

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1277 Sellers of Travel
SPONSOR(S): Insurance, Business & Financial Affairs Policy Committee, Rivera
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Insurance, Business & Financial Affairs Policy Committee	13 Y, 0 N, As CS	Lowrance	Cooper
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

The Sellers of Travel Act (Act), ss. 559.926-559.939, F.S., requires sellers to register with the Department of Agriculture and Consumer Services (Department) annually. When a seller of travel registers with the Department, a registrant must provide to the Department a number of items including, among other things, the registrant's legal business or trade name, mailing address, business locations, and the full names, addresses, and telephone numbers of its owners or corporate officers and directors and the Florida agent of the corporation.

Chapter 2008-214, Laws of Florida, implemented substantial changes to the Seller of Travel Act. As a result of the 2008 amendments, a number of affected air service charter operators and sellers of tickets to Cuba sued the Commissioner of the Department for violations of their federally-protected rights. The U.S. District Court for the Southern District of Florida permanently enjoined the Department from implementing the amendments in Chapter 2008-214. The court held that these amendments violated the U.S. Constitution on four grounds:

1. The implementation would interfere with the federal government's exclusive authority to conduct foreign affairs in violation of the Supremacy Clause;
2. The implementation would interfere with the federal government's exclusive authority to conduct foreign commerce in violation of the Foreign Commerce Clause;
3. Federal regulation of interaction with terrorist nations is so pervasive it leaves no room for state action;
4. The implementation would be an improper burden on interstate commerce in violation of the Interstate Commerce Clause.

The bill provides that sellers of travel who are engaged in selling pre-arranged travel, tourist related services, or tour-guide services to any person traveling from Florida to a terrorist nation are not subject to registration exemptions. The bill also defines terrorist nation to mean any state, country, or nation designated by the U.S. Department of State as a state sponsor of terrorism.

A fiscal impact is contingent upon possible litigation regarding federal rights violations.

The effective date of this act is July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The U.S. Supreme Court has recognized an international right to travel.¹ However, this right may be infringed upon where national security is at stake. Title 31 of the Code of Federal Regulations, Chapter V, delineates the ability to travel and do business with terrorist countries. Currently, four countries are designated by the U.S. Department of State as terrorist states: Cuba, Iran, Sudan, and Syria. The ability to travel to these countries varies, as do the requirements for the ability to be authorized or licensed by the Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury for such travel.

The Sellers of Travel Act (Act), ss. 559.926-559.939, F.S., requires sellers to register with the Department of Agriculture and Consumer Services (Department) annually. When a seller of travel registers with the Department, a registrant must provide to the Department a number of items including, among other things, the registrant's legal business or trade name, mailing address, business locations, and the full names, addresses, and telephone numbers of its owners or corporate officers and directors and the Florida agent of the corporation.²

Chapter 2008-214, Laws of Florida, implemented substantial changes to the Seller of Travel Act. The 2008 amendments, among other things:

- Automatically make any violation of federal law by the sellers of travel to terrorist nations a third-degree felony under Florida Law;
- Require companies providing lawful travel related to service to terrorist states post a bond in an amount ranging from \$100,000 to \$250,000 and allows other sellers of travel to use the Department to use the bond to pay its own investigatory expenses without any limits to the exposure under the bond;
- Create two classes of travel providers subject to different standards (i.e. those sellers doing business with terrorist states and those who do not);
- Require disclosure and identification by sellers of travel to terrorist states of each company with whom each seller does business and make that information available to the public and competitors.

¹ See, *Haig v. Agee*, 453 U.S. 280, 306 (1981); see also Heather E. Reser, Comment, *Airline Terrorism: The Effect of Tightened Security on the Right to Travel*, 68 J. Air L. & Com. 819.

² Section 559.928, F.S.

As a result of the 2008 amendments, a number of affected air service charter operators and sellers of tickets to Cuba sued the Commissioner of the Department for violations of their federally-protected rights.³ The U.S. District Court for the Southern District of Florida permanently enjoined the Department from implementing the amendments in Chapter 2008-214.⁴ The court held these amendments violated the U.S. Constitution on four grounds:

1. The implementation would interfere with the federal government's exclusive authority to conduct foreign affairs in violation of the Supremacy Clause;
2. The implementation would interfere with the federal government's exclusive authority to conduct foreign commerce in violation of the Foreign Commerce Clause;
3. Federal regulation of interaction with terrorist nations is so pervasive it leaves no room for state action;
4. The implementation would be an improper burden on interstate commerce in violation of the Interstate Commerce Clause.

Effect of the Bill

The bill provides that sellers of travel who are engaged in selling pre-arranged travel, tourist related services, or tour-guide services to any person traveling from Florida to a terrorist nation are not exempt from the current law⁵ which includes all registration and regulatory requirements. Consequently, sellers of travel engaged in selling services to terrorist nations will be subject to all the requirements in current law.

The bill also defines a terrorist nation to mean any state, country, or nation designated by the U.S. Department of State as a state sponsor of terrorism. Thus, the bill would apply to sellers of travel who sell services originating in Florida with a destination of Cuba, Sudan, Syria, or Iran.

B. SECTION DIRECTORY:

Section 1: Amends s. 559.935, F.S., to provide an exception to the exemptions from the current law.

Section 2: Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

According to the Department, the bill will most likely result in federal rights litigation.⁶ A contingent fiscal liability of the state exists; approximately \$360,000 if the plaintiffs (sellers of travel) prevail in the existing litigation. This contingency reflects minimum estimated legal costs payment from the Department of Financial Services' State Risk Management Trust Fund (self insurance fund). Federal law permits plaintiffs to seek from the court an award of legal fees and costs to be paid by the defendant and the \$360,000 amount is the least amount that would be paid.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

³ See *ABC Charters, Inc. et al. v. Bronson*, 591 F. Supp.2d 1272 (2008); Order granting Plaintiff's motion for preliminary injunction.

⁴ See *ABC Charters, Inc. et al., v. Bronson*, 2009 WL 1010435 (S.D. Fla.).

⁵ See s. 559.935, F.S., relating to Exemptions.

⁶ The Department provided a bill analysis on HB 1277, however, discussions with the Department have indicated that they anticipate this bill will have the same fiscal impact as the original bill.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Sellers of travel will be required to certify whether they sell travel from Florida directly to a terrorist nation as well as whether they engage in any other business with terrorist nations. Those violating the Sellers of Travel Act in connection with selling travel from Florida to a terrorist nation will face criminal punishment and administrative/civil sanctions significantly greater for the same violations than those not selling to terrorist nations.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

2. Other:

According to the court in *ABC Charters, Inc. et al v. Bronson*⁷, the design and intent of the 2008 amendments to the Florida Sellers of Travel Act encroaches on federal foreign affairs powers in violation of the Supremacy Clause, the Foreign Commerce Clause, the Foreign Affairs Power, and the Interstate Commerce Clause of the U.S. Constitution. By stating that sellers of travel to terrorist nations are not exempt from the current law, the bill clearly expresses legislative intent. The question remains whether this bill will alleviate the court's concerns regarding the constitutionality of the current law.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 25, 2010, the Insurance, Business & Financial Affairs Policy Committee considered a proposed committee substitute (PCS), did not adopt any amendments, and reported the PCS favorably with a committee substitute. The analysis has been written to reflect the changes made in the PCS (See "Effect of the bill").

⁷ See *ABC Charters, Inc. et al., v. Bronson*, 2009 WL 1010435 (S.D. Fla.).