Commerce Committee

Wednesday, March 22, 2017
9:15 AM
Webster Hall (212 Knott)

MEETING PACKET

Richard Corcoran
Speaker

Jose Diaz
Chair

The Florida House of Representatives

Commerce Committee

Richard Corcoran
Speaker

Jose Diaz
Chair

AGENDA

March 22, 2017
9:15 AM – 12:15 PM
Webster Hall (212 Knott)

I. Call to Order and Roll Call

II. Consideration of the following bill(s):

a. CS/HB 81 Vendors Licensed Under the Beverage Law by Government Operations & Technology Appropriations Subcommittee, Avila

b. CS/CS/HB 241 Low-voltage Electric Fences by Local, Federal & Veterans Affairs Subcommittee, Agriculture & Property Rights Subcommittee, Williamson

c. CS/CS/HB 357 Self-Service Storage Facilities by Civil Justice & Claims Subcommittee, Careers & Competition Subcommittee, Moraitis

d. HB 473 Intrusion and Burglar Alarms by Sullivan

e. CS/HB 635 Florida Wing of the Civil Air Patrol by Local, Federal & Veterans Affairs Subcommittee, Combee

f. CS/HB 743 Steroid Use in Racing Greyhounds by Tourism & Gaming Control Subcommittee, Smith, Miller, A.

g. CS/HB 805 Insurance Policy Transfers by Insurance & Banking Subcommittee, Ingoglia

303 House Office Building, 402 South Monroe Street , Tallahassee, FL 32399-1300
(850) 717-4870

h. HB 885 Transactions with Foreign Financial Institutions by Trujillo

III. Adjournment

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Commerce Committee

Start Date and Time:	Wednesday, March 22, 2017 09:15 am
End Date and Time:	Wednesday, March 22, 2017 12:15 pm
Location:	Webster Hall (212 Knott)
Duration:	3.00 hrs

Consideration of the following bill(s):

CS/HB 81 Vendors Licensed Under the Beverage Law by Government Operations & Technology Appropriations Subcommittee, Avila
CS/CS/HB 241 Low-voltage Electric Fences by Local, Federal & Veterans Affairs Subcommittee, Agriculture & Property Rights Subcommittee, Williamson
CS/CS/HB 357 Self-Service Storage Facilities by Civil Justice & Claims Subcommittee, Careers & Competition Subcommittee, Moraitis
HB 473 Intrusion and Burglar Alarms by Sullivan
CS/HB 635 Florida Wing of the Civil Air Patrol by Local, Federal & Veterans Affairs Subcommittee, Combee
CS/HB 743 Steroid Use in Racing Greyhounds by Tourism & Gaming Control Subcommittee, Smith, Miller, A.
CS/HB 805 Insurance Policy Transfers by Insurance & Banking Subcommittee, Ingoglia
HB 885 Transactions with Foreign Financial Institutions by Trujillo

Pursuant to rule 7.11, the deadline for amendments to bills on the agenda by non-appointed members shall be 6:00 p.m., Tuesday, March 21, 2017.

By request of Chair Diaz, J., all Commerce Committee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Tuesday, March 21, 2017.

NOTICE FINALIZED on 03/20/2017 4:15PM by McCloskey.Michele

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 81 Vendors Licensed Under the Beverage Law
SPONSOR(S): Government Operations & Technology Appropriations Subcommittee, Avila
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Careers & Competition Subcommittee	8 Y, 7 N	Willson	Anstead
2) Government Operations & Technology Appropriations Subcommittee	7 Y, 6 N, As CS	Topp	Topp
3) Commerce Committee		Willson MW	Hamon K.W.H.

SUMMARY ANALYSIS

Currently, package stores can sell beer, wine or liquor in sealed containers for consumption off premises, but are prohibited from selling any merchandise other than alcoholic beverages, with a few exceptions and may not allow direct access to another building or room.

The bill amends s. 565.04, F.S., defining the term "liquor package store" to mean a vendor that is:
- subject to the "quota" license limitation imposed under s. 561.20(1), F.S.,
- licensed in accordance with and pays state taxes under s. 565.02(1)(a), F.S.,
- permitted to sell any alcoholic beverages regardless of alcoholic content, and
- operates a place of business where beverages are sold only in sealed containers for consumption off the premises where sold.

The bill creates a "Type A" and a "Type B" liquor package store license.
- A Type A license may be issued to a vendor pursuant to the same restrictions and license fee imposed on package store under current law.
- A Type B license may be issued to a vendor to sell alcoholic beverages without restriction as to openings to other buildings and rooms and without restriction as to other items and merchandise that may also be sold on the premises. This will permit grocery stores and large retail stores to put spirits in their main store rather than building or renting a separate building to sell the higher alcoholic content beverages. Type B licensees pay the Type A license fee, plus an additional amount based on the county population where the licensee is located.

The bill expands the current exception to the requirement that vendors shall not employ persons under the age of 18 provided in s. 562.13(2)(c), F.S. Current statutory language requires a vendor ***to be*** a drugstore, grocery store, department store, florist, specialty gift shop, or automobile service station, in order to employ a person under the age of 18. The bill amends the language to require the vendor ***to include within its premises*** a retail drugstore, grocery store, department store, florist, specialty gift shop, or automobile service station, in order to employ a person under the age of 18, with additional restrictions.

The bill requires any vendor who employs a person under the age of 18 to be supervised by a person over the age of 18 and requires the supervisor to verify by identification the age of any purchaser on behalf of the underage employee before permitting the sale of alcohol to the purchaser. The bill provides that it is unlawful for a vendor to employ a person under the age of 18 during a month where the vendor derives more than 30 percent of its gross revenues from the sale of alcoholic beverages.

The bill does not appear to have a fiscal impact on state or local governments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Chapters 561-565 and 567-568, F.S., comprise Florida's Beverage Law. The Division of Alcoholic Beverages and Tobacco (Division), in the Department of Business and Professional Regulation (Department), is responsible for the regulation of the alcoholic beverage industry.[1]

In general, Florida's Beverage Law provides for a structured three-tiered distribution system consisting of the manufacturer, distributor, and vendor. The manufacturer creates the beverages. The distributor obtains the beverages from the manufacturer and delivers them to the vendor. The vendor makes the ultimate sale to the consumer. In the three-tiered system, alcoholic beverage excise taxes generally are collected at the distribution level based on inventory depletions and the state sales tax is collected at the retail level.

Package Stores

Section 565.04, F.S., provides that vendors licensed to sell alcoholic beverages under s. 565.02(1)(a), F.S., are not permitted to sell any merchandise in their store other than alcoholic beverages, bitters, grenadine, nonalcoholic mixers (not including juice from outside of Florida), fruit juice produced in Florida, bar and party supplies and equipment and tobacco products. Section 565.02(1)(a), F.S., creates a state license for "vendors who are permitted to sell any alcoholic beverages regardless of alcoholic content" and "operating a place of business where [alcoholic] beverages are sold only in sealed containers for consumption off the premises." The result has been the creation of "package stores," where the vendor sells the above and nothing else in an enclosed space that is separated from any other store by a wall.

Quota Licenses

Section 561.20, F.S., limits the number of alcoholic beverage licenses for the sale of liquor along with beer and wine that may be issued per county. This limited alcoholic beverage license is often referred to as a "quota" license. The number of quota licenses issued is limited to one license per 7,500 residents within the county. New quota licenses are created and issued when there is an increase in the county population.[2]

Typically, quota licenses are owned by:

- A liquor store physically connected to a large retail store such as a grocery store, or
- A separate liquor store not affiliated with a large retail store.

According to the Department, there are currently 525 large retail locations that have both a quota license for their package store and a license to sell beer and wine in the connecting retail store, which is not accessible from the package store due to the restrictions set forth under s. 565.04, F.S. In addition, there are 135 quota licenses owned by large retailers that could be transferred to an affiliated but not physically connected large retail store.

[1] s. 561.02, F.S.
[2] s. 561.20, F.S.

Age Restrictions

The beverage law restricts businesses who sell alcoholic beverages from employing persons under the age of 18, subject to a few exceptions. Package stores are not exempt from this requirement and may only employ persons age 18 or over.

There are a number of exceptions to this requirement. Subsection 562.13(2)(c), F.S., permits venders to employ persons under the age of 18 years old if the vendor is a drugstore, grocery store, department store, florist, specialty gift shop, or automobile service station.

Effect of the Bill

Package Stores

The bill amends s. 565.04, F.S., and defines the term "liquor package store" to mean a vendor that is:

- subject to the "quota" license limitation imposed under s. 561.20(1), F.S.,
- licensed in accordance with and pays state taxes under s. 565.02(1)(a), F.S.,
- permitted to sell any alcoholic beverages regardless of alcoholic content, and
- operates a place of business where beverages are sold only in sealed containers for consumption off the premises where sold.

The bill creates a "Type A" and a "Type B" liquor package store license.

- A Type A license may be issued to a vendor pursuant to the same restrictions as a package store under current law.
- A Type B license may be issued to a vendor to sell alcoholic beverages without restriction as to openings to other buildings and rooms and without restriction as to other items and merchandise that may also be sold on the premises. Type B licensees must pay the s. 565.02(1)(a), F.S. license fee, plus an additional amount based on the county population where the licensee is located. This will permit grocery stores and large retail stores to put spirits in their main store rather than building or renting a separate building to sell the higher alcoholic content beverages.

It is possible that 660 licenses to sell beer and wine will no longer be needed by vendors that have both a large retail store and a connected package store or affiliated package store. Licenses to sell liquor will be allowed to be transferred into a large retail store as a Type B license, and the vendor will be able to sell liquor in a large retail store that is currently licensed to sell beer and wine.

Age Restrictions

The bill expands the current exception to the requirement that vendors shall not employ persons under the age of 18 provided in s. 562.13(2)(c), F.S. Current statutory language requires a vendor ***to be*** a drugstore, grocery store, department store, florist, specialty gift shop, or automobile service station, in order to employ a person under the age of 18. The bill amends the language to require the vendor ***to include within its premises*** a retail drugstore, grocery store, department store, florist, specialty gift shop, or automobile service station, in order to employ a person under the age of 18, with additional restrictions on the vendor. The additional restrictions require the vendor to:

- Pay the annual taxes set forth in s. 563.02(1), s. 564.02(1), 30 or s. 565.02(1)(a), F.S.;
- Derive 30 percent or less of its gross revenues each month from the sale of alcoholic beverages;
- Require a person 18 years of age or older to supervise the minor employee; and
- Require the supervisor to verify by identification the age of the purchaser to be 21 years of age or older and approve the sale of alcoholic beverages.

It is unlawful for a vendor that meets the above requirements to employ a person under the age of 18 during a month where the restriction on monthly revenue is exceeded.

B. SECTION DIRECTORY:

Section 1 amends s. 562.13 F.S., providing an exception to certain employment restrictions for vendors licensed under the Beverage Law for the employment of persons under a specified age.

Section 2 amends s. 565.04, F.S., defining the term "liquor package store"; creating Type A and Type B liquor package store licenses; authorizing the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation to issue licenses; establishing additional fees based on the county where the vendor operates.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may impact the marketplace and sales for large and small alcoholic beverage retailers. Some alcoholic beverage licensees may be able to increase profits by selling additional merchandise. Additionally, some businesses currently required to obtain multiple licenses for multiple stores will be able to save money by obtaining one license to conduct business rather than multiple licenses by combining their package store with a larger store location.

D. FISCAL COMMENTS:

The bill does not appear to have a fiscal impact on state or local governments.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The Division will likely need to amend application forms for licensure. Otherwise, there is no mandatory rulemaking or rulemaking authority in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Current statutory language requires a vendor ***to be*** a drugstore, grocery store, department store, florist, specialty gift shop, or automobile service station, in order to employ a person under the age of 18. The bill amends the language to require the vendor ***to include within its premises*** a retail drugstore, grocery store, department store, florist, specialty gift shop, or automobile service station, in order to employ a person under the age of 18, with additional restrictions on the vendor. Therefore, rather than requiring that the business be a drugstore or other listed business type, the business will now qualify for the exception if the building houses a drugstore or other listed business type. This could expand the types of businesses that could hire a person under the age of 18 if the business adds one of the listed businesses into its licensed premises.

The terms "drugstore," "grocery store," "department store," "florist," "specialty gift shop," and "automobile service station" are not defined, so there is nothing indicating that a retailer that sells flowers in a small part of its store does not meet the definition of "florist," or a convenience store with an aisle that holds cold medications does not meet the definition of "drugstore."

The bill provides that it is unlawful for a vendor to employ a person under the age of 18 during a month where the restriction on monthly revenue is exceeded. If a vendor faces this situation, it is likely the vendor will not know that he or she has exceeded the restriction on monthly revenue until after the month has passed and the unlawful behavior has already occurred. The only way a vendor will be able to prevent a violation in cases where the business is often close to the restriction limit is for the vendor to track the alcoholic beverage sales daily and compare the sales to an estimate for overall revenues. If the revenue from the sales of alcohol approaches 30 percent, the vendor would be required to stop all sales of alcoholic beverages. This would be time consuming for the vendor and difficult to administer.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 14, 2017, the Government Operations & Technology Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The committee substitute amends, s. 565.04, F.S., as follows:

- defines the term "liquor package store" to mean a vendor subject to the limitation imposed in s. 561.20(1), F.S. who is licensed in accordance with and pays state taxes under s. 565.02(1)(a), F.S., who is permitted to sell any alcoholic beverages regardless of alcoholic content, and who operates a place of business where beverages are sold only in sealed containers for consumption off the premises where sold.
- creates "Type A" and "Type B" liquor package store license, where a Type A license may be issued to a vendor pursuant to the same restrictions as a package store under current law and a Type B license may be issued to a vendor without restriction as to the merchandise that may also be sold on the premises or whether the premises may have openings to other buildings or rooms. Type B licensees must pay the Type A license fee plus an additional amount based on the county population where the licensee is located.

The bill analysis is drafted to the committee substitute as passed by the Government Operations & Technology Appropriations Subcommittee.

A bill to be entitled

An act relating to vendors licensed under the Beverage Law; amending s. 562.13, F.S.; providing an exception from employment restrictions on vendors licensed under the Beverage Law for the employment of persons under a specified age; providing that failure to comply with a restriction on monthly revenue from the sale of alcoholic beverages is unlawful if a minor is employed during a month that the restriction is exceeded, to which penalties apply; amending s. 565.04, F.S.; defining the term "liquor package store"; creating Type A and Type B liquor package store licenses; removing restrictions on direct access to a vendor's place of business upon payment of additional license fees; authorizing the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation to issue licenses; establishing additional fees based on the county where the vendor operates; providing an effective date.

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

Section 1. Paragraph (c) of subsection (2) of section 562.13, Florida Statutes, is amended to read:

562.13 Employment of minors or certain other persons by

certain vendors prohibited; exceptions.—

(2) This section shall not apply to:

(c) Persons under the age of 18 years who are employed in licensed vendor premises that include within the premises a retail drugstore, grocery store, department store, florist, specialty gift shop, or automobile service station, and whose annual license fees are set forth in s. 563.02(1), s. 564.02(1), or s. 565.02(1)(a), if the vendor licensed to sell alcoholic beverages on the licensed premises derives 30 percent or less of its gross revenues each month from the sale of alcoholic beverages and if the minor employee is supervised by a person 18 years of age or older who, before any purchase of alcoholic beverages, verifies the age of the purchaser to be 21 years of age or older and approves the sale of alcoholic beverages to such purchaser. Failure to comply with the restriction on monthly revenue from the sale of alcoholic beverages is unlawful if a person under the age of 18 years is employed in the licensed premises during a month that the restriction is exceeded ~~drugstores, grocery stores, department stores, florists, specialty gift shops, or automobile service stations which have obtained licenses to sell beer or beer and wine, when such sales are made for consumption off the premises~~.

However, a minor to whom this subsection otherwise applies may not be employed if the employment, whether as a professional

entertainer or otherwise, involves nudity, as defined in s. 847.001, on the part of the minor and such nudity is intended as a form of adult entertainment.

Section 2. Section 565.04, Florida Statutes, is amended to read:

565.04 Package store licenses, regulations, and fees ~~restrictions~~.—

(1) The term "liquor package store," as used in this section, means a vendor:

(a) Subject to the limitation imposed in s. 561.20(1);

(b) Licensed in accordance with and who pays state taxes under s. 565.02(1)(a);

(c) Who is permitted to sell any alcoholic beverages regardless of alcoholic content; and

(d) Who operates a place of business where beverages are sold only in sealed containers for consumption off the premises where sold.

(2) The division is authorized to issue Type A liquor package store licenses and Type B liquor package store licenses in accordance with ss. 561.20(1) and 565.02(1)(a), subject to the following:

(a) Type A liquor package store licenses may be issued to a vendor with a premises without openings permitting direct access to any other building or room, except to a private office or storage room of the place of business from which patrons are

excluded. Such liquor package stores ~~Vendors licensed under s. 565.02(1)(a)~~ shall not in the licensed premises ~~said place of business~~ sell, offer, or expose for sale any merchandise other than such beverages, and such liquor package stores ~~places of business~~ shall be devoted exclusively to such sales; provided, however, that such vendors shall be permitted to sell bitters, grenadine, nonalcoholic mixer-type beverages (not to include fruit juices produced outside this state), fruit juices produced in this state, home bar, and party supplies and equipment (including but not limited to glassware and party-type foods), miniatures of no alcoholic content, and tobacco products. A Type A liquor package store licensee shall pay an annual license fee pursuant to s. 565.02(1)(a). ~~Such places of business shall have no openings permitting direct access to any other building or room, except to a private office or storage room of the place of business from which patrons are excluded.~~

(b) Type B liquor package store licenses may be issued to a vendor that is not subject to the limitations contained in subsection (2)(a), subject to the following conditions:

1. A Type B liquor package store licensee shall pay an annual license fee pursuant to s. 565.02(1)(a); and

2. A Type B liquor package store licensee shall pay an additional amount according to the population of the county where the vendor operates and provided for herein:

a. Vendors operating places of business in counties having

a population of over 100,000, according to the latest population estimate prepared pursuant to s. 186.901, for such county, shall pay $294 in addition to the annual license fee.

b. Vendors operating places of business in counties having a population of over 75,000 and not over 100,000, according to the latest population estimate prepared pursuant to s. 186.901, for such county, shall pay $252 in addition to the annual license fee.

c. Vendors operating places of business in counties having a population of over 50,000 and not over 75,000, according to the latest population estimate prepared pursuant to s. 186.901, for such county, shall pay $210 in addition to the annual license fee.

d. Vendors operating places of business in counties having a population of over 25,000 and not over 50,000, according to the latest population estimate prepared pursuant to s. 186.901, for such county, shall pay $168 in addition to the annual license fee.

e. Vendors operating places of business in counties having a population of not over 25,000, according to the latest population estimate prepared pursuant to s. 186.901, for such county, shall pay $126 in addition to the annual license fee.

(3) ~~(2)~~ Notwithstanding any other law, when delivering alcoholic beverages to a vendor licensed under s. 565.02(1)(a), a licensed distributor may transport the beverages through

another premises owned in whole or in part by the vendor.

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

COMMERCE COMMITTEE

HB 81 by Rep. Avila
Vendors Licensed Under the Beverage Law

AMENDMENT SUMMARY
March 22, 2017

Amendment 1 by Rep. Avila (Strike-all):

- Amends s. 565.04, F.S., to prohibit the Division from issuing a package store license for any locations within 1,000 feet of a primary or secondary school.
    - Exemption: Allows package stores licensed on or before June 30, 2017, to maintain and renew the license for that location, if the place of business complies with the package store restrictions in current law in s. 565.04, F.S.
- Provides a 4-year phased repeal of the package store restrictions for businesses that are located more than 1,000 feet from a school. During the phase-in period, the number of places of business that a vendor may operate without the restrictions is calculated by the vendor (rounded to the next greater whole number) each year:
    - Starting July 1, 2018, one business or 25 percent of a vendor's businesses, whichever is greater, can operate without the restrictions;
    - Starting July 1, 2019, two businesses or 50 percent of a vendor's business;
    - Starting July 1, 2020, three businesses or 75 percent of a vendor's businesses; and

  These restrictions expire June 30, 2021.
- Prohibits the sale of mini-bottles (liquor bottles that are less than 200 ml. or 6.8 oz.) in any area that is accessible to customers. A business that maintains the current package store restrictions is exempt from this requirement.
- Allows a retail drug store, grocery store, department store, florist shop, specialty gift shop, or automobile service station, that is also a package store, to employ a person under the age of 18 only if:
    - The minor is supervised by a person 18 years of age or older,
    - Who verifies the age of the purchaser to be 21 years of age or older, and
    - Approves the sale of alcoholic beverages to the purchaser.

  Provides that it is unlawful to employ a minor during a month in which a vendor's gross revenue from the sale of alcoholic beverages exceeds 30 percent its of total revenue.

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Commerce Committee
Representative Avila offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraph (c) of subsection (2) of section 562.13, Florida Statutes, is amended to read:

562.13 Employment of minors or certain other persons by certain vendors prohibited; exceptions.—

(2) This section shall not apply to:

(c) Persons under the age of 18 years who are employed in a retail drugstore ~~drugstores~~, grocery store ~~stores~~, department store ~~stores~~, florist shop ~~florists~~, specialty gift shop ~~shops~~, or automobile service station whose license fees are specified in s. 563.02(1), s. 564.02(1), or s. 565.02(1)(a), if such vendor derives 30 percent or less of its monthly gross revenue

from sales of alcoholic beverages. This exception applies only if the minor employees are supervised by a person 18 years of age or older who verifies that any purchaser of alcoholic beverages is 21 years of age or older and who approves the sale of alcoholic beverages to such purchaser. Failure to comply with the restriction on monthly revenue from the sale of alcoholic beverages is unlawful if a person under the age of 18 years is employed in the licensed premises during a month that the restriction is exceeded ~~stations which have obtained licenses to sell beer or beer and wine, when such sales are made for consumption off the premises~~.

However, a minor to whom this subsection otherwise applies may not be employed if the employment, whether as a professional entertainer or otherwise, involves nudity, as defined in s. 847.001, on the part of the minor and such nudity is intended as a form of adult entertainment.

Section 2. Subsection (1) of section 565.04, Florida Statutes, is amended, present subsection (2) of that section is redesignated as subsection (5), and a new subsection (2) and subsections (3) and (4) are added to that section, to read:

565.04 Package store restrictions.—

(1)(a) The division may not issue a license under s. 565.02(1)(a) for any location or business located within 1,000

feet of a public or private elementary school, middle school, or secondary school.

(b) Notwithstanding paragraph (a), a vendor ~~vendors~~ licensed under s. 565.02(1)(a) on or before June 30, 2017, for a licensed premises located within 1,000 feet of a public or private elementary school, middle school, or secondary school, may maintain and renew the beverage license for that premises but may ~~shall~~ not in said place of business sell, offer, or expose for sale any merchandise other than such beverages, and such place ~~places~~ of business shall be devoted exclusively to such sales; provided, however, that such vendor ~~vendors~~ shall be permitted to sell bitters, grenadine, nonalcoholic mixer-type beverages (not to include fruit juices produced outside this state), fruit juices produced in this state, home bar, and party supplies and equipment (including but not limited to glassware and party-type foods), miniatures of no alcoholic content, and tobacco products. Such places of business shall have no openings permitting direct access to any other building or room, except to a private office or storage room of the place of business from which patrons are excluded.

(2)(a) A vendor licensed under s. 565.02(1)(a) may not in such place of business sell, offer, or expose for sale any merchandise other than such beverages, and such place of business shall be devoted exclusively to such sales; however, such vendor may sell bitters, grenadine, nonalcoholic mixer-type

beverages (not to include fruit juices produced outside this state), fruit juices produced in this state, home bar, party supplies and equipment (including, but not limited to, glassware and party-type foods), miniatures of no alcoholic content, and tobacco products. Such place of business may not have openings permitting direct access to any other building or room, except to a private office or storage room of the place of business from which patrons are excluded.

(b) Paragraph (a) does not apply to a vendor:

1. After July 1, 2018:

a. At the vendor's place of business if the vendor has only one place of business.

b. At 25 percent of the vendor's places of business if the vendor has an interest, directly or indirectly, in more than one place of business;

2. After July 1, 2019, at two of the vendor's places of business, or, if the vendor has an interest, directly or indirectly, in two or more places of business, 50 percent of the vendor's places of business; and

3. After July 1, 2020, at three of the vendor's places of business, or, if the vendor has an interest in three or more places of business, 75 percent of the vendor's places of business.

If the percentage of the vendor's places of business results in a fraction of 0.50 or more, the number of the vendor's places of business at which paragraph (a) does not apply shall be increased to the next greater whole number. A vendor licensed under s. 565.02(1)(a) must notify the Division of Alcoholic Beverages and Tobacco, in writing, of the places of business to which paragraph (a) will not apply.

(c) This subsection expires June 30, 2021.

(3)(a) A vendor licensed under s. 565.02(1)(a) may not in such place of business sell, offer, or expose for sale distilled spirits in containers of 200 milliliters or less or 6.8 ounces or less except from a restricted area where access is restricted to the vendor or employees of such vendor.

(b) Paragraph (a) does not apply to a vendor's place of business if such place of business is devoted exclusively to the sale of alcoholic beverages; however, such vendor at such place of business may sell bitters, grenadine, nonalcoholic mixer-type beverages (not to include fruit juices produced outside this state), fruit juices produced in this state, home bar, party supplies and equipment (including, but not limited to, glassware and party-type foods), miniatures of no alcoholic content, and tobacco products. Such place of business may not have openings permitting direct access to any other building or room, except to a private office or storage room of the place of business from which patrons are excluded.

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

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

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to vendors licensed under the Beverage Law; amending s. 562.13, F.S.; revising applicability to specify circumstances under which persons under the age of 18 years who are employed in specified businesses are excluded from certain employment prohibitions; providing that failure to comply with a restriction on monthly revenue from the sale of alcoholic beverages is unlawful if a minor is employed during a month that the restriction is exceeded; amending s. 565.04, F.S.; limiting the package store restrictions to vendors located within a certain distance of a school; providing an exception for current licenses with some restrictions; providing applicability; providing an expiration date; providing a restriction on the sale of distilled spirits below the specified container sizes; providing an exception; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 241 Low-voltage Electric Fences
SPONSOR(S): Local, Federal & Veterans Affairs Subcommittee; Agriculture & Property Rights Subcommittee; Williamson and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 190

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Property Rights Subcommittee	14 Y, 0 N, As CS	Thompson	Smith
2) Local, Federal & Veterans Affairs Subcommittee	12 Y, 0 N, As CS	Darden	Miller
3) Commerce Committee		Thompson JAT	Hamon K.W.H.

SUMMARY ANALYSIS

The Florida Building Code, ch. 553, Part IV, F.S., is intended to create a single source of uniform standards for all aspects of construction statewide. Included in the Building Code is a uniform system for the installation permitting of low-voltage alarm systems (a device used to signal or detect a burglary, fire, robbery, or medical emergency).

The bill expands current law regarding the streamlined installation permitting of low-voltage alarm systems to include low-voltage electric fences. Specifically, the bill:

- Defines "low-voltage electric fence" as an alarm system, as defined in s. 489.505, F.S., that consists of a fence structure and an energizer powered by a commercial storage battery not exceeding 12 volts which produces an electric charge upon contact with the fence structure;
- Adds "new or existing low-voltage electric fence" to the types of projects that constitute a low-voltage alarm system project; and
- Adds "closed-circuit television systems," "access controls," and "battery recharging devices" to the types of ancillary components or equipment attached to a low-voltage alarm system.

The bill requires a low-voltage electric fence to meet all of the following requirements to be permitted as a low-voltage alarm system project, and prohibits any further permitting for the low-voltage alarm system project other than as provided in s. 553.793, F.S.:

- Must not produce an electric charge that exceeds specified international energizer characteristics;
- Must be completely enclosed by a nonelectric fence or wall;
- May be up to 2 feet higher than the perimeter nonelectric fence or wall;
- Must be identified using warning signs attached to the fence at intervals of not more than 60 feet;
- May not be installed in an area zoned exclusively for single-family or multi-family residential use; and
- May not be used to enclose portions of the property used for residential purposes.

The bill does not appear to have a fiscal impact on state government. The bill may impact local governments to the extent they currently charge a permitting fee for installing low-voltage electric fences.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Florida Building Code and Local Enforcement Agencies

The Florida Building Code, ch. 553, Part IV, F.S., applies statewide to all construction. The intent of the Florida Building Code is to create a single source of uniform standards for all aspects of construction. The Florida Building Commission is responsible for its general administration. With certain exceptions, state and local agencies can enforce the Florida Building Code.

A "local enforcement agency" is an agency of local government, a local school board, a community college board of trustees, or a university board of trustees in the State University System with jurisdiction to make inspections of buildings and to enforce the codes which establish standards for design, construction, erection, alteration, repair, modification, or demolition of public or private buildings, structures, or facilities.[1]

Alarm System Contractors

Part II of ch. 489, F.S., regulates electrical and alarm system contracting.[2] The Electrical Contractors' Licensing Board within DBPR generally handles the licensing and regulation of electrical and alarm system contractors.[3]

Low-Voltage Alarm Systems

Florida defines an "alarm system" as any electrical device, signaling device, or combination of electrical devices used to signal or detect a burglary, fire, robbery, or medical emergency.[4] A "low-voltage alarm system project" is a project related to the installation, maintenance, inspection, replacement, or service of a new or existing alarm system, and attached ancillary components, that is hardwired and operating at low voltage.[5]

Uniform state law streamlines the permitting process for the installation of low-voltage alarm system projects.[6] Generally, the law authorizes licensed electrical and alarm system contractors to purchase uniform basic permit labels (permits) from the local enforcement agencies without requiring detailed information about the project, and exempts the contractor from having to notify the local enforcement

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[1] s. 553.71(5), F.S.

[2] s. 489.505(2), F.S., defines an "alarm system contractor I" as an alarm system contractor whose business includes all types of alarm systems for all purposes; and an "alarm system contractor II" as an alarm system contractor whose business includes all types of alarm systems other than fire, for all purposes, except as herein provided. Section 489.505(7), F.S. defines a "certified alarm system contractor as an alarm system contractor who possesses a certificate of competency issued by the Department of Business and Professional Regulation (DBPR). The scope of certification is limited to alarm circuits originating in the alarm control panel and equipment governed by the applicable provisions of Articles 725, 760, 770, 800, and 810 of the National Electrical Code, Current Edition, and National Fire Protection Association Standard 72, Current Edition; and the installation, repair, fabrication, erection, alteration, addition, or design of electrical wiring, fixtures, appliances, thermostats, apparatus, raceways, and conduit, or any part thereof not to exceed 98 volts (RMS), when those items are for the purpose of transmitting data or proprietary video (satellite systems that are not part of a community antenna television or radio distribution system) or providing central vacuum capability or electric locks; however, this provision governing the scope of certification does not create any mandatory licensure requirement.

[3] s. 489.507, F.S.

[4] s. 489.505(1), F.S.

[5] s. 553.793(1)(b), F.S., incorporating by reference "low voltage" as defined in the National Electrical Code Standard 70, Current Edition.

[6] s. 553.793, F.S.

agency of the details of a job prior to installation.[7] Contractors have 14 days after completion of a project to submit a Uniform Notice of a Low Voltage Alarm System Project to the local enforcement agency.[8] The local enforcement agency is then authorized to coordinate directly with the property owner or customer for inspection.[9]

Specifically, the law:

- Applies to all low-voltage alarm system projects for which a permit is required by a local enforcement agency;[10]
- Authorizes local enforcement agencies to determine whether to require permitting for low-voltage alarm systems;[11]
- Prohibits local enforcement agencies from charging more than $40 for a permit;[12]
- Prohibits local enforcement agencies from requiring any other charge associated with the installation or replacement of a new or existing hardwired, low-voltage alarm system;[13]
- Requires the permits to be valid for one year from the date of purchase;[14]
- Requires the permits to only be used in the jurisdiction where they are issued;[15]
- Prohibits a local enforcement agency from requesting any information for issuance of permits for purchase by a contractor other than identification information, proof of registration, or certification as a contractor;[16]
- Requires a contractor to post an unused permit in a conspicuous place on the premises of the low-voltage alarm system project site before commencing work on the project;[17]
- Exempts a contractor from notifying the local enforcement agency before commencing work on a low-voltage alarm system project;[18]
- Requires a contractor to submit a Uniform Notice of a Low-Voltage Alarm System Project to the local enforcement agency within 14 days after completing the project;[19]
- Authorizes a local enforcement agency to take disciplinary action against a contractor who fails to timely submit a Uniform Notice of a Low-Voltage Alarm System Project;[20]
- Allows the Uniform Notice of a Low-Voltage Alarm System Project to be submitted electronically or by facsimile if all submissions are signed by the owner, tenant, contractor, or authorized representative of such persons;[21]
- Authorizes a local enforcement agency to coordinate directly with the owner or customer to inspect a low-voltage alarm system project to ensure compliance with applicable codes and standards;[22]
- If a low-voltage alarm system project fails an inspection, requires the contractor to take corrective action as necessary to pass inspection;[23] and
- Prohibits a permit from being required for the subsequent maintenance, inspection, or service of an alarm system that was permitted in accordance with this law.[24]

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[7] *Id.*
[8] *Id.*
[9] *Id.*
[10] s. 553.793(2), F.S.
[11] *Id.*
[12] Section 553.793(4), F.S.
[13] *Id.*
[14] s. 553.793(4)(b), F.S.
[15] *Id.*
[16] s. 553.793(4)(a), F.S.
[17] s. 553.793(5), F.S.
[18] s. 553.793(6), F.S.
[19] *Id.*
[20] *Id.*
[21] s. 553.793(7), F.S.
[22] s. 553.793(8), F.S.
[23] *Id.*
[24] s. 553.793(10), F.S.

A municipality, county, district, or other entity of local government may not adopt or maintain in effect an ordinance or rule regarding a low-voltage alarm system that is inconsistent with the streamlined low-voltage alarm system installation permitting of s. 553.793, F.S.[25]

Effect of Proposed Changes

The bill expands current law regarding the streamlined installation permitting of low-voltage alarm systems to include "low-voltage electric fence" as a type of low-voltage alarm system project.

Specifically, the bill amends s. 553.793, F.S., to do the following:

- Add "new or existing low-voltage electric fence" to the types of projects that constitute a low-voltage alarm system project;
- Add "closed-circuit television systems," "access controls," and "battery recharging devices" to the types of ancillary components or equipment attached to a low-voltage alarm system;
- Define "low-voltage electric fence" as an alarm system, as defined in s. 489.505, F.S., that consists of a fence structure and an energizer powered by a commercial storage battery not exceeding 12 volts which produces an electric charge upon contact with the fence structure.

The bill requires that a low-voltage electric fence meet all of the following requirements to be permitted as a low-voltage alarm system project, and prohibits any further permitting for the low-voltage alarm system project other than as provided in s. 553.793, F.S.:

- The electric charge produced by the fence upon contact does not exceed energizer characteristics set forth in paragraph 22.108 and depicted in Figure 102 of International Electrotechnical Commission Standard No. 60335-2-76, Current Edition;
- A nonelectric fence or wall must completely enclose the perimeter of the low-voltage electric fence;
- The low-voltage electric fence may be up to 2 feet higher than the perimeter nonelectric fence or wall;
- The low-voltage electric fence must be identified using warning signs attached to the fence at intervals of not more than 60 feet;
- The low-voltage electric fence may not be installed in an area zoned exclusively for single-family or multi-family residential use; and
- The low-voltage electric fence may not enclose portions of the property used for residential purposes.

A municipality, county, district, or other entity of local government may not adopt or maintain in effect an ordinance or rule regarding a low-voltage alarm system project that is inconsistent with s. 553.793, F.S. Consequently, including a low-voltage electric fence within this classification will eliminate the authority of a local government to regulate low-voltage electric fences in a way that is inconsistent with the streamlined low-voltage alarm system installation permitting.

B. SECTION DIRECTORY:

Section 1 amends s. 553.793, F.S., relating to streamlined low-voltage alarm system installation permitting.

Section 2 provides an effective date of July 1, 2017.

[25] s. 553.793(9), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill has no fiscal impact on state revenues.

2. Expenditures:

   The bill has no fiscal impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   By including low-voltage electric fences in s. 553.793, F.S., the bill requires local enforcement agencies, when permitting is required by the applicable local government entity, to charge not more than a $40 permitting fee for the installation or replacement of a new or existing low-voltage electric fence.

2. Expenditures:

   Local enforcement agencies that choose to require permitting for a low-voltage electric fence would be required to make permit labels available.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill limits permitting fees to not more than $40 for electrical or alarm system contractors, when permitting is required by the applicable local government entity, for the installation or replacement of a new or existing low-voltage electric fence.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because the bill may reduce the authority that counties or municipalities have to raise revenues in the aggregate; however, the insignificant fiscal impact exemption may apply.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 22, 2017, the Agriculture & Property Rights Subcommittee adopted one strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Adds battery recharging devices to the current list of ancillary components that may be attached to a low-voltage alarm system project; and
- Modifies the requirements for a low-voltage electric fence to:
    - Allow the low-voltage electric fence to be up to 2 feet higher than a perimeter nonelectric fence or wall;
    - Remove specific language required to be displayed on warning signs; and
    - Clarify that no further permit is required for a low-voltage alarm system project.

On March 8, 2017, the Local, Federal & Veterans Affairs Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment clarifies that a low-voltage electric fence may be used on a mixed-use property as long as the fence is not used to enclose areas used for residential purposes. This analysis is drafted to the committee substitute as passed by the Local, Federal & Veterans Affairs Subcommittee.

A bill to be entitled

An act relating to low-voltage electric fences; amending s. 553.793, F.S.; revising the definition of the term "low-voltage alarm system project"; providing a definition for the term "low-voltage electric fence"; providing requirements for a low-voltage electric fence to be permitted as a low-voltage alarm system project; conforming a cross-reference; providing an effective date.

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

Section 1. Subsections (3) through (10) of section 553.793, Florida Statutes, are redesignated as subsections (4) through (11), respectively, subsection (1) and present subsection (6) are amended, and a new subsection (3) is added to that section, to read:

553.793 Streamlined low-voltage alarm system installation permitting.—

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

(a) "Contractor" means a person who is qualified to engage in the business of electrical or alarm system contracting pursuant to a certificate or registration issued by the department under part II of chapter 489.

(b) "Low-voltage alarm system project" means a project

related to the installation, maintenance, inspection, replacement, or service of a new or existing alarm system, as defined in s. 489.505, that is hardwired and operating at low voltage, as defined in the National Electrical Code Standard 70, Current Edition, or a new or existing low-voltage electric fence, and ancillary components or equipment attached to such a system or fence, including, but not limited to, home-automation equipment, thermostats, closed-circuit television systems, access controls, battery recharging devices, and video cameras.

(c) "Low-voltage electric fence" means an alarm system, as defined in s. 489.505, that consists of a fence structure and an energizer powered by a commercial storage battery not exceeding 12 volts which produces an electric charge upon contact with the fence structure.

(d) "Wireless alarm system" means a burglar alarm system or smoke detector that is not hardwired.

(3) A low-voltage electric fence must meet all of the following requirements to be permitted as a low-voltage alarm system project and no further permit shall be required for the low-voltage alarm system project other than as provided in this section:

(a) The electric charge produced by the fence upon contact must not exceed energizer characteristics set forth in paragraph 22.108 and depicted in Figure 102 of International Electrotechnical Commission Standard No. 60335-2-76, Current

Edition.

(b) A nonelectric fence or wall must completely enclose the low-voltage electric fence. The low-voltage electric fence may be up to 2 feet higher than the perimeter nonelectric fence or wall.

(c) The low-voltage electric fence must be identified using warning signs attached to the fence at intervals of not more than 60 feet.

(d) The low-voltage electric fence shall not be installed in an area zoned exclusively for single-family or multi-family residential use.

(e) The low-voltage electric fence shall not enclose the portions of a property which are used for residential purposes.

(7) ~~(6)~~ A contractor is not required to notify the local enforcement agency before commencing work on a low-voltage alarm system project. However, a contractor must submit a Uniform Notice of a Low-Voltage Alarm System Project as provided under subsection (8) ~~(7)~~ to the local enforcement agency within 14 days after completing the project. A local enforcement agency may take disciplinary action against a contractor who fails to timely submit a Uniform Notice of a Low-Voltage Alarm System Project.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 357 Self-Service Storage Facilities
SPONSOR(S): Careers & Competition Subcommittee; Civil Justice & Claims Subcommittee; Moraitis
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 264

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Careers & Competition Subcommittee	12 Y, 0 N, As CS	Willson	Anstead
2) Civil Justice & Claims Subcommittee	15 Y, 0 N, As CS	MacNamara	Bond
3) Commerce Committee		Willson MW	Hamon K.W.H.

SUMMARY ANALYSIS

The Self-storage Facility Act (the Act) governs the relationship between the owner of a self-service storage facility and a tenant with whom the owner has entered into an agreement. The owner has a statutory lien upon all personal property located at the self-service storage facility for failure to pay rent. A self-service storage facility owner may sell such personal property in a tenant's storage unit if the tenant fails to pay rent. The facility owner is required to give notice to the tenant of the intent to sell the property before the sale.

The bill provides that a lien sale may be conducted on a public website that typically conducts personal property auctions, and that the facility owner does not have to be licensed as an auctioneer to post property on such a website.

The bill limits the value of property contained in a storage unit if the value was limited by the rental agreement.

The bill provides that, when a lien is claimed on property that is a motor vehicle or watercraft and charges are 60 days or more past due, a facility owner may sell the motor vehicle or watercraft pursuant to the Act or have the motor vehicle or watercraft towed. If towing is elected, the facility owner is no longer liable for the property after the wrecker takes possession. The wrecker operator that takes possession of a motor vehicle or watercraft must comply with notification and sale requirements in current law regarding towing from private property.

The bill allows a storage facility to charge a reasonable late fee for the nonpayment of rent, and for any expenses incurred as a result of rent collection or lien enforcement. The late fee and conditions must be stated in the rental agreement, and the bill provides that a reasonable late fee is the greater of $20 or 20 percent of the monthly rent.

The bill does not appear to have a fiscal impact on state or local governments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Sections 83.801-83.809, F.S., comprise Florida's "Self-storage Facility Act" (the Act). The Act provides remedies for the owner of a self-service storage facility in the event that a tenant does not pay rent.[1] The Act gives the facility owner the ability to deny a tenant access to his or her property if the tenant is more than five days delinquent in paying rent.[2]

The Act provides that the owner of a self-service storage facility has a lien upon all personal property located at a self-service storage facility for rent, labor charges, or other charges in relation to the personal property and for the expenses necessary to preserve or dispose of the property.[3] The facility owner is required to take certain steps before satisfying the lien.

First, the tenant must be provided written notice prior to the sale of the property. The notice must be delivered in person or by certified mail to the tenant's last known address and conspicuously posted at the self-service storage facility. The notice must contain a statement showing the amount due, the date it became due, a description of the property, a demand for payment within 14 days, and a conspicuous statement that, unless the claim is paid within the time stated in the notice, the personal property will be advertised for sale or other disposition and will be sold or otherwise disposed of at a specified time and place.

If the tenant has not satisfied the payments after the expiration of the time provided by the notice, the facility owner may advertise for a sale of the property. An advertisement of the sale must be published once a week for 2 consecutive weeks in a newspaper of general circulation in the area where the self-service storage facility is located. If there is no such newspaper of general circulation, the advertisement must be posted at least 10 days before the sale in at least three conspicuous places in the neighborhood where the self-service storage facility is located.[4] The advertisement must include a brief and general description of the property believed to be contained in the storage unit, the address of the facility, the name of the tenant, and the time, place, and manner of the sale or other disposition, which may not be sooner than 15 days after the first publication.[5]

The facility owner may then satisfy the lien from the proceeds of the sale. The balance, if any, is held by the facility owner for delivery on demand to the tenant. A notice of any balance must be delivered by the facility owner to the tenant in person or by certified mail. The balance is considered abandoned if the tenant does not claim it within two years.[6]

Current law also requires the facility owner to hold the sale proceeds for holders of liens against the property whose liens have priority over the facility owner's lien. The facility owner must provide notice of the amount of sale proceeds to such lienholders by either personal delivery or certified mail.[7]

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[1] "Self-service storage facility" is defined by s. 83.803(1), F.S, as any real property designed and used for the purpose of renting or leasing individual storage space to tenants who have access to such space for the purpose of storing and removing personal property.
[2] s. 83.8055, F.S.
[3] s. 83.805, F.S.
[4] s. 83.806, F.S.
[5] s. 83.806(4)(a), F.S.
[6] s. 83.806(8), F.S.
[7] *Id.*

Effect of the Bill

The bill provides that a lien sale may be conducted on a public website that typically conducts personal property auctions and provides that the facility owner does not have to be licensed as an auctioneer to post property on such a website.

The bill creates s. 83.806(9), F.S., to limit the value of property that may be stored in a storage unit if the value is limited in the rental agreement. This limits the liability of the facility to the amount stated in the contract if the contents of the unit are damaged or stolen or if the facility owner wrongfully sells the tenant's property. This provision appears to be a codification of current case law.[8]

In addition to selling the motor vehicle or watercraft pursuant to s. 83.806, F.S., the bill provides that, when a lien is claimed on property that is a motor vehicle or watercraft and charges are 60 days past due, a facility owner may have the motor vehicle or watercraft towed. If towed, the facility owner is no longer liable for the property after the wrecker takes possession. The bill requires a wrecker that takes possession of a motor vehicle or watercraft to comply with notification and sale requirements pursuant to s. 713.78, F.S.[9] Moreover, s. 713.78, F.S., is amended to give a wrecker operator authority to tow from a self-service storage facility.

The bill also allows a storage facility to charge a reasonable late fee for each rental period that a tenant does not pay rent. However, this fee may be imposed and collected only if its amount is set forth in the contract with the tenant. Also, the fee may not exceed the greater of $20 or 20 percent of the monthly rent. In addition to the late fee, any reasonable expense incurred by an owner as a result of rent collection or lien enforcement may be charged to the tenant.

B. SECTION DIRECTORY:

Section 1: Amends s. 83.806, F.S., revising requirements for the advertisement of the sale or disposition of property held in a self-service storage facility, limiting the maximum value of certain property under certain circumstances, and providing options and notice requirements for the disposition of motor vehicles or watercraft claimed to be subject to a lien.

Section 2: Amends s. 83.808, F.S., authorizing a facility or unit owner to charge a tenant certain fees under certain conditions

Section 3: Amends s. 713.78, F.S., relating to liens for recovering, towing, or storing vehicles and vessels.

Section 4: Provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

[8] *Muns v. Shurgard Income Properties Fund 16-Limited Partnership*, 682 So.2d 166 (Fla. 4th DCA 1996).

[9] s. 713.78, F.S., relates to liens for recovering, towing, or storing vehicles and vessels. The statute requires owners to pay towing fees and provides responsibilities to obtain possession of the vehicle or vessel.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill could increase the use of Internet-based sales by storage facilities, and these sales would likely benefit the website hosting the sales. Additionally, the use of Internet-based sales may increase the number of bidders on items from a delinquent tenant's storage unit and result in higher prices for items sold. As a result, there may be additional funds to pay the storage facility's lien and perhaps additional surplus fund for the tenant.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

There appears to be no rulemaking authority added or amended.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 22, 2017, the Careers & Competition Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment allows facility owners to sell motor vehicles and watercraft in the same manner as other property under s. 83.806, F.S.

On March 13, 2017, the Civil Justice & Claims Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment added Section 3 of the bill, to conform s. 731.78, F.S., to the towing authorization created in Section 1 of the bill. This analysis is drafted to the committee substitute as passed by the Civil Justice & Claims Subcommittee.

A bill to be entitled

An act relating to self-service storage facilities; amending s. 83.806, F.S.; providing that a lien sale may be conducted on certain websites; providing that a facility or unit owner is not required to hold a license to post property for online sale; limiting the maximum value of certain property under certain circumstances; providing options for the disposition of motor vehicles or watercraft claimed to be subject to a lien; amending s. 83.808, F.S.; authorizing a facility or unit owner to charge a tenant certain fees under certain conditions; amending s. 713.78, F.S.; conforming a provision to changes made by the act; providing an effective date.

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

Section 1. Subsection (4) of section 83.806, Florida Statutes, is amended, and subsections (9) and (10) are added to that section, to read:

83.806 Enforcement of lien.—An owner's lien as provided in s. 83.805 may be satisfied as follows:

(4) After the expiration of the time given in the notice, an advertisement of the sale or other disposition shall be published once a week for 2 consecutive weeks in a newspaper of

general circulation in the area where the self-service storage facility or self-contained storage unit is located.

(a) A lien sale may be conducted on a public website that customarily conducts personal property auctions. The facility or unit owner is not required to hold a license to post property for online sale. Inasmuch as any sale may involve property of more than one tenant, a single advertisement may be used to dispose of property at any one sale.

(b) ~~(a)~~ The advertisement shall include:

1. A brief and general description of what is believed to constitute the personal property contained in the storage unit, as provided in paragraph (2)(b).

2. The address of the self-service storage facility or the address where the self-contained storage unit is located and the name of the tenant.

3. The time, place, and manner of the sale or other disposition. The sale or other disposition shall take place at least ~~not sooner than~~ 15 days after the first publication.

(c) ~~(b)~~ If there is no newspaper of general circulation in the area where the self-service storage facility or self-contained storage unit is located, the advertisement shall be posted at least 10 days before the date of the sale or other disposition in at least ~~not fewer than~~ three conspicuous places in the neighborhood where the self-service storage facility or self-contained storage unit is located.

(9) If the rental agreement contains a limit on the value of property stored in the tenant's storage space, the limit is deemed to be the maximum value of the property stored in such space.

(10) If a lien is claimed on property that is a motor vehicle or a watercraft and rent and other charges related to the property remain unpaid or unsatisfied for 60 days after the maturity of the obligation to pay the rent and other charges, the facility or unit owner may sell the property pursuant to this section or have the property towed. If a motor vehicle or watercraft is towed, the facility or unit owner is not liable for the motor vehicle or watercraft or any damages to the motor vehicle or watercraft once a wrecker takes possession of the property. The wrecker taking possession of the property must comply with all notification and sale requirements provided in s. 713.78.

Section 2. Subsection (3) is added to section 83.808, Florida Statutes, to read:

83.808 Contracts.—

(3) A facility or unit owner may charge a tenant a reasonable late fee for each period that he or she does not pay rent due under the rental agreement. The amount of the late fee and the conditions for imposing such fee must be stated in the rental agreement or in an addendum to such agreement. For purposes of this subsection, a late fee of $20, or 20 percent of

the monthly rent, whichever is greater, is reasonable and does not constitute a penalty. In addition to late fees, a facility or unit owner may also charge a tenant a reasonable fee for any expenses incurred as a result of rent collection or lien enforcement.

Section 3. Paragraph (c) of subsection (2) of section 713.78, Florida Statutes, is amended to read:

713.78 Liens for recovering, towing, or storing vehicles and vessels.—

(2) Whenever a person regularly engaged in the business of transporting vehicles or vessels by wrecker, tow truck, or car carrier recovers, removes, or stores a vehicle or vessel upon instructions from:

(c) The landlord or a person authorized by the landlord, when such motor vehicle or vessel remained on the premises after the tenancy terminated and the removal is done in compliance with s. 83.806 or s. 715.104; or

she or he shall have a lien on the vehicle or vessel for a reasonable towing fee and for a reasonable storage fee; except that no storage fee shall be charged if the vehicle is stored for less than 6 hours.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 473 Intrusion and Burglar Alarms
SPONSOR(S): Sullivan
TIED BILLS: **IDEN./SIM. BILLS:** SB 822

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Careers & Competition Subcommittee	13 Y, 0 N	Wright	Anstead
2) Commerce Committee		Wright	Hamon

SUMMARY ANALYSIS

Florida requires alarm systems to be installed and monitored by licensed alarm system contractors. Neither Florida Statutes nor the Florida Building Code require alarm system registration. However, some local jurisdictions require alarm systems to be registered in order to provide law enforcement with information in the event an alarm is triggered.

Most alarm system companies monitor alarm systems though central monitoring systems or a central monitoring station. When an alarm is triggered, a signal is generated alerting the monitoring station of an intrusion or emergency. Upon notification that an alarm indicating an intrusion or burglary has been triggered, the monitoring personnel must make verification calls to the premises to confirm that it is not a false alarm prior to contacting a law enforcement agency for dispatch.

However, verification calls are not required if the alarm system has visual or auditory sensors that enable the monitoring personnel to verify the cause of the alarm in real time. If alarm system monitoring personnel can see or hear a break in or other emergency in progress via video or audio monitoring devices, a verification call to the premises is not required and alarm system personnel immediately contact law enforcement.

The bill creates an additional exception to the verification call requirement. Verification calls by alarm system monitoring personnel will no longer be required if the alarm signal is generated from premises used for the storage of firearms and ammunition by a licensed federal firearms manufacturer, importer, or dealer.

The bill does not appear to have a fiscal impact on state or local governments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Alarm Systems, Alarm System Contractors, and Registration

An "alarm system" is defined as "any electrical device, signaling device, or combination of electrical devices used to signal or detect a burglary, fire, robbery, or medical emergency."[1]

Many alarm system contractors install alarm systems that are monitored by a central monitoring system or station (CMS). Generally, a CMS is a facility that receives signals from alarm systems and at which personnel are in constant attendance.[2] In Florida, because they monitor alarm systems, CMSs must be licensed alarm system contractors, subject to regulation and discipline by the Electrical Contractors' Licensing Board under the Florida Department of Business and Professional Regulation.[3]

There is no current state-wide requirement to register any information related to alarm systems, but some local enforcement agencies[4] have implemented alarm system registrations.[5] Local enforcement agencies have varied registration requirements that typically include contact information for the homeowner or occupant registering the alarm system, the alarm contractor, and an emergency contact.[6] Local enforcement agencies differ as to whether the property owner or alarm system contractor is required to register an alarm system.

Failure to register an alarm system may result in a fine on the property owner, alarm system contractor, or both. Not all local enforcement agencies require registration fees, but the fees for those that do vary across the state. Fines for excessive alarms also vary by local enforcement agency. There have been reports that some local enforcement agencies will not dispatch a response team in response to an alarm if the alarm system has not been registered.[7]

Verification Calls

A false alarm is a false intrusion or burglar alarm signal stemming from causes not connected with an intrusion or burglary, such as user error (e.g. inputting incorrect alarm keypad codes), faulty equipment, poor installation, and bad weather. Between 94 and 98 percent of alarm calls are false. Each false alarm requires approximately 20 minutes of two police officers' time. [8]

Most jurisdictions across the country, including Florida, require a CMS to make a first verification call to the premises with an activated alarm system before contacting a law enforcement agency to ensure the alarm signal is not false, which reduces false alarm calls to law enforcement agencies by 75 percent.[9] If

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[1] s. 489.505(1), F.S.
[2] Central Station Alarm Association, ALARM CONFIRMATION, VERIFICATION, AND NOTIFICATION PROCEDURES 4 (2016).
[3] s. 489.505(2), F.S.
[4] A "local enforcement agency" is an agency of local government, a local school board, a community college board of trustees, or a university board of trustees in the State University System with jurisdiction to make inspections of buildings and to enforce the codes which establish standards for design, construction, erection, alteration, repair, modification, or demolition of public or private buildings, structures, or facilities. s. 553.71(5), F.S.
[5] s. 553.7931(1), F.S.
[6] E-mail from Jorge Chamizo, Floridian Partners, FW: HB 779 Alarm System Registration, regarding attachment from Xfinity Home (on file with Business & Professions Subcommittee) (Jan. 15, 2016); List of municipalities serviced by Florida Safeguard, http://floridasafeguard.com/?page_id=123 (last visited Jan. 15, 2016).
[7] *Id.*
[8] Rana Thompson, FALSE BURGLAR ALARMS 7, 9, 11 (2nd ed. 2011).
[9] Security Industry Alarm Coalition, *Consumer Guide to ECV*, http://siacinc.org/docs/Executive%20Overview.pdf (last visited March 14, 2017).

the owner is not successfully contacted by the CMS during the initial call, Florida requires a second call by the CMS to another phone number associated with the premises, which further reduces false alarm calls to law enforcement agencies by 40 percent.[10]

Florida requires verification calling unless the alarm signal has been generated by an alarm system with audio or visual sensors which allow the CMS to verify the alarm signal. If alarm system monitoring personnel can verify an emergency situation via an alarm system that has audio or video equipment, a verification call is not required.

Federal Firearms Licenses and Firearm Theft

Federal law requires a federal firearms license (FFL) if a person is engaged in business as a firearms or ammunition dealer, manufacturer or importer.[11] Florida does not regulate gun shops or firearms dealers.

In 2015, there were 14,800 firearms reported lost or stolen nationwide from FFLs; there were 700 lost or stolen firearms reported in Florida.[12]

Although there are no federal or state security requirements for the storage of unloaded firearms by FFLs,[13] the United States Department of Justice has prepared storage suggestions for FFLs to prevent firearm theft.[14]

Effect of the Bill

The bill makes an exception to the verification calling requirement made in response to an alarm signal. If the alarm signal was generated from a premises used by a FFL for storage of firearms and ammunition, verification calling is not required.

The bill clarifies that the verification call may be made to a telephone number associated with the premises generating the alarm signal.

B. SECTION DIRECTORY:

Section 1 Amends s. 489.529, F.S., to exempt locations used for storage of firearms or ammunition by a federal firearms licenseholder from the verification call requirement.

Section 2 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

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[10] It is estimated by the Florida Alarm Association (FAA) that Florida has seen a 40 percent reduction in false alarm calls since passing the second verification call requirement. Most alarm companies use automated dialing technology to make verification calls, which takes seconds to make. Caitlin Doornbos, *After break-in, gun shop owner seeks alarm law change*, Orlando Sentinel, August 26, 2016, available at http://www.orlandosentinel.com/news/breaking-news/os-gun-shop-alarm-911-20160819-story.html.

[11] United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives, *Types of Federal Firearms Licenses (FFLs)*, https://www.atf.gov/resource-center/types-federal-firearms-licenses-ffls (last visited March 10, 2017).

[12] United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives, *ATF Releases 2015 Federal Firearms License Theft and Loss Report*, https://www.atf.gov/news/pr/atf-releases-2015-federal-firearms-licensee-theft-and-loss-report (last visited March 10, 2017).

[13] *See* s. 790.174, F.S. (The only requirement in Florida for storing firearms is related to loaded firearms which may come into contact with a minor, which must be kept in locked box, in a secured location, or with a trigger lock.)

[14] United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives, SAFETY AND SECURITY INFORMATION FOR FEDERAL FIREARMS LICENSEES 8 (2010).

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may require alarm companies to develop mechanisms to store and relay information about premises used by a FFL for storage of firearms and ammunition.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill does not require FFLs to identify themselves or notify alarm system contactors or companies that they are a FFL nor does the bill require alarm system monitoring companies or stations to maintain such information in a database.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to intrusion and burglar alarms; amending s. 489.529, F.S.; providing an exclusion from the requirement for a verification call prior to alarm dispatch for specified premises; providing an effective date.

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

Section 1. Section 489.529, Florida Statutes, is amended to read:

489.529 Alarm verification calls required.—All residential or commercial intrusion/burglary alarms that have central monitoring must have a central monitoring verification call made to a telephone number associated with the premises generating the alarm signal, prior to alarm monitor personnel contacting a law enforcement agency for alarm dispatch. The central monitoring station must employ call-verification methods for the premises generating the alarm signal if the first call is not answered. However, ~~if the intrusion/burglary alarms have properly operating visual or auditory sensors that enable the monitoring personnel to verify the alarm signal,~~ verification calling is not required if:

(1) The intrusion/burglary alarm has a properly operating visual or auditory sensor that enables the monitoring personnel

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

to verify the alarm signal; or

(2) The intrusion/burglary alarm is installed on a premises that is used for the storage of firearms or ammunition by a person who holds a valid federal firearms license as a manufacturer, importer, or dealer of firearms or ammunition.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 635 Florida Wing of the Civil Air Patrol
SPONSOR(S): Local, Federal & Veterans Affairs Subcommittee; Combee and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 370

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	14 Y, 0 N, As CS	Renner	Miller
2) Commerce Committee		Sarsfield AS	Hamon K.W.H.
3) Government Accountability Committee			

SUMMARY ANALYSIS

The Civil Air Patrol (CAP) is a nonprofit, congressionally chartered corporation whose primary missions include search and rescue, disaster relief, humanitarian services, air force support, and counterdrug operations.

The CAP serves as an auxiliary of the U.S. Air Force (USAF). In 2015, the USAF expanded its description of total force to include regular, Guard, Reserve, civilian, and auxiliary members. Despite its inclusion in the total force of the USAF, members of the CAP are considered civilians and do not have any obligation to any branch of the military. Subsequently, members of the CAP do not qualify for most federal programs created to provide benefits for or protect the rights of servicemembers.

The Florida Wing (FLWG) of the CAP is an organization composed of citizens who volunteer and contribute their time, skill, facilities, and equipment from time to time to public safety and defense, to promote the education, health, welfare, peace, and safety of the citizens of this state. In addition to the fundamental operations of the CAP, the FLWG also provides light transport services, aerial photography, and communications capabilities in the form of amateur radio operations.

The bill provides employment protections for a member of the FLWG of the CAP who is absent from his or her place of employment due to service or training with the CAP. Specifically, the bill:

- Requires employers to provide unpaid leave to an employee engaged in CAP service or training;
- Prohibits the termination of an employee who is absent from work due to CAP service or training, except for cause;
- Entitles an employee returning to work following a period of CAP service or training to certain seniority rights; and
- Authorizes a cause of action for a member of the FLWG of the CAP who is affected by a violation of a provision in the bill.

The bill may have an indeterminate fiscal impact on the Department of Management Services for upgrading its personnel system to implement the additional time sheet accounting metric for Civil Air Patrol Leave. The bill does not appear to have a fiscal impact on local governments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Civil Air Patrol

The Civil Air Patrol (CAP) is a nonprofit, congressionally chartered corporation[1] created in 1946 with the purpose to:

- Encourage and aid citizens of the United States in contributing their efforts, services, and resources in developing aviation and in maintaining air supremacy;
- Encourage and develop by example the voluntary contribution of private citizens to the public welfare;
- Provide aviation education and training to its members;
- Encourage and foster civil aviation in local communities;
- Provide an organization of private citizens with adequate facilities to assist in meeting local and national emergencies; and
- Assist the Department of the Air Force in fulfilling its noncombat programs and missions.[2]

Pursuant to its charter, the CAP serves as an auxiliary of the U.S. Air Force (USAF). In 2015, the USAF expanded its description of total force[3] to include regular, Guard, Reserve, civilian, and auxiliary members.[4] Despite its inclusion in the total force of the USAF members of the CAP are considered civilians and do not have any obligation to any branch of the military.[5] Subsequently, members of the CAP do not qualify for most federal programs created to provide benefits for or protect the rights of servicemembers.

Members of the CAP are either cadet or senior members. Cadets are generally under the age of 18 and participate in a 16-step program that includes aerospace education, leadership training, physical fitness, and moral leadership.[6] Cadets compete for academic scholarships to further their studies in fields such as engineering, science, aircraft mechanics, aerospace medicine, meteorology, as well as many others.[7]

Senior members of the CAP either perform tactical operations or provide support for the CAP's primary missions of search and rescue, disaster relief, humanitarian services, air force support, and counterdrug operations.[8] The CAP is the primary resource of the Air Force Rescue Coordination

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[1] Organizations chartered by Congress have a patriotic, charitable, historical, educational, or other purpose. Chartering does not make the organizations "agencies of the United States," confer any powers of a governmental character, or assign any benefits. The attraction for national organizations is that it tends to provide an "official" endorsement to their activities and, to that extent, it may provide them prestige and indirect financial benefit. See Congressional Research Service, *Congressionally Chartered Nonprofit Organizations ("Title 36 Corporations"): What They Are and How Congress Treats Them,* pg. 5 (April 8, 2004), https://digital.library.unt.edu/ark:/67531/metacrs7367/m1/1/high_res_d/RL30340_2004Apr08.pdf (last visited Feb. 21, 2017).

[2] 36 U.S.C. §40302 (2000).

[3] Total force is the summation of all resources and personnel available to the U.S. Air Force.

[4] U.S. AIR FORCE, *Civil Air Patrol joins total force 'Airmen'* (Aug. 28, 2015), http://www.af.mil/News/ArticleDisplay/tabid/223/Article/615251/civil-air-patrol-joins-total-force-airmen.aspx (last visited Feb. 21 2017); *see also* http://www.gocivilairpatrol.com/how_to_join/adults_faq/ (last visited Feb. 21, 2017).

[5] CIVIL AIR PATROL, *FAQs for Adults, Am I considered a member of the military?*, http://www.gocivilairpatrol.com/how_to_join/adults_faq/ (last visited Feb. 21, 2017).

[6] CIVIL AIR PATROL, *Cadet Programs*, http://www.gocivilairpatrol.com/about/civil_air_patrols_three_primary_missions/cadet-programs/ (last visited Feb. 21, 2017).

[7] *Id.*

[8] Civil Air Patrol, *Emergency Services*, http://www.gocivilairpatrol.com/about/civil_air_patrols_three_primary_missions/emergency-services/ (last visited February 21, 2017).

Center[9] and performs approximately 75 percent of all aerial search activity in the inland area of the 48 continental United States.[10]

The CAP is divided into 52 wings geographically defined by state lines, Puerto Rico, and the District of Columbia.[11] Each wing is housed within one of six regions as part of the national command structure.[12] Subordinate units of the CAP are divided into groups and further organized into squadrons and flights.[13]

Florida Wing of the Civil Air Patrol

The Florida Wing (FLWG) of the CAP was recognized in Florida Statutes in 1974 as an organization composed of citizens who volunteer and contribute their time, skill, facilities, and equipment from time to time to public safety and defense, to promote the education, health, welfare, peace, and safety of the citizens of this state.[14] In addition to the fundamental operations of the CAP, the FLWG also provides light transport services, aerial photography, and communications capabilities in the form of amateur radio operations.[15]

There are approximately 3,306 members of the FLWG to include 1,460 cadets and 1,846 senior members active in seven groups statewide.[16] During federal fiscal year 2015-16, the FLWG executed 290 training and actual missions totaling 5,912 flying hours and completed 179,169 miles of driving in support of CAP missions and programs.[17]

Pursuant to s. 252.55, F.S., the FLWG is eligible to receive state appropriations administered by the Florida Division of Emergency Management (FDEM). The FLWG initially received $50,000 per annum of general revenue beginning in 1974 and ending when the provision was repealed from the Florida Statutes in 1996.[18] The FDEM continued to issue payments to the FLWG each fiscal year following the repeal. Since fiscal year 2009-10, the FDEM has paid $49,500 per annum to the FLWG. These funds are to be used for the purpose of acquisition, installation, conditioning, and maintenance of the FLWG.[19]

Uniformed Services Employment and Reemployment Rights Act

The Uniformed Services Employment and Reemployment Rights Act[20] (USERRA) is a Federal law enacted in 1994 that intends to ensure that persons who serve or have served in the U.S. Armed Forces, U.S. Reserves, National Guard, or other uniformed services[21] are:

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[9] *See* CONR-1AF (AFNORTH), *Air Force Rescue Coordination Center*, available at http://www.1af.acc.af.mil/Units/AFRCC.aspx (last visited Feb. 21, 2017). The Air Force Rescue Coordination Center is the United States' inland search and rescue coordinator. It is the single agency responsible for coordinating on-land federal search and rescue activities in the 48 contiguous United States, Mexico, and Canada.

[10] AIR COMBAT COMMAND, *SAR Agencies*, http://www.acc.af.mil/AboutUs/FactSheets/Display/tabid/5768/Article/199165/sar-agencies.aspx (last visited Feb. 21, 2017).

[11] Florida Wing, *Information, Florida Wing,* http://www.flwg.us/Information.aspx (last visited Feb. 21, 2017).

[12] *Id.*

[13] *Id.*

[14] Ch. 74-333, Laws of Fla. (Creating s. 252.33, F.S., effective July 1, 1974).

[15] FLWG, *Information, CAP's Missions,* http://www.flwg.us/Information.aspx (last visited Feb. 21, 2017).

[16] FLWG, *Memorandum for the Florida State Legislature*, provided on February 21, 2017 (on file with Local, Federal & Veteran Affairs Subcommittee staff).

[17] *Id.*

[18] s. 13 of Ch. 96-423, Laws of Fla.

[19] s. 252.55(2), F.S.

[20] 38 U.S.C. §4301 et seq.

[21] *See* 38 U.S.C. §4303 (2016). The term "uniformed services" means the Armed Forces, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the Public Health Service, System members of the National Urban Search and Rescue Response System during a period of appointment into Federal service under section 327 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, and any other category of persons designated by the President in time of war or national emergency.

- Not disadvantaged in their civilian careers because of their service;
- Promptly reemployed in their civilian jobs upon their return from duty; and
- Not discriminated against in employment based on past, present, or future military service.[22]

The provisions of USERRA apply to all public, private, and government employers in the U.S., foreign employers doing business in the U.S., and U.S. companies operating in foreign countries.[23] Employers are prohibited from denying initial employment, reemployment, retention in employment, promotion, or any benefit of employment to an individual on the basis of his or her military service.[24] USERRA also protects individuals from retaliation by an employer in the event he or she takes action to enforce a protection afforded under the law.[25]

Any person whose absence from a position of employment due to service in the uniformed services is entitled to the protections under USERRA if:[26]

- The person has given advance written or verbal notice of such service to such person's employer;
- The cumulative length of absence and of all previous absences from a position of employment with that employer by reason of service in the uniformed services does not exceed five years; and
- The person reports to, or submits an application for reemployment to, such employer.

An employer is not required to reemploy a person protected under USERRA if:[27]

- The employer's circumstances have so changed as to make such reemployment impossible or unreasonable;
- In the case of a person entitled to reemployment, such employment would impose an undue hardship on the employer; or
- The employment from which the person leaves to serve in the uniformed services is for a brief, non-recurrent period and there is no reasonable expectation that such employment will continue indefinitely or for a significant period.

A member of the uniformed services who claims they were denied their rights may file a complaint, in writing, with the Secretary of the U.S. Department of Veterans Affairs.[28] If the Secretary determines that the action alleged in the complaint occurred, then the Secretary shall initiate the statutory procedure for resolving the complaint.[29] It is then the burden of the employer to prove that the dismissal of the complainant was within the rights afforded to the employer by USERRA.[30]

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[22] EMPLOYER SUPPORT OF THE GUARD AND RESERVE, *What is USERRA*, http://www.esgr.mil/USERRA/What-is-USERRA.aspx (last visited Feb. 21, 2017).
[23] EMPLOYER SUPPORT OF THE GUARD AND RESERVE, *Frequently Asked Questions: What employees are covered by USERRA?*, http://www.esgr.mil/USERRA/Frequently-Asked-Questions.aspx (last visited Feb. 21, 2017).
[24] EMPLOYER SUPPORT OF THE GUARD AND RESERVE, *Frequently Asked Questions: Can an employer discriminate based on past or present military service?*, http://www.esgr.mil/USERRA/Frequently-Asked-Questions.aspx (last visited Feb. 22, 2017).
[25] *Id.*
[26] 38 U.S.C. §4312 (2015).
[27] *Id.*
[28] 38 U.S.C. §4322 (2008).
[29] *See* 38 U.S.C. §4323-4325.
[30] *See supra* note 26.

Employment Protections for National Guard Members on State Active Duty

Members of the National Guard who do not qualify for the protections offered by USERRA are provided similar rights when ordered into state active duty pursuant to ch. 250, F.S., or into active duty as defined by the law of any other state. Florida Statutes defines "state active duty" as:

> "Full-time duty in active military service of the State of Florida when ordered by the Governor or Adjutant General...to preserve the public peace, execute the laws of the state, suppress insurrection, repel invasion, enhance security and respond to terrorist threats or attacks, respond to an emergency...or to imminent danger of an emergency, enforce the law, carry out counter-drug operations, provide training, provide for the security of the rights or lives of the public, protect property, or conduct ceremonies."[31]

Section 250.482(1), F.S., provides that an employer[32] may not discharge, reprimand, or in any other way penalize such member because of his or her absence by reason of state active duty.[33] Furthermore, a member of the National Guard who returns to work after serving on state active duty may not be discharged from such employment for a period of one year after the date the member returns to work, except for cause.[34]

An employer may not require any National Guard member returning to employment following a period of state active duty to use vacation, annual, compensatory, or similar leave for the period during which the member was ordered into state active duty.[35] However, any returning member may request to use such leave as pay for the period in which he or she was ordered into state active duty.[36]

An employer is not required to allow a member of the National Guard to return to work if able to prove that:[37]

- The employer's circumstances have so changed as to make employment impossible or unreasonable;
- Employment would impose an undue hardship on the employer;
- The employment from which the member of the National Guard leaves to serve in state active duty is for a brief, non-recurrent period and there is no reasonable expectation that such employment will continue indefinitely or for a significant period; or
- The employer had legally sufficient cause to terminate the member of the National Guard at the time he or she left for state active duty.

Effect of Proposed Changes

The bill defines the following terms:

"Benefits" means all benefits, other than salary and wages, provided or made available to employees by an employer and includes group life insurance, health insurance, disability insurance, and pensions, regardless of whether such benefits are provided by a policy or practice of the employer.

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[31] s. 250.01(21), F.S.
[32] s. 250.482(1), F.S., defines an employer as a public or private employer, or an employing or appointing authority of this state, its counties, school districts, municipalities, political subdivisions, career centers, community colleges, or universities.
[33] s. 250.482(1), F.S.
[34] s. 250.482(2)(d).
[35] s. 250.482(2)(e), F.S.
[36] *Id.*
[37] s. 250.482(2)(b), F.S.

"Civil Air Patrol leave" means leave requested by an employee who is a CAP member for the purpose of participating in a Civil Air Patrol training or mission.

"Civil Air Patrol member" means a senior member of the FLWG of the CAP.

"Employee" means any person who may be permitted, required, or directed by an employer in consideration of direct or indirect gain or profit to engage in any employment and who has been employed by the same employer for at least 90 days immediately preceding the commencement of Civil Air Patrol leave. The term does include an independent contractor.

"Employer" means a private or public employer, or an employing or appointing authority of this state, its counties, school districts, municipalities, political subdivisions, career centers, Florida College System institutions, or state universities.

Employment Rights and Limitations

The bill requires an employer with 15 or more employees to provide up to 15 days of unpaid CAP leave annually to an employee who is also a CAP member, subject to certain conditions.

An employer may not require a CAP member returning to employment following CAP leave to use vacation, annual, compensatory, or similar leave. However, such employee is authorized, upon his or her request, to apply any vacation, annual, compensatory or similar leave accrued prior to the commencement of his or her CAP leave towards such leave.

Reemployment Rights and Limitations

The bill prohibits an employer from discharging, reprimanding, or otherwise penalizing a CAP member due to his or her CAP leave. Furthermore, the member may not be discharged from such employment for a period of one year after the date of his or her return to work, except for cause.

An employer is not required to allow a CAP member to return to work upon the completion of CAP leave if the employer can prove that:

- The employer's circumstances have so changed as to make employment impossible or unreasonable;
- Employment would impose an undue hardship on the employer;
- The employment from which the CAP member leaves is for a brief, nonrecurring period and there is no reasonable expectation that such employment will continue indefinitely or for a significant period; or
- The employer had legally sufficient cause to terminate the CAP member at the time he or she left to perform a CAP mission or participate in training.

A CAP member is required to notify their employer of his or her intent to return to work upon the completion of CAP leave. When the CAP member returns to work he or she is entitled to the following:

- The seniority that the member had at his or her place of employment on the date his or her CAP leave began and any other rights and benefits that inure to the member as a result of such seniority; and
- Any additional seniority that the member would have attained at his or her place of employment if he or she had remained continuously employed and any other rights and benefits that inure to the member as a result of such seniority.

Procedures for Assistance, Enforcement, and Investigation

If the wing commander of the FLWG of the CAP certifies that there is probable cause to believe an employer has violated this section, the member may bring a civil action. A civil action against the employer may occur in a court in the county where the employer resides or has his or her principal place of business or in the county where the alleged violation occurred. Upon adverse adjudication, the defendant is liable for actual damages or $500, whichever is greater. The prevailing party is entitled to recover reasonable attorney fees and court costs.

The certification of probable cause may not be issued until the wing commander, or his or her designee, has completed an investigation. All employers and other personnel involved with the subject of such an investigation must cooperate with the wing commander in the investigation.

B. SECTION DIRECTORY:

Section 1: Amends s. 252.55, F.S., relating to the Florida Wing of the Civil Air Patrol.
Section 2: Provides for an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill may require the Department of Management Services to upgrade its personnel system to implement an additional timesheet accounting metric for CAP leave. However, the cost is indeterminate at this time.[38]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

[38] Florida Department of Management Services HB 635 agency analysis. On file with Local, Federal & Veteran Affairs Subcommittee staff.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 8, 2017, the Local, Federal & Veterans Affairs Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Refines the definition of the term "Civil Air Patrol Leave";
- Defines the term "Civil Air Patrol member" in order to clarify that the bill applies only to senior members of the Florida Wing of the Civil Air Patrol; and
- Makes technical changes to apply the defined terms consistently throughout the bill.

This analysis is drafted to the committee substitute as passed by the Local, Federal & Veterans Affairs Subcommittee.

A bill to be entitled

An act relating to the Florida Wing of the Civil Air Patrol; amending s. 252.55, F.S.; defining terms; requiring certain employers to provide Civil Air Patrol leave; prohibiting specified public and private employers from discharging, reprimanding, or penalizing a Civil Air Patrol member because of his or her absence by reason of taking Civil Air Patrol leave; providing procedures for and requirements of employees and employers with respect to Civil Air Patrol leave and employment following such leave; specifying rights and entitlements of a Civil Air Patrol member who returns to work following Civil Air Patrol leave; providing for a civil action; specifying damages; authorizing the award of attorney fees and costs; specifying conditions under which a certification of probable cause of a violation of the act may be issued; providing an effective date.

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

Section 1. Section 252.55, Florida Statutes, is amended to read:

252.55 Civil Air Patrol, Florida Wing.—

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

(a) "Benefits" means all benefits, other than salary and wages, provided or made available to employees by an employer and includes group life insurance, health insurance, disability insurance, and pensions, regardless of whether such benefits are provided by a policy or practice of the employer.

(b) "Civil Air Patrol leave" means leave requested by an employee who is a Civil Air Patrol member for the purpose of participating in a Civil Air Patrol training or mission.

(c) "Civil Air Patrol member" means a senior member of the Florida Wing of the Civil Air Patrol.

(d) "Employee" means any person who may be permitted, required, or directed by an employer, in consideration of direct or indirect gain or profit, to engage in any employment and who has been employed by the same employer for at least 90 days immediately preceding the commencement of Civil Air Patrol leave. The term includes an independent contractor.

(e) "Employer" means a private or public employer, or an employing or appointing authority of this state, a county, a school district, a municipality, a political subdivision, a career center, a Florida College System institution, or a state university.

(2) ~~(1)~~ The Florida Wing of the Civil Air Patrol, an auxiliary of the United States Air Force, is ~~shall be~~ recognized as a nonprofit, educational, and emergency-management-related organization and is ~~shall be~~ eligible to purchase materials from

the various surplus warehouses of the state.

(3) ~~(2)~~ Funds shall be appropriated annually from the Emergency Management, Preparedness, and Assistance Trust Fund for the purpose of acquisition, installation, conditioning, and maintenance of the Florida Wing of the Civil Air Patrol. However, ~~no part of~~ the annual appropriation, or any part thereof, may not ~~shall~~ be expended for the purchase of uniforms or personal effects of members of the organization or for compensation or salary to such members.

(4) ~~(3)~~ The wing commander of the Florida Wing of the Civil Air Patrol may employ administrative help and purchase educational materials for the training of Florida youth for which funds from the annual appropriation may be used.

(5) ~~(4)~~ Purchase of aircraft is ~~shall be~~ limited to not more than $15,000 per year, and not more than $15,000 per year may be placed in a building reserve fund to be used for the ~~toward~~ acquisition of a permanent state headquarters and operations facility.

(6) ~~(5)~~ The wing commander of the Florida Wing of the Civil Air Patrol shall biennially furnish the division a 2-year projection of the goals and objectives of the Civil Air Patrol which shall be reported in the division's biennial report submitted pursuant to s. 252.35.

(7) An employer:

(a) That employs 15 or more employees shall provide up to

15 days of unpaid Civil Air Patrol leave annually to an employee, subject to the conditions in this section.

(b) May not require a Civil Air Patrol member returning to employment following Civil Air Patrol leave to use vacation, annual, compensatory, or similar leave for the period during which the member was on Civil Air Patrol leave. However, any such returning member is, upon his or her request, authorized to use any vacation, annual, compensatory, or similar leave with pay accrued by the member before the commencement of his or her Civil Air Patrol leave.

(c) May not discharge, reprimand, or otherwise penalize a Civil Air Patrol member because of his or her absence by reason of taking Civil Air Patrol leave.

(8)(a) Upon the completion of a Civil Air Patrol leave, the Civil Air Patrol member shall promptly notify the employer of his or her intent to return to work.

(b) An employer is not required to allow a Civil Air Patrol member to return to work upon the completion of his or her Civil Air Patrol leave if:

1. The employer's circumstances have so changed as to make employment impossible or unreasonable;

2. Employment would impose an undue hardship on the employer;

3. The employment from which the member takes such leave is for a brief, nonrecurring period and there is no reasonable

expectation that such employment will continue indefinitely or for a significant period; or

4. The employer had legally sufficient cause to terminate the member at the time he or she commenced such leave.

The employer has the burden of proving any circumstance specified in subparagraphs 1.-4. which served as the employer's basis for not allowing a Civil Air Patrol member to return to work upon completion of Civil Air Patrol leave.

(c) A Civil Air Patrol member who returns to work following his or her Civil Air Patrol leave is entitled to:

1. The seniority that the member had at his or her place of employment on the date his or her leave began and any other rights and benefits that inure to the member as a result of such seniority; and

2. Any additional seniority that the member would have attained at his or her place of employment if he or she had remained continuously employed and any other rights and benefits that would have inured to the member as a result of such seniority.

(d) A Civil Air Patrol member who returns to work following his or her Civil Air Patrol leave may not be discharged from such employment for a period of 1 year after the date the member returns to work, except for cause.

(9) If the wing commander of the Florida Wing of the Civil

Air Patrol certifies that there is probable cause to believe that an employer has violated this section, an aggrieved employee who had taken Civil Air Patrol leave may bring a civil action against the employer in a court in the county where the employer resides or has his or her principal place of business or in the county where the alleged violation occurred. Upon adverse adjudication, the defendant is liable for actual damages or $500, whichever is greater. The prevailing party is entitled to recover reasonable attorney fees and court costs.

(10) The certification of probable cause may not be issued until the wing commander of the Florida Wing of the Civil Air Patrol, or his or her designee, has completed an investigation. All employers and other personnel involved with the subject of such an investigation must cooperate with the wing commander in the investigation.

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

COMMERCE COMMITTEE

HB 635 by Rep. Combee
Florida Wing of the Civil Air Patrol

AMENDMENT SUMMARY
March 22, 2017

Amendment 1 by Rep. Combee (Line 140): The amendment inserts a legislative determination and declaration that there is an important state interest in allowing senior members of the Florida Wing of the Civil Air Patrol to take leave as authorized under s. 252.55, Florida Statutes.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 635 (2017)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Commerce Committee

Representative Combee offered the following:

Amendment (with title amendment)

Between lines 140 and 141, insert:

Section 2. The Legislature finds that a proper and legitimate state purpose is served when allowing senior members of the Florida Wing of the Civil Air Patrol to take Civil Air Patrol leave, as authorized under s. 252.55, Florida Statutes. Therefore, the Legislature determines and declares that this act fulfills an important state interest.

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

Remove line 18 and insert:

act may be issued; providing a declaration of important state interest; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 743 Steroid Use in Racing Greyhounds
SPONSOR(S): Tourism & Gaming Control Subcommittee, Smith and others
TIED BILLS: **IDEN./SIM. BILLS:** HB 113, SB 512

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Tourism & Gaming Control Subcommittee	13 Y, 0 N	Sarsfield	Barry
2) Commerce Committee		Sarsfield AS	Hamon K.W.H.

SUMMARY ANALYSIS

The bill provides that a positive test result for anabolic steroids in a greyhound racing animal results in a violation of law.

The bill does not have a fiscal impact on state or local government.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Greyhound racing in Florida began in 1922, and pari-mutuel wagering on greyhound racing was legalized in 1932.[1] There are currently twelve licensed pari-mutuel greyhound racetracks in Florida, where thousands of greyhounds from around the country participate in races each year.[2] The Division of Pari-Mutuel Wagering (Division) is responsible for regulating pari-mutuel facilities, including protecting the safety and welfare of racing greyhounds. The Division enforces statutes and maintains policies that either limit or prohibit certain medications from being administered to racing greyhounds.

Much of the current law related to the medication and testing of racing animals was adopted in the 1990's. Given the large number of medications that could be used in greyhounds, the Division adopted a rule in 2011 to clarify which medications may or may not be used in connection with greyhound racing.[3]

Among other things, the Division's rule permits "the administration of testosterone or testosterone-like substances, when used for the control of estrus in female racing Greyhounds."[4] According to the Division, rules were adopted with the understanding that trainers use testosterone only to control the amount of estrus[5] in female greyhounds.[6] However, some critics of greyhound racing contend that anabolic steroids are often administered to greyhounds as a performance enhancing medication to the detriment of the animal's well-being.[7] Accordingly, other jurisdictions have prohibited the use of anabolic steroids in racing animals.[8]

In 2015, the statutes were revised to reflect the changing uses of medications and other substances in animal racing.[9] Section 550.2415, F.S., currently prohibits the racing of an animal that has been impermissibly medicated and identifies certain medications or substances that are either prohibited or permitted only under limited circumstances. The statutes authorize the Division to adopt rules specifying acceptable levels of naturally occurring substances, in accordance with standards established by the Association of Racing Commissioners International, Inc. (ARCI).[10] Notably, under the ARCI Model Rules of Racing, "[a]ny usage of anabolic steroids involving racing greyhounds is strictly prohibited at any stage of their training and racing careers."[11] Other drugs and substances are

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[1] *The History of Greyhound Racing*, THE GREYHOUND RACING ASS'N OF AMERICA, INC., http://www.gra-america.org/the_sport/history.html (last visited Mar. 6, 2017).
[2] *See* David Begnaud, *Florida's Greyhound racing may be headed for the finish line*, CBS EVENING NEWS, (Feb. 12, 2016) *http://www.cbsnews.com/news/floridas-greyhound-racing-may-be-headed-for-the-finish-line/* (There are 19 greyhound racetracks in the United States—12 of which are located in Florida).
[3] *See* Rule 61D-6.007, F.A.C., regarding permitted medications for racing greyhounds.
[4] *Id.*
[5] *Estrus*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/estrus, (last visited Mar. 6, 2017) ("a regularly recurrent state of sexual receptivity during which the female of most mammals will accept the male and is capable of conceiving").
[6] *See* Rule 61D-6.007
[7] *See About Dog Racing: Drugs*, GREY2K USA WORLDWIDE, https://www.grey2kusa.org/about/drugs.php (last visited Mar. 6, 2017).
[8] *See* Independent Anti-Doping and Medication Control Review, *Report of Current GBGB Anti-doping and Medication Rules and their Implementation* (London: Greyhound Board of Great Britain, 2010), 24; *see also* Greyhounds Australasia, Greyhounds Australasia Rules (Springvale: Greyhounds Australasia, 2012); New Zealand Greyhound Racing Association, "Categories of Prohibited Substances," Rules and Policies (Lower Hutt: New Zealand Greyhound Racing Association, 2014).
[9] Ch. 2015-88, Laws of Fla.
[10] s. 550.2415(7)(a), F.S.
[11] THE ASS'N OF RACING COMMISSIONERS INT'L, *Model Rules of Racing* 404 (December 9, 2016), https://drive.google.com/file/d/0B2HwTiDKu_FHVTFhTU0yU3pmT3M/view.

permitted under limited circumstances, such as furosemide to treat exercise-induced bleeding. Vitamins and minerals that do not exceed certain levels are also permitted.

Currently, the following factors are evaluated in determining whether certain substances are prohibited:

- Whether the substance was administered during a specific time frame prior to a race;
- Whether the racing animal is approved or qualified to receive the substance;
- What level of the substance is detected as set by administrative rule; and
- What method of administration was used.

Samples of bodily fluids may be collected from a racing animal immediately before and immediately after it has raced. If racing officials find that impermissible substances have been administered, impermissible levels of substances have been administered, or permissible substances have been administered during prohibited periods before a race, such substances may be confiscated and the racing animal may be prohibited from racing.

The trainer of record for each animal is responsible for the condition of the animals he or she enters into a race, and for securing all prescribed medications, over-the-counter medicines, and natural or synthetic medicinal compounds.

In determining whether a violation has occurred, samples from racing greyhounds collected at racetracks are analyzed by the Division's laboratory. The University of Florida College of Veterinary Medicine Equine Racing Laboratory is currently under annual contract for these services.[12]

If the Division's laboratory finds that the sample contains prohibited substances, the owner or trainer has the right to request another analysis be done on the retained portion by an independent laboratory. If the independent laboratory's analysis confirms the finding made by the Division laboratory, administrative disciplinary proceedings may be pursued against the owner or trainer. However, if the results cannot be confirmed by an independent laboratory, a greyhound owner or trainer may still be prosecuted based on the original positive test result from the Division's laboratory. This is due to difficulties in collecting a sufficient amount of sample from a greyhound for the independent laboratory analysis.

Effect of Proposed Changes

The bill modifies s. 550.2415, F.S., related to the prohibition of racing greyhounds under certain conditions, making it a violation for a greyhound to test positive for anabolic steroids before or after a race. Licensees responsible for a racing greyhound are held in violation if illegal substances are found, whether or not the actual perpetrator is known.

The bill maintains existing procedures for determining violations. The bill provides that if a racing greyhound tests positive for anabolic steroids, administrative sanctions set forth in current law may apply. The licensee's license can be suspended or revoked or the licensee may be fined. The maximum fine for violations is $10,000 or the amount of the purse, whichever is greater. The deadline for the initiation of administrative disciplinary proceedings is 90 days from the date the violation was committed. Any affected licensee would have the same due process rights, including the opportunity for a hearing, which law currently affords for alleged violations under s. 550.2415, F.S.

[12] *See Veterinary Diagnostic Laboratories*, UF LARGE ANIMAL HOSPITAL, COLLEGE OF VETERINARY MEDICINE, http://largeanimal.vethospitals.ufl.edu/services/veterinary-diagnostic-laboratories/ (last visited Mar. 6, 2017).

B. SECTION DIRECTORY:

Section 1 amends s. 550.2415, F.S., making it a violation for a racing greyhound to have anabolic steroids present in the bloodstream resulting in a positive test based on samples taken either before or immediately after the racing of that greyhound.

Section 2 provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill does not have a fiscal impact on state or local government.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 8, 2017, the Tourism and Gaming Control Subcommittee considered a Proposed Committee Substitute for HB 743. The committee substitute made one title change to HB 743, replacing "An act relating to greyhound racing" with "An act relating to steroid use in racing greyhounds." The committee substitute was reported favorably. The analysis is drafted to the committee substitute.

A bill to be entitled

An act relating to steroid use in racing greyhounds; amending s. 550.2415, F.S.; providing that a positive test result for anabolic steroids in a greyhound results in a violation; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) of section 550.2415, Florida Statutes, is amended to read:

550.2415 Racing of animals under certain conditions prohibited; penalties; exceptions.—

(1)(a) The racing of an animal that has been impermissibly medicated or determined to have a prohibited substance present is prohibited. It is a violation of this section for a person to impermissibly medicate an animal or for an animal to have a prohibited substance present resulting in a positive test for such medications or substances based on samples taken from the animal before or immediately after the racing of that animal. <u>It is a violation of this section for a greyhound to have anabolic steroids present resulting in a positive test for such steroids based on samples taken from the greyhound before or immediately after the racing of that greyhound.</u> Test results and the identities of the animals being tested and of their trainers and owners of record are confidential and exempt from s. 119.07(1)

and from s. 24(a), Art. I of the State Constitution for 10 days after testing of all samples collected on a particular day has been completed and any positive test results derived from such samples have been reported to the director of the division or administrative action has been commenced.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 805 Insurance Policy Transfers
SPONSOR(S): Insurance & Banking Subcommittee; Ingoglia
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 812

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	15 Y, 0 N, As CS	Peterson	Luczynski
2) Appropriations Committee	26 Y, 0 N	Helpling	Leznoff
3) Commerce Committee		Peterson KP	Hamon K.W.H.

SUMMARY ANALYSIS

Insurance companies writing commercial lines insurance policies may transfer commercial policies to a different Florida licensed insurance company that is a member of the same insurance group or owned by the same holding company as the first insurer. A commercial policy that is transferred under current law is considered a renewal policy, rather than a cancellation, nonrenewal, or termination. The insurer must provide notice of intent to transfer at least 45 days in advance along with the financial rating of the authorized insurer to which the policy is being transferred.

Insurance companies that write personal lines residential and commercial residential policies, except for certain farmowners policies, are not authorized to use this procedure. Instead, the insurer must first cancel, nonrenew, or terminate residential policies and meet current law applicable to cancellations, nonrenewal, or terminations, including a requirement to provide notice 120 days in advance of the action.

The bill allows the transfer of a personal lines residential or commercial residential policy as a renewal. The bill provides certain conditions to protect a policyholder when a policy is being transferred.

The bill does not appear to have a fiscal impact on state or local government.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Nonrenewal Notice for Property Insurance

Under current law, insurers writing personal lines residential[1] or commercial lines residential[2] property insurance must give policyholders a notice of cancellation, nonrenewal, or termination at least 120 days prior to the effective date of the cancellation, nonrenewal, or termination.[3] An insurer writing most other property and casualty policies must give policyholders at least 45 days written notice of nonrenewal.[4]

Transfer of Insurance Policies

Insurance companies writing commercial lines[5] insurance policies may transfer commercial policies to a different Florida licensed insurance company that is a member of the same insurance group or owned by the same holding company as the first insurer. A commercial policy that is transferred under current law is considered a renewal policy, rather than a cancellation, nonrenewal, or termination. The insurer must provide notice of intent to transfer at least 45 days in advance along with the financial rating of the authorized insurer to which the policy is being transferred.

Insurance companies that write personal lines residential and commercial residential policies, other than specified farmowners insurance policies, are not authorized to use this procedure.[6] Instead, the insurer must first cancel, nonrenew, or terminate residential policies and meet current law applicable to cancellations, nonrenewal, or terminations, including the 120-day advance notice requirement.

Effect of the Bill on Transfers of Residential Insurance Policies

The bill allows the transfer of a personal lines residential or commercial residential policy as a renewal, provided certain procedures are satisfied. The company to which the policy is being transferred must be admitted in Florida and other states and presently writing residential property insurance. The Office of Insurance Regulation (OIR) must have determined that the financial position of the receiving company is at least as sound as the transferring company; the transfer results in substantially similar coverage; and the transfer is made on a nondiscriminatory basis. Additionally, the OIR must approve the transfer. The receiving company must provide the policyholder with a notice of change in policy terms that complies with s. 627.43141, F.S., which must also include notice of the policy transfer and the authorized insurer's financial rating. Section 627.43141, F.S., requires the insurer to give at least 45-days' prior notice of the change to both the policyholder and his or her agent. The practical effect of the bill is to allow transfers of residential policies between insurers that are members of the same insurance group or owned by the same holding company without requiring that the policy be cancelled or nonrenewed. Transfers of farmowners insurance are not subject to the additional procedures and remain subject only to the procedures applicable to transfers of non-residential commercial policies.

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[1] Personal lines residential policies include homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners, and similar policies.
[2] Commercial residential policies include condominium association, apartment building, and homeowner's association policies.
[3] s. 6274133(2)(b), F.S.
[4] s. 6274133(1)(a), F.S.
[5] Commercial lines insurance is insurance designed for and bought by a business to cover losses sustained by the business. INSURANCE INFORMATION INSTITUTE, *Glossary,* http://www.iii.org/services/glossary/c? (last visited Feb. 28, 2017). Some commercial insurance, such as workers' compensation insurance, is required to be bought by the business. (Generally, non-construction businesses employing four or more employees have to buy workers' compensation insurance. A construction business must buy workers' compensation insurance if the business has one or more employees).
[6] s. 627.4133(8), F.S.

B. SECTION DIRECTORY:

Section 1: amends s. 627.4133, F.S., relating to notice of cancellations, nonrenewal, or renewal premium.

Section 2: provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill requires the OIR to confirm that receiving insurers have the same or better financials than the transferring insurers, and to approve any transfers of residential properties to related companies. It is not known how many companies may utilize the procedure, thus how many policies the OIR may be asked to review and approve for transfer. The OIR's primary role under the bill is to approve the financials of the receiving insurer, to confirm that policy coverages are comparable, and to confirm that policies are selected for transfer in a nondiscriminatory fashion. Thus, it does not appear the bill will have a significant fiscal impact to the OIR.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill should decrease the administrative costs of insurers who wish to consolidate coverage from a subsidiary company to its parent corporation. The bill allows a simpler procedure that is less likely to result in a loss of business because it permits the transfer without first cancelling or nonrenewing policies. Because the bill requires the transfer to be approved by the OIR and to be made to a company whose financials meet or exceed those of the transferring insurer, it is not likely the policyholders will be negatively affected by the changes.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 7, 2017, the Insurance & Banking Subcommittee considered and adopted one amendment and reported the bill favorably as a committee substitute. The amendment changed the term "affiliated insurer" to "authorized insurer" and the term "insured" to "policyholder" to make the terminology internally consistent; revised the notice requirements to clarify scope and responsibility for providing same; and eliminated duplicative language.

This analysis is drafted to the committee substitute as passed by the Insurance & Banking Subcommittee.

A bill to be entitled

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

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

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

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

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

renewal premium. This subsection does not apply to a policy providing personal lines residential or commercial residential property insurance coverage, except for farmowners insurance, unless:

(a) The authorized insurer to which the policy is being transferred is admitted and writing residential property insurance in other states and has been determined by the office to have the same or better financial strength than the transferring insurer;

(b) The transfer results in substantially similar coverage;

(c) The authorized insurer to which the policy is being transferred provides a notice of change in policy terms to the policyholder in compliance with s. 627.43141, which must also include notice of the policy transfer and the authorized insurer's financial rating. Such notice must be provided with the notice of renewal premium. The notice and information provided under this paragraph must be provided to the insured at least 45 days before the effective date of the transfer, and may replace any other notice required by this subsection;

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

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

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

COMMERCE COMMITTEE

CS/HB 805 by Rep. Ingoglia
INSURANCE POLICY TRANSFERS

AMENDMENT SUMMARY
March 22, 2017

Amendment 1 by Rep. Ingoglia (Lines 31 - 46): Clarifies that insurers receiving transferred policies must be admitted in Florida and may not convert a policy to a surplus lines policy, and requires that notice be sent 60 days in advance of the transfer, rather than 45 days as currently allowed in the bill.

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Commerce Committee

Representative Ingoglia offered the following:

Amendment

Remove lines 31-46 and insert:

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

(b) The transfer results in substantially similar coverage;

(c) The authorized insurer to which the policy is being transferred provides a notice of change in policy terms to the policyholder in compliance with s. 627.43141, which must also include notice of the policy transfer and the authorized

insurer's financial rating. Such notice must be provided with the notice of renewal premium. The notice and information provided under this paragraph must be provided to the insured at least 60 days before the effective date of the transfer and may replace any other notice required by this subsection;

(d) The policyholder of the policy being transferred has been selected

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 885 Transactions with Foreign Financial Institutions
SPONSOR(S): Trujillo
TIED BILLS: **IDEN./SIM. BILLS:** SB 1482

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	13 Y, 0 N	Hinshelwood	Luczynski
2) Commerce Committee		Hinshelwood	Hamon

SUMMARY ANALYSIS

The Office of Financial Regulation (OFR) charters, licenses, and regulates various entities that engage in financial institution business in Florida. As part of its examination and oversight duties, the OFR also ensures that Florida-chartered financial institutions comply with state and applicable federal requirements for safety and soundness, as well as federal Bank Secrecy Act/anti-money laundering laws and economic and trade sanctions administered by the U.S. Treasury.

The bill imposes certain reporting requirements on a financial institution chartered in this state which maintains a correspondent account or a payable-through account with a foreign financial institution owned by a country under a U.S. Treasury sanctions program. Such a financial institution must, within 5 business days, identify and report the source of every transaction that passes through the foreign correspondent account to the OFR, and certify that the source does not involve any confiscated property, as defined in the Cuban Liberty and Democratic Solidarity Act of 1996.

The bill has an indeterminable fiscal impact on the state. The bill has no impact on local governments and an indeterminable impact on the private sector.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The U.S. Dual Banking System

The U.S. dual banking system allows commercial banks to become chartered (organized) under either federal or state law.

- National banks are chartered under federal law, i.e., the National Bank Act.[1] Their primary federal regulator is the Office of the Comptroller of the Currency (OCC), an independent agency within the U.S. Department of the Treasury (U.S. Treasury).
- State-chartered banks are chartered under the laws of the state in which the bank is headquartered.
  - The primary federal regulator for state banks that are members of the Federal Reserve System is the Board of Governors of the Federal Reserve System (FRB).
  - The primary federal regulator for non-members is the Federal Deposit Insurance Corporation (FDIC).[2]

In addition to having a federal regulator, state-chartered banks are regulated by their chartering state. In Florida, the state regulatory agency for financial institutions is the Office of Financial Regulation (OFR).[3] The OFR's Division of Financial Institutions charters, licenses, and regulates various entities that engage in financial institution business in Florida, in accordance with the financial institutions codes (Codes) and the rules promulgated thereunder.[4] The OFR also ensures that Florida-chartered financial institutions comply with state and applicable federal requirements for safety and soundness.[5] The OFR does not regulate federally chartered financial institutions or financial institutions chartered by other states.

Competitive Equality

The Codes contain a unique provision that ensures competitive equality for Florida-chartered financial institutions with their nationally-chartered counterparts. If a state law places a Florida-chartered financial institution at a competitive disadvantage with their nationally chartered counterparts, the Codes authorizes the OFR to grant Florida-chartered financial institutions the authority to make any loan or investment or exercise any power which they could make or exercise as if they were nationally

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[1]The National Bank Act of 1964 (12 U.S.C. § 24 Seventh) gives enumerated powers and "all such incidental powers as shall be necessary to carry on the business of banking" to nationally chartered banks. To prevent inconsistent or intrusive state regulation from impairing the national system, Congress provided: "No national bank shall be subject to any visitorial powers except as authorized by Federal law." *Id.* at § 484(a).

[2]12 U.S.C. § 1813(q).

[3]s. 20.121(3)(a)2., F.S.

[4]Chs. 655, 657, 658, 660, 662, 663, 665, and 667, F.S.; chs. 69U-100 through 69U-162, F.A.C.

[5]While the Codes do not specifically define "safety and soundness," the Codes define "unsafe and unsound practice" as "any practice or conduct found by the office to be contrary to generally accepted standards applicable to a financial institution, or a violation of any prior agreement in writing or order of a state or federal regulatory agency, which practice, conduct, or violation creates the likelihood of loss, insolvency, or dissipation of assets or otherwise prejudices the interest of the financial institution or its depositors or members. In making this determination, the office must consider the size and condition of the financial institution, the gravity of the violation, and the prior conduct of the person or institution involved." *See* s. 655.005(1)(y), F.S. For a discussion of the FDIC's approach to unsafe or unsound practices, see FDIC's Risk Management Manual of Examination Policies, Section 15.1, at: https://www.fdic.gov/regulations/safety/manual/section15-1.pdf (last visited Mar. 11, 2017).

chartered, and provides they are entitled to the same privileges and protections granted to their national counterparts.[6] In addition, this provision states:

> In issuing an order or rule under this section, the office or commission shall consider the importance of maintaining a competitive dual system of financial institutions and whether such an order or rule is in the public interest.[7]

Regulations Relating to Financial Transactions

Federal Bank Secrecy Act/Anti-Money Laundering Regulations (BSA/AML) Relating to Correspondent Accounts, Payable-Through Accounts, and Foreign Financial Institutions Under U.S. Treasury Sanctions

The Financial Crimes Enforcement Network (FinCEN) is a bureau within the U.S. Treasury whose mission is to safeguard the financial system from illicit use and combat money laundering and promote national security through the collection, analysis, and dissemination of financial intelligence and strategic use of financial authorities.[8] FinCEN administers the federal Currency and Foreign Transactions Reporting Act of 1970 (commonly referred to as the "Bank Secrecy Act" or "BSA"), which requires U.S. financial institutions to assist U.S. government agencies to detect and prevent money laundering. The BSA was amended by the USA PATRIOT Act of 2001 to include additional measures to prevent, detect, and prosecute terrorist-related activities and international money laundering.

BSA/AML programs are an important component of safety and soundness supervision, "due to the reputational, regulatory, legal, and financial risk exposure to a bank involved in money laundering schemes or willfully violating the BSA statute."[9]

The BSA requires all U.S. financial institutions to maintain comprehensive risk management and AML compliance programs, including:

- Maintaining risk management policies and procedures, namely, "Know Your Customer" (KYC), Customer Due Diligence (CDD), and Customer Identification Programs (CIPs);
- Keeping records of cash purchases of negotiable instruments;
- Filing reports of cash transactions exceeding $10,000 (daily aggregate amount);
- Designating a BSA compliance officer and training programs for the financial institution's employees; and
- Reporting suspicious activity that might signify money laundering, terrorist financing, tax evasion, or other criminal activities. FinCEN regulations provide that banks must file a suspicious activity report (SAR) if it involves at least $5,000, and the bank knows, suspects, or has reason to suspect that the transaction involves funds derived from illegal activities, is intended or conducted in order to hide or disguise funds or assets derived from illegal activities, is designed to evade BSA or other regulatory requirements, or has no business or apparent lawful purpose.

Some examples of potentially suspicious activity are:

- A customer uses unusual or suspicious identification documents that cannot be readily verified.
- Funds transfer activity occurs to or from a financial institution located in a higher risk jurisdiction distant from the customer's operations.
- The currency transaction patterns of a business show a sudden change inconsistent with normal activities.
- Goods or services purchased by the business do not match the customer's stated line of business.

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[6] s. 655.061, F.S.
[7] *Id.*
[8] FinCEN, *Mission*, https://www.fincen.gov/about/mission (last visited Mar. 11, 2017).
[9] FEDERAL DEPOSIT INSURANCE CORPORATION, *Bank Secrecy Act Examination Program Overview*, https://www.fdic.gov/regulations/examinations/bsa/index.html (last visited Mar. 11, 2017).

- Customers conducting business in higher-risk jurisdictions.
- Official embassy business conducted through personal accounts.
- Multiple accounts are used to collect and funnel funds to a small number of foreign beneficiaries, both persons and businesses, particularly in higher-risk locations.[10]

Federal and state banking regulators oversee BSA/AML recordkeeping and reporting requirements as part of their examination duties. In addition, if the U.S. Treasury finds "reasonable grounds" exist for concluding that a non-U.S. jurisdiction or any financial institution operating outside of the U.S. is of "primary money laundering concern," the U.S. Treasury may subject U.S. financial institutions to special measures, including prohibitions or conditions on opening or maintaining certain correspondent or payable-through accounts.[11] The BSA/AML requires U.S. financial institutions to take certain customer identification and due diligence measures regarding correspondent and payable-through accounts, if the U.S. Treasury determines transactions that involve jurisdictions outside of the U.S. to be of "primary money laundering concern."[12] Further, financial institutions in the U.S. are required to have enhanced due diligence procedures for a correspondent account that is established, maintained, administered, or managed in the U.S. for a foreign bank.[13]

FinCEN has estimated that there are approximately 300 financial institutions in the U.S. that provide correspondent banking services to foreign financial institutions. Correspondent banking is essential to the U.S. and international financial systems by facilitating transactions critical for remittances, economic development, and trade finance. However, the complexity of these relationships (particularly in the intermediate layers) and the typical lack of relationship with the payment originator raises significant risks and customer due diligence obligations that some correspondent accounts can be exploited to facilitate illegal proceeds through the U.S.[14]

Florida Control of Money Laundering in Financial Institutions Act

The Florida Control of Money Laundering in Financial Institutions Act incorporates federal BSA/AML recordkeeping and reporting requirements for Florida-chartered financial institutions, and sets forth administrative remedies, criminal sanctions, and civil money penalties that are enforced by the OFR.[15]

In 2014, the Legislature amended the Florida Control of Money Laundering in Financial Institutions Act to include the BSA/AML provisions relating to terrorist financing, as enacted by the USA PATRIOT Act of 2001. The legislation also added language requiring Florida-chartered financial institutions to have a BSA/AML compliance officer who is responsible for the institution's BSA/AML policies and procedures. Further, it adds that the financial institution's board of directors is responsible for the efficacy of the BSA/AML program.

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[10]Federal Financial Institutions Examination Council, *Bank Secrecy Act/Anti-Money Laundering Examination Manual, Appendix F: Money Laundering and Terrorist Financing "Red Flags,"* https://www.ffiec.gov/bsa_aml_infobase/pages_manual/OLM_106.htm (last visited Mar. 11, 2017).

[11]31 U.S.C. §5318A(e)(1)(B) and (C) define "correspondent account" and "payable-through account" as:
"Correspondent account" means an account established to receive deposits from, make payments on behalf of a foreign financial institution, or handle other financial transactions related to such institution.
"Payable-through account" means an account, including a transaction account (as defined in section 19(b)(1)(C) of the Federal Reserve Act), opened at a depository institution by a foreign financial institution by means of which the foreign financial institution permits its customers to engage, either directly or through a subaccount, in banking activities usual in connection with the business of banking in the United States.

[12]31 U.S.C. § 5318A(b).

[13]31 C.F.R. § 1010.610.

[14]U.S. Department of the Treasury, *2015 National Money Laundering Risk Assessment*, pp. 40-41.

[15]s. 655.50, F.S.

State Regulations for Correspondent Accounts, Payable-Through Accounts, and Transactions Relating to Iran or Terrorism

Section 655.968, F.S, requires that a financial institution chartered in this state which maintains a correspondent account or a payable-through account with a foreign financial institution must establish due diligence policies, procedures, and controls reasonably designed to detect whether the United States Secretary of the Treasury has found that the foreign financial institution knowingly:

(a) Facilitates the efforts of the Government of Iran, including efforts of Iran's Revolutionary Guard Corps, to acquire or develop weapons of mass destruction or their delivery systems;
(b) Provides support for an organization designated by the United States as a foreign terrorist organization;
(c) Facilitates the activities of a person who is subject to financial sanctions pursuant to a resolution of the United Nations Security Council imposing sanctions on Iran;
(d) Engages in money laundering to carry out any activity in this list;
(e) Facilitates efforts by the Central Bank of Iran or any other Iranian financial institution to carry out an activity in this list; or
(f) Facilitates a significant transaction or provides significant financial services for Iran's Revolutionary Guard Corps or its agents or affiliates, or any financial institution, whose property or interests in property are blocked pursuant to federal law in connection with Iran's proliferation of weapons of mass destruction, or delivery systems for those weapons, or Iran's support for international terrorism.

Additionally, each financial institution chartered in this state must annually certify that the financial institution has adopted and substantially complies with the due diligence policies, procedures, and controls required by s. 655.968, F.S., and the rules adopted thereunder,[16] and that to the best knowledge of the financial institution, the financial institution does not maintain a correspondent account or a payable-through account with a foreign financial institution that knowingly engages in any act described above.[17]

Office of Foreign Assets Control (OFAC) and U.S. Sanctions Programs

The Office of Foreign Assets Control is another bureau of the U.S. Treasury that administers and enforces numerous economic and trade sanctions, based on U.S. foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the United States' national security, foreign policy, or economy. These sanctions can be either comprehensive or selective, as well as program-based (e.g., counter narcotics trafficking, counterterrorism, or cyber-related) or geographically targeted, using the blocking of assets and trade restrictions to accomplish foreign policy and national security goals. Currently, the OFAC administers over 20 country-specific sanctions programs, including Cuba.[18]

The OFAC regulations are broad in scope. All U.S. persons (including U.S. citizens and permanent resident aliens regardless of where they are located) and entities within the U.S., all U.S. incorporated entities and their foreign branches must comply with OFAC regulations. This means that all financial institutions, regardless of whether they are federally chartered or state chartered, are also bound. U.S. persons, including U.S. financial institutions, are required to "block" (freeze) targeted property which means that title to the blocked property remains with the target, but the exercise of powers and privileges normally associated with ownership is prohibited without OFAC authorization. Blocking immediately imposes an across-the-board prohibition against transfers or dealings of any kind with

[16] *See* Rule 69U-100.964, F.A.C.
[17] s. 655.968(4), F.S.
[18] For a list of current OFAC sanctions programs, see U.S. DEPARTMENT OF THE TREASURY, *Resource Center: Sanctions Programs and Country Information*, at: https://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx (last visited Mar. 11, 2017).

regard to the property.[19] Every transaction that a U.S. financial institution engages in is subject to OFAC regulations. If a bank knows or has reason to know that a target is party to a transaction, the bank's processing of the transaction would be unlawful.[20]

In addition, OFAC regulations prohibit financial institutions from doing business with specific individuals, groups, and entities that are owned or controlled by, or acting for or on behalf of, targeted countries, known as the Specially Designated Nationals (SDNs) and Blocked Persons List. The OFAC can designate individuals and entities as SDNs and Blocked Persons, regardless of whether their country of residence is listed as a state sponsor of terrorism.

U.S./Cuba Relations and Recent Normalization Policy

In 1917, Congress enacted the Trading With the Enemy Act (TWEA) to empower the President to regulate and embargo trade with foreign nations.[21] To date, the only nation that remains designated as an enemy under TWEA is Cuba. With respect to Cuba, the President has repeatedly exercised the TWEA power through the comprehensive Cuban Assets Control Regulations (CACR regulations), which the U.S. Treasury first adopted in 1963 and enforces through its OFAC. Together, the TWEA and the CACR regulations are the main mechanism of domestic enforcement of the U.S. trade embargo against Cuba.

The CACR regulations define "confiscated property"[22] and prohibits U.S. nationals,[23] permanent resident aliens, and U.S. agencies from knowingly making a loan, extending credit or providing other financing for the purpose of financing transactions involving "confiscated property" the claim to which is owed by a U.S. national, except for financing by a U.S. national owning such a claim for a transaction permitted under U.S. law.[24]

In 1996, Congress enacted the Cuban Liberty and Democratic Solidarity Act ("Libertad Act" or the "Helms-Burton Act"), which continued the embargo against Cuba indefinitely and "effectively suspend[ed]...the requirement that the President revisit the embargo each year."[25] A significant aspect of the Libertad Act is that it creates a private cause of action by which U.S. nationals with claims to "confiscated property" in Cuba may file suit in U.S. courts against persons that may be "trafficking" in that property. However, no suits have ever been filed under this provision because the Libertad Act permits the President of the United States to suspend the provision every six months, an act that every U.S. President has routinely taken.[26] Most recently, on January 4, 2017, former Secretary of State John Kerry notified Congress that President Obama had suspended the lawsuit provision for another six months, effective February 1, the date that the previous six-month suspension expired.[27]

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[19]U.S. DEPARTMENT OF THE TREASURY, *OFAC FAQs: General Questions*, at https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_general.aspx#basic (last visited Mar. 11, 2017).
[20]U.S. DEPARTMENT OF THE TREASURY, *OFAC FAQs: Sanctions Compliance – Additional Questions from Financial Institutions #44 and 45*, https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_compliance.aspx#other_fi (last visited Mar. 11, 2017).
[21]ch. 106, 40 Stat. 411 (1917) (codified as amended at 50 U.S.C. app. §§ 1–6, 7–39, 41–44).
[22]31 C.F.R. §§ 515.311(b) and 515.336.
[23]The term U.S. national generally includes: (1) A subject or citizen of the United States or any person who has been domiciled in or a permanent resident of the United States; (2) A United States partnership, association, corporation, or other organization; (3) Any organization's office or other sub-unit that is located within the United States; (4) Any person to the extent that such person was or has been acting or purporting to act directly or indirectly for the benefit or on behalf of any national of the United States; (5) Any other person who there is reasonable cause to believe is a "national," as so defined. *See* 31 C.F.R. § 515.302.
[24]31 C.F.R. § 515.208.
[25]22 U.S.C. §§ 6021-6091. *See United States v. Plummer*, 221 F.3d 1298, 1308 n.6 (11th Cir. 2000).
[26]22 U.S.C. § 6085(b). *See also* Mimi Whitefield, *One of Obama's parting acts: Suspending lawsuit provision of Helms-Burton*, MIAMI HERALD (Feb. 6, 2017), http://www.miamiherald.com/news/nation-world/world/americas/cuba/article131092324.html (last visited Mar. 11, 2017).
[27]*Id.*

Claims of U.S. nationals against the Cuban government may be certified under Title V of the International Claims Settlement Act of 1949 to the Foreign Claims Settlement Commission, a quasi-judicial, independent agency within the U.S. Department of Justice. Since its inception, the commission has approved nearly $2 billion in awards (excluding accrued interest) for claims against the Cuban government.[28] However, the U.S. has not yet settled these claims with Cuba.[29]

On December 17, 2014, the United States and Cuba announced an agreement to normalize relations, and the White House directed the U.S. Treasury and the U.S. Department of Commerce to amend their regulations to reestablish certain economic development measures such as commercial air travel, telecommunications, business operations in Cuba, and remittances.[30]

Since 1982, the U.S. has listed Cuba on its list of state sponsors of terrorism. On May 29, 2015, the U.S. removed Cuba from that list.[31]

A number of CACR regulations related to financial intuitions have been amended since the announcement of normalization of U.S. relations with Cuba, including:

- January 2015 – The CACR regulations were amended to allow U.S. banks to open correspondent accounts in Cuban banks for authorized transactions, and to permit U.S. travelers to use U.S. debit and credit cards in Cuba.[32] However, the portion of the CACR regulations that now permits a U.S. bank to open a correspondent account in Cuban banks does not authorize the establishment and maintenance of accounts in the U.S. by, on behalf of, or for the benefit of, Cuba or a Cuban national.[33]
- September 2015 – The CACR regulations were amended to allow banking institutions to open and maintain accounts for Cuban individuals for use while the Cuban national is located outside of Cuba, and to allow authorized travelers to open and maintain accounts in Cuba in order to access funds for authorized transactions in Cuba.[34]
- March 2016 – The CACR regulations were amended to allow:
    - U.S. banking institutions to process "u-turn payments" in which Cuba or a Cuban national has an interest. The amendments authorize funds transfers from a bank outside the U.S. that pass through one or more U.S. financial institutions before being transferred to a bank outside the U.S., where neither the originator nor the beneficiary is a person subject to U.S. jurisdiction.[35]
    - U.S. banking institutions to process U.S. dollar monetary instruments, including cash and travelers' checks, presented indirectly by Cuban financial institutions. Additionally, correspondent accounts at third-country financial institutions used for such transactions may now be denominated in U.S. dollars.[36]

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[28]U.S. DEPARTMENT OF JUSTICE, *Foreign Claims Settlement Commission of the U.S.: Completed Programs – Cuba*, https://www.justice.gov/fcsc/claims-against-cuba (last visited Mar. 11, 2017).
[29]*Id.* Recently, the U.S. and Cuba held a second round of talks regarding these FCSC-certified claims as well as claims of the Government of Cuba against the U.S. related to the embargo. Arshad Mohammed & Sarah Marsh, *U.S., Cuba hold 'substantive' second round talks on claims*, REUTERS (July 29, 2016), http://www.reuters.com/politics/article/us-usa-cuba-idUSKCN1091ZV (last visited Mar. 11, 2017).
[30]THE WHITE HOUSE, *Statement by the President on Cuba Policy Changes* (Dec. 17, 2014), at https://www.whitehouse.gov/the-press-office/2014/12/17/statement-president-cuba-policy-changes (last visited Mar. 11, 2017).
[31]Carol Morello, *U.S. takes Cuba off list of state sponsors of terrorism*, WASHINGTON POST (May 29, 2015), https://www.washingtonpost.com/world/national-security/us-takes-cuba-off-list-of-state-sponsors-of-terrorism/2015/05/29/d718493a-0618-11e5-8bda-c7b4e9a8f7ac_story.html?utm_term=.087de2db6f58 (last visited Mar. 11, 2017).
[32]31 C.F.R. § 515.584.
[33]*Id.*
[34]31 C.F.R. §§ 515.560 and 515.585.
[35]31 C.F.R. § 515.584(d).
[36]31 C.F.R. § 515.584(g).

- U.S. banking institutions to open and maintain bank accounts in the U.S. for Cuban nationals in Cuba for the purposes of receiving payments in the United States for authorized or exempt transactions and to remit such payments back to Cuba.[37]

Following the January 2015 amendments to the CACR regulations, a Florida-chartered financial institution, Stonegate Bank (Stonegate), announced an agreement to establish a correspondent banking relationship with Banco Internacional de Comercio S.A. (BICSA), a bank owned by the Cuban government.[38] Stonegate's banking relationship with Cuba includes providing banking services for Cuba's embassy and diplomatic mission in the U.S.[39] Stonegate now offers debit and credit cards for use in Cuba.[40]

Despite developments in the relations between the U.S. and Cuba, due to the significant compliance risks under federal law described previously, financial institutions have generally expressed caution and skepticism in entering this market.[41]

Effect of the Bill

The bill creates s. 655.969, F.S., to impose certain reporting requirements on a financial institution chartered in this state which maintains a correspondent account or a payable-through account with a foreign financial institution owned by a country under a U.S. Treasury sanctions program. Such a financial institution must, within 5 business days, identify and report the source of every transaction that passes through the foreign correspondent account to the OFR, and certify that the source does not involve any confiscated property, as defined in the Cuban Liberty and Democratic Solidarity Act of 1996, which defines the following:

- "Confiscated"[42] means:
  (A) the nationalization, expropriation, or other seizure by the Cuban Government or ownership or control of property, on or after January 1, 1959--
    (i) Without the property having been returned or adequate and effective compensation provided; or
    (ii) Without the claim to the property having been settled pursuant to an international claims settlement agreement or other mutually accepted settlement procedure; and
  (B) The repudiation by the Cuban Government of, the default by the Cuban Government on, or the failure of the Cuban Government to pay, on or after January 1, 1959—
    (i) A debt of any enterprise which has been nationalized, expropriated, or otherwise taken by the Cuban Government;
    (ii) A debt which is a charge on property nationalized, expropriated, or otherwise taken by the Cuban Government; or
    (iii) A debt which is incurred by the Cuban Government in satisfaction or settlement of a confiscated property claim.
- "Property" means: any property (including patents, copyrights, trademarks, and any other form of intellectual property), whether real, personal, or mixed, and any present, future, or contingent right, security, or other interest therein, including any leasehold interest.[43]

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[37]31 C.F.R. § 515.584(h).
[38]Stonegate Bank, *Press Release: Stonegate Bank Announces Opening Of Correspondent Banking Relationship With Cuban Bank – Banco Internacional de Comercio S.A.* (July 22, 2015), https://www.stonegatebank.com/files/PressReleaseCubanCorrespondent.pdf (last visited Mar. 11, 2017).
[39]Nicholas Nehamas, *Banking on Cuba: Stonegate Bank sees more opportunities for growth*, MIAMI HERALD (Oct. 4, 2015), http://www.miamiherald.com/news/business/biz-monday/article37421685.html (last visited Mar. 11, 2017).
[40]Stonegate Bank, *Card Services: Credit Cards*, https://www.stonegatebank.com/credit_cards.htm (last visited Mar. 11, 2017); Stonegate Bank, *Press Release: Stonegate Bank and MasterCard Enable U.S.-Issued Debit Cards for Use in Cuba* (Nov. 19, 2015), https://www.stonegatebank.com/files/PressReleaseCubanCorrespondent.pdf (last visited Mar. 11, 2017).
[41]Mimi Whitefield, *Banking issues must be ironed out as U.S., Cuba repair relations*, MIAMI HERALD (Jan. 30, 2015), http://www.miamiherald.com/news/nation-world/world/americas/cuba/article9554120.html (last visited Mar. 11, 2017).
[42]22 U.S.C. § 6023(4).

B. SECTION DIRECTORY:

Section 1. Creates s. 655.969, F.S., relating to correspondent accounts with a foreign financial institution.

Section 2. Provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not appear to have an impact on local government revenues.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will increase compliance, monitoring, and reporting costs for financial institutions. The fiscal impact on the private sector could vary greatly based on the volume of transactions required to be reported to the OFR. Therefore, the fiscal impact on the private sector is indeterminable.

D. FISCAL COMMENTS:

The OFR would incur expenditures for reviewing and analyzing documentation submitted, assessing compliance with the statute, and taking any necessary action for non-compliance.[44] Additionally, the OFR's technology infrastructure would be affected due to the need to provide an electronic platform for submittal of information and the storage of information reported.[45] The fiscal impact on the OFR could vary greatly based on the volume of transactions collected, recorded, and tracked. Therefore, the fiscal impact to the agency is indeterminable.

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[43]22 U.S.C. § 6023(12). The definition of "property" excludes real property used for residential purposes unless, as of Mar. 12, 1996, the claim to the property is held by a U.S. national and the claim has been certified under title V of the International Claims Settlement Act or the property is occupied by an official of the Cuban Government or the ruling political party in Cuba.

[44]Office of Financial Regulation, Agency Analysis of 2017 House Bill 885 (Mar. 10, 2017).

[45]*Id.*

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

   Two federal decisions have addressed state legislation regarding Florida-Cuba relations:

   - In 2008, Florida enacted amendments to the Florida Sellers of Travel Act ("Travel Act Amendments"), which placed restrictions on travel businesses in Florida as well as businesses providing services to individuals traveling to or sending humanitarian aid to families in certain designated "terrorist states." In *ABC Charters, Inc. v. Bronson*, 591 F.Supp.2d 1272 (S.D. Fla. 2008), a federal district court found that the law was aimed principally, if not solely, to travel to Cuba. The court enjoined enforcement of the Travel Act Amendments, concluding they will likely be found unconstitutional under the Foreign Affairs Provisions, the Supremacy Clause, the Foreign Commerce Clause, and the Interstate Commerce Clause of the U.S. Constitution.
   - In 2012, Florida enacted a "Cuba amendment" to s. 287.135, F.S., to prohibit companies engaged in business operations in Cuba from bidding on, submitting a proposal for, or entering into or renewing a contract with an agency or local governmental entity for goods or services of $1 million or more. In *Odebrecht Const., Inc. v. Secretary, Fla. Dep't of Transp.*, 715 F.3d 1268 (11th Cir. 2013), the Eleventh Circuit Court of Appeals affirmed an injunction prohibiting enforcement of the Cuba Amendment. The court found that the Cuba Amendment was preempted by extensive federal statutory and administrative sanctions and would undermine the President's discretionary authority concerning federal policy toward Cuba.

   The bill may implicate the same constitutional considerations as the statutes enjoined in the *ABC Charters* and *Odebrecht* decisions.

B. RULE-MAKING AUTHORITY:

   The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

   While the legislation appears to relate to a correspondent or payable-through account associated with Cuba, as drafted, a financial institution would have to comply with the reporting requirements if it maintains a correspondent account or a payable-through account with a foreign financial institution owned by a country under a sanctions program, regardless of whether that country is Cuba. Additionally, the information reported to the OFR may be subject to public disclosure for lack of a public record exemption to cover such information.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to transactions with foreign financial institutions; creating s. 655.969, F.S.; requiring financial institutions chartered in this state with certain correspondent or payable-through accounts to report specified information to the Office of Financial Regulation; providing an effective date.

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

Section 1. Section 655.969, Florida Statutes, is created to read:

655.969 Correspondent accounts with a foreign financial institution.—A financial institution chartered in this state which maintains a correspondent account or a payable-through account with a foreign financial institution owned by a country under a sanctions program administered by the U.S. Department of the Treasury must, within 5 business days, identify and report the source of every transaction that passes through the foreign correspondent account to the office, and certify that the source does not involve any confiscated property, as defined in the Cuban Liberty and Democratic Solidarity Act of 1996, 22 U.S.C. 6023(4) and (12).

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