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# **Regulatory Affairs Committee**

**Wednesday, January 27, 2016  
10:00 AM  
Sumner Hall (404 HOB)**

## **MEETING PACKET**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Regulatory Affairs Committee

**Start Date and Time:** Wednesday, January 27, 2016 10:00 am  
**End Date and Time:** Wednesday, January 27, 2016 11:00 am  
**Location:** Sumner Hall (404 HOB)  
**Duration:** 1.00 hrs

**Consideration of the following bill(s):**

CS/CS/HB 463 Public Records/Unsworn DFS Investigative Personnel by Government Operations Subcommittee, Insurance & Banking Subcommittee, DuBose  
HB 633 Public Food Service Establishments by Raulerson  
CS/HB 875 Motor Vehicle Service Agreement Companies by Insurance & Banking Subcommittee, Stark, Santiago

Pursuant to rule 7.12, the filing deadline for amendments to bills on the agenda by a member who is not a member of the committee or subcommittee considering the bill is 6:00 p.m., Tuesday, January 26 2016.

By request of the Chair, all Regulatory Affairs Committee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Tuesday, January 26, 2016.

**NOTICE FINALIZED on 01/25/2016 4:20PM by Ellinor.Martha**



# The Florida House of Representatives

## Regulatory Affairs Committee

Steve Crisafulli  
Speaker

Jose Diaz  
Chair

### AGENDA

January 27, 2016

404 HOB 10:00 AM – 11:00 AM

- I. Call to Order and Roll Call
- II. CS/CS/HB 463 by *Government Operations Subcommittee; Insurance & Banking Subcommittee; Rep. DuBose*  
Public Records/Unsworn DFS Investigative Personnel
- III. HB 633 by *Rep. Raulerson*  
Public Food Service Establishments
- IV. CS/HB 875 by *Insurance & Banking Subcommittee; Reps. Stark and Santiago*  
Motor Vehicle Service Agreement Companies
- V. ADJOURNMENT



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 463 Public Records/Unsworn DFS Investigative Personnel  
**SPONSOR(S):** Government Operations Subcommittee; Insurance & Banking Subcommittee; DuBose  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 592

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	11 Y, 1 N, As CS	Peterson	Luczynski
2) Government Operations Subcommittee	11 Y, 0 N, As CS	Toliver	Williamson
3) Regulatory Affairs Committee		Peterson <i>KP</i>	Hamon <i>K.W.H.</i>

### SUMMARY ANALYSIS

Current law provides public records exemptions for personal identification and location information of certain current or former agency personnel and their spouses and children.

The bill expands the current public records exemptions to include current and former unsworn investigative personnel of the Department of Financial Services whose duties include the investigation of fraud, theft, workers' compensation coverage requirements and compliance, other criminal activities, or state regulatory requirement violations. The exemption covers the home addresses, telephone numbers, dates of birth, and photographs of the personnel; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by their children.

The bill provides for repeal of the exemption on October 2, 2021, unless reviewed and saved from repeal by the Legislature. In addition, the bill provides a statement of public necessity as required by the State Constitution.

The bill may have an insignificant fiscal impact on the state and local governments.

The bill takes effect upon becoming a law.

**Article I, section 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records or public meetings exemption. The bill expands the current public records exemption; thus, it requires a two-thirds vote for final passage.**

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

##### **Public Records**

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of the legislative, executive, or judicial branches of government.<sup>1</sup> The Legislature, however, may by general law exempt records from the constitutional requirement.<sup>2</sup> An exemption must state with specificity the public necessity justifying the exemption and may be no broader than necessary to accomplish the stated purpose of the law.<sup>3</sup> A bill enacting an exemption must pass by a two-thirds vote of the members present and voting.<sup>4</sup>

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly-created or substantially-amended public records or open meetings exemptions.<sup>5</sup> A public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose. An identifiable public purpose is served, if the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a government program, which administration would be significantly impaired without the exemption;
- Protects personal identifying information that, if released, would be defamatory or would jeopardize an individual's safety; or
- Protects trade or business secrets.<sup>6</sup>

The Act directs the Legislature to consider the following as part of the review process:

- What specific records or meetings are affected by the exemption?
- What specific parties does the exemption affect?
- What is the public purpose of the exemption?
- Can the information contained in the records or meetings be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?<sup>7</sup>

Finally, the Act requires the automatic repeal of an exemption on October 2 of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>8</sup>

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<sup>1</sup> FLA. CONST., art. I, s. 24(a).

<sup>2</sup> FLA. CONST., art. I, s. 24(c).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Section 119.15, F.S.

<sup>6</sup> Section 119.15(6)(b), F.S.

<sup>7</sup> Section 119.15(6)(a), F.S.

<sup>8</sup> Section 119.15(3), F.S.

## Exemptions for Agency Personnel Identification and Location Information

Current law provides public records exemptions for personal identification and location information of certain current or former agency personnel and their spouses and children.<sup>9</sup> Categories of personnel covered by these exemptions include:

- Law enforcement, including correctional, and specified investigatory personnel;
- Firefighters;
- Justices and judges;
- Local and statewide prosecuting attorneys;
- Magistrates, administrative law judges, and child support hearing officers;
- Local government agency and water management district human resources administrators;
- Code enforcement officers;
- Guardians ad litem;
- Specified Department of Juvenile Justice personnel;
- Public defenders and criminal conflict and civil regional counsel;
- Investigators or inspectors of the Department of Business and Professional Regulation;
- County tax collectors;
- Employees of the Department of Health who make eligibility determinations for social security disability benefits, investigate or prosecute complaints against practitioners, or inspect health care facilities; and
- Impaired practitioner consultants and employees of a consultant who make determinations regarding a health care practitioner's safety and skill to practice.

Although the types of exempt information vary, the following information is exempt<sup>10</sup> from public records requirements for all personnel listed above:

- Home addresses and telephone numbers<sup>11</sup> of the named personnel;
- Home addresses, telephone numbers, and places of employment of the spouses and their children; and,
- Names and locations of schools and day care facilities attended by their children.

If exempt information is held by an agency that is not the employer of the protected personnel, he or she must submit a written request to the non-employing agency to maintain the public records exemption.<sup>12</sup>

Currently, personal identification and location information of unsworn investigative personnel of the Department of Financial Services (DFS) and their spouses and children is not exempt from public disclosure, unless subject to another exemption.<sup>13</sup>

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<sup>9</sup> See s. 119.071(4)(d), F.S.

<sup>10</sup> There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates as *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, the record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See 85-62 Fla. Op. Att'y Gen. (1985).

<sup>11</sup> The term "telephone numbers" includes home, personal cellular, and personal pager telephone numbers, and telephone numbers associated with personal communications devices. See s. 119.071(4)(d)1., F.S.

<sup>12</sup> Section 119.071(4)(d)3., F.S.

<sup>13</sup> For example, the exemption related to former law enforcement officers applies to certain DFS employees. Section 119.071(4)(d)2.a.(I) and (II), F.S.

## Effect of the Bill

The bill expands the current public records exemptions for identification and location information of specified agency personnel to include current and former unsworn investigative personnel of the DFS whose duties include the investigation of fraud, theft, workers' compensation coverage requirements and compliance, other criminal activities, or state regulatory requirement violations. It provides that the home addresses, telephone numbers, dates of birth, and photographs of such personnel; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by their children are exempt from public records requirements.

The bill currently affects 206 employees in the Divisions of: Insurance Agent & Agency Services;<sup>14</sup> Accounting & Auditing;<sup>15</sup> Funeral, Cemetery & Consumer Services;<sup>16</sup> Workers Compensation;<sup>17</sup> and Public Assistance Fraud.<sup>18, 19</sup> While the bill does not define "investigative personnel," the DFS defines it to include unsworn investigators who have authority to issue enforcement actions and their supervisors.<sup>20</sup> Supervisors are included because they review enforcement actions and periodically accompany investigators in the field and the State Attorney's office.<sup>21</sup> The term does not include support staff or others who do not carry a badge.<sup>22</sup>

These personnel conduct face-to-face interviews, collect evidence, inspect and assess compliance, conduct surveillance, and prepare reports that cause consequences for the target of an investigation. These efforts may result in arrest and prosecution for crimes up to and including first degree felonies; loss of commerce and property; monetary fines; or the suspension or loss of professional licenses.<sup>23</sup>

The DFS has provided numerous examples from each of the affected divisions of employees who have been threatened as a result of their duties and who have feared repercussion. Threats range from weapons brandished; verbal threats to harm the person or his or her family; harassment; and intimidation.<sup>24</sup> Threats have been made directly and indirectly, including telephone messages left on personal phone lines.<sup>25</sup> In at least one instance, the target of the investigation used a public records request to obtain an investigator's personnel file.<sup>26</sup>

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<sup>14</sup> The Division of Insurance Agent & Agency Services conducts administrative investigations of its licensees, which include insurance agents and agencies; insurance adjusters; bail bond agents and agencies; navigators; title agents, agencies, and escrow accounts; and warranty sales. Disciplinary action, including license revocation and a permanent ban from the insurance industry, may result. Approximately, 10-20 percent of the division's cases are referred for criminal investigation.

<sup>15</sup> The Office of Fiscal Integrity within the Division of Accounting & Auditing investigates suspicion of theft, attempted theft, or the misappropriation of state funds.

<sup>16</sup> The Division of Funeral, Cemetery & Consumer Services regulates the deathcare industry in Florida. The division investigates complaints from the public regarding conduct of licensees, such as allegations of fraudulent activities or improper handling of human remains. Disciplinary action, including license revocation, may result.

<sup>17</sup> Investigators in the Division of Workers' Compensation enforce the statutory requirement that employers secure workers' compensation coverage for their employees. Investigators issue stop-work orders, ceasing all the business operations of the employer if the employer lacks workers' compensation coverage. Mandatory fines may also be imposed.

<sup>18</sup> The Division of Public Assistance Fraud investigates recipients of Supplemental Nutrition Assistance Program, Medicaid, School Readiness, Social Security Administration disability programs, and Temporary Assistance for Needy Families, and merchants, daycare providers and employees of the Department of Children & Families or Early Learning Coalitions alleged to have committed fraud.

<sup>19</sup> Email from Elizabeth Boyd, Legislative Affairs Director, Florida Department of Financial Services, RE: HB 463 (Nov. 9, 2015) (on file with the House Insurance & Banking Subcommittee).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Florida Department of Financial Services, Agency Analysis of 2015 House Bill 463, p.1 (Nov. 10, 2015) (on file with the House Insurance & Banking Subcommittee).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> Email from Elizabeth Boyd, Legislative Affairs Director, Florida Department of Financial Services, RE: HB 463 (Nov. 5, 2015) (on file with the House Insurance & Banking Subcommittee).



The bill provides that the exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2021, unless reviewed and saved from repeal by the Legislature. It also provides a public necessity statement as required by the State Constitution.

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 119.071, F.S., to provide an exemption from public records requirements for the personal identifying and location information of certain unsworn investigative personnel of the DFS.

**Section 2:** Provides a public necessity statement.

**Section 3:** Provides an effective date of upon becoming a law.

**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:

None.

2. Expenditures:

See Fiscal Comments.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

The bill could create a minimal fiscal impact on agencies because staff responsible for complying with public records requests could require training related to creation of the public records exemption. In addition, agencies could incur costs associated with redacting the exempt identification and location information prior to releasing a record. These costs, however, would be absorbed, as they are part of the day-to-day responsibilities of agencies.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records or public meetings exemption. The bill expands current public records exemptions; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public records or public meetings exemption. The bill expands current public records exemptions; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public records or public meetings exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public records exemption for the identification and location information of investigative personnel of the DFS whose duties include the investigation of fraud, theft, workers' compensation coverage requirements and compliance, other criminal activities, or state regulatory requirement violations. As such, the exemption does not appear to be in conflict with the constitutional requirement that it be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On November 18, 2015, the Insurance & Banking Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The amendments revised the scope of the exemption to remove social security numbers, photographs of the spouse and children, and language related to the types of investigations and to add further description of the justification for the exemption.

On January 13, 2016, the Government Operations Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The amendments clarified that the exemption applies only to investigative personnel of the DFS whose duties include the investigation of fraud, theft, workers' compensation coverage requirements and compliance, other criminal activities, or state regulatory requirement violations. The amendments also replaced references to "child care facilities" with "day care facilities" in order to track the language contained in other similar exemptions found in current law.

The staff analysis is drafted to reflect the committee substitute as approved by the Government Operations Subcommittee.

1 A bill to be entitled

2 An act relating to public records; amending s.  
3 119.071, F.S.; providing an exemption from public  
4 records requirements for the personal identifying and  
5 location information of certain unsworn investigative  
6 personnel of the Department of Financial Services and  
7 the names and personal identifying and location  
8 information of the spouses and children of such  
9 personnel; providing for future review and repeal of  
10 the exemption; providing a statement of public  
11 necessity; providing an effective date.  
12

13 Be It Enacted by the Legislature of the State of Florida:  
14

15 Section 1. Paragraph (d) of subsection (4) of section  
16 119.071, Florida Statutes, is amended to read:

17 119.071 General exemptions from inspection or copying of  
18 public records.—

19 (4) AGENCY PERSONNEL INFORMATION.—

20 (d)1. For purposes of this paragraph, the term "telephone  
21 numbers" includes home telephone numbers, personal cellular  
22 telephone numbers, personal pager telephone numbers, and  
23 telephone numbers associated with personal communications  
24 devices.

25 2.a.(I) The home addresses, telephone numbers, social  
26 security numbers, dates of birth, and photographs of active or

27 former sworn or civilian law enforcement personnel, including  
 28 correctional and correctional probation officers, personnel of  
 29 the Department of Children and Families whose duties include the  
 30 investigation of abuse, neglect, exploitation, fraud, theft, or  
 31 other criminal activities, personnel of the Department of Health  
 32 whose duties are to support the investigation of child abuse or  
 33 neglect, and personnel of the Department of Revenue or local  
 34 governments whose responsibilities include revenue collection  
 35 and enforcement or child support enforcement; the home  
 36 addresses, telephone numbers, social security numbers,  
 37 photographs, dates of birth, and places of employment of the  
 38 spouses and children of such personnel; and the names and  
 39 locations of schools and day care facilities attended by the  
 40 children of such personnel are exempt from s. 119.07(1).

41 (II) The names of the spouses and children of active or  
 42 former sworn or civilian law enforcement personnel and the other  
 43 specified agency personnel identified in sub-sub-subparagraph  
 44 (I) are exempt from s. 119.07(1) and s. 24(a), Art. I of the  
 45 State Constitution.

46 (III) Sub-sub-subparagraph (II) is subject to the Open  
 47 Government Sunset Review Act in accordance with s. 119.15, and  
 48 shall stand repealed on October 2, 2018, unless reviewed and  
 49 saved from repeal through reenactment by the Legislature.

50 (IV) The home addresses, telephone numbers, dates of  
 51 birth, and photographs of current or former unsworn  
 52 investigative personnel of the Department of Financial Services

53 whose duties include the investigation of fraud, theft, workers'  
 54 compensation coverage requirements and compliance, other  
 55 criminal activities, or state regulatory requirement violations;  
 56 the names, home addresses, telephone numbers, dates of birth,  
 57 and places of employment of the spouses and children of such  
 58 personnel; and the names and locations of schools and day care  
 59 facilities attended by the children of such personnel are exempt  
 60 from s. 119.07(1) and s. 24(a), Art. I of the State  
 61 Constitution. This sub-sub-subparagraph is subject to the Open  
 62 Government Sunset Review Act in accordance with s. 119.15 and  
 63 shall stand repealed on October 2, 2021, unless reviewed and  
 64 saved from repeal through reenactment by the Legislature.

65       b. The home addresses, telephone numbers, dates of birth,  
 66 and photographs of firefighters certified in compliance with s.  
 67 633.408; the home addresses, telephone numbers, photographs,  
 68 dates of birth, and places of employment of the spouses and  
 69 children of such firefighters; and the names and locations of  
 70 schools and day care facilities attended by the children of such  
 71 firefighters are exempt from s. 119.07(1).

72       c. The home addresses, dates of birth, and telephone  
 73 numbers of current or former justices of the Supreme Court,  
 74 district court of appeal judges, circuit court judges, and  
 75 county court judges; the home addresses, telephone numbers,  
 76 dates of birth, and places of employment of the spouses and  
 77 children of current or former justices and judges; and the names  
 78 and locations of schools and day care facilities attended by the

79 children of current or former justices and judges are exempt  
 80 from s. 119.07(1).

81 d.(I) The home addresses, telephone numbers, social  
 82 security numbers, dates of birth, and photographs of current or  
 83 former state attorneys, assistant state attorneys, statewide  
 84 prosecutors, or assistant statewide prosecutors; the home  
 85 addresses, telephone numbers, social security numbers,  
 86 photographs, dates of birth, and places of employment of the  
 87 spouses and children of current or former state attorneys,  
 88 assistant state attorneys, statewide prosecutors, or assistant  
 89 statewide prosecutors; and the names and locations of schools  
 90 and day care facilities attended by the children of current or  
 91 former state attorneys, assistant state attorneys, statewide  
 92 prosecutors, or assistant statewide prosecutors are exempt from  
 93 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

94 (II) The names of the spouses and children of current or  
 95 former state attorneys, assistant state attorneys, statewide  
 96 prosecutors, or assistant statewide prosecutors are exempt from  
 97 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

98 (III) Sub-sub-subparagraph (II) is subject to the Open  
 99 Government Sunset Review Act in accordance with s. 119.15, and  
 100 shall stand repealed on October 2, 2018, unless reviewed and  
 101 saved from repeal through reenactment by the Legislature.

102 e. The home addresses, dates of birth, and telephone  
 103 numbers of general magistrates, special magistrates, judges of  
 104 compensation claims, administrative law judges of the Division

105 of Administrative Hearings, and child support enforcement  
 106 hearing officers; the home addresses, telephone numbers, dates  
 107 of birth, and places of employment of the spouses and children  
 108 of general magistrates, special magistrates, judges of  
 109 compensation claims, administrative law judges of the Division  
 110 of Administrative Hearings, and child support enforcement  
 111 hearing officers; and the names and locations of schools and day  
 112 care facilities attended by the children of general magistrates,  
 113 special magistrates, judges of compensation claims,  
 114 administrative law judges of the Division of Administrative  
 115 Hearings, and child support enforcement hearing officers are  
 116 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 117 Constitution if the general magistrate, special magistrate,  
 118 judge of compensation claims, administrative law judge of the  
 119 Division of Administrative Hearings, or child support hearing  
 120 officer provides a written statement that the general  
 121 magistrate, special magistrate, judge of compensation claims,  
 122 administrative law judge of the Division of Administrative  
 123 Hearings, or child support hearing officer has made reasonable  
 124 efforts to protect such information from being accessible  
 125 through other means available to the public.

126 f. The home addresses, telephone numbers, dates of birth,  
 127 and photographs of current or former human resource, labor  
 128 relations, or employee relations directors, assistant directors,  
 129 managers, or assistant managers of any local government agency  
 130 or water management district whose duties include hiring and

131 firing employees, labor contract negotiation, administration, or  
 132 other personnel-related duties; the names, home addresses,  
 133 telephone numbers, dates of birth, and places of employment of  
 134 the spouses and children of such personnel; and the names and  
 135 locations of schools and day care facilities attended by the  
 136 children of such personnel are exempt from s. 119.07(1) and s.  
 137 24(a), Art. I of the State Constitution.

138 g. The home addresses, telephone numbers, dates of birth,  
 139 and photographs of current or former code enforcement officers;  
 140 the names, home addresses, telephone numbers, dates of birth,  
 141 and places of employment of the spouses and children of such  
 142 personnel; and the names and locations of schools and day care  
 143 facilities attended by the children of such personnel are exempt  
 144 from s. 119.07(1) and s. 24(a), Art. I of the State  
 145 Constitution.

146 h. The home addresses, telephone numbers, places of  
 147 employment, dates of birth, and photographs of current or former  
 148 guardians ad litem, as defined in s. 39.820; the names, home  
 149 addresses, telephone numbers, dates of birth, and places of  
 150 employment of the spouses and children of such persons; and the  
 151 names and locations of schools and day care facilities attended  
 152 by the children of such persons are exempt from s. 119.07(1) and  
 153 s. 24(a), Art. I of the State Constitution, if the guardian ad  
 154 litem provides a written statement that the guardian ad litem  
 155 has made reasonable efforts to protect such information from  
 156 being accessible through other means available to the public.



157 i. The home addresses, telephone numbers, dates of birth,  
 158 and photographs of current or former juvenile probation  
 159 officers, juvenile probation supervisors, detention  
 160 superintendents, assistant detention superintendents, juvenile  
 161 justice detention officers I and II, juvenile justice detention  
 162 officer supervisors, juvenile justice residential officers,  
 163 juvenile justice residential officer supervisors I and II,  
 164 juvenile justice counselors, juvenile justice counselor  
 165 supervisors, human services counselor administrators, senior  
 166 human services counselor administrators, rehabilitation  
 167 therapists, and social services counselors of the Department of  
 168 Juvenile Justice; the names, home addresses, telephone numbers,  
 169 dates of birth, and places of employment of spouses and children  
 170 of such personnel; and the names and locations of schools and  
 171 day care facilities attended by the children of such personnel  
 172 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 173 Constitution.

174 j.(I) The home addresses, telephone numbers, dates of  
 175 birth, and photographs of current or former public defenders,  
 176 assistant public defenders, criminal conflict and civil regional  
 177 counsel, and assistant criminal conflict and civil regional  
 178 counsel; the home addresses, telephone numbers, dates of birth,  
 179 and places of employment of the spouses and children of such  
 180 defenders or counsel; and the names and locations of schools and  
 181 day care facilities attended by the children of such defenders  
 182 or counsel are exempt from s. 119.07(1) and s. 24(a), Art. I of

183 the State Constitution.

184 (II) The names of the spouses and children of the  
 185 specified agency personnel identified in sub-sub-subparagraph  
 186 (I) are exempt from s. 119.07(1) and s. 24(a), Art. I of the  
 187 State Constitution. This sub-sub-subparagraph is subject to the  
 188 Open Government Sunset Review Act in accordance with s. 119.15  
 189 and shall stand repealed on October 2, 2019, unless reviewed and  
 190 saved from repeal through reenactment by the Legislature.

191 k. The home addresses, telephone numbers, and photographs  
 192 of current or former investigators or inspectors of the  
 193 Department of Business and Professional Regulation; the names,  
 194 home addresses, telephone numbers, and places of employment of  
 195 the spouses and children of such current or former investigators  
 196 and inspectors; and the names and locations of schools and day  
 197 care facilities attended by the children of such current or  
 198 former investigators and inspectors are exempt from s. 119.07(1)  
 199 and s. 24(a), Art. I of the State Constitution if the  
 200 investigator or inspector has made reasonable efforts to protect  
 201 such information from being accessible through other means  
 202 available to the public. This sub-subparagraph is subject to the  
 203 Open Government Sunset Review Act in accordance with s. 119.15  
 204 and shall stand repealed on October 2, 2017, unless reviewed and  
 205 saved from repeal through reenactment by the Legislature.

206 l. The home addresses and telephone numbers of county tax  
 207 collectors; the names, home addresses, telephone numbers, and  
 208 places of employment of the spouses and children of such tax

209 collectors; and the names and locations of schools and day care  
210 facilities attended by the children of such tax collectors are  
211 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
212 Constitution if the county tax collector has made reasonable  
213 efforts to protect such information from being accessible  
214 through other means available to the public. This sub-  
215 subparagraph is subject to the Open Government Sunset Review Act  
216 in accordance with s. 119.15 and shall stand repealed on October  
217 2, 2017, unless reviewed and saved from repeal through  
218 reenactment by the Legislature.

219 m. The home addresses, telephone numbers, dates of birth,  
220 and photographs of current or former personnel of the Department  
221 of Health whose duties include, or result in, the determination  
222 or adjudication of eligibility for social security disability  
223 benefits, the investigation or prosecution of complaints filed  
224 against health care practitioners, or the inspection of health  
225 care practitioners or health care facilities licensed by the  
226 Department of Health; the names, home addresses, telephone  
227 numbers, dates of birth, and places of employment of the spouses  
228 and children of such personnel; and the names and locations of  
229 schools and day care facilities attended by the children of such  
230 personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of  
231 the State Constitution if the personnel have made reasonable  
232 efforts to protect such information from being accessible  
233 through other means available to the public. This sub-  
234 subparagraph is subject to the Open Government Sunset Review Act

235 in accordance with s. 119.15 and shall stand repealed on October  
 236 2, 2019, unless reviewed and saved from repeal through  
 237 reenactment by the Legislature.

238 n. The home addresses, telephone numbers, dates of birth,  
 239 and photographs of current or former impaired practitioner  
 240 consultants who are retained by an agency or current or former  
 241 employees of an impaired practitioner consultant whose duties  
 242 result in a determination of a person's skill and safety to  
 243 practice a licensed profession; the names, home addresses,  
 244 telephone numbers, dates of birth, and places of employment of  
 245 the spouses and children of such consultants or their employees;  
 246 and the names and locations of schools and day care facilities  
 247 attended by the children of such consultants or employees are  
 248 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 249 Constitution if a consultant or employee has made reasonable  
 250 efforts to protect such information from being accessible  
 251 through other means available to the public. This sub-  
 252 subparagraph is subject to the Open Government Sunset Review Act  
 253 in accordance with s. 119.15 and shall stand repealed on October  
 254 2, 2020, unless reviewed and saved from repeal through  
 255 reenactment by the Legislature.

256 3. An agency that is the custodian of the information  
 257 specified in subparagraph 2. and that is not the employer of the  
 258 officer, employee, justice, judge, or other person specified in  
 259 subparagraph 2. shall maintain the exempt status of that  
 260 information only if the officer, employee, justice, judge, other

261 person, or employing agency of the designated employee submits a  
 262 written request for maintenance of the exemption to the  
 263 custodial agency.

264 4. The exemptions in this paragraph apply to information  
 265 held by an agency before, on, or after the effective date of the  
 266 exemption.

267 5. Except as otherwise expressly provided in this  
 268 paragraph, this paragraph is subject to the Open Government  
 269 Sunset Review Act in accordance with s. 119.15, and shall stand  
 270 repealed on October 2, 2017, unless reviewed and saved from  
 271 repeal through reenactment by the Legislature.

272 Section 2. The Legislature finds that it is a public  
 273 necessity to exempt from public records requirements the home  
 274 addresses, telephone numbers, dates of birth, and photographs of  
 275 current or former unsworn investigative personnel of the  
 276 Department of Financial Services whose duties include the  
 277 investigation of fraud, theft, workers' compensation coverage  
 278 requirements and compliance, other criminal activities, or state  
 279 regulatory requirement violations; the names, home addresses,  
 280 telephone numbers, dates of birth, and places of employment of  
 281 the spouses and children of such personnel; and the names and  
 282 locations of schools and day care facilities attended by the  
 283 children of such personnel. The efforts of such personnel can  
 284 lead to arrests and prosecutions for crimes up to and including  
 285 first degree felony violations and can also result in the loss  
 286 of commerce and property, the assessment of monetary fines, or

287 the suspension or loss of professional licenses. The department  
288 has documented numerous examples of personnel who have been  
289 threatened and who have feared repercussions as a result of  
290 their carrying out their duties. These threats have included  
291 weapons being brandished, verbal threats made to harm them or  
292 their family members, harassment, and intimidation. In at least  
293 one instance, the target of the investigation used a public  
294 records request to access an investigator's personnel file. As a  
295 result, the Legislature finds that the release of such personal  
296 identifying and location information might place these unsworn  
297 investigative personnel of the department and their family  
298 members in danger of physical and emotional harm from  
299 disgruntled individuals who have contentious reactions to  
300 actions taken by such personnel, or whose business or  
301 professional practices have come under the scrutiny of such  
302 personnel. The Legislature further finds that the harm that may  
303 result from the release of such personal identifying and  
304 location information outweighs any public benefit that may be  
305 derived from the disclosure of the information.

306 Section 3. This act shall take effect upon becoming a law.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 633 Public Food Service Establishments  
**SPONSOR(S):** Raulerson  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 764

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	11 Y, 0 N	Butler	Anstead
2) Government Operations Appropriations Subcommittee	10 Y, 0 N	Topp	Topp
3) Regulatory Affairs Committee		Butler <i>BSB</i>	Hamon <i>K.W.H.</i>

### SUMMARY ANALYSIS

The Division of Hotels and Restaurants (Division) of the Department of Business and Professional Regulation (Department) licenses and inspects public food service establishments, which are defined as places where food is prepared, served, or sold for immediate consumption by the general public.

Current law excludes certain places from the definition of "public food service establishment," including any food service establishment maintained and operated by a public or private school, college, university, or a church or religious, nonprofit fraternal or nonprofit civic organization if used only by members and associates or students and faculty, or if used temporarily to serve such events as fairs, carnivals, or athletic contests.

Such exclusion from the definition of "public food service establishment" removes regulatory oversight. Places that fall within the exclusion are not required to comply with state health and safety standards. The Division does not collect a licensing fee and does not conduct inspections of places that qualify for the exclusion.

The bill adds "food contests" and "cook-offs" to the list of temporary events that are excluded from the definition of "public food service establishment" when maintained and operated by a public or private school, college, university, or a church or a religious, nonprofit fraternal or nonprofit civic organization.

A new exclusion is created for "any eating place maintained and operated by an individual or entity at a food contest, cook-off, or a temporary event lasting from 1 to 3 days which is hosted by a church or a religious, nonprofit fraternal, or nonprofit civic organization."

The bill provides that the Division may request documentation from individuals claiming to be excluded from the definition of public food service establishment that indicate "its status as a church or a religious, nonprofit fraternal, or nonprofit civic organization."

The bill is expected to have a significant negative fiscal impact on state funds by reducing revenues to the Hotels and Restaurants Trust Fund up to \$199,654 annually. However, the Department estimates that the fiscal year-end balance of the Hotels and Restaurants Trust Fund (including the impact of HB 633) will maintain a positive surplus cash balance of: \$18.1 million in FY 2016-17, \$20.2 million in FY 2017-18, and \$22.1 million in FY 2018-19.

The bill has an effective date of July 1, 2016.



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

##### Public Food Service Establishments

The Division is charged with enforcing the provisions of part I of ch. 509, F.S., and all other applicable laws relating to the inspection and regulation of public food service establishments, to protect the public health, safety, and welfare of Florida citizens.

The Division licenses and inspects public food service establishments, defined by s. 509.013(5)(a), F.S., to mean:

any building, vehicle, place, or structure, or any room or division in a building, vehicle, place, or structure where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption.

A “temporary food service event” means any event of 30 days or less in duration where food is prepared, served, or sold to the general public.<sup>1</sup>

At the end of fiscal year 2014-2015, there were 90,158 licensed public food service establishments, including seating, permanent non-seating, hotdog carts, and mobile food dispensing vehicles.<sup>2</sup>

The number of temporary event license applications processed during the last four fiscal years is as follows:

<u>Fiscal Year</u>	<u>Temporary Event License Applications</u>
2014-15	7,849
2013-14	7,718
2012-13	7,292
2011-12	7,125

In Fiscal Year 2014-15, the Division licensed and inspected 7,849 public food service establishments and food vendors at temporary food service events.<sup>3</sup>

Since 1998,<sup>4</sup> there have been a total of 2,382 outbreaks of foodborne illness in Florida.<sup>5</sup> For the last three years on record (2012-2014), the Center for Disease Control (CDC) reports there have been 58 outbreaks of foodborne illness in Florida, of which, 1 was confirmed to have originated at a fair, 3 were confirmed to have originated from a catered event, and 22 were confirmed to originate from a Restaurant.<sup>6</sup> Of these Florida cases, 1,023 persons contracted an illness during an outbreak and 87

<sup>1</sup> s. 509.13(8), F.S.

<sup>2</sup> Florida Department of Business and Professional Regulation, Division of Hotels and Restaurants, *Annual Report, Fiscal Year 2014-2015*, available at [http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2014\\_15.pdf](http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2014_15.pdf).

<sup>3</sup> Florida Department of Business and Professional Regulation, Division of Hotels and Restaurants, *Annual Report, Fiscal Year 2014-2015*, available at [http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2014\\_15.pdf](http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2014_15.pdf).

<sup>4</sup> The Center for Disease Control (CDC) Foodborne Outbreak Online Database (FOOD) was developed to allow foodborne outbreak data to be more publicly available and contains information on outbreaks of foodborne illnesses dating back to 1998. CDC, *Foodborne Outbreak Tracking and Reporting*, <http://wwwn.cdc.gov/foodborneoutbreaks/> (last visited Nov. 23, 2015).

<sup>5</sup> CDC, *Outbreaks per State*, <http://wwwn.cdc.gov/foodborneoutbreaks/> (last visited Nov. 23, 2015).

<sup>6</sup> CDC, *FOOD Tool Data*, available at <http://wwwn.cdc.gov/foodborneoutbreaks/> (last visited Nov. 23, 2015).

persons were hospitalized; though, there were no deaths reported due to a foodborne illness outbreak within 2012-2014.<sup>7</sup>

### Exclusions from the Definition of Public Food Service Establishments

The definition of “public food service establishment” in s. 509.013(5)(b), F.S., excludes certain places, including:

- Any place maintained and operated by a public or private school, college, or university:
  - For the use of students and faculty; or
  - Temporarily to serve such events as fairs, carnivals, and athletic contests.
- Any eating place maintained and operated by a church or a religious, nonprofit fraternal, or nonprofit civic organization:
  - For the use of members and associates; or
  - Temporarily to serve such events as fairs, carnivals, or athletic contests.

The Division does not license or inspect temporary food service events when the food is prepared and served by an excluded entity.

### Sponsors of Temporary Food Service Events

Sponsors of temporary food service events<sup>8</sup> are required at least three days before the event to provide the Division with event details, including the type of food service proposed, the time and location of the event, and a complete list of food service vendors participating in the event. Sponsors are also required to provide the Division with the number of individual food service facilities each vendor will operate at the event, and the identification number of each food service vendor’s current license as a public food service establishment or temporary food service event licensee.

This notification may be completed orally, by telephone, in person, or in writing and the process may not be used to circumvent the license requirements.<sup>9</sup>

The Division uses this information to prepare and send inspectors to efficiently inspect each temporary food service establishment before the event begins or soon after the event begins. Generally the Division sends enough inspectors to temporary food service events to inspect every vendor within an hour of arrival.

### Effect of the Bill

The bill amends the current exclusion of certain temporary eating places operated and maintained by a public or private school, college, university, or a church, a religious, nonprofit fraternal, or nonprofit civic organization to also exclude eating places at “food contests” and “cook-offs” operated and maintained by these organizations.

The bill creates a new exclusion for any “eating place maintained and operated by an individual or entity at a food contest, cook-off, or a temporary event lasting from 1 to 3 days which is hosted by a church or a religious, nonprofit fraternal, or nonprofit civic organization.”

The bill provides that the Division may request documentation from a church, or a religious, nonprofit fraternal, or nonprofit civic organization claiming to be excluded. The Division may also request

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<sup>7</sup> *Id.*

<sup>8</sup> s. 509.032(3)(c), F.S.

<sup>9</sup> s. 509.032(3)(c), F.S.

documentation from an event host, when an individual or entity claims to be excluded from licensure and inspection while maintaining and operating an eating place at the host's event.

Because this exclusion could be applied to any food vendor at an event hosted by a nonprofit organization, and many such events are hosted by nonprofit organizations, the Division estimates a loss of up to 100 percent of temporary event permit fee revenue for events that last less than three days.<sup>10</sup> Sponsors and nonprofit hosts will still be required to submit certain event information, pursuant to s. 509.032(c)(3), F.S., even if every vendor at an event is excluded.

An eating place that is excluded from the definition of "public food service establishment," is removed from the regulatory oversight of the Division. The Division will not be able to charge a permit fee, conduct inspections, require compliance with health, safety, and sanitary requirements, or pursue administrative remedies or fines against an excluded eating place.

The bill provides an effective date of July 1, 2016.

**B. SECTION DIRECTORY:**

**Section 1** amends s. 509.013, F.S., revising the definition of the term "public food service establishment" to exclude certain entities and individuals; providing the Division with the authority to request documentation of individuals or entities claiming to be excluded.

**Section 2** amends s. 509.032, F.S., to make conforming clarifications for licensure requirements.

**Section 3** provides an effective date of July 1, 2016.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

**1. Revenues:**

The loss of license fees would decrease revenues to the Hotels and Restaurants Trust Fund by up to \$199,654 annually.<sup>11</sup> This estimate considers the worst case scenario of a 100% reduction in licensing revenue from temporary food service establishment permits for events that last three days or fewer. The Department estimates that the fiscal year-end balance of the Hotels and Restaurants Trust Fund (including the impact of HB 633) will maintain a positive cash balance as noted in the chart below.<sup>12</sup>

<b>Hotels and Resaurants Trust Fund</b>			
	<b>FY 2016-17</b>	<b>FY 2017-18</b>	<b>FY 2018-19</b>
Beginning Balance	15,794,062	18,106,062	20,194,824
Estimated Revenue	32,197,130	32,255,320	32,281,423
Impact of HB 633	(199,654)	(199,654)	(199,654)
<b>TOTAL Revenue</b>	<b>31,997,476</b>	<b>32,055,666</b>	<b>32,081,769</b>
Estimated Expenditures	29,684,974	29,967,406	30,127,907
<b>Estimated Year-end Balance</b>	<b>18,106,062</b>	<b>20,194,824</b>	<b>22,148,887</b>

<sup>10</sup> Florida Department of Business and Professional Regulation, Agency Bill Analysis of 2016 Senate Bill 764, p. 5 (November 23, 2015), which is substantially similar to HB 663.

<sup>11</sup> Florida Department of Business and Professional Regulation, Agency Bill Analysis of 2016 Senate Bill 764 (November 23, 2015), which is substantially similar to House Bill 633.

<sup>12</sup> Florida Department of Business and Professional Regulation, *Operating Account Forecast of Hotels and Restaurants Trust Fund*, received by staff of the Government Operations Appropriations Subcommittee on December 10, 2015 (on file with the subcommittee).

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill decreases permit fees and regulatory oversight for temporary food contests and for persons who operate eating places at events hosted by a church, religious organization, or nonprofit fraternal or civic organization.

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:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1                                   A bill to be entitled  
 2           An act relating to public food service establishments;  
 3           amending s. 509.013, F.S.; revising the definition of  
 4           the term "public food service establishment" to  
 5           exclude certain events; amending s. 509.032, F.S.;  
 6           clarifying that a food service license is not required  
 7           to be obtained if an event is excluded under the  
 8           definition of the term "public food service  
 9           establishment"; providing an effective date.

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

Section 1. Subsection (5) of section 509.013, Florida Statutes, is amended to read:

- 509.013 Definitions.—As used in this chapter, the term:
- (5) (a) "Public food service establishment" means any building, vehicle, place, or structure, or any room or division in a building, vehicle, place, or structure where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption.
  - (b) The following are excluded from the definition in paragraph (a):
    1. Any place maintained and operated by a public or private school, college, or university:

- 27 a. For the use of students and faculty; or
- 28 b. Temporarily to serve such events as fairs, carnivals,
- 29 food contests, cook-offs, and athletic contests.
- 30 2. Any eating place maintained and operated by a church or
- 31 a religious, nonprofit fraternal, or nonprofit civic
- 32 organization:
- 33 a. For the use of members and associates; or
- 34 b. Temporarily to serve such events as fairs, carnivals,
- 35 food contests, cook-offs, or athletic contests.
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- 37 Upon request by the division, a church or a religious, nonprofit
- 38 fraternal, or nonprofit civic organization claiming an exclusion
- 39 under this subparagraph must provide the division documentation
- 40 of its status as a church or a religious, nonprofit fraternal,
- 41 or nonprofit civic organization.
- 42 3. Any eating place maintained and operated by an
- 43 individual or entity at a food contest, cook-off, or a temporary
- 44 event lasting from 1 to 3 days which is hosted by a church or a
- 45 religious, nonprofit fraternal, or nonprofit civic organization.
- 46 Upon request by the division, the event host must provide the
- 47 division documentation of its status as a church or a religious,
- 48 nonprofit fraternal, or nonprofit civic organization.
- 49 ~~4.3.~~ Any eating place located on an airplane, train, bus,
- 50 or watercraft which is a common carrier.
- 51 ~~5.4.~~ Any eating place maintained by a facility certified
- 52 or licensed and regulated by the Agency for Health Care

53 Administration or the Department of Children and Families or  
 54 other similar place that is regulated under s. 381.0072.

55 ~~6.5.~~ Any place of business issued a permit or inspected by  
 56 the Department of Agriculture and Consumer Services under s.  
 57 500.12.

58 ~~7.6.~~ Any place of business where the food available for  
 59 consumption is limited to ice, beverages with or without  
 60 garnishment, popcorn, or prepackaged items sold without  
 61 additions or preparation.

62 ~~8.7.~~ Any theater, if the primary use is as a theater and  
 63 if patron service is limited to food items customarily served to  
 64 the admittees of theaters.

65 ~~9.8.~~ Any vending machine that dispenses any food or  
 66 beverages other than potentially hazardous foods, as defined by  
 67 division rule.

68 ~~10.9.~~ Any vending machine that dispenses potentially  
 69 hazardous food and which is located in a facility regulated  
 70 under s. 381.0072.

71 ~~11.10.~~ Any research and development test kitchen limited  
 72 to the use of employees and which is not open to the general  
 73 public.

74 Section 2. Paragraph (c) of subsection (3) of section  
 75 509.032, Florida Statutes, is amended to read:

76 509.032 Duties.—

77 (3) SANITARY STANDARDS; EMERGENCIES; TEMPORARY FOOD  
 78 SERVICE EVENTS.—The division shall:

79 (c) Administer a public notification process for temporary  
 80 food service events and distribute educational materials that  
 81 address safe food storage, preparation, and service procedures.

82 1. Sponsors of temporary food service events shall notify  
 83 the division not less than 3 days before the scheduled event of  
 84 the type of food service proposed, the time and location of the  
 85 event, a complete list of food service vendors participating in  
 86 the event, the number of individual food service facilities each  
 87 vendor will operate at the event, and the identification number  
 88 of each food service vendor's current license as a public food  
 89 service establishment or temporary food service event licensee.  
 90 Notification may be completed orally, by telephone, in person,  
 91 or in writing. A public food service establishment or food  
 92 service vendor may not use this notification process to  
 93 circumvent the license requirements of this chapter.

94 2. The division shall keep a record of all notifications  
 95 received for proposed temporary food service events and shall  
 96 provide appropriate educational materials to the event sponsors  
 97 and notify the event sponsors of the availability of the food-  
 98 recovery brochure developed under s. 595.420.

99 3.a. Unless excluded under s. 509.013(5)(b), a public food  
 100 service establishment or other food service vendor must obtain  
 101 one of the following classes of license from the division: an  
 102 individual license, for a fee of no more than \$105, for each  
 103 temporary food service event in which it participates; or an  
 104 annual license, for a fee of no more than \$1,000, that entitles



105 | the licensee to participate in an unlimited number of food  
106 | service events during the license period. The division shall  
107 | establish license fees, by rule, and may limit the number of  
108 | food service facilities a licensee may operate at a particular  
109 | temporary food service event under a single license.

110 |       b. Public food service establishments holding current  
111 | licenses from the division may operate under the regulations of  
112 | such a license at temporary food service events.

113 |       Section 3. This act shall take effect July 1, 2016.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 875 Motor Vehicle Service Agreement Companies  
**SPONSOR(S):** Insurance & Banking Subcommittee; Stark and others  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 1120

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 0 N, As CS	Cooper	Luczynski
2) Regulatory Affairs Committee		Cooper <i>MC</i>	Hamon <i>K.W.H.</i>

### SUMMARY ANALYSIS

Motor vehicle service agreement companies are one type of warranty association and are governed by the provisions in Part I, Chapter 634, Florida Statutes. Motor vehicle service agreements generally provide vehicle owners with protection when the manufacturer's warranty expires. While a warranty is not considered a traditional insurance product, it protects purchasers from future risks and associated costs. In Florida, warranty associations are regulated by the Office of Insurance Regulation (OIR). The OIR's regulatory authority of warranty associations includes licensure, investigation of complaints, and monitoring of reserve requirements, among other duties. However, the OIR is not required to approve forms or rates for warranties.

Under current law, motor vehicle service agreements indemnify the agreement holder against loss caused by failure of any mechanical or other component part, or any mechanical or other component part of the motor vehicle that does not function as it was originally intended. The term "motor vehicle service agreement" also includes any contract that provides: for coverage which is issued in conjunction with an additive product applied to the motor vehicle that is the subject of such agreement; for payment of vehicle protection expenses (such as meeting applicable deductibles and providing for temporary replacement vehicle rental expenses); and for the payment for paintless dent-removal services.

As defined in statute, "additive product" means any fuel supplement, oil supplement, or any other supplement product added to a motor vehicle for the purpose of increasing or enhancing the performance or improving the longevity of such motor vehicle. The bill modifies this definition to indicate the term does not include a product applied to the exterior or interior surface of a motor vehicle to protect the appearance of the motor vehicle. The bill also deletes the definition of "paintless dent-removal" but still allows the process to be considered part of a motor vehicle service agreement.

The bill also changes and expands coverage provided in a motor vehicle service agreement to include: a) repair or replacement of tires or wheels on a motor vehicle damaged as a result of encountering a road hazard (and defines the term); b) removal of dents, dings, or creases on a motor vehicle that may be repaired using the process of paintless dent removal without affecting the existing paint finish and without using replacement body panels, or sanding, bonding, or painting; and c) replacement of a motor vehicle key or key fob if the key or key fob is inoperable, lost, or stolen.

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

The bill has an effective date of July 1, 2016.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

Motor vehicle service agreement companies are one type of warranty association and are governed by the provisions in Part I, Chapter 634, Florida Statutes. Motor vehicle service agreements generally provide vehicle owners with protection when the manufacturer's warranty expires. While a warranty is not considered a traditional insurance product, it protects purchasers from future risks and associated costs. In Florida, warranty associations are regulated by the Office of Insurance Regulation (OIR). The OIR's regulatory authority of warranty associations includes approval of forms, investigation of complaints, and monitoring of reserve requirements, among other duties. However, the OIR is not required to approve rates for warranties.

Under current law, motor vehicle service agreements indemnify the agreement holder against loss caused by failure of any mechanical or other component part, or any mechanical or other component part of the motor vehicle that does not function as it was originally intended. The term "motor vehicle service agreement" also includes any contract that provides: for coverage which is issued in conjunction with an additive product applied to the motor vehicle that is the subject of such agreement; for payment of vehicle protection expenses (such as meeting applicable deductibles and providing for temporary replacement vehicle rental expenses); and for the payment for paintless dent-removal services.<sup>1</sup>

As defined in statute, "additive product" means any fuel supplement, oil supplement, or any other supplement product added to a motor vehicle for the purpose of increasing or enhancing the performance or improving the longevity of such motor vehicle.<sup>2</sup> The bill modifies this definition to indicate the term does not include a product applied to the exterior or interior surface of a motor vehicle to protect the appearance of the motor vehicle.

The bill deletes the definition of "paintless dent-removal" but still allows the process to be considered part of a motor vehicle service agreement. In revising the process, the bill makes two changes. Currently, coverage for paintless dent-removal is predicated on services being provided by a company whose primary business is providing such services. The bill eliminates this condition, thereby allowing greater flexibility in who offers the service. The second change removes hail damage as a specific example of a cause of a dent, ding and crease. However, because the new language that provides coverage for removal of dents, dings, or creases on a motor vehicle that may be repaired is not limited in any way, this should not affect the right to provide or receive coverage for hail damage. In effect, this change removes superfluous language.

The bill also changes and expands coverage provided in a motor vehicle service agreement to include: a) repair or replacement of tires or wheels on a motor vehicle damaged as a result of encountering a road hazard<sup>3</sup>; b) removal of dents, dings, or creases on a motor vehicle that may be repaired using the process of paintless dent removal without affecting the existing paint finish and without using replacement body panels, or sanding, bonding, or painting; c) replacement of a motor vehicle key or key fob if the key or key fob is inoperable, lost, or stolen.

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<sup>1</sup> s. 634.011(8), F.S.

<sup>2</sup> s. 634.011(2), F.S.

<sup>3</sup> "Road hazard" means a danger that is encountered while operating a motor vehicle. The term includes, but is not limited to, potholes, rocks, debris, metal parts, glass, plastics, curbs and composite scraps. The term does not include any damage caused by collision with another vehicle, vandalism, or other causes usually covered under the comprehensive or collision coverages provided by an automobile physical damage policy.

B. SECTION DIRECTORY:

**Section 1.** Amends s. 634.011, F.S., relating to definitions.

**Section 2.** Provides an effective date of July 1, 2016.

**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:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None provided by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 19, 2016, the Insurance & Banking Subcommittee considered HB 875 and adopted three amendments which did the following:

- Deleted the authority for the OIR Commissioner to approve additional services that can be part of motor vehicle service agreements; and
- Revised the definition of road hazard to limit its application and to replace the term “wood debris” with “debris.”

This staff analysis has been updated to reflect the committee substitute.

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A bill to be entitled

An act relating to motor vehicle service agreement companies; amending s. 634.011, F.S.; revising and providing definitions; providing an effective date.

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

Section 1. Subsections (14) through (17) of section 634.011, Florida Statutes, are renumbered as subsections (15) through (18), respectively, subsections (2) and (8) of that section are amended, and a new subsection (14) is added to that section, to read:

634.011 Definitions.—As used in this part, the term:

(2) "Additive product" means any fuel supplement, oil supplement, or any other supplement product added to a motor vehicle for the purpose of increasing or enhancing the performance or improving the longevity of such motor vehicle. The term "additive product" does not include a product applied to the exterior or interior surface of a motor vehicle to protect the appearance of the motor vehicle.

(8) "Motor vehicle service agreement" or "service agreement" means any contract or agreement indemnifying the service agreement holder for the motor vehicle listed on the service agreement and arising out of the ownership, operation, and use of the motor vehicle against loss caused by failure of any mechanical or other component part, or any mechanical or

27 other component part that does not function as it was originally  
 28 intended; however, nothing in this part shall prohibit or affect  
 29 the giving, free of charge, of the usual performance guarantees  
 30 by manufacturers or dealers in connection with the sale of motor  
 31 vehicles. Transactions exempt under s. 624.125 are expressly  
 32 excluded from this definition and are exempt from the provisions  
 33 of this part. The term "motor vehicle service agreement"  
 34 includes any contract or agreement that provides:

35 (a) For the coverage or protection defined in this  
 36 subsection and which is issued or provided in conjunction with  
 37 an additive product applied to the motor vehicle that is the  
 38 subject of such contract or agreement;

39 (b) For payment of vehicle protection expenses.

40 1.a. "Vehicle protection expenses" means a preestablished  
 41 flat amount payable for the loss of or damage to a vehicle or  
 42 expenses incurred by the service agreement holder for loss or  
 43 damage to a covered vehicle, including, but not limited to,  
 44 applicable deductibles under a motor vehicle insurance policy;  
 45 temporary vehicle rental expenses; expenses for a replacement  
 46 vehicle that is at least the same year, make, and model of the  
 47 stolen motor vehicle; sales taxes or registration fees for a  
 48 replacement vehicle that is at least the same year, make, and  
 49 model of the stolen vehicle; or other incidental expenses  
 50 specified in the agreement.

51 b. "Vehicle protection product" means a product or system  
 52 installed or applied to a motor vehicle or designed to prevent



53 | the theft of the motor vehicle or assist in the recovery of the  
 54 | stolen motor vehicle.

55 |         2. Vehicle protection expenses shall be payable in the  
 56 | event of loss or damage to the vehicle as a result of the  
 57 | failure of the vehicle protection product to prevent the theft  
 58 | of the motor vehicle or to assist in the recovery of the stolen  
 59 | motor vehicle. Vehicle protection expenses covered under the  
 60 | agreement shall be clearly stated in the service agreement form,  
 61 | unless the agreement provides for the payment of a  
 62 | preestablished flat amount, in which case the service agreement  
 63 | form shall clearly identify such amount.

64 |         3. Motor vehicle service agreements providing for the  
 65 | payment of vehicle protection expenses shall either:

66 |             a. Reimburse a service agreement holder for the following  
 67 | expenses, at a minimum: deductibles applicable to comprehensive  
 68 | coverage under the service agreement holder's motor vehicle  
 69 | insurance policy; temporary vehicle rental expenses; sales taxes  
 70 | and registration fees on a replacement vehicle that is at least  
 71 | the same year, make, and model of the stolen motor vehicle; and  
 72 | the difference between the benefits paid to the service  
 73 | agreement holder for the stolen vehicle under the service  
 74 | agreement holder's comprehensive coverage and the actual cost of  
 75 | a replacement vehicle that is at least the same year, make, and  
 76 | model of the stolen motor vehicle; or

77 |             b. Pay a preestablished flat amount to the service  
 78 | agreement holder.

79  
 80 Payments shall not duplicate any benefits or expenses paid to  
 81 the service agreement holder by the insurer providing  
 82 comprehensive coverage under a motor vehicle insurance policy  
 83 covering the stolen motor vehicle; however, the payment of  
 84 vehicle protection expenses at a preestablished flat amount of  
 85 \$5,000 or less does not duplicate any benefits or expenses  
 86 payable under any comprehensive motor vehicle insurance policy;  
 87 ~~or~~

88 (c)1. For repair or replacement of tires or wheels on a  
 89 motor vehicle damaged as a result of encountering a road hazard;

90 (d) For removal of dents, dings, or creases on a motor  
 91 vehicle that may be repaired using the process of paintless dent  
 92 removal without affecting the existing paint finish and without  
 93 using replacement body panels, or sanding, bonding, or painting;  
 94 or

95 (e) For replacement of a motor vehicle key or key fob if  
 96 the key or key fob is inoperable, lost, or stolen ~~For the~~  
 97 ~~payment for paintless dent removal services provided by a~~  
 98 ~~company whose primary business is providing such services.~~

99 ~~2. "Paintless dent removal" means the process of removing~~  
 100 ~~dents, dings, and creases, including hail damage, from a vehicle~~  
 101 ~~without affecting the existing paint finish, but does not~~  
 102 ~~include services that involve the replacement of vehicle body~~  
 103 ~~panels or sanding, bonding, or painting.~~

104 (14) "Road hazard" means a danger that is encountered

105 while operating a motor vehicle. The term includes, but is not  
106 limited to, potholes, rocks, debris, metal parts, glass,  
107 plastic, curbs, and composite scraps. The term does not include  
108 any damage caused by collision with another vehicle, vandalism,  
109 or other causes usually covered under the comprehensive or  
110 collision coverages provided by an automobile physical damage  
111 policy.

112 Section 2. This act shall take effect July 1, 2016.