and other standards as prescribed
239 by the board. However, in no event may an evaluation be referred
240 to or construed as an appraisal.

241 Section 4. Section 475.6175, Florida Statutes, is repealed.

242 Section 5. Section 475.621, Florida Statutes, is amended to



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243 read:

244 475.621 Registry of licensed and certified appraisers;
245 registry of appraisal management companies.—

246 (1) The department shall transmit to the appraisal
247 subcommittee, at least no less than annually, a roster listing
248 individuals who hold a valid state license or certification as
249 an appraiser. The department shall transmit to the appraisal
250 subcommittee, at least annually, a roster listing individuals or
251 companies that hold a valid state registration as an appraisal
252 management company.

253 (2) The department shall collect from such individuals who
254 perform or seek to perform appraisals in federally related
255 transactions, an annual fee as set by rule of, and transmitted
256 to, the appraisal subcommittee. The department shall collect
257 from such appraisal management companies that perform or seek to
258 perform appraisal management services in covered transactions an
259 annual fee set by rule of the board and transmitted to the
260 appraisal subcommittee.

261 (3) Notwithstanding the prohibition against requiring
262 registration of a federally regulated appraisal management
263 company as provided in s. 475.6235(8)(b), the board shall
264 establish a procedure to collect from a federally regulated
265 appraisal management company an annual fee as set by rule of the
266 board and transmitted to the appraisal subcommittee.

267 Section 6. Subsections (5) and (8) of section 475.6235,
268 Florida Statutes, are amended to read:

269 475.6235 Registration of appraisal management companies
270 required; exemptions.—

271 (5) Each person listed in paragraph (2)(f) must be



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272 competent and qualified to engage in appraisal management
273 services with safety to the general public and those with whom
274 the person may undertake a relationship of trust and confidence.
275 If any person listed in paragraph (2) (f) has been denied
276 registration, licensure, or certification as an appraiser or has
277 been disbarred, or if the person's registration, license, or
278 certificate to practice or conduct any regulated profession,
279 business, or vocation has been revoked or suspended by this or
280 any other state, any nation, any possession or district of the
281 United States, or any court or lawful agency thereof because of
282 any conduct or practices that would have warranted a like result
283 under this part, or if the person has been guilty of conduct or
284 practices in this state or elsewhere that would have been
285 grounds for disciplining her or his registration, license, or
286 certification under this part had the person then been a
287 registered trainee appraiser or a licensed or certified
288 appraiser, the person is ~~shall be~~ deemed not to be qualified to
289 be registered unless, ~~because of lapse of time and subsequent~~
290 ~~good conduct and reputation, or other reason deemed sufficient,~~
291 ~~it appears to the board that the interest of the public is not~~
292 ~~likely to be endangered by the granting of registration.~~

293 (8) This section does not apply to:

294 (a) A financial institution, as defined in s. 655.005,
295 which owns and operates an internal appraisal office, business
296 unit, or department; or

297 (b) A federally regulated ~~An~~ appraisal management company
298 ~~that is a subsidiary owned and controlled by a financial~~
299 ~~institution, as defined in s. 655.005, that is regulated by a~~
300 ~~federal financial institution regulatory agency.~~



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301 Section 7. Subsection (1) of section 475.6245, Florida
302 Statutes, is amended to read:

303 475.6245 Discipline of appraisal management companies.—

304 (1) The board may deny an application for registration or
305 renewal registration of an appraisal management company; may
306 investigate the actions of any appraisal management company
307 registered under this part; may reprimand or impose an
308 administrative fine not to exceed \$5,000 for each count or
309 separate offense against any such appraisal management company;
310 and may revoke or suspend, for a period not to exceed 10 years,
311 the registration of any such appraisal management company, or
312 place any such appraisal management company on probation, if the
313 board finds that the appraisal management company or any person
314 listed in s. 475.6235(2)(f):

315 (a) Has violated any provision of this part or s.
316 455.227(1); however, any appraisal management company registered
317 under this part is exempt from s. 455.227(1)(i).

318 (b) Has been guilty of fraud, misrepresentation,
319 concealment, false promises, false pretenses, dishonest conduct,
320 culpable negligence, or breach of trust in any business
321 transaction in this state or any other state, nation, or
322 territory; has violated a duty imposed upon her or him by law or
323 by the terms of a contract, whether written, oral, express, or
324 implied, in an appraisal assignment; has aided, assisted, or
325 conspired with any other person engaged in any such misconduct
326 and in furtherance thereof; or has formed an intent, design, or
327 scheme to engage in such misconduct and committed an overt act
328 in furtherance of such intent, design, or scheme. It is
329 immaterial to the guilt of the appraisal management company that



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330 the victim or intended victim of the misconduct has sustained no
331 damage or loss; that the damage or loss has been settled and
332 paid after discovery of the misconduct; or that such victim or
333 intended victim was a customer or a person in confidential
334 relation with the appraisal management company or was an
335 identified member of the general public.

336 (c) Has advertised services in a manner that is fraudulent,
337 false, deceptive, or misleading in form or content.

338 (d) Has violated any provision of this part or any lawful
339 order or rule issued under this part or chapter 455.

340 (e) Has been convicted or found guilty of, or entered a
341 plea of nolo contendere to, regardless of adjudication, a crime
342 in any jurisdiction that directly relates to the activities of
343 an appraisal management company or that involves moral turpitude
344 or fraudulent or dishonest conduct. The record of a conviction
345 certified or authenticated in such form as admissible in
346 evidence under the laws of the state shall be admissible as
347 prima facie evidence of such guilt.

348 (f) Has had a registration, license, or certification as an
349 appraiser or a registration as an appraisal management company
350 revoked, suspended, or otherwise acted against; has been
351 disbarred; has had her or his registration, license, or
352 certificate to practice or conduct any regulated profession,
353 business, or vocation revoked or suspended by this or any other
354 state, any nation, or any possession or district of the United
355 States; or has had an application for such registration,
356 licensure, or certification to practice or conduct any regulated
357 profession, business, or vocation denied by this or any other
358 state, any nation, or any possession or district of the United



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359 States.

360 (g) Has become temporarily incapacitated from acting as an
361 appraisal management company with safety to those in a fiduciary
362 relationship with her or him because of drunkenness, use of
363 drugs, or temporary mental derangement; however, suspension of a
364 registration in such cases shall only be for the period of such
365 incapacity.

366 (h) Is confined in any county jail, postadjudication; is
367 confined in any state or federal prison or mental institution;
368 or, through mental disease or deterioration, can no longer
369 safely be entrusted to deal with the public or in a confidential
370 capacity.

371 (i) Has failed to inform the board in writing within 30
372 days after pleading guilty or nolo contendere to, or being
373 convicted or found guilty of, any felony.

374 (j) Has been found guilty, for a second time, of any
375 misconduct that warrants disciplinary action, or has been found
376 guilty of a course of conduct or practice that shows that she or
377 he is incompetent, negligent, dishonest, or untruthful to an
378 extent that those with whom she or he may sustain a confidential
379 relationship may not safely do so.

380 (k) Has made or filed a report or record, either written or
381 oral, that the appraisal management company knows to be false;
382 has willfully failed to file a report or record required by
383 state or federal law; has willfully impeded or obstructed such
384 filing; or has induced another person to impede or obstruct such
385 filing. However, such reports or records shall include only
386 those that are signed or presented in the capacity of an
387 appraisal management company.



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388 (1) Has obtained or attempted to obtain a registration,
389 license, or certification by means of knowingly making a false
390 statement, submitting false information, refusing to provide
391 complete information in response to an application question, or
392 engaging in fraud, misrepresentation, or concealment.

393 (m) Has paid money or other valuable consideration, except
394 as required by this section, to any member or employee of the
395 board to obtain a registration, license, or certification under
396 this section.

397 (n) Has instructed an appraiser to violate any standard of
398 professional practice established by rule of the board,
399 including standards for the development or communication of a
400 real estate appraisal or other provision of the Uniform
401 Standards of Professional Appraisal Practice.

402 (o) Has engaged in the development of an appraisal or the
403 preparation of an appraisal report, unless the appraisal
404 management company is owned or controlled by certified
405 appraisers.

406 (p) Has failed to communicate an appraisal without good
407 cause.

408 (q) Has accepted an appraisal assignment if the employment
409 itself is contingent upon the appraisal management company
410 reporting a predetermined result, analysis, or opinion or if the
411 fee to be paid for the performance of the appraisal assignment
412 is contingent upon the opinion, conclusion, or valuation reached
413 upon the consequences resulting from the appraisal assignment.

414 (r) Has failed to timely notify the department of any
415 change in principal business location as an appraisal management
416 company.



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417 (s) Has influenced or attempted to influence the
418 development, reporting, or review of an appraisal through
419 coercion, extortion, collusion, compensation, inducement,
420 intimidation, bribery, or any other means, including, but not
421 limited to:

422 1. Withholding or threatening to withhold timely payment
423 for an appraisal, unless such nonpayment is based upon specific
424 quality or other service issues that constitute noncompliance
425 with the appraisal engagement agreement.

426 2. Withholding or threatening to withhold future business
427 from an appraiser.

428 3. Promising future business, promotions, or increased
429 compensation for an appraiser, whether the promise is express or
430 implied.

431 4. Conditioning a request for appraisal services or the
432 payment of an appraisal fee, salary, or bonus upon the opinion,
433 conclusion, or valuation to be reached or upon a preliminary
434 estimate or opinion requested from an appraiser.

435 5. Requesting that an appraiser provide an estimated,
436 predetermined, or desired valuation in an appraisal report or
437 provide estimated values or comparable sales at any time before
438 the appraiser's completion of appraisal services.

439 6. Providing to an appraiser an anticipated, estimated,
440 encouraged, or desired value for a subject property or a
441 proposed or target amount to be loaned to the borrower, except
442 that a copy of the sales contract for purchase transactions may
443 be provided.

444 7. Providing to an appraiser, or any person related to the
445 appraiser, stock or other financial or nonfinancial benefits.



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446 8. Allowing the removal of an appraiser from an appraiser
447 panel without prior written notice to the appraiser.

448 9. Obtaining, using, or paying for a second or subsequent
449 appraisal or ordering an automated valuation model in connection
450 with a mortgage financing transaction unless there is a
451 reasonable basis to believe that the initial appraisal was
452 flawed or tainted and such basis is clearly and appropriately
453 noted in the loan file, or unless such appraisal or automated
454 valuation model is issued pursuant to a bona fide prefunding or
455 postfunding appraisal review or quality control process.

456 10. Any other act or practice that impairs or attempts to
457 impair an appraiser's independence, objectivity, or
458 impartiality.

459 (t) Has altered, modified, or otherwise changed a completed
460 appraisal report submitted by an appraiser to an appraisal
461 management company.

462 (u) Has employed, contracted with, or otherwise retained an
463 appraiser whose registration, license, or certification is
464 suspended or revoked to perform appraisal services or appraisal
465 management services.

466 (v) Has required or attempted to require an appraiser to
467 sign any indemnification agreement that would require the
468 appraiser to hold harmless the appraisal management company or
469 its owners, agents, employees, or independent contractors from
470 any liability, damage, loss, or claim arising from the services
471 performed by the appraisal management company or its owners,
472 agents, employees, or independent contractors and not the
473 services performed by the appraiser.

474 Section 8. Section 475.628, Florida Statutes, is amended to



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475 read:

476 475.628 Professional standards for appraisers registered,
477 licensed, or certified under this part.—

478 (1) The board shall adopt rules establishing standards of
479 professional practice which meet or exceed nationally recognized
480 standards of appraisal practice, including standards adopted by
481 the Appraisal Standards Board of the Appraisal Foundation. Each
482 appraiser registered, licensed, or certified under this part
483 must comply with the rules. Statements on appraisal standards
484 which may be issued for the purpose of clarification,
485 interpretation, explanation, or elaboration through the
486 Appraisal Foundation are binding on any appraiser registered,
487 licensed, or certified under this part, upon adoption by rule of
488 the board.

489 (2) The board may adopt rules establishing standards of
490 practice, other than standards adopted by the Appraisal
491 Standards Board of the Appraisal Foundation, for nonfederally
492 related transactions. The board shall require that an appraiser,
493 when performing an appraisal or appraisal service for any
494 purpose other than a federally related transaction, must also
495 comply with the Ethics and Competency Rules of the standards
496 adopted by the Appraisal Standards Board of the Appraisal
497 Foundation and other requirements as determined by rule of the
498 board. Assignments completed using alternate standards do not
499 satisfy the experience requirements of s. 475.617 unless those
500 assignments comply with the standards adopted by the Appraisal
501 Standards Board of the Appraisal Foundation.

502 Section 9. For the purpose of incorporating the amendment
503 made by this act to section 475.611, Florida Statutes, in a



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504 reference thereto, section 475.629, Florida Statutes, is
505 reenacted to read:

506 475.629 Retention of records.—An appraiser registered,
507 licensed, or certified under this part shall prepare and retain
508 a work file for each appraisal, appraisal review, or appraisal
509 consulting assignment. An appraisal management company
510 registered under this part shall prepare and retain an order
511 file for each appraisal, appraisal review, or appraisal
512 consulting assignment. The work file and the order file shall be
513 retained for 5 years or the period specified in the Uniform
514 Standards of Professional Appraisal Practice, whichever is
515 greater. The work file must contain original or true copies of
516 any contracts engaging the appraiser's or appraisal management
517 company's services, appraisal reports, and supporting data
518 assembled and formulated by the appraiser or company in
519 preparing appraisal reports or engaging in appraisal management
520 services and all other data, information, and documentation
521 required by the standards for the development or communication
522 of a real estate appraisal as approved and adopted by the
523 Appraisal Standards Board of The Appraisal Foundation, as
524 established by rule of the board. The order file must contain
525 original or true copies of any contracts engaging the
526 appraiser's services, the appraisal reports, any engagement
527 materials or instructions from the client, and all other
528 documents required by the standards for the development or
529 communication of a real estate appraisal as approved and adopted
530 by the Appraisal Standards Board of The Appraisal Foundation, as
531 established by rule of the board. Notwithstanding the foregoing,
532 while general contracts and materials pertaining to impaneling



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533 of an appraiser by an appraisal management company shall be
534 retained under this section, such contracts and materials are
535 not required to be maintained within the order file. Except as
536 otherwise specified in the Uniform Standards of Professional
537 Appraisal Practice, the period for retention of the records
538 applicable to each engagement of the services of the appraiser
539 or appraisal management company runs from the date of the
540 submission of the appraisal report to the client. Appraisal
541 management companies shall also retain the company accounts,
542 correspondence, memoranda, papers, books, and other records in
543 accordance with administrative rules adopted by the board. These
544 records must be made available by the appraiser or appraisal
545 management company for inspection and copying by the department
546 upon reasonable notice to the appraiser or company. If an
547 appraisal has been the subject of or has served as evidence for
548 litigation, reports and records must be retained for at least 2
549 years after the trial or the period specified in the Uniform
550 Standards of Professional Appraisal Practice, whichever is
551 greater.

552 Section 10. This act shall take effect October 1, 2017.

553
554 ===== T I T L E A M E N D M E N T =====

555 And the title is amended as follows:

556 Delete everything before the enacting clause
557 and insert:

558 A bill to be entitled
559 An act relating to real estate appraisers; amending s.
560 475.451, F.S.; revising authorized methods of
561 instruction and certain requirements for specified



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562 real estate practice courses; amending s. 475.611,
563 F.S.; defining and redefining terms; amending s.
564 475.612, F.S.; authorizing appraisers to perform real
565 property evaluations in connection with certain
566 federally regulated transactions; requiring such
567 appraisers to comply with certain standards; requiring
568 the Florida Real Estate Appraisal Board to adopt
569 rules; providing construction; repealing s. 475.6175,
570 F.S., relating to registered trainee appraisers;
571 amending s. 475.621, F.S.; requiring the Department of
572 Business and Professional Regulation to transmit a
573 specified roster to a certain appraisal subcommittee;
574 requiring the department to collect an annual fee from
575 certain appraisal management companies and transmit
576 the fee to such appraisal subcommittee; requiring the
577 board to establish a certain procedure and adopt
578 rules; amending s. 475.6235, F.S.; deleting an
579 exception by which the board may grant a registration
580 to a person otherwise deemed not qualified; revising
581 applicability; amending s. 475.6245, F.S.; authorizing
582 the board to deny an application for renewal of an
583 appraisal management company's registration on
584 specified grounds; amending s. 475.628, F.S.;
585 authorizing the board to adopt rules establishing
586 certain standards of practice for nonfederally related
587 transactions; providing requirements and construction
588 for such standards; reenacting s. 475.629, F.S.,
589 relating to retention of records, to incorporate the
590 amendment made by the act to s. 475.611, F.S., in a



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591

reference thereto; providing an effective date.

By Senator Passidomo

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1 A bill to be entitled
2 An act relating to real estate appraisers; amending s.
3 475.451, F.S.; revising authorized methods of
4 instruction and certain requirements for specified
5 real estate practice courses; amending s. 475.611,
6 F.S.; defining and redefining terms; repealing s.
7 475.6175, F.S., relating to registered trainee
8 appraisers; amending s. 475.621, F.S.; requiring the
9 Department of Business and Professional Regulation to
10 transmit a specified roster to a certain appraisal
11 committee; requiring the department to collect an
12 annual fee from certain appraisal management companies
13 and transmit the fee to such appraisal committee;
14 requiring the Florida Real Estate Appraisal Board to
15 adopt rules; amending s. 475.6235, F.S.; revising
16 which persons are included in a specified requirement
17 for information in an application for appraisal
18 management company registration; deleting a provision
19 that deems a specified person not qualified to engage
20 in appraisal management services except under certain
21 circumstances; revising applicability; amending s.
22 475.6245, F.S.; authorizing the board to deny an
23 application for renewal of an appraisal management
24 company's registration on specified grounds; adding
25 grounds for discipline of appraisal management
26 companies by the board; reenacting s. 475.626(1)(b),
27 F.S., relating to violations and penalties, to
28 incorporate the amendment made by the act to s.
29 475.6245, F.S., in a reference thereto; reenacting s.
30 475.629, F.S., relating to retention of records, to
31 incorporate the amendment made by the act to s.
32 475.611, F.S., in a reference thereto; providing an

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33 effective date.

34
35 Be It Enacted by the Legislature of the State of Florida:

36
37 Section 1. Subsection (6) of section 475.451, Florida
38 Statutes, is amended to read:

39 475.451 Schools teaching real estate practice.—

40 (6) Any course prescribed by the commission as a condition
41 precedent to any person's becoming initially licensed as a sales
42 associate or as a broker may be taught by a ~~in any~~ real estate
43 school in a classroom or by distance learning pursuant to s.
44 475.17(2) and ~~through the use of a video tape of instruction~~ by
45 a currently permitted instructor from any such school ~~or may be~~
46 ~~taught by distance learning pursuant to s. 475.17(2).~~ The
47 ~~commission may require that any such video tape course have a~~
48 ~~single session of live instruction by a currently permitted~~
49 ~~instructor from any such school; however, this requirement shall~~
50 ~~not exceed 3 classroom hours.~~ All other prescribed courses,
51 except the continuing education course required by s. 475.182,
52 shall be taught by a currently permitted school instructor
53 personally in attendance at such course or by distance learning
54 pursuant to s. 475.17. The continuing education course required
55 by s. 475.182 may be taught by distance learning pursuant to s.
56 475.17 or by an equivalent correspondence course; however, any
57 such correspondence course shall be required to have a final
58 examination, prepared and administered by the school or course
59 provider issuing the correspondence course. The continuing
60 education requirements provided in this chapter do not apply to
61 an attorney who is otherwise qualified under this chapter and

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62 who is a member in good standing of The Florida Bar.

63 Section 2. Subsections (1) and (2) of section 475.611,
64 Florida Statutes, are amended to read:

65 475.611 Definitions.—

66 (1) As used in this part, the term:

67 (a) "Appraisal" or "appraisal services" means the services
68 provided by certified or licensed appraisers or registered
69 trainee appraisers, and includes:

70 1. "Appraisal assignment" denotes an engagement for which a
71 person is employed or retained to act, or could be perceived by
72 third parties or the public as acting, as an agent or a
73 disinterested third party in rendering an unbiased analysis,
74 opinion, review, or conclusion relating to the nature, quality,
75 value, or utility of specified interests in, or aspects of,
76 identified real property.

77 2. "Analysis assignment" denotes appraisal services that
78 relate to the employer's or client's individual needs or
79 investment objectives and includes specialized marketing,
80 financing, and feasibility studies as well as analyses,
81 opinions, and conclusions given in connection with activities
82 such as real estate brokerage, mortgage banking, real estate
83 counseling, or real estate consulting.

84 3. "Appraisal review assignment" denotes an engagement for
85 which an appraiser is employed or retained to develop and
86 communicate an opinion about the quality of another appraiser's
87 appraisal, appraisal report, or work. An appraisal review may or
88 may not contain the reviewing appraiser's opinion of value.

89 (b) "Appraisal Foundation" or "foundation" means The
90 Appraisal Foundation established on November 20, 1987, as a not-

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91 for-profit corporation under the laws of Illinois.

92 (c) "Appraisal management company" means a person who
93 performs appraisal management services regardless of the use of
94 the term "appraisal management company," "appraiser
95 cooperative," "appraiser portal," "mortgage technology company,"
96 or other term.

97 (d) "Appraisal management services" means the coordination
98 or management of appraisal services for compensation by:

99 1. Employing, contracting with, or otherwise retaining one
100 or more licensed or certified appraisers to perform appraisal
101 services for a client; or

102 2. Acting as a broker or intermediary between a client and
103 one or more licensed or certified appraisers to facilitate the
104 client's employing, contracting with, or otherwise retaining the
105 appraisers.

106 (e) "Appraisal report" means any communication, written or
107 oral, of an appraisal, appraisal review, appraisal consulting
108 service, analysis, opinion, or conclusion relating to the
109 nature, quality, value, or utility of a specified interest in,
110 or aspect of, identified real property, and includes any report
111 communicating an appraisal analysis, opinion, or conclusion of
112 value, regardless of title. However, in order to be recognized
113 in a federally related transaction, an appraisal report must be
114 written.

115 (f) "Appraisal review" means the act or process of
116 developing and communicating an opinion about the quality of
117 another appraiser's appraisal, appraisal report, or work.

118 (g) "Appraisal subcommittee" means the designees of the
119 heads of the federal financial institutions regulatory agencies

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120 established by the Federal Financial Institutions Examination
121 Council Act of 1978 (12 U.S.C. ss. 3301 et seq.), as amended.

122 (h) "Appraiser" means any person who is a registered
123 trainee real estate appraiser, a licensed real estate appraiser,
124 or a certified real estate appraiser. An appraiser renders a
125 professional service and is a professional within the meaning of
126 s. 95.11(4) (a).

127 (i) "Appraiser panel" means a network, list, or roster of
128 licensed or certified appraisers approved by an appraisal
129 management company to perform appraisals as independent
130 contractors for the appraisal management company. The term
131 includes both appraisers accepted by the appraisal management
132 company for consideration for future appraisal assignments in
133 covered transactions or for secondary market participants in
134 connection with covered transactions, and appraisers engaged by
135 the appraisal management company to perform one or more
136 appraisals in covered transactions or appraisals for secondary
137 mortgage market participants in connection with covered
138 transactions. An appraiser is an independent contractor for
139 purposes of this paragraph if the appraiser is treated as an
140 independent contractor by the appraisal management company for
141 purposes of federal income taxation ~~group of appraisers selected~~
142 ~~by an appraisal management company to perform appraisal services~~
143 ~~for clients on behalf of the company.~~

144 (j) "Board" means the Florida Real Estate Appraisal Board
145 established under this section.

146 (k) "Certified general appraiser" means a person who is
147 certified by the department as qualified to issue appraisal
148 reports for any type of real property.

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149 (l) "Certified residential appraiser" means a person who is
150 certified by the department as qualified to issue appraisal
151 reports for residential real property of one to four residential
152 units, without regard to transaction value or complexity, or
153 real property as may be authorized by federal regulation.

154 (m) "Client" means a person who contracts with an appraiser
155 or appraisal management company for the performance of appraisal
156 services.

157 (n) "Covered transaction" means a consumer credit
158 transaction secured by the consumer's principal dwelling.

159 (o) ~~(n)~~ "Department" means the Department of Business and
160 Professional Regulation.

161 (p) ~~(o)~~ "Direct supervision" means the degree of supervision
162 required of a supervisory appraiser overseeing the work of a
163 registered trainee appraiser by which the supervisory appraiser
164 has control over and detailed professional knowledge of the work
165 being done. Direct supervision is achieved when a registered
166 trainee appraiser has regular direction, guidance, and support
167 from a supervisory appraiser who has the competencies as
168 determined by rule of the board.

169 (q) "Federally regulated appraisal management company"
170 means an appraisal management company that is owned and
171 controlled by an insured depository institution, as defined in
172 12 U.S.C. s. 1813, and that is regulated by the Office of the
173 Comptroller of the Currency, the Board of Governors of the
174 Federal Reserve System, or the Federal Deposit Insurance
175 Corporation.

176 (r) ~~(p)~~ "Federally related transaction" means any real
177 estate-related financial transaction which a federal financial

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178 institutions regulatory agency or the Resolution Trust
179 Corporation engages in, contracts for, or regulates, and which
180 requires the services of a state-licensed or state-certified
181 appraiser.

182 (s)~~(q)~~ "Licensed appraiser" means a person who is licensed
183 by the department as qualified to issue appraisal reports for
184 residential real property of one to four residential units or on
185 such real estate or real property as may be authorized by
186 federal regulation. After July 1, 2003, the department shall not
187 issue licenses for the category of licensed appraiser.

188 (t) "Order file" means the documentation necessary to
189 support the performance of appraisal management company
190 services.

191 (u)~~(r)~~ "Registered trainee appraiser" means a person who is
192 registered with the department as qualified to perform appraisal
193 services only under the direct supervision of a certified
194 appraiser. A registered trainee appraiser may accept appraisal
195 assignments only from her or his primary or secondary
196 supervisory appraiser.

197 (v) "Secondary mortgage market participant" means a
198 guarantor or insurer of mortgage-backed securities or an
199 underwriter or issuer of mortgage-backed securities. The term
200 includes an individual investor in a mortgage-backed security
201 only if the investor also serves in the capacity of a guarantor,
202 insurer underwriter, or issuer for the mortgage-backed security.

203 (w)~~(s)~~ "Signature" means personalized evidence indicating
204 authentication of work performed by an appraiser and the
205 acceptance of responsibility for the content of an appraisal,
206 appraisal review, or appraisal consulting service or conclusions

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207 in an appraisal report.

208 (x)~~(t)~~ "Subsidiary" means an organization that is owned and
209 controlled by a financial institution that is regulated by a
210 federal financial institution regulatory agency.

211 (y)~~(u)~~ "Supervisory appraiser" means a certified
212 residential appraiser or a certified general appraiser
213 responsible for the direct supervision of one or more registered
214 trainee appraisers and fully responsible for appraisals and
215 appraisal reports prepared by those registered trainee
216 appraisers. The board~~r~~ by rule~~r~~ shall determine the
217 responsibilities of a supervisory appraiser, the geographic
218 proximity required, the minimum qualifications and standards
219 required of a certified appraiser before she or he may act in
220 the capacity of a supervisory appraiser, and the maximum number
221 of registered trainee appraisers to be supervised by an
222 individual supervisory appraiser.

223 (z)~~(v)~~ "Training" means the process of providing for and
224 making available to a registered trainee appraiser, under direct
225 supervision, a planned, prepared, and coordinated program, or
226 routine of instruction and education, in appraisal professional
227 and technical appraisal skills as determined by rule of the
228 board.

229 (aa)~~(w)~~ "Uniform Standards of Professional Appraisal
230 Practice" means the most recent standards approved and adopted
231 by the Appraisal Standards Board of The Appraisal Foundation.

232 (bb)~~(*)~~ "Valuation services" means services pertaining to
233 aspects of property value and includes such services performed
234 by certified appraisers, registered trainee appraisers, and
235 others.

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236 ~~(cc)(y)~~ "Work file" means the documentation necessary to
237 support an appraiser's analysis, opinions, and conclusions.

238 (2) Wherever the word "operate" or "operating" appears in
239 this part with respect to a registered trainee appraiser,
240 registered appraisal management company, licensed appraiser, or
241 certified appraiser; in any order, rule, or regulation of the
242 board; in any pleading, indictment, or information under this
243 part; in any court action or proceeding; or in any order or
244 judgment of a court, it shall be deemed to mean the commission
245 of one or more acts described in this part as constituting or
246 defining a registered trainee appraiser, licensed appraiser, or
247 certified appraiser, not including, however, any of the
248 exceptions stated therein. A single act is sufficient to bring a
249 person within the meaning of this subsection, and each act, if
250 prohibited herein, constitutes a separate offense.

251 Section 3. Section 475.6175, Florida Statutes, is repealed.

252 Section 4. Section 475.621, Florida Statutes, is amended to
253 read:

254 475.621 Registry of licensed and certified appraisers;
255 registry of appraisal management companies.-

256 (1) The department shall transmit to the appraisal
257 subcommittee, no less than annually, a roster listing
258 individuals who hold a valid state license or certification as
259 an appraiser. The department shall transmit to the appraisal
260 subcommittee, no less than annually, a roster listing persons or
261 companies that hold a valid state registration as an appraisal
262 management company.

263 (2) The department shall collect from such individuals who
264 perform or seek to perform appraisals in federally related

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265 transactions, an annual fee as set by, and transmitted to, the
266 appraisal subcommittee. The department shall collect from such
267 appraisal management companies that perform or seek to perform
268 appraisal management company services in covered transactions an
269 annual fee set by rule of the board and transmitted to the
270 appraisal subcommittee.

271 (3) Notwithstanding the prohibition against requiring
272 registration of a federally regulated appraisal management
273 company as provided in s. 475.6235(8)(b), the board shall
274 establish a procedure to collect from a federally regulated
275 appraisal management company an annual fee as set by rule of the
276 board and transmitted to the appraisal subcommittee.

277 Section 5. Paragraph (f) of subsection (2), subsection (5),
278 and paragraph (b) of subsection (8) of section 475.6235, Florida
279 Statutes, are amended to read:

280 475.6235 Registration of appraisal management companies
281 required; exemptions.—

282 (2) An application for registration must be submitted to
283 the department in the format prescribed by the department and
284 must include, at a minimum, the following:

285 (f) The full name, street address, telephone number,
286 corporate title, and social security number or federal employer
287 identification number of any person who possesses the authority,
288 directly or indirectly, to direct the management or policies of
289 the appraisal management company, whether through ownership, by
290 contract, or otherwise, including, but not limited to:

291 1. Each officer and director if the appraisal management
292 company is a corporation.

293 2. Each general partner if the appraisal management company

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294 is a partnership.

295 3. Each manager or managing member of the appraisal
296 management company is a limited liability company.

297 4. The owner of the appraisal management company is a sole
298 proprietorship.

299 5. Each other person who, directly or indirectly, owns or
300 controls any 10 percent or more of an ownership interest in the
301 appraisal management company.

302 (5) Each person listed in paragraph (2)(f) must be
303 competent and qualified to engage in appraisal management
304 services with safety to the general public and those with whom
305 the person may undertake a relationship of trust and confidence.
306 ~~If any person listed in paragraph (2)(f) has been denied~~
307 ~~registration, licensure, or certification as an appraiser or has~~
308 ~~been disbarred, or if the person's registration, license, or~~
309 ~~certificate to practice or conduct any regulated profession,~~
310 ~~business, or vocation has been revoked or suspended by this or~~
311 ~~any other state, any nation, any possession or district of the~~
312 ~~United States, or any court or lawful agency thereof because of~~
313 ~~any conduct or practices that would have warranted a like result~~
314 ~~under this part, or if the person has been guilty of conduct or~~
315 ~~practices in this state or elsewhere that would have been~~
316 ~~grounds for disciplining her or his registration, license, or~~
317 ~~certification under this part had the person then been a~~
318 ~~registered trainee appraiser or a licensed or certified~~
319 ~~appraiser, the person shall be deemed not to be qualified~~
320 ~~unless, because of lapse of time and subsequent good conduct and~~
321 ~~reputation, or other reason deemed sufficient, it appears to the~~
322 ~~board that the interest of the public is not likely to be~~

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323 ~~endangered by the granting of registration.~~

324 (8) This section does not apply to:

325 (b) An appraisal management company that is a federally
326 regulated appraisal management company ~~subsidiary owned and~~
327 ~~controlled by a financial institution, as defined in s. 655.005,~~
328 ~~that is regulated by a federal financial institution regulatory~~
329 ~~agency.~~

330 Section 6. Subsection (1) of section 475.6245, Florida
331 Statutes, is amended to read:

332 475.6245 Discipline of appraisal management companies.—

333 (1) The board may deny an application for registration or
334 for renewal registration of an appraisal management company; may
335 investigate the actions of any appraisal management company
336 registered under this part; may reprimand or impose an
337 administrative fine not to exceed \$5,000 for each count or
338 separate offense against any such appraisal management company;
339 and may revoke or suspend, for a period not to exceed 10 years,
340 the registration of any such appraisal management company, or
341 place any such appraisal management company on probation, if the
342 board finds that the appraisal management company or any person
343 listed in s. 475.6235(2) (f):

344 (a) Has violated any provision of this part or s.
345 455.227(1); however, any appraisal management company registered
346 under this part is exempt from s. 455.227(1) (i).

347 (b) Has been guilty of fraud, misrepresentation,
348 concealment, false promises, false pretenses, dishonest conduct,
349 culpable negligence, or breach of trust in any business
350 transaction in this state or any other state, nation, or
351 territory; has violated a duty imposed upon her or him by law or

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352 by the terms of a contract, whether written, oral, express, or
353 implied, in an appraisal assignment; has aided, assisted, or
354 conspired with any other person engaged in any such misconduct
355 and in furtherance thereof; or has formed an intent, design, or
356 scheme to engage in such misconduct and committed an overt act
357 in furtherance of such intent, design, or scheme. It is
358 immaterial to the guilt of the appraisal management company that
359 the victim or intended victim of the misconduct has sustained no
360 damage or loss; that the damage or loss has been settled and
361 paid after discovery of the misconduct; or that such victim or
362 intended victim was a customer or a person in confidential
363 relation with the appraisal management company or was an
364 identified member of the general public.

365 (c) Has advertised services in a manner that is fraudulent,
366 false, deceptive, or misleading in form or content.

367 (d) Has violated any provision of this part or any lawful
368 order or rule issued under this part or chapter 455.

369 (e) Has been convicted or found guilty of, or entered a
370 plea of nolo contendere to, regardless of adjudication, a crime
371 in any jurisdiction that directly relates to the activities of
372 an appraisal management company or that involves moral turpitude
373 or fraudulent or dishonest conduct. The record of a conviction
374 certified or authenticated in such form as admissible in
375 evidence under the laws of the state shall be admissible as
376 prima facie evidence of such guilt.

377 (f) Has had a registration, license, or certification as an
378 appraiser or a registration as an appraisal management company
379 revoked, suspended, or otherwise acted against; has been
380 disbarred; has had her or his registration, license, or

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381 certificate to practice or conduct any regulated profession,
382 business, or vocation revoked or suspended by this or any other
383 state, any nation, or any possession or district of the United
384 States; or has had an application for such registration,
385 licensure, or certification to practice or conduct any regulated
386 profession, business, or vocation denied by this or any other
387 state, any nation, or any possession or district of the United
388 States.

389 (g) Has become temporarily incapacitated from acting as an
390 appraisal management company with safety to those in a fiduciary
391 relationship with her or him because of drunkenness, use of
392 drugs, or temporary mental derangement; however, suspension of a
393 registration in such cases shall only be for the period of such
394 incapacity.

395 (h) Is confined in any county jail, postadjudication; is
396 confined in any state or federal prison or mental institution;
397 or, through mental disease or deterioration, can no longer
398 safely be entrusted to deal with the public or in a confidential
399 capacity.

400 (i) Has failed to inform the board in writing within 30
401 days after pleading guilty or nolo contendere to, or being
402 convicted or found guilty of, any felony.

403 (j) Has been found guilty, for a second time, of any
404 misconduct that warrants disciplinary action, or has been found
405 guilty of a course of conduct or practice that shows that she or
406 he is incompetent, negligent, dishonest, or untruthful to an
407 extent that those with whom she or he may sustain a confidential
408 relationship may not safely do so.

409 (k) Has made or filed a report or record, either written or

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410 oral, that the appraisal management company knows to be false;
411 has willfully failed to file a report or record required by
412 state or federal law; has willfully impeded or obstructed such
413 filing; or has induced another person to impede or obstruct such
414 filing. However, such reports or records shall include only
415 those that are signed or presented in the capacity of an
416 appraisal management company.

417 (l) Has obtained or attempted to obtain a registration,
418 license, or certification by means of knowingly making a false
419 statement, submitting false information, refusing to provide
420 complete information in response to an application question, or
421 engaging in fraud, misrepresentation, or concealment.

422 (m) Has paid money or other valuable consideration, except
423 as required by this section, to any member or employee of the
424 board to obtain a registration, license, or certification under
425 this section.

426 (n) Has instructed an appraiser to violate any standard of
427 professional practice established by rule of the board,
428 including standards for the development or communication of a
429 real estate appraisal or other provision of the Uniform
430 Standards of Professional Appraisal Practice.

431 (o) Has engaged in the development of an appraisal or the
432 preparation of an appraisal report, unless the appraisal
433 management company is owned or controlled by certified
434 appraisers.

435 (p) Has failed to communicate an appraisal without good
436 cause.

437 (q) Has accepted an appraisal assignment if the employment
438 itself is contingent upon the appraisal management company

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439 reporting a predetermined result, analysis, or opinion or if the
440 fee to be paid for the performance of the appraisal assignment
441 is contingent upon the opinion, conclusion, or valuation reached
442 upon the consequences resulting from the appraisal assignment.

443 (r) Has failed to timely notify the department of any
444 change in principal business location as an appraisal management
445 company.

446 (s) Has influenced or attempted to influence the
447 development, reporting, or review of an appraisal through
448 coercion, extortion, collusion, compensation, inducement,
449 intimidation, bribery, or any other means, including, but not
450 limited to:

451 1. Withholding or threatening to withhold timely payment
452 for an appraisal, unless such nonpayment is based upon specific
453 quality or other service issues that constitute noncompliance
454 with the appraisal engagement agreement.

455 2. Withholding or threatening to withhold future business
456 from an appraiser.

457 3. Promising future business, promotions, or increased
458 compensation for an appraiser, whether the promise is express or
459 implied.

460 4. Conditioning a request for appraisal services or the
461 payment of an appraisal fee, salary, or bonus upon the opinion,
462 conclusion, or valuation to be reached or upon a preliminary
463 estimate or opinion requested from an appraiser.

464 5. Requesting that an appraiser provide an estimated,
465 predetermined, or desired valuation in an appraisal report or
466 provide estimated values or comparable sales at any time before
467 the appraiser's completion of appraisal services.

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468 6. Providing to an appraiser an anticipated, estimated,
469 encouraged, or desired value for a subject property or a
470 proposed or target amount to be loaned to the borrower, except
471 that a copy of the sales contract for purchase transactions may
472 be provided.

473 7. Providing to an appraiser, or any person related to the
474 appraiser, stock or other financial or nonfinancial benefits.

475 8. Allowing the removal of an appraiser from an appraiser
476 panel without prior written notice to the appraiser.

477 9. Obtaining, using, or paying for a second or subsequent
478 appraisal or ordering an automated valuation model in connection
479 with a mortgage financing transaction unless there is a
480 reasonable basis to believe that the initial appraisal was
481 flawed or tainted and such basis is clearly and appropriately
482 noted in the loan file, or unless such appraisal or automated
483 valuation model is issued pursuant to a bona fide prefunding or
484 postfunding appraisal review or quality control process.

485 10. Any other act or practice that impairs or attempts to
486 impair an appraiser's independence, objectivity, or
487 impartiality.

488 (t) Has altered, modified, or otherwise changed a completed
489 appraisal report submitted by an appraiser to an appraisal
490 management company.

491 (u) Has employed, contracted with, or otherwise retained an
492 appraiser whose registration, license, or certification is
493 suspended or revoked to perform appraisal services or appraisal
494 management services.

495 (v) Has required or attempted to require an appraiser to
496 sign any indemnification agreement that would require the

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497 appraiser to hold harmless the appraisal management company or
498 its owners, agents, employees, or independent contractors from
499 any liability, damage, loss, or claim arising from the services
500 performed by the appraisal management company or its owners,
501 agents, employees, or independent contractors and not the
502 services performed by the appraiser.

503 (w) Has failed to compensate an appraiser in accordance
504 with s. 129E of the federal Truth in Lending Act, 15 U.S.C. s.
505 1639e.

506 Section 7. For the purpose of incorporating the amendment
507 made by this act to section 475.6245, Florida Statutes, in a
508 reference thereto, paragraph (b) of subsection (1) of section
509 475.626, Florida Statutes, is reenacted to read:

510 475.626 Violations and penalties.—

511 (1) A person may not:

512 (b) If an appraisal management company, commit any conduct
513 or practice set forth in s. 475.6245.

514 Section 8. For the purpose of incorporating the amendment
515 made by this act to section 475.611, Florida Statutes, in a
516 reference thereto, section 475.629, Florida Statutes, is
517 reenacted to read:

518 475.629 Retention of records.—An appraiser registered,
519 licensed, or certified under this part shall prepare and retain
520 a work file for each appraisal, appraisal review, or appraisal
521 consulting assignment. An appraisal management company
522 registered under this part shall prepare and retain an order
523 file for each appraisal, appraisal review, or appraisal
524 consulting assignment. The work file and the order file shall be
525 retained for 5 years or the period specified in the Uniform

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526 Standards of Professional Appraisal Practice, whichever is
527 greater. The work file must contain original or true copies of
528 any contracts engaging the appraiser's or appraisal management
529 company's services, appraisal reports, and supporting data
530 assembled and formulated by the appraiser or company in
531 preparing appraisal reports or engaging in appraisal management
532 services and all other data, information, and documentation
533 required by the standards for the development or communication
534 of a real estate appraisal as approved and adopted by the
535 Appraisal Standards Board of The Appraisal Foundation, as
536 established by rule of the board. The order file must contain
537 original or true copies of any contracts engaging the
538 appraiser's services, the appraisal reports, any engagement
539 materials or instructions from the client, and all other
540 documents required by the standards for the development or
541 communication of a real estate appraisal as approved and adopted
542 by the Appraisal Standards Board of The Appraisal Foundation, as
543 established by rule of the board. Notwithstanding the foregoing,
544 while general contracts and materials pertaining to impaneling
545 of an appraiser by an appraisal management company shall be
546 retained under this section, such contracts and materials are
547 not required to be maintained within the order file. Except as
548 otherwise specified in the Uniform Standards of Professional
549 Appraisal Practice, the period for retention of the records
550 applicable to each engagement of the services of the appraiser
551 or appraisal management company runs from the date of the
552 submission of the appraisal report to the client. Appraisal
553 management companies shall also retain the company accounts,
554 correspondence, memoranda, papers, books, and other records in

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555 accordance with administrative rules adopted by the board. These
556 records must be made available by the appraiser or appraisal
557 management company for inspection and copying by the department
558 upon reasonable notice to the appraiser or company. If an
559 appraisal has been the subject of or has served as evidence for
560 litigation, reports and records must be retained for at least 2
561 years after the trial or the period specified in the Uniform
562 Standards of Professional Appraisal Practice, whichever is
563 greater.

564 Section 9. This act shall take effect October 1, 2017.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3.15.17

Meeting Date

SB 716

Bill Number (if applicable)

Topic Appraisal Mgt. Companies

Amendment Barcode (if applicable)

Name Trey Goldman

Job Title Legislative Counsel

Address 200 S. Monroe

Phone 850/212-8870

Street

Tallahassee FL 32301

City

State

Zip

Email treyg@floridarealtors.org

Speaking: For Against Information

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

Representing FLORIDA REALTORS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/15/17

Meeting Date

SB 716

Bill Number (if applicable)

Topic Real Estate Appraisers

Amendment Barcode (if applicable)

Name Kenneth Pratt

Job Title Senior VP of Governmental Relations

Address 1001 Thomasville Rd, Ste 201
Street

Phone 850-509-8020

Tallahassee FL 32301
City State Zip

Email kpratt@floridabankers.com

Speaking: For Against Information

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

Representing Florida Bankers Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

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)

3/15/17
Meeting Date

716
Bill Number (if applicable)

Topic Appraisers

Amendment Barcode (if applicable)

Name Trey Price

Job Title

Address 3253 Stanhope Dr
Street

Phone (850) 321-7962

Tallahassee FL
City State Zip

Email Trey@pricepointstrategies.com

Speaking: For Against Information

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

Representing Real Estate Valuation Advocacy Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/15/2017

Meeting Date

SB 716

Bill Number (if applicable)

Topic JO MORRIS

Amendment Barcode (if applicable)

Name JO MORRIS

Job Title LEGISLATIVE AFFAIRS DIRECTOR

Address 2601 Blairstone Rd.

Phone

Street

TLH

City

FL

State

32399

Zip

Email

Speaking: For Against Information

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

Representing DBPR

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.



**SENATOR KATHLEEN
PASSIDOMO**
28th District

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Ethics and Elections, *Chair*
Healthy Policy, *Vice Chair*
Appropriations Subcommittee on Health
and
Human Services
Appropriations Subcommittee on
Transportation,
Tourism, and Economic Development
Commerce and Tourism

SELECT COMMITTEE:

Joint Select Committee on Collective
Bargaining

JOINT COMMITTEE:

Joint Legislative Auditing Committee

February 17, 2017

The Honorable Travis Hutson, Chair
Senate Committee on Regulated Industries
Florida Senate
330 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chair Hutson:

Senate Bill 716, Real Estate Appraisers, has been referred to the Committee on Regulated Industries. I would appreciate the placing of this bill on the committee agenda at your earliest convenience.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Passidomo", with a horizontal line extending to the right.

Kathleen C. Passidomo

Cc: Ross McSwain, Staff Director
Lynn Koon, Committee Assistant

REPLY TO:

- 3299 East Tamiami Trail, Suite 203, Naples, Florida 34112 (239) 417-6205
- 318 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5028

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Education, *Chair*
Regulated Industries, *Vice Chair*
Appropriations Subcommittee on the Environment
and Natural Resources
Health Policy
Transportation

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR DOROTHY L. HUKILL

14th District

March 10, 2017

The Honorable Travis Hutson
Regulated Industries Committee, Chair
330 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Re: Request for Excusal from Committee Meeting

Dear Chairman Hutson:

Please excuse me from the Regulated Industries Committee on March 15, 2017 at 4:00 p.m. as I will not be able to attend due to illness.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Dorothy L. Hukill".

Dorothy L. Hukill
State Senator, District 14

cc: Ross McSwain, Staff Director of the Regulated Industries Committee
Lynn Koon, Committee Administrative Assistant of the Regulated Industries Committee

REPLY TO:

□ 209 Dunlawton Avenue, Unit 17, Port Orange, Florida 32127 (386) 304-7630 FAX: (888) 263-3818

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

CourtSmart Tag Report

Room: SB 301
Caption: Senate Regulated Industries

Case No.:
Judge:

Type:

Started: 3/15/2017 4:01:18 PM

Ends: 3/15/2017 4:26:05 PM

Length: 00:24:48

4:01:19 PM Call to order
4:01:40 PM Roll call
4:02:02 PM Quorum is present
4:02:10 PM Senator Hukill is excused
4:02:34 PM SB 716 by Senator Passidomo
4:02:41 PM Sen. Passidomo to explain the bill
4:03:57 PM Amendment barcode 933304
4:04:03 PM Questions on the amendment
4:04:07 PM No questions
4:04:12 PM Show that the amendment is adopted
4:04:18 PM Question on the bill as amended
4:04:29 PM Jo Morris with DBPR waives in support
4:04:42 PM Waives in support
4:04:54 PM Kenneth Pratt with FBA waives in support
4:04:57 PM Waives in support
4:05:19 PM SB 716 is reported as a committee substitute
4:05:26 PM SB 514 by Sen. Stargel
4:05:32 PM Sen. Stargel to explain the bill
4:06:03 PM Questions on the bill
4:06:11 PM Sen. Braynon with a question
4:06:52 PM Series of questions
4:07:17 PM Jo Morris with DBPR waives in support
4:07:21 PM Debate on the bill
4:07:23 PM No debate on the bill
4:07:32 PM Sen. Stargel to close on the bill
4:07:54 PM SB 514 is reported favorably
4:08:09 PM Chairman turns Chair over to Sen. Thurston
4:08:15 PM SB. 388 by Sen. Hutson
4:08:24 PM Sen. Hutson to explain the bill
4:08:38 PM Amendment number 550448 by Sen. Hutson
4:08:45 PM Sen. Hutson to explain the amendment
4:09:12 PM Questions on the amendment
4:09:27 PM Debate on the amendment
4:09:35 PM Sen. Hutson waives to close on the amendment
4:09:40 PM The amendment is adopted
4:09:48 PM Questions on the bill as amended
4:09:56 PM Appearance forms for the bill
4:10:12 PM Richard Turner waives in support
4:10:32 PM Mac Stipanovich waives in support
4:11:14 PM Melanie Becker waives in support
4:11:24 PM Mitch Rubin waives in opposition
4:11:32 PM Eric Criss waives in opposition
4:11:39 PM Jon Costello waives in opposition
4:11:47 PM Jon Johnson waives in support
4:12:06 PM Sen. Thurston with a question on the bill as amended
4:12:18 PM Sen. Hutson to explain the bill
4:13:55 PM Sen. Benacquisto voiced concern moving forward on the bill
4:14:06 PM Sen. Hutson waives to close on SB 388
4:14:27 PM SB 388 is reported as a committee substitute.
4:14:35 PM Chair Hutson takes over chair again
4:14:51 PM SB 400 by Senator Perry
4:15:53 PM Questions on the bill

4:16:10 PM Amendment barcode 822540 by Sen. Gibson
4:16:15 PM Sen. Gibson to explain the amendment
4:17:31 PM Questions on the amendment
4:17:34 PM Sen. Bracy with a question
4:17:56 PM Debate on the amendment
4:18:07 PM Sen. Perry notes that it's a friendly amendment
4:18:10 PM Show that amendment is adopted
4:18:22 PM Amendment barcode 174852 by Sen. Perry
4:18:26 PM Show that amendment is adopted
4:18:48 PM Amendment barcode 201078 by Sen. Brandes
4:19:02 PM Substitute amendment by Sen. Brandes 323682
4:19:08 PM Sen. Brandes to explain the amendment
4:20:36 PM Amendment to the substitute amendment barcode 193132 by Sen. Brandes
4:20:46 PM Show that the late-filed amendment is taken up
4:20:53 PM Sen. Brandes to explain the amendment
4:21:57 PM Show the amendment adopted
4:22:03 PM Questions on the substitute amendment
4:22:09 PM No debate on the substitute amendment
4:22:26 PM Show that the substitute amendment is adopted
4:23:12 PM Questions on the amendment as adopted
4:23:25 PM Richard Turner waives in support
4:23:39 PM Gary Rutledge waives in support
4:23:48 PM Jason Unger waives in support
4:23:57 PM Sen. Gibson in debate on the bill
4:24:18 PM Sen. Perry to close on the bill
4:24:41 PM SB 400 is reported as a committee substitute
4:25:10 PM Sen. Brandes requests to be shown favorably on SB 716 and SB 514
4:25:37 PM Sen. Bracy announces Sen. Gibson's birthday
4:25:53 PM Sen. Steube requests to be shown favorably on SB 716 and SB 514
4:25:56 PM Meeting adjourned