Business & Professions Subcommittee

Tuesday, March 17, 2015
12:30 PM
12 HOB

MEETING PACKET

Steve Crisafulli
Speaker

Halsey Beshears
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Business & Professions Subcommittee

Start Date and Time:	Tuesday, March 17, 2015 12:30 pm
End Date and Time:	Tuesday, March 17, 2015 02:30 pm
Location:	12 HOB
Duration:	2.00 hrs

Consideration of the following bill(s):

CS/HB 725 City of Jacksonville, Duval County by Local Government Affairs Subcommittee, Adkins
HB 765 Household Moving Services by Goodson
HB 921 Motor Vehicle Manufacturers, Factory Branches, Distributors, Importers, & Dealers by Trujillo
HB 1141 Natural Gas Rebate Program by Ray
HB 1287 Veterinary Medical Practice by Renuart

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., Monday, March 16, 2015.

By request of the Chair, all Business & Professions Subcommittee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Monday, March 16, 2015.

NOTICE FINALIZED on 03/13/2015 16:00 by Ellinor.Martha

The Florida House of Representatives

Regulatory Affairs Committee

Business & Professions Subcommittee

Steve Crisafulli
Speaker

Halsey Beshears
Chair

AGENDA

March 17, 2015
12 House Office Building
12:30 PM – 2:30 PM

I. **Call to Order & Roll Call**

II. CS/HB 725 by *Local Government Affairs Subcommittee; Rep. Adkins*
City of Jacksonville, Duval County

III. HB 765 by *Rep. Goodson*
Household Moving Services

IV. HB 921 by *Rep. Trujillo*
Motor Vehicle Manufacturers, Factory Branches, Distributors, Importers, & Dealers

V. HB 1141 by *Rep. Ray*
Natural Gas Rebate Program

VI. HB 1287 by *Rep. Renuart*
Veterinary Medical Practice

VII. **Adjournment**

303 House Office Building, 402 South Monroe Street, Tallahassee, Florida 32399-1300
(850) 717-4871 Fax: (850) 413-0419

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: CS/HB 725 City of Jacksonville, Duval County
SPONSOR(S): Local Government Affairs Subcommittee; Adkins
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Government Affairs Subcommittee	12 Y, 0 N, As CS	Darden	Miller
2) Business & Professions Subcommittee		Butler 3513	Luczynski nj
3) Local & Federal Affairs Committee			

SUMMARY ANALYSIS

Kiteboarding and kitesurfing are prohibited within an area extending one mile from the centerline of an airport runway.

The bill provides an exception to this prohibition for kiteboarding and kitesurfing in Huguenot Memorial Park, in the city of Jacksonville, Duval County. The park is within an area extending one mile from an active airport runway. The bill will generate additional revenue for the City of Jacksonville in the form of increased park fees and will benefit the manufacturers and sellers of sporting equipment by bolstering demand.

This bill will take effect upon becoming law.

According to House Rule 5.5(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. Since this bill creates an exemption to general law, the provisions of House Rule 5.5(b) apply.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Regulations on Kiteboarding and Kitesurfing

Kiteboarding and kitesurfing together are defined by statute as an "activity in which a kiteboard or surfboard is tethered to a kite so as to harness the power of the wind and propel the board across a body of water."[1] Kite is further defined for the purposes of the statute as having the same meaning as under Federal regulations.[2]

Federal Aviation Administration (FAA) regulations concerning kites apply to any kite that weighs more than five pounds and is intended to be attached to a rope or cable.[3] Federal regulations prohibit the use of kites in the area less than 500 feet from the base of any cloud, more than 500 feet above the surface of the earth, in an area where ground visibility is less than three miles, or within five miles of the boundary of any airport.[4]

Kiteboarders and kitesurfers are propelled by wind-power and are tethered to kites with lines of sixty to seventy feet.[5] Kiteboarding and kitesurfing are not allowed in the federally restricted areas, unless the participant receives a waiver from the FAA.[6]

Federal regulations require the mooring line of a kite to have colored pennants or streamers, visible for one mile, every fifty feet starting at 150 feet above the earth's surface.[7] Further regulations restrict the use of kites between sunset and sunrise, requiring the mooring line to be lighted in the same manner as required for obstructions to air navigation.[8] Florida law may be more restrictive on this matter, prohibiting persons from engaging in "water skiing... or any similar activity" from thirty minutes after sunset to thirty minutes before sunrise.[9]

Kiteboarding and kitesurfing are also prohibited by Florida law near airports. Kiteboarding and kitesurfing are prohibited within an area of one-half mile from a direct line extending one mile from the centerline of an airport runway unless otherwise permitted by federal law.[10]

A person or entity may apply and be granted waiver from the FAA to operate a kite, such as the one used for kiteboarding or kite surfing, within five miles of an airport. Under s. 327.37(6), F.S., if a person or entity is granted such a waiver by the FAA, then that person or entity would also be exempted from the prohibition on kiteboarding and kitesurfing near an airport in s. 327.37(6), F.S.

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[1] s. 327.02, F.S.
[2] s. 327.02(14), F.S.; *Cf.* 14 C.F.R. s.101.1(2) (2015) ("any kite that weighs more than 5 pounds and is intended to be flown at the end of a rope or cable").
[3] 14 C.F.R. s. 101.1(2) (2015).
[4] 14 C.F.R. s. 101.13 (2015).
[5] Matt Soergel, *Huguenot Park likely to remain a haven for kiteboarders, despite new state law*, FLORIDA TIMES-UNION (June 17, 2014), http://jacksonville.com/news/metro/2014-06-17/story/huguenot-park-likely-remain-haven-kiteboarders-despite-new-state-law.
[6] 14 C.F.R. s. 101.5 (2015); *see also* Federal Aviation Administration, *Air Traffic Bulletin* (Apr. 2012) (explaining waiver process for parasailing), *available at* http://www.faa.gov/air_traffic/publications/media/ATB2012-2.pdf.
[7] 14 C.F.R. s. 101.17 (2015).
[8] *Id.*
[9] s. 327.37(2)(a), F.S., (kiteboarding and kitesailing are not specifically enumerated, but may be considered "similar activity").
[10] s. 327.37(6), F.S.

Kiteboarding in Huguenot Memorial Park

Huguenot Memorial Park is located in northeast Jacksonville, nestled between Fort George Inlet to the north, the Atlantic Ocean to the east, and the St. Johns River to the south.[11] The park has been described as the "prime kiteboarding spot in Northeast Florida."[12] The park is located across the St. Johns River from Naval Station Mayport.[13] The runway at Naval Station Mayport is located on the northern end of the installation.[14]

Areas of Huguenot Memorial Park within one mile of the base's runway include a flat-water lagoon area that had been frequently used for training beginners in the sport.[15] This lagoon area, referred to "The Pond," is seen by the kiteboarding community as an important space for ensuring beginners can learn the sport without posing excessive risk to themselves and other beachgoers.[16] Areas of the park where kiteboarding are still permitted are seen as too challenging for beginners and present a heightened risk of injury.[17]

Officials at Naval Station Mayport have not seen kiteboarding and kitesurfing as a cause for concern, stating the topic has "never been an issue on our scope."[18] Officials from the base have since reiterated this position, while also noting the importance of continued monitoring "to ensure the safety, health, and welfare of our community, and the operational integrity of the installation mission."[19]

Effect of Proposed Changes

The bill provides an exemption to s. 327.37(6), F.S., for kitesurfing and kiteboarding in Huguenot Memorial Park, in the City of Jacksonville, Duval County. The bill also describes the boundaries of Huguenot Memorial Park and surrounding waters.

To the extent that kitesurfing and kiteboarding are exempted by this bill, federal law still prohibits these activities within five miles of the boundary of any airport. Persons or entities who wish to engage in kitesurfing or kiteboarding in Huguenot Memorial Park within five miles of the boundary of Naval Station Mayport, must apply for and be granted a waiver, as required by federal law, from the FAA.

According to the economic impact statement (EIS), the bill will result in increased usage of Huguenot Memorial Park, resulting in the collection of additional park fees and thereby increasing revenues for the City of Jacksonville. The EIS also states the bill would benefit water sports vendors and other outdoor activity equipment manufacturers and retailers by increasing demand for kiteboarding and kitesurfing paraphernalia.

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[11] *See* City of Jacksonville, *Huguenot Memorial Park*, http://www.coj.net/departments/parks-and-recreation/recreation-and-community-programming/huguenot-memorial-park.aspx (last visited Mar. 3, 2015).
[12] Matt Soergel, *Huguenot Park kiteboarders worry they'll no longer fly high at oceanfront park*, FLORIDA TIMES-UNION (May 27, 2014), http://jacksonville.com/news/metro/2014-05-27/story/huguenot-park-kiteboarders-worry-theyll-no-longer-fly-high-oceanfront.
[13] *Id.*
[14] *See* The Periscope Kings Bay, Georgia, *Important Info About Your Drinking Water*, http://kingsbayperiscope.jacksonville.com/military/mayport-mirror/2013-11-06/story/important-info-about-your-drinking-water (last visited Mar. 4, 2015) (containing map of Naval Station Mayport). *See also* FAA Airport Diagrams, *Mayport NS (ADM David L. McDonald Field)*, https://nfdc.faa.gov/nfdcApps/airportLookup/airportDisplay.jsp?airportId=NRB (last visited Mar. 4, 2015). The general remarks about Mayport NS at this site caution that large vessels with masts of up to 150 feet frequently transit the channel of the St. Johns River immediately adjacent to the approach end of runway 23. As the river channel is closer to the Naval Station than Huguenot Park, this caution indicates the air traffic apparently would exceed an altitude of at least 150 feet or more above the park.
[15] Soergel, *supra* note 12.
[16] *Id.*
[17] Steve Patterson, *Huguenot fans want to exempt Jacksonville park from state law limiting kite-surfing*, FLORIDA TIMES-UNION (Oct. 16, 2014), http://jacksonville.com/news/metro/2014-10-16/story/huguenot-fans-want-exempt-jacksonville-park-state-law-limiting-kite.
[18] *Id.* (Statement from Mike Andrews, spokesman for the commander of Navy Region Southeast).
[19] Email from Matt Schellhorn, Community Planning and Liaison for Naval Station Mayport to Scott Shine, Member of the Jacksonville Waterways Commission, RE: Waterways (09/15/2014) (on file with Local Government Affairs Subcommittee).

According to House Rule 5.5(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. Since this bill creates an exemption to general law, the provisions of House Rule 5.5(b) apply.

B. SECTION DIRECTORY:

Section 1: Creates an exemption to s. 327.37(6), F.S., for kiteboarding and kitesurfing in Huguenot Memorial Park, City of Jacksonville, Duval County; and describes the boundaries of Huguenot Memorial Park.

Section 2: Provides that the bill shall take effect upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes [x] No []

IF YES, WHEN? November 18, 2014

WHERE? *Financial News & Daily Record*, a daily (except Saturday and Sunday) newspaper published in Duval County, Florida.

B. REFERENDUM(S) REQUIRED? Yes [] No [x]

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [x] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [x] No []

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The bill does not provide rulemaking authority or require executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 10, 2015, the Local Government Affairs Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment described and added the submerged lands and the waters surrounding and adjacent to Huguenot Memorial Park, in addition to the property description, to clarify the exemption created by the bill would apply to kiteboarding and kitesurfing in those waters.

This analysis is drawn to the bill as amended.

Rep Adkins
HB 725
LB

FINANCIAL NEWS &
Daily Record

PROOF OF PUBLICATION

(Published Daily Except Saturday and Sunday)
Jacksonville, Duval County, Florida

STATE OF FLORIDA,
COUNTY OF DUVAL, } SS:

Before the undersigned authority personally appeared James F. Bailey, Jr., who on oath says that he is the Publisher of FINANCIAL NEWS and DAILY RECORD, a daily (except Saturday and Sunday) newspaper published at Jacksonville, in Duval County, Florida; that the attached copy of advertisement, being a

Notice of Intention to Seek Local Legislation

in the matter of A bill to be entitled (J2)

in the _____ Court, of Duval County, Florida, was published in said newspaper in the issues of November 18, 2014

Affiant further says that the said FINANCIAL NEWS and DAILY RECORD is a newspaper at Jacksonville, in said Duval County, Florida, and that the said newspaper has heretofore been continuously published in said Duval County, Florida, each day (except Saturday and Sunday) and has been entered as periodicals matter at the post office in Jacksonville, in said Duval County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that he has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in said newspaper.

Publisher

Sworn to and subscribed before me this day of November 18, 2014

ANGELA CAMPBELL
Notary Public, State of Florida
My Comm. Expires April 10, 2017
Commission No. EE 871981

Angela Campbell
Notary Signature

Angela Campbell
Notary Public
EE871981

seal

James F. Bailey, Jr. personally known to me

NOTICE OF INTENTION TO SEEK LOCAL LEGISLATION

TO WHOM IT MAY CONCERN: NOTICE IS HEREBY GIVEN of intent that the undersigned will apply to the next Session of the Legislature of the State of Florida for the introduction of a local bill

A bill to be entitled

An act relating to the City of Jacksonville, Duval County; amending chapter 2014-70, Laws of Florida, as amended; providing an exemption from Section 327.37(6), Florida Statutes, (Water skis, parasails, aquaplanes, kite boarding, kite surfing, and moored ballooning regulated) for kite boarding or kite surfing within Huguenot Memorial Park in the City of Jacksonville; providing an effective date. (J-2) - This bill will be discussed at a meeting tentatively scheduled for January 15, 2015 in City Council Chambers.

Nov. 18 00(14-13001)

HOUSE OF REPRESENTATIVES
2015 LOCAL BILL CERTIFICATION FORM

BILL #: J-2 HB 1125

SPONSOR(S): Representative Janet H. Adkins

RELATING TO: Exemption from requirements of Sec 327.37 (6), F.S. (Ch. 2014-70, Laws of Florida) for kiteboarding in Huguenot Park, City of Jacksonville

[Indicate Area Affected (City, County, or Special District) and Subject]

NAME OF DELEGATION: Duval County Legislation Delegation

CONTACT PERSON: Paula Shoup

PHONE NO.: (904) 630-1680 **E-Mail:** paulas@coj.net

I. *House local bill policy requires that three things occur before a committee or subcommittee of the House considers a local bill: (1) The members of the local legislative delegation must certify that the purpose of the bill cannot be accomplished at the local level; (2) the legislative delegation must hold a public hearing in the area affected for the purpose of considering the local bill issue(s); and (3) the bill must be approved by a majority of the legislative delegation, or a higher threshold if so required by the rules of the delegation, at the public hearing or at a subsequent delegation meeting. Please submit this completed, original form to the Local Government Affairs Subcommittee as soon as possible after a bill is filed.*

(1) Does the delegation certify that the purpose of the bill cannot be accomplished by ordinance of a local governing body without the legal need for a referendum?

YES [X] NO [ ]

(2) Did the delegation conduct a public hearing on the subject of the bill?

YES [x] NO [ ]

Date hearing held: January 15, 2015

Location: Council Chambers, City Hall, 117 W. Duval St, Jacksonville FL, 32202

(3) Was this bill formally approved by a majority of the delegation members?

YES [X] NO [ ]

II. *Article III, Section 10 of the State Constitution prohibits passage of any special act unless notice of intention to seek enactment of the bill has been published as provided by general law (s. 11.02, F. S.) or the act is conditioned to take effect only upon approval by referendum vote of the electors in the area affected.*

Has this constitutional notice requirement been met?

Notice published: YES [X] NO [ ] DATE November 18, 2014

Where? Daily Record **County** Duval

Referendum in lieu of publication: YES [ ] NO [X]

Date of Referendum _____

III. *Article VII, Section 9(b) of the State Constitution prohibits passage of any bill creating a special taxing district, or changing the authorized millage rate for an existing special taxing district, unless the bill subjects the taxing provision to approval by referendum vote of the electors in the area affected.*

(1) Does the bill create a special district and authorize the district to impose an ad valorem tax?

YES [ ] NO [x] NOT APPLICABLE [ ]

(2) Does this bill change the authorized ad valorem millage rate for an existing special district?

YES [ ] NO [x] NOT APPLICABLE [ ]

If the answer to question (1) or (2) is YES, does the bill require voter approval of the ad valorem tax provision(s)?

YES [ ] NO [ ]

Note: House policy requires that an Economic Impact Statement for local bills be prepared at the local level and be submitted to the Local Government Affairs Subcommittee.

Delegation Chair (Original Signature) — Date: 1/15/15

Janet H. Adkins
Printed Name of Delegation Chair

HOUSE OF REPRESENTATIVES

2014 ECONOMIC IMPACT STATEMENT FORM

Read all instructions carefully.
House local bill policy requires that no local bill will be considered by a committee or a subcommittee without an Economic Impact Statement. This form must be prepared at the LOCAL LEVEL by an individual who is qualified to establish fiscal data and impacts, and has personal knowledge of the information given (for example, a chief financial officer of a particular local government). Please submit this completed, original form to the Local & Federal Affairs Committee as soon as possible after a bill is filed. Additional pages may be attached as necessary.

BILL #: J-2 HB 725

SPONSOR(S): Representative Janet H. Adkins

RELATING TO: Exemption from requirements of Section 327.37(6), F.S. (Ch. 2014-70, Laws of Florida) for kite boarding in Huguenot Park, City of Jacksonville.

[Indicate Area Affected (City, County or Special District) and Subject]

I. REVENUES:

These figures are new revenues that would not exist but for the passage of the bill. The term "revenue" contemplates, but is not limited to, taxes, fees and special assessments. For example, license plate fees may be a revenue source. If the bill will add or remove property or individuals from the tax base, include this information as well.

	FY 14-15	FY 15-16
Revenue decrease due to bill:	$ N/A	$ N/A
Revenue increase due to bill:	$ N/A	$ N/A

II. COST:

Include all costs, both direct and indirect, including start-up costs. If the bill repeals the existence of a certain entity, state the related costs, such as satisfying liabilities and distributing assets.

Expenditures for Implementation, Administration and Enforcement:

FY14-15	FY 15-16
$ N/A	$ N/A

Please include explanations and calculations regarding how each dollar figure was determined in reaching total cost.

There should be no negative impact as a result of the subject legislation. If anything, the subject legislation will result in maintaining revenues that the City of Jacksonville would

receive from park fees for residents and vistors who enter Huguenot Park to engage in kite boarding or kite surfing activities.

III. FUNDING SOURCE(S):

State the specific source from which funding will be received, for example, license plate fees, state funds, borrowed funds or special assessments.

If certain funding changes are anticipated to occur beyond the following two fiscal years, explain the change and at what rate taxes, fees or assessments will be collected in those years.

	FY 14-15	FY 15-16
Local:	$ N/A	$ N/A
State:	$ N/A	$ N/A
Federal:	$ N/A	$ N/A

III. ECONOMIC IMPACT:

Potential Advantages:

Include all possible outcomes linked to the bill, such as increased efficiencies, and positive or negative changes to tax revenue. If an act is being repealed or an entity dissolved, include the increased or decreased efficiencies caused thereby.

Include specific figures for anticipated job growth.

1. Advantages to Individuals: Residents and vistors will be able to take advantage of a public park for intended purposes of outdoor enjoyment without unnecessary government regulation.

2. Advantages to Businesses: Water sport vendors or those specializing in outdoor activities equipment may benefit from subject legislation as it would permit activities in locations not permitted by SB 320.

3. Advantages to Government: With the regulation, residents and vistors may not visit Huguenot Park because they are limited in kite surfing locations, which would result in a decrease in park revenues. Without the regulation the park will not lose those revenues.

Potential Disadvantages:

Include all possible outcomes linked to the bill, such as inefficiencies, shortages, or market changes anticipated.

Include reduced business opportunities, such as reduced access to capital or training.

State any decreases in tax revenue as a result of the bill.

1. Disadvantages to Individuals: Should be no disadvantage as it allows for open access to Huguenot Park for outdoor watersports.

2. Disadvantages to Businesses: Should be no disadvantage because allows business sales for potential activities not now permitted with the implementation of SB 320.

3. Disadvantages to Government: Should be no disadvantage; disadvantage would only be if regulation is continued in Huguenot Park, which could result in lost revenues for park fees.

IV. ESTIMATED IMPACT UPON COMPETITION AND THE OPEN MARKET FOR EMPLOYMENT:

Include all changes for market participants, such as suppliers, employers, retailers and laborers. If the answer is "None," explain the reasons why. Also, state whether the bill may require a governmental entity to reduce the services it provides.

1. Impact on Competition:

None. The only impact on competition would be if the subject bill were not approved and SB 320 as currently written was implemented as it restricts kite boarding activities which have been permitted prior in Huguenot Park.

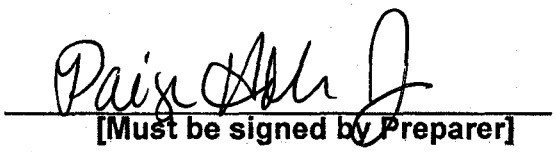
2. Impact on the Open Market for Employment:

None. There would be a potential negative impact on open market for employment without the proposed legislation, as SB 320 in current form, limits activities in certain locations currently used for kite boarding or kite surfining.

V. SPECIFIC DATA USED IN REACHING ESTIMATES:

Include the type(s) and source(s) of data used, percentages, dollar figures, all assumptions made, history of the industry/issue affected by the bill, and any audits.

No data used.

PREPARED BY: 

[Must be signed by Preparer]

Print preparer's name: Paige H. Johnston

10/2/14

Date

TITLE (such as Executive Director, Actuary, Chief Accountant, or Budget Director):

Assistant General Counsel

REPRESENTING: City Council Member - Jim Love (District 14)

PHONE: (904) 630-3671

E-MAIL ADDRESS: pjohnston@coj.net

A bill to be entitled

An act relating to the City of Jacksonville, Duval County; providing an exception to general law; allowing kiteboarding and kitesurfing within a specified area; providing an effective date.

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

Section 1. Notwithstanding s. 327.37(6), Florida Statutes, kiteboarding and kitesurfing activities, as defined in s. 327.02, Florida Statutes, are allowed within Huguenot Memorial Park in the City of Jacksonville, Duval County, and the submerged lands together with their covering waters surrounding and adjacent to Huguenot Memorial Park, including those submerged lands and waters identified as the Fort George Inlet and those submerged lands and waters extending from the mean high water mark seaward into the Atlantic Ocean for a distance of 3 nautical miles, but excluding those submerged lands and waters identified as the St. Johns River lying to the south of Huguenot Memorial Park, which park is more specifically described as follows:

Those accreted lands lying within Section 20 and unsurveyed Section 17, Township 1 South, Range 29 East, Duval County, Florida, southeasterly of Fort George Inlet, and northerly of and adjacent to the

northerly line of those lands described in Board of Trustees of the Internal Improvement Trust Fund Deed No. 18,471 as recorded in Deed Book 817, Page 308, Public Records of Duval County, Florida, said northerly line being described as follows:

Commence at the Northwest corner of said Section 20, thence South 0°47'31" East along the westerly line of said Section 20 a distance of 2396.6 feet; thence North 89°12'29" East a distance of 2,439 feet to a point on the axis of the North Jetty, said point being the Point of Beginning of those lands described in Deed Book 817, Page 308; thence North 17°20'09" East along the westerly line of said lands a distance of 500.00 feet to the Northwest corner of said lands and the POINT OF BEGINNING of said northerly line; thence South 72°39'51" East along said northerly line a distance of 6,450 feet to an angle point in the northerly boundary of said lands and the POINT OF TERMINATION of the herein described line.

And

That portion of Government Lots Seven (7) and Eight (8) lying Southeasterly of Hecksher Drive (State Road No. 105) and Easterly of Haulover Creek, Section 19,

Township 1 South, Range 29 East, Jacksonville, Duval County, Florida, excepting therefrom that portion of said Government Lot Eight (8) deeded to the State of Florida and described as Parcel No. 21 in deed recorded in the public records of said County in Deed Book 1058, pages 113 through 117.

And

All that portion of the lands described and recorded in Eng Form 1736 by the Department of the Army Lease Agreement, Project No. DACW17-1-80-2, dated 1 June 1980. Excepting therefrom all that portion lying northerly of the north line of that 100 foot tract described and recorded in Deed Book 527, page 349 of the current public records of Duval County, Florida.

Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 765 Household Moving Services
SPONSOR(S): Goodson
TIED BILLS: None. **IDEN./SIM. BILLS:** SB 798

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee		Whittier	Luczynski
2) Agriculture & Natural Resources Appropriations Subcommittee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

Chapter 507, F.S., establishes laws pertaining to the loading, transportation or shipment, unloading, and affiliated storage of household goods as part of household moves and addresses household moving practices in the state that are consistent with federal law governing consumer protection. The chapter applies to the operations of any mover or moving broker engaged in the *intrastate* transportation or shipment of household goods originating and terminating in the state and does not apply to shipments contracted by the U.S., the state, or any local government or political subdivision of the state.

The bill makes the following major changes to Chapter 507, F.S.:

- Provides definitions for "impracticable operations" and "tariff" and revises the definition of mover, clarifying that a mover required to register with the Department of Agricultural and Consumer Services (DACS) does not include a laborer hired only for the purposes of loading and unloading goods;
- Lowers the registration fees for moving brokers;
- Provides that DACS may immediately suspend a mover's registration or eligibility for registration if a mover does not maintain motor vehicle insurance coverage;
- Provides that a mover must offer valuation coverage and may not limit its liability for the loss or damage of household goods to a specified valuation rate;
- Requires a mover to annually file a tariff with DACS and requires that the tariff be posted and available for public inspection;
- Requires a mover to conduct a physical survey of the household goods to be moved unless the survey is waived by the shipper;
- Requires a mover to provide a binding estimate to the shipper prior to executing a contract for service, which details the total charges for moving the household goods;
- Requires DACS to prepare a publication of rights, responsibilities, and remedies for movers and shippers under the chapter and requires that a mover provide a prospective shipper the published summary of rights and responsibilities, a binding estimate, and copies of the tariff;
- Requires a mover to tender household goods for delivery on the agreed upon delivery date;
- Provides a maximum allowable charge for moving goods and time-frames in which payments should be submitted to the mover;
- Provides that a mover may collect partial payment if part of the shipment of household goods is lost or destroyed and outlines shipper's rights in the instance of partial/total loss of household goods;
- Provides that DACS can immediately suspend a registration or the processing of an application for registration if the registrant or applicant is formally charged with certain crimes and provides for penalties against shippers who fail to comply with a law enforcement officer's order to relinquish a shipper's household goods.

The DACS estimates a net cost (expenditures and decreased revenues) of $220,741 in FY 15-16 and $124,793 in FY 16-17. The bill provides an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Chapter 507, F.S., establishes laws pertaining to the loading, transportation or shipment, unloading, and affiliated storage of household goods as part of household moves, and addresses household moving practices in the state that are consistent with federal law governing consumer protection. The chapter applies to the operations of any mover or moving broker engaged in the *intrastate* transportation or shipment of household goods originating and terminating in the state and does not apply to shipments contracted by the U.S., the state, or any local government or political subdivision of the state. Legislative intent provides that "the chapter is intended to secure the satisfaction and confidence of shippers and members of the public when using a mover."[1]

Section 507.01, F.S., provides the following definitions:

- "Household goods" or "goods" means personal effects or other personal property commonly found in a home, personal residence, or other dwelling, including, but not limited to, household furniture. The term does not include freight or personal property moving to or from a factory, store, or other place of business.
- "Household move" or "move" means the loading of household goods into a vehicle, moving container, or other mode of transportation or shipment; the transportation or shipment of those household goods; and the unloading of those household goods, when the transportation or shipment originates and terminates at one of the following ultimate locations, regardless of whether the mover temporarily stores the goods while en route between the originating and terminating locations:
    - From one dwelling to another dwelling;
    - From a dwelling to a storehouse or warehouse that is owned or rented by the shipper or the shipper's agent; or
    - From a storehouse or warehouse that is owned or rented by the shipper or the shipper's agent to a dwelling.
- "Mover" means a person who, for compensation, contracts for or engages in the loading, transportation or shipment, or unloading of household goods as part of a household move. The term does not include a postal, courier, envelope, or package service that does not advertise itself as a mover or moving service.
- "Moving broker" or "broker" means a person who, for compensation, arranges for another person to load, transport or ship, or unload household goods as part of a household move or who, for compensation, refers a shipper to a mover by telephone, postal or electronic mail, Internet website, or other means.
- "Shipper" means a person who uses the services of a mover to transport or ship household goods as part of a household move.

Section 507.03, F.S., requires movers and moving brokers engaged in intrastate moving to register with the Department of Agriculture and Consumer Services (DACS) biennially (every 2 years). The registration fee is $300 per year for each mover or moving broker. At the time of application or renewal, a $600 fee is due for the two-year registration.[2] There are approximately 900 movers and 12 moving brokers in the state.[3]

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[1] s. 507.02, F.S.
[2] s. 507.03, F.S.
[3] Email from Jonathan Rees, Deputy Director of Legislative Affairs, Department of Agriculture and Consumer Services, RE: the moving industry in the state (Mar. 5, 2015).

A Certificate of Insurance must be provided by the mover showing proof of proper coverage. Insurance and surety must be issued by a company authorized to transact business in this state. The DACS shall be named as a certificate holder and must be notified at least 10 days before cancellation of insurance coverage.[4] A copy of the policy, declarations page or insurance card will not be accepted.

Coverage must include:

- Liability insurance coverage for the loss or damage of household goods – not less than $10,000 per shipment.
    - In lieu of maintaining the liability insurance, a mover operating two or fewer trucks is authorized, and a moving broker is required, to file with DACS, a performance bond or certificate of deposit in the amount of $25,000.[5]
- Motor vehicle coverage, including bodily injury and property damage liability coverage in the following minimum amounts:
    - $50,000 per occurrence for a commercial motor vehicle with a gross weight of less than 35,000 pounds.
    - $100,000 per occurrence for a commercial motor vehicle with a gross weight of more than 35,000 pounds, but less than 44,000 pounds.
    - $300,000 per occurrence for a commercial motor vehicle with a gross weight of 44,000 pounds or more.[6]

A mover may offer valuation coverage to compensate a shipper if there is loss or damage of the shipper's household goods that occurs during a household move. A mover may not limit their liability for the loss or damage of household goods to a valuation rate that is less than 60 cents per pound per article. If a mover limits their liability to less than that rate, the provision of a contract for moving services is void. If a mover limits its liability for a shipper's goods, the mover must disclose the limitation, including the valuation rate, to the shipper in writing at the time that the estimate and contract for services are executed and before any moving or accessorial services are provided. The disclosure must also inform the shipper of the opportunity to purchase valuation coverage if the mover offers that coverage.[7]

Before providing any moving or accessorial services, a contract and estimate must be provided to a prospective shipper in writing, must be signed and dated by the shipper and the mover, and must include:

- The name, telephone number, and physical address where the mover's employees are available during normal business hours.
- The date the contract or estimate is prepared and any proposed date of the move.
- The name and address of the shipper, the addresses where the articles are to be picked up and delivered, and a telephone number where the shipper may be reached.
- The name, telephone number, and physical address of any location where the goods will be held pending further transportation, including situations where the mover retains possession of goods pending resolution of a fee dispute with the shipper.
- An itemized breakdown and description and total of all costs and services for loading, transportation or shipment, unloading, and accessorial services to be provided during a household move or storage of household goods.
- Acceptable forms of payment. A mover shall accept a minimum of two of the three following forms of payment:
    - Cash, cashier's check, money order, or traveler's check;

[4] s. 507.04, F.S.
[5] s. 507.04(1), F.S.
[6] s. 507.04(2), F.S.
[7] s. 507.04(4) and (5), F.S.

- Valid personal check, showing upon its face the name and address of the shipper or authorized representative; or
- Valid credit card, which shall include, but not be limited to, Visa or MasterCard.[8]

Movers and moving brokers are not currently required to file a tariff with DACS. A tariff is a legal document that includes the exact prices, services, rules, regulations, classifications, policies, and other provisions of the services offered by the mover.[9] Further, there is no requirement that a mover tender household goods for delivery on the agreed upon delivery date.

The department has no publication that includes a summary of the rights and responsibilities of and remedies available to movers and shippers.[10] There is no provision in the statute for movers to collect a partial payment from a shipper if part of the shipment of household goods is lost or destroyed. Administrative remedies and penalties are: issuing notices of noncompliance; imposing an administrative fine; directing person/business to cease and desist specified activities; refusing to register, revoke, or suspend a registration, or place a registrant on probation.

Effects of Proposed Changes

Legislative intent for the chapter is expanded to include the provision of "consistency and transparency in moving practices" in addition to securing the satisfaction and confidence of shippers and members of the public when using a mover.

The bill adds definitions for the following terms:

- "Impracticable operations" means conditions that make it impossible for a mover to perform pickup or delivery services for a household move with its road haulage equipment.
- "Tariff" means the document filed with the department by a mover under s. 507.045 which reflects its rates and charges for transportation and accessorial services.

The definition of "mover" is clarified to reflect that an individual hired as a laborer to assist a shipper only in the loading and unloading of the shipper's own household goods is not included as a "mover".

"Liability Insurance" is retitled "cargo liability insurance" throughout the section. Consequences for failing to maintain insurance coverage are moved from s. 507.04(1), F.S., to s. 507.04(3), F.S. This change does not remove the insurance requirement, it expands it by moving it to a section that refers to both cargo liability insurance and motor vehicle insurance requirements.

The bill decreases the biennial registration fee for a moving broker from $300 per year to $100 per year. At the time of application or renewal, a $200 fee is due for the two-year registration. The registration fee for each mover remains at $300 per year with the application or renewal for the biennial registration remaining at $600. The bill removes the requirement for a moving broker to provide *evidence* of current and valid insurance or alternative coverage; however, it does not remove the *actual* requirement for a moving broker to have alternative coverage if they have two or fewer vehicles.

A moving company's valuation coverage protects a shipper's goods from damage. Currently, a mover may offer valuation coverage to compensate a shipper if there is loss or damage of the shipper's household goods that occurs during a household move. The bill changes valuation coverage from an optional offering to a required offering. The current valuation rate permits the mover to limit the liability for the loss or damage of household goods at no less than 60 cents per pound. The bill amends this to

[8] s. 507.05, F.S.
[9] Florida Department of Agriculture and Consumer Services, Agency Analysis of 2015 House Bill 765, p. 2 (Feb. 24, 2015).
[10] *Id.*

require the mover to offer coverage that is no less than the cost of replacement of the goods less depreciated value.

The bill requires each mover to annually file a tariff with DACS which must be posted and available for public inspection. Such tariff must be clear and concise and arranged in a manner that allows a shipper to determine the precise cost of, and the terms of service applicable to, the move. The bill specifies items that the tariff must contain. DACS may reject a tariff that fails to meet the requirements of this section or departmental rule, and such tariff is void and its use is unlawful.

Language is added that details the aspects of physical surveys, the process of waiving a survey, and the provisions of a binding estimate. A physical survey must be performed by the mover to provide an accurate binding estimate unless the goods being shipped are outside of a 50-mile radius of the location of the agent who prepares the estimate. In other instances, a physical survey may be waived if the shipper elects to do so; however, this waiver must be documented in writing and retained by the mover. Before executing a contract for service, and at least 48 hours before the scheduled time and date of a shipment, a mover must provide a binding estimate of the total charges including, but not limited to, the loading, transportation or shipment, and unloading of household goods and accessorial services.

Under the bill, movers are allowed to charge a one-time fee not to exceed $100 for binding estimates. The estimates should be signed upon completion, with both the mover and shipper maintaining a copy. Movers can amend the estimates if done within the 48-hours preceding the scheduled loading of goods. Further provisions outline exclusions for binding estimates and addendums to the original contract.

The bill provides additional provisions to the contract for service that is provided to the shipper by the mover prior to providing any services. These include: total charges based on the binding estimate and the terms and conditions of the contract, a caveat listing the maximum potential payment if the shipper and mover agree to pay upon delivery, and the recognition of addendums. A copy of the contract must accompany the household goods whenever they are in the mover's possession.

The bill requires DACS to prepare a summary of the rights and responsibilities of, and remedies, available to movers and shippers. The publication must include a form to be signed by the mover and the shipper acknowledging that both parties have read and understand the document. This acknowledgment form, along with the publication, must be attached as a part of the contract for service. The bill outlines the information that must be provided to the shipper by the mover prior to services being rendered.

The bill requires a mover to tender goods on the agreed delivery date or within the time frame specified. If a mover cannot deliver the household goods within the agreed upon time frame, the mover must make every effort to notify the shipper of the delay and provide an amended date of delivery. The DACS notes that, "This will add consumer protection from loss or theft of goods and increase the ability to hold carriers responsible for damages, losses or failures—responsible carriers will be unaffected."[11]

The bill provides that movers may only charge the amount of the binding estimate, plus any additional services requested or agreed to in writing. A mover is specifically prohibited from charging, demanding, collecting, or receiving compensation for transportation or accessorial services in an amount greater than the rates and charges specified in the tariff that was in effect on the date that the binding estimate was signed by the mover and the shipper.

If a mover is proposing a change to a rate or charge, or the manner in which such rate or charge is calculated, in the tariff, DACS must be notified and the change is not effective until 30 days after the mover provides notice of the proposed change to the department. Upon a showing of good cause,

[11] Florida Department of Agriculture and Consumer SERVICES, Agency Analysis of 2015 House Bill 765, p. 5 (Feb. 24, 2015).

DACS may waive the 30-day notice requirement. Such notice must plainly state the proposed change and its effective date.

Any payment that is not collected upon delivery must be billed within 15-days of delivery. Movers may bill shippers for late fees should the shipper fail to make their payment within 30-days of delivery. The bill does not provide guidelines or limits on the late fees that can be charged by the mover.

Under the bill, movers can collect a partial payment from a shipper if part of the shipment of household goods is lost or destroyed. This could include:

- A prorated percentage of the binding estimate;
- Charges for additional services requested by the shipper after the contract was issued;
- Charges for impracticable operations (not to exceed 15% of all other charges due at delivery); and
- Any specific valuation rate charges due, if applicable.

It is the responsibility of the mover to determine what amount of the household goods were lost or destroyed during transit. If there was a total loss or destruction, the mover may not request freight charges from the shipper, but can collect a specific valuation rate charge due. If the total loss or destruction was the fault of the shipper, the total loss provisions are not applicable. Further language outlines shipper's rights in regard to collection for losses.

Administrative penalties are revised to include that DACS shall immediately suspend a registration or the processing of an application for registration if the registrant or applicant is formally charged with certain crimes, including: fraud, theft, larceny, embezzlement, or fraudulent conversion or misappropriation of property. Criminal penalties are amended to make reference to the new tariff and binding estimate requirements. Failure of a mover to comply with the order of a law enforcement officer related to the relinquishment of a shipper's household goods, in partial delivery circumstances and meeting certain conditions, is a felony of the third degree. The bill states that complying with the order from law enforcement is not a waiver to seek further payment from the shipper.

B. SECTION DIRECTORY:

Section 1. Amends s. 507.01, F.S., relating to definitions.

Section 2. Amends s. 507.02, F.S., relating to legislative intent.

Section 3. Amends s. 507.03, F.S., relating to registration.

Section 4. Amends s. 507.04, F.S., relating to required insurance coverages, liability limitations, and valuation coverage.

Section 5. Creates s. 507.045, F.S., relating to tariffs.

Section 6. Amends s. 507.05, F.S., relating to physical surveys, binding estimates, and contracts for service.

Section 7. Creates s. 507.054, F.S., relating to a publication of rights and responsibilities.

Section 8. Creates s. 507.055, F.S., relating to disclosures.

Section 9. Amends s. 507.06. F.S., relating to delivery and storage of household goods.

Section 10. Creates s. 507.065, F.S., relating to payment.

Section 11. Creates s. 507.066, F.S., relating to collection for losses.

Section 12. Amends s. 507.07, F.S., relating to violations.

Section 13. Amends s. 507.09, F.S., relating to administrative remedies and penalties.

Section 14. Amends s. 507.11, F.S., relating to criminal penalties.

Section 15. Creates s. 507.14, F.S., relating to rulemaking.

Section 16. Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The Department of Agriculture and Consumer Services estimates a recurring annual loss of $2400 resulting from lowering the annual registration fee for moving brokers from $300 to $100.

2. Expenditures:

DACS General Inspection Trust Fund[12]

	FY 15-16	FY 16-17
Recurring – Consumer Services		
Salaries and Benefits		
Regulatory Consultant (1)	$48,941	$48,941
Senior Clerk (1)	$35,051	$35,051
Expenses		
Professional Expense Package (1)	$6,166	$6,166
Support Staff Expense Package (1)	$5,057	$5,057
Special Category		
Human Resources Allocation (2)	$688	$688
TOTAL RECURRING COST	**$95,903**	**$95,903**
Non-Recurring – Consumer Services		
Expenses		
Professional Expense Package (1)	$3,882	$0
Support Staff Expense Package (1)	$3,666	$0
Contracted Services		
Software – develop, test, deploy		
1,040 hrs @ $85	$88,400	$0
TOTAL NONRECURRING COST	**$95,948**	**$0**
TOTAL RECURRING/		

[12] Florida Department of Agriculture and Consumer Services, Agency Analysis of 2015 House Bill 765, p.6 (Feb. 24, 2015).

NONRECURRING COST	**$191,851**	**$95,903**
Non-Operating Cost		
Information Technology Support	$4,930	$4,930
Administrative/Indirect Cost	$10,567	$10,567
General Revenue Service Charge	$10,992	$10,992
TOTAL NON-OPERATING COST	**$26,490**	**$26,490**
EXPENDITURES GRAND TOTAL	**$218,341**	**$122,393**
NET LOSS (including lost revenues)	**$220.741**	**$124,793**

B. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Unknown.

C. FISCAL COMMENTS:

On March 11, 2015, the Criminal Justice Impact Conference estimated that the new felony created in the bill would have an insignificant fiscal impact on the state, in terms of impacting prison beds.

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:

No new rule-making authority is created, but the authority for DACS to adopt rules to administer the chapter is moved from s. 507.09, F.S., to s. 507.14, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

On line 162, the bill removes the requirement for a moving broker to provide *evidence* of current and valid insurance or alternative coverage; however, on line 193, it does not remove the *actual* requirement for a moving broker to have alternative coverage if they have two or fewer vehicles.

The language in lines 402-405, permitting the mover to perform and bill for additional services that the shipper has not agreed to pay for, may create a loophole for movers to add charges without the shipper's consent.

Lines 570-572 authorize a mover to bill a shipper for late fees should the shipper fail to make their payment within 30-days of delivery; however, the bill does not provide guidelines or limits on the late fees that can be charged by the mover.

Line 623 references "requirement under this part." Chapter 507 does not contain parts. Based on the context of the provision, a reference to "chapter" may be more appropriate.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to household moving services; amending s. 507.01, F.S.; defining terms; amending s. 507.02, F.S.; clarifying intent; amending s. 507.03, F.S.; revising the registration fees for a moving broker; removing the requirement that a moving broker provide evidence of current and valid insurance or alternative coverage; amending s. 507.04, F.S.; removing a prohibition that a mover may not limit its liability for the loss or damage of household goods to a specified valuation rate; removing a requirement that a mover disclose a liability limitation when the mover limits its liability for a shipper's goods; requiring a mover to offer valuation coverage to compensate a shipper for the loss or damage of the shipper's household goods that are lost or damaged during a household move; requiring the valuation coverage to indemnify the shipper for at least the cost of replacement goods less depreciated value; revising the time at which the mover must disclose the terms of the coverage to the shipper in writing; revising the information that the disclosure must provide to the shipper; creating s. 507.045, F.S.; requiring a mover to annually publish, file, and post a tariff with the Department of Agricultural and Consumer Services; requiring the department to reject a noncomplying

tariff; providing that a tariff must contain certain information; prohibiting a mover from charging, demanding, collecting, or receiving compensation beyond that agreed upon by the mover and shipper; requiring a mover to provide certain notice to the department about changes in rates or charges and related rules; providing that the department may waive a certain notice requirement; amending s. 507.05, F.S.; requiring a mover to conduct a physical survey and provide a binding estimate in certain circumstances unless waived by the shipper in writing; requiring specified content for the binding estimate; authorizing the mover to provide a maximum one-time fee for providing a binding estimate; requiring the mover and shipper to sign the estimate; requiring the mover to provide the shipper with a copy of the estimate at the time of signature; providing that a binding estimate may only be amended under certain circumstances; providing that a mover reaffirms the original binding estimate once the mover begins to load the household goods for a move; authorizing a mover to charge more than the binding estimate in certain circumstances; requiring a mover to allow a shipper to consider whether additional services are needed; requiring a mover to retain a copy of the binding estimate for a specified period; requiring a

mover to provide a contract for service to the shipper before providing moving or accessorial services; requiring a driver to have possession of the contract before leaving the point of origin; requiring a mover to retain a contract of service for a specified period; creating s. 507.054, F.S.; requiring the department to prepare a publication that summarizes the rights and responsibilities of, and remedies available to, movers and shippers; requiring the publication to meet certain specifications; creating s. 507.055, F.S.; requiring a mover to provide certain disclosures to a prospective shipper; amending s. 507.06, F.S.; requiring a mover to tender household goods for delivery on the agreed upon delivery date or within a specified period unless waived by the shipper; requiring a mover to immediately notify and provide certain information to a shipper if the mover is unable to perform delivery on the agreed upon date or during the specified period; requiring a mover to take certain actions if the mover amends the date or period for pick up or delivery; creating s. 507.065, F.S.; providing a maximum amount that a mover may charge a shipper; requiring a mover to bill a shipper for certain amounts within a specified period; creating s. 507.066, F.S.; specifying the amount of payment that the mover may collect upon delivery of

partially lost or destroyed household goods; requiring a mover to determine the proportion of lost or destroyed household goods; prohibiting a mover from collecting or requiring a shipper to pay any charges other than specific valuation rate charges if a household goods shipment is totally lost or destroyed in transit; amending s. 507.07, F.S.; providing that it is a violation of ch. 507, F.S., to fail to comply with specified provisions; providing that it is a violation of ch. 507, F.S., to increase the contracted cost for moving services in certain circumstances; conforming a provision to a change made by this act; amending s. 507.09, F.S.; requiring the department, upon verification by certain entities, to immediately suspend a registration or the processing of an application for a registration in certain circumstances; amending s. 507.11, F.S.; providing criminal penalties; conforming a provision to a change made by this act; creating s. 507.14, F.S.; requiring the department to adopt rules; providing an effective date.

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

Section 1. Present subsections (6) through (9) of section 507.01, Florida Statutes, are amended, and new subsections (8)

and (14) are added to that section, to read:

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

~~(6) "Estimate" means a written document that sets forth the total costs and describes the basis of those costs, relating to a shipper's household move, including, but not limited to, the loading, transportation or shipment, and unloading of household goods and accessorial services.~~

(6)~~(7)~~ "Household goods" or "goods" means personal effects or other personal property commonly found in a home, personal residence, or other dwelling, including, but not limited to, household furniture. The term does not include freight or personal property moving to or from a factory, store, or other place of business.

(7)~~(8)~~ "Household move" or "move" means the loading of household goods into a vehicle, moving container, or other mode of transportation or shipment; the transportation or shipment of those household goods; and the unloading of those household goods, when the transportation or shipment originates and terminates at one of the following ultimate locations, regardless of whether the mover temporarily stores the goods while en route between the originating and terminating locations:

(a) From one dwelling to another dwelling;

(b) From a dwelling to a storehouse or warehouse that is owned or rented by the shipper or the shipper's agent; or

(c) From a storehouse or warehouse that is owned or rented

by the shipper or the shipper's agent to a dwelling.

(8) "Impracticable operations" means conditions that make it impossible for a mover to perform pickup or delivery services for a household move with its road haulage equipment.

(9) "Mover" means a person who, for compensation, contracts for or engages in the loading, transportation or shipment, or unloading of household goods as part of a household move. The term does not include a postal, courier, envelope, or package service that does not advertise itself as a mover or moving service or an individual that is hired as a laborer to assist a shipper only in the loading and unloading of the shipper's own household goods.

(14) "Tariff" means the document filed with the department by a mover under s. 507.045 which reflects its rates and charges for transportation and accessorial services.

Section 2. Subsection (3) of section 507.02, Florida Statutes, is amended to read:

507.02 Construction; intent; application.—

(3) This chapter is intended to provide consistency and transparency in moving practices and to secure the satisfaction and confidence of shippers and members of the public when using a mover.

Section 3. Subsections (3) and (9) of section 507.03, Florida Statutes, are amended to read:

507.03 Registration.—

(3) Registration fees shall be calculated at the rate of

$300 per year per mover and $100 per year per ~~or~~ moving broker. All amounts collected shall be deposited by the Chief Financial Officer to the credit of the General Inspection Trust Fund of the department for the sole purpose of administration of this chapter.

(9) Each mover ~~and moving broker~~ shall provide evidence of the current and valid insurance or alternative coverages required under s. 507.04.

Section 4. Subsections (1), (3), (4), and (5) of section 507.04, Florida Statutes, are amended to read:

507.04 Required insurance coverages; liability limitations; valuation coverage.—

(1) CARGO LIABILITY INSURANCE.—

(a)1. Except as provided in paragraph (b), each mover operating in this state must maintain current and valid cargo liability insurance coverage of at least $10,000 per shipment for the loss or damage of household goods resulting from the negligence of the mover or its employees or agents.

2. The mover must provide the department with evidence of liability insurance coverage before the mover is registered with the department under s. 507.03. All insurance coverage maintained by a mover must remain in effect throughout the mover's registration period. ~~A mover's failure to maintain insurance coverage in accordance with this paragraph constitutes an immediate threat to the public health, safety, and welfare. If a mover fails to maintain insurance coverage, the department~~

~~may immediately suspend the mover's registration or eligibility for registration, and the mover must immediately cease operating as a mover in this state. In addition, and notwithstanding the availability of any administrative relief pursuant to chapter 120, the department may seek from the appropriate circuit court an immediate injunction prohibiting the mover from operating in this state until the mover complies with this paragraph, a civil penalty not to exceed $5,000, and court costs.~~

(b) A mover that operates two or fewer vehicles, in lieu of maintaining the cargo liability insurance coverage required under paragraph (a), may, and each moving broker must, maintain one of the following alternative coverages:

1. A performance bond in the amount of $25,000, for which the surety of the bond must be a surety company authorized to conduct business in this state; or

2. A certificate of deposit in a Florida banking institution in the amount of $25,000.

The original bond or certificate of deposit must be filed with the department and must designate the department as the sole beneficiary. The department must use the bond or certificate of deposit exclusively for the payment of claims to consumers who are injured by the fraud, misrepresentation, breach of contract, misfeasance, malfeasance, or financial failure of the mover or moving broker or by a violation of this chapter by the mover or broker. Liability for these injuries may be determined in an

administrative proceeding of the department or through a civil action in a court of competent jurisdiction. However, claims against the bond or certificate of deposit must only be paid, in amounts not to exceed the determined liability for these injuries, by order of the department in an administrative proceeding. The bond or certificate of deposit is subject to successive claims, but the aggregate amount of these claims may not exceed the amount of the bond or certificate of deposit.

(3) INSURANCE COVERAGES.—The insurance coverages required under paragraph (1)(a) and subsection (2) must be issued by an insurance company or carrier licensed to transact business in this state under the Florida Insurance Code as designated in s. 624.01. The department shall require a mover to present a certificate of insurance of the required coverages before issuance or renewal of a registration certificate under s. 507.03. The department shall be named as a certificateholder in the certificate and must be notified at least 10 days before cancellation of insurance coverage. A mover's failure to maintain insurance coverage constitutes an immediate threat to the public health, safety, and welfare. If a mover fails to maintain insurance coverage, the department may immediately suspend the mover's registration or eligibility for registration, and the mover must immediately cease operating as a mover in this state. In addition, and notwithstanding the availability of any administrative relief pursuant to chapter 120, the department may seek from the appropriate circuit court

an immediate injunction prohibiting the mover from operating in this state until the mover complies with this paragraph, a civil penalty not to exceed $5,000, and court costs.

(4) ~~LIABILITY LIMITATIONS; VALUATION RATES.—A mover may not limit its liability for the loss or damage of household goods to a valuation rate that is less than 60 cents per pound per article. A provision of a contract for moving services is void if the provision limits a mover's liability to a valuation rate that is less than the minimum rate under this subsection. If a mover limits its liability for a shipper's goods, the mover must disclose the limitation, including the valuation rate, to the shipper in writing at the time that the estimate and contract for services are executed and before any moving or accessorial services are provided. The disclosure must also inform the shipper of the opportunity to purchase valuation coverage if the mover offers that coverage under subsection (5).~~

~~(5)~~ VALUATION COVERAGE.—A mover shall ~~may~~ offer valuation coverage to compensate a shipper for the loss or damage of the shipper's household goods that are lost or damaged during a household move. ~~If a mover offers valuation coverage,~~ The coverage must indemnify the shipper for at least the cost of replacement of the goods less depreciated value ~~minimum valuation rate required under subsection (4)~~. The mover must disclose the terms of the coverage to the shipper in writing within ~~at the time that~~ the binding estimate and again when the contract for services is ~~are~~ executed and before any moving or

accessorial services are provided. The disclosure must inform the shipper of the cost of the valuation coverage, if any ~~the valuation rate of the coverage, and the opportunity to reject the coverage~~. ~~If valuation coverage compensates a shipper for at least the minimum valuation rate required under subsection (4), the coverage satisfies the mover's liability for the minimum valuation rate.~~

Section 5. Section 507.045, Florida Statutes, is created to read:

507.045 Tariffs.—

(1) Each mover shall annually file a tariff with the department which must be posted and available for public inspection. Such tariff must be clear and concise and arranged in a manner that allows a shipper to determine the precise cost of, and the terms of service applicable to, the move. The department may reject a tariff that fails to meet the requirements of this section or department rule, and such tariff is void and its use is unlawful.

(2) At a minimum, a tariff must contain the following information:

(a) A table of contents, arranged in alphabetical order, which shows the page number or item number for each household good or accessorial service. If the content of a tariff is so limited that its title page or interior arrangement plainly discloses its contents, the table of contents may be omitted.

(b) An index of the household goods, with specific rates,

which makes reference to the page or items where the household goods are listed. An index is not required if the tariff has fewer than five pages or if the rates for a destination are listed alphabetically by household good.

(c) An explanation of any notes, abbreviations, or symbols.

(d) Clear and explicit terms that specify covered services.

(e) A transportation rate that is explicitly stated in a dollar amount.

(f) The charge for any accessorial service rendered in connection with the move. The tariff must separately state each service to be rendered and the associated charge.

1. Charges for packing and unpacking must be stated as amounts per moving container or per 100 pounds of weight.

2. An hourly labor charge for miscellaneous labor services performed at the request of the shipper shall be specified if a flat rate for all such services is not stated.

(g) A charge for impracticable operations, including identification of the specific services considered to be impracticable operations.

(h) The mileage associated with the tariff, or the method by which mileage will be determined for the tariff, which must be based on the distance between the point of origin and the destination.

(3) A mover may not charge, demand, collect, or receive

compensation for transportation or accessorial services in an amount greater than the rates and charges specified in the tariff that was in effect on the date that the binding estimate required under s. 507.05(3) was signed by the mover and the shipper.

(4) A change to a rate or charge, or the manner in which such rate or charge is calculated, specified in a mover's tariff is not effective until 30 days after the mover provides notice of the proposed change to the department. Such notice must plainly state the proposed change and its effective date. Upon a showing of good cause, the department may waive the 30-day notice requirement.

Section 6. Section 507.05, Florida Statutes, is amended to read:

507.05 Physical surveys, binding estimates, and contracts for service. ~~Before providing any moving or accessorial services, a contract and estimate must be provided to a prospective shipper in writing, must be signed and dated by the shipper and the mover, and must include:~~

(1) PHYSICAL SURVEY.—A mover must conduct a physical survey of the household goods to be moved and provide the prospective shipper with a binding estimate of the cost of the move. A physical survey is not required if the household goods are located outside a 50-mile radius of the location of the agent who prepares the estimate.

(2) WAIVER OF SURVEY.—A shipper may elect to waive the

physical survey, and such waiver must be in writing and signed by the shipper before the household goods are loaded. The mover shall retain a copy of the waiver as an addendum to the contract for service.

(3) BINDING ESTIMATE.—Before executing a contract for service for a household move, and at least 48 hours before the scheduled time and date of a shipment of household goods, a mover must provide a binding estimate of the total charges, including, but not limited to, the loading, transportation or shipment, and unloading of household goods and accessorial services. The binding estimate shall be based on a physical survey conducted pursuant to subsection (1), unless waived pursuant to subsection (2).

(a) At a minimum, the binding estimate must include all of the following:

1. The table of measures used by the mover or the mover's agent in preparing the estimate.

2. The date the estimate was prepared and the proposed date of the move, if any.

3. An itemized breakdown and description of services, and the total cost to the shipper of loading, transporting or shipping, unloading, and accessorial services.

4. A statement that the estimate is binding on the mover and the shipper and that the charges shown apply only to those services specifically identified in the estimate.

5. Identification of acceptable forms of payment.

(b) A mover may charge a one-time fee, not to exceed $100, for providing a binding estimate.

(c) The binding estimate must be signed by the mover and the shipper, and a copy must be provided to the shipper by the mover at the time that the estimate is signed.

(d) A binding estimate may only be amended by the mover before the 48 hours immediately preceding the scheduled loading of household goods for shipment, when the shipper has requested additional services of the mover not previously disclosed in the original binding estimate, or upon mutual agreement of the mover and the shipper. Once a mover begins to load the household goods for a move, failure to execute a new binding estimate signifies the mover has reaffirmed the original binding estimate.

(e) A mover may not collect more than the amount of the binding estimate unless:

1. The shipper tenders additional household goods or requires services that are not specifically included in the binding estimate, in which case the mover is not required to honor the estimate. If, despite the addition of household goods or the need for additional services, the mover chooses to perform the move, it must, before loading the household goods, reaffirm the binding estimate or negotiate a revised binding estimate.

2. Upon issuance of the contract for services, the mover advises the shipper, in advance of performing additional services, including accessorial services, that such services are

essential to properly performing the move. The mover must allow the shipper at least 1 hour to determine whether to authorize the additional services.

a. If the shipper agrees to pay for the additional services, the mover must execute a written addendum to the contract for services, which must be signed by the shipper. The addendum may be sent to the shipper by facsimile, e-mail, overnight courier, or certified mail, with return receipt requested. The mover must bill the shipper for only the agreed upon additional services within 15 days after the delivery of those additional services pursuant to s. 507.06.

b. If the shipper does not agree to pay for the additional services, the mover may perform and, pursuant to s. 507.06, bill the shipper for only those additional services necessary to complete the delivery.

3. The shipper requests additional services after the contract for service has been issued, in which case the mover must inform the shipper of the associated charges in writing. The mover may require full payment at the destination for the costs associated with the additional requested services and the full amount of the original binding estimate.

(f) A mover shall retain a copy of the binding estimate for each move performed for at least 1 year after its preparation date as an attachment to the contract for service.

(4) CONTRACT FOR SERVICE.—Before providing any moving or accessorial services, a mover must provide a contract for

service to the shipper, which the shipper must sign and date.

(a) At a minimum, the contract for service must include:

1.~~(1)~~ The name, telephone number, and physical address where the mover's employees are available during normal business hours.

2.~~(2)~~ The date the contract was ~~or estimate is~~ prepared and the ~~any~~ proposed date of the move, if any.

3.~~(3)~~ The name and address of the shipper, the addresses where the articles are to be picked up and delivered, and a telephone number where the shipper may be reached.

4.~~(4)~~ The name, telephone number, and physical address of any location where the household goods will be held pending further transportation, including situations in which ~~where~~ the mover retains possession of household goods pending resolution of a fee dispute with the shipper.

5.~~(5)~~ An itemized breakdown and description and total of all costs and services for loading, transportation or shipment, unloading, and accessorial services to be provided during a household move or storage of household goods.

6. The total charges owed by the shipper based on the binding estimate and the terms and conditions for their payment, including any required minimum payment.

7. If the household goods are transported under an agreement to collect payment upon delivery, the maximum payment that the mover may demand at the time of delivery.

8.~~(6)~~ Acceptable forms of payment, which must be clearly

and conspicuously disclosed to the shipper on the binding estimate and the contract for services. A mover must ~~shall~~ accept at least ~~a minimum of~~ two of the three following forms of payment:

a.~~(a)~~ Cash, cashier's check, money order, or traveler's check;

b.~~(b)~~ Valid personal check, showing upon its face the name and address of the shipper or authorized representative; or

c.~~(c)~~ Valid credit card, which shall include, but not be limited to, Visa or MasterCard. ~~A mover must clearly and conspicuously disclose to the shipper in the estimate and contract for services the forms of payments the mover will accept, including the forms of payment described in paragraphs (a)-(c).~~

(b) Each addendum to the contract for service is an integral part of the contract.

(c) A copy of the contract for service must accompany the household goods whenever they are in the mover's or the mover's agent's possession. Before a vehicle that is being used for the move leaves the point of origin, the driver responsible for the move must have the contract for service in his or her possession.

(d) A mover shall retain a contract for service for each move it performs for at least 1 year after the date the contract for service was signed.

Section 7. Section 507.054, Florida Statutes, is created

to read:

507.054 Publication.—

(1) The department shall prepare a publication that includes a summary of the rights and responsibilities of, and remedies available to, movers and shippers under this chapter. The publication must include a form, to be signed by the mover and shipper, stating that both parties have read and understand the document and an acknowledgement, to be signed by the mover, that the failure of a mover to relinquish household goods as required by this chapter constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, that any other violation of this chapter constitutes a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and that any violation of this chapter constitutes a violation of the Florida Deceptive and Unfair Trade Practices Act. The publication must also include a notice to the shipper about the potential risks of shipping sentimental or family heirloom items. The publication, including the signed and dated form, must be attached as an integral part of the contract for service.

(2) A mover may provide exact copies of the department's publication to shippers or may customize the color, design, and dimension of the front and back covers of the standard department publication. If the mover customizes the publication, the customized publication must include the content specified in subsection (1) and meet the following requirements:

(a) The font size used must be at least 10 points, with the exception that the following must appear prominently on the front cover in at least 12-point boldface type: "Your Rights and Responsibilities When You Move. Furnished by Your Mover, as Required by Florida Law."

(b) The size of the booklet must be at least 36 square inches.

Section 8. Section 507.055, Florida Statutes, is created to read:

507.055 Required disclosure and acknowledgment of rights and remedies.—Before executing a contract for service for a move, a mover must provide to a prospective shipper all of the following:

(1) The publication required under s. 507.054.

(2) A concise, easy-to-read, and accurate binding estimate required under s. 507.05(3).

(3) A notice of the availability of the mover's tariff, including an explanation that the shipper may examine the tariff at the premises of the mover or request that copies of the tariff be sent to him or her.

Section 9. Subsection (1) of section 507.06, Florida Statutes, is amended, and subsections (4) and (5) are added to that section, to read:

507.06 Delivery and storage of household goods.—

(1) A mover must relinquish household goods to a shipper and must place the household goods inside a shipper's dwelling

or, if directed by the shipper, inside a storehouse or warehouse that is owned or rented by the shipper or the shipper's agent, unless the shipper has not tendered payment pursuant to s. 507.065 ~~in the amount specified in a written contract or estimate signed and dated by the shipper~~. A mover may not, under any circumstances, refuse to relinquish prescription medicines and household goods for use by children, including children's furniture, clothing, or toys~~, under any circumstances~~.

(4) A mover shall tender household goods for delivery to a shipper on the agreed upon delivery date or within the timeframe specified in the contract for service. This requirement may be waived by the shipper.

(5) If a mover becomes aware that it will be unable to perform either the pickup or the delivery of household goods on the date agreed upon or during the timeframe specified in the contract for service, the mover shall, at its own expense, immediately notify the shipper of the delay.

(a) A mover's notification of delay must be provided to a shipper in person or by telephone, facsimile, e-mail, overnight courier, or certified mail, return receipt requested. If the mover does not receive confirmation that the shipper has received the notification, the mover shall undertake a second method of notification.

(b) A mover must advise the shipper of the amended date or timeframe within which the mover expects to pick up or deliver the household goods. The mover must consider the needs of the

shipper in establishing the amended date or timeframe. The mover must also do all of the following:

1. Document, in writing, the date, time, and manner of notification of the delay and the amended date or period for pickup or delivery.

2. Retain the documentation required by subparagraph 1. as part of its file on the move for 1 year after the notification date.

3. Upon the request of the shipper, furnish a copy of the notice by hand delivery or by first-class mail.

Section 10. Section 507.065, Florida Statutes, is created to read:

507.065 Payment.—

(1) Except as provided in s. 507.05(3), the maximum amount that a mover may charge before relinquishing household goods to a shipper is the exact amount of the binding estimate, plus charges for any additional services requested or agreed to in writing by the shipper after the contract for service was issued and for impracticable operations as defined in the mover's tariff, if applicable.

(2) A mover must bill a shipper for any charges assessed under this chapter which are not collected upon delivery of household goods at their destination within 15 days after such delivery. A mover may assess a late fee for any uncollected charges if the shipper fails to make payment within 30 days after receipt of the bill.

Section 11. Section 507.066, Florida Statutes, is created to read:

507.066 Collection for losses.—

(1) PARTIAL LOSSES.—A mover may collect an adjusted payment from a shipper if part of a shipment of household goods is lost or destroyed.

(a) A mover may collect the following at delivery:

1. A prorated percentage of the binding estimate. The prorated percentage must equal the percentage of the weight of the portion of the household goods delivered relative to the total weight of the household goods that were ordered to be moved.

2. Charges for any additional services requested by the shipper after the contract for service was issued.

3. Charges for impracticable operations, if applicable; however, such charges may not exceed 15 percent of all other charges due at delivery.

4. Any specific valuation rate charges due, as provided in s. 507.04(4), if applicable.

(b) The mover may bill and collect from the shipper any remaining charges not collected at the time of delivery in accordance with s. 507.065. This paragraph does not apply if the loss or destruction of household goods occurred as a result of an act or omission of the shipper.

(c) A mover must determine, at its own expense, the proportion of the household goods, based on actual or

constructive weight, which were lost or destroyed in transit.

(2) TOTAL LOSSES.—A mover may not collect, or require a shipper to pay, freight charges, including a charge for accessorial services, when a household goods shipment is lost or destroyed in transit; however, the mover may collect a specific valuation rate charge due, as provided in s. 507.04(4). This subsection does not apply if the loss or destruction was due to an act or omission of the shipper.

(3) SHIPPER'S RIGHTS.—A shipper's rights under this section are in addition to any other rights the shipper may have with respect to household goods that were lost or destroyed while in the custody of the mover or the mover's agent. These rights also apply regardless of whether the shipper exercises his or her right to obtain a refund of the portion of a mover's published freight charges corresponding to the portion of the lost or destroyed household goods, including any charges for accessorial services, at the time the mover disposes of claims for loss, damage, or injury to the household goods.

Section 12. Subsections (1), (4), and (5) of section 507.07, Florida Statutes, are amended, to read:

507.07 Violations.—It is a violation of this chapter:

(1) To operate ~~conduct business as a mover or moving broker, or advertise to engage~~ in violation ~~the business~~ of ~~moving~~ or fail to comply with ss. 507.03-507.10, or any other requirement under this part ~~offering to move, without being registered with the department~~.

(4) To increase the contracted cost ~~fail to honor and comply with all provisions of the contract~~ for moving services previously provided in a binding estimate of the scheduled date and time of the move without a request by the shipper to perform additional services not disclosed on the original binding estimate ~~or bill of lading regarding the purchaser's rights, benefits, and privileges thereunder~~.

(5) To withhold delivery of household goods or in any way hold household goods in storage against the expressed wishes of the shipper if payment has been made as delineated in the estimate or contract for services, or pursuant to this chapter.

Section 13. Section 507.09, Florida Statutes, is amended to read:

507.09 Administrative remedies; penalties.—

(1) The department may enter an order doing one or more of the following if the department finds that a mover or moving broker, or a person employed or contracted by a mover or broker, has violated or is operating in violation of this chapter or the rules or orders issued pursuant to this chapter:

(a) Issuing a notice of noncompliance under s. 120.695.

(b) Imposing an administrative fine in the Class II category pursuant to s. 570.971 for each act or omission.

(c) Directing that the person cease and desist specified activities.

(d) Refusing to register or revoking or suspending a registration.

(e) Placing the registrant on probation, subject to the conditions specified by the department.

(2) The department shall, upon notification and subsequent written verification by a law enforcement agency, a court, a state attorney, or the Department of Law Enforcement, immediately suspend a registration or the processing of an application for a registration if the registrant, applicant, or an officer or director of the registrant or applicant is formally charged with a crime involving fraud, theft, larceny, embezzlement, or fraudulent conversion or misappropriation of property or a crime arising from conduct during a movement of household goods until final disposition of the case or removal or resignation of that officer or director.

(3) The administrative proceedings that ~~which~~ could result in the entry of an order imposing any of the penalties specified in subsection (1) or subsection (2) are governed by chapter 120.

~~(3) The department may adopt rules under ss. 120.536(1) and 120.54 to administer this chapter.~~

Section 14. Section 507.11, Florida Statutes, is amended to read:

507.11 Criminal penalties.—

(1) The refusal of a mover or a mover's employee, agent, or contractor to comply with an order from a law enforcement officer to relinquish a shipper's household goods after the officer determines that the shipper has tendered payment of the amount of a written binding estimate, any charges for additional

services requested by the shipper after the contract for service was issued, and charges for applicable impracticable operations, as defined in the mover's tariff ~~or contract~~, or after the officer determines that the mover did not produce a signed estimate or contract for service upon which demand is being made for payment, is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A mover's compliance with an order from a law enforcement officer to relinquish household goods to a shipper is not a waiver or finding of fact regarding any right to seek further payment from the shipper.

(2) The refusal of a mover or a mover's employee, agent, or contractor to comply with an order from a law enforcement officer to relinquish a shipper's household goods after the officer determines that the shipper has tendered payment of the prorated percentage of the binding estimate for a partial delivery under s. 507.066 is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A mover's compliance with an order from an law enforcement agency to relinquish household goods to a shipper is not a waiver or finding of fact regarding any right to seek further payment from the shipper.

(3)~~(2)~~ Except as provided in subsections ~~subsection~~ (1) and (2), any person or business that violates this chapter commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 15. Section 507.14, Florida Statutes, is created to read:

507.14 Rulemaking.—The department shall adopt rules to administer this chapter.

Section 16. This act shall take effect July 1, 2015.

HB 921

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 921 Motor Vehicle Manufacturers, Factory Branches, Distributors, Importers, & Dealers
SPONSOR(S): Trujillo
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee		Anstead	Luczynski
2) Civil Justice Subcommittee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

The bill provides additional grounds to deny, suspend, or revoke a license held by a motor vehicle manufacturer, factory branch, distributor, or importer ("manufacturer"). The bill prohibits manufacturers from taking certain actions against motor vehicle dealers and requires certain procedures be followed by the manufacturer when dealing with motor vehicle dealers. Specifically, the manufacturer:

- May not take adverse action against a motor vehicle dealer due to a delivered motor vehicle being resold or exported by the customer unless such resale or export occurred within 30 days after the date of the original sale;
- May not refuse to pay a bonus to a motor vehicle dealer who does not comply with the conditions of an offered bonus program related to improvements to facilities or additions of new signs if the dealer's facility was required or approved to make improvements within the last 10-years and the new program's improvements would replace or alter those previously approved improvements;
- Is required to give motor vehicle dealers at least 80 percent of the total bonus offered to other participants of a facility improvement bonus program that meets the 10-year prior improvement condition above;
- May not require or coerce a dealer to purchase goods from a vendor selected by the manufacturer without first making available to the dealer the option to obtain the goods or services from a vendor chosen by the dealer;
- Must provide a written statement or notice disclosing whether the manufacturer has an ownership interest in a prescribed vendor, provide the agreement between the vendor and the manufacturer for payment, and provide the basis for the amount of compensation;
- Must increase the dealer's benefits by the amount of a "prorated share" of any compensation by a vendor or fair market value of such ownership in a vendor, if the manufacturer provides a notice that discloses an ownership interest;
- Must provide the dealer with the right to purchase leased signs or other image elements of like kind and quality from a vendor selected by the dealer and be given the opportunity to purchase the signs at a price substantially similar to the capitalized lease costs; and
- May not require a motor vehicle dealer to participate in a dealer advertising or marketing pool or threaten to take adverse action for refusing to do so.

The bill removes any liability on the part of the motor vehicle dealer for loaning a car or a "temporary replacement vehicle" to a customer who gets into an accident. The bill also removes previously set limits on liability related to temporary replacement vehicles provided by motor vehicle dealers.

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

The bill has an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Motor Vehicle Manufacturers and Franchise Dealerships – Generally:

Manufacturers, distributors, and importers ("manufacturers") enter into contractual agreements with motor vehicle dealers to sell particular vehicles that they manufacture, distribute, or import. Florida law, chapter 320, F.S., has regulated the relationship between motor vehicle manufacturers and motor vehicle dealers since 1970. Existing law requires the licensing of motor vehicle manufacturers, and regulates numerous aspects of the contracts between manufacturers and motor vehicle dealers.

Section 320.64, F.S., currently provides thirty-eight grounds for the denial, suspension, or revocation of the license of a manufacturer.

Section 320.61(1), F.S, states, in part, "[n]o manufacturer, factory branch, distributor, or importer shall engage in business in this state without a license therefor ... ." Section 320.61(2), F.S., allows the Department of Highway Safety and Motor Vehicles ("DHSMV") to prescribe renewal applications pursuant to s. 320.63, F.S., which requires a manufacturer to submit the following documents to determine fitness:

- Information relating to solvency and financial standing;
- A certified copy of any warranty connected with the motor vehicles sold or any component;
- A copy of the written agreement and all supplements thereto between the motor vehicle dealer and the manufacturer;
- A list of authorized dealers or distributors and their addresses;
- An affidavit acknowledging that the provisions of an agreement are not contrary to the provisions contained in ss. 320.60-320.70, F.S.;
- A certified copy of all applicable preparation and delivery charge obligations of the dealer;
- An affidavit stating the rates which the manufacturer pays or agrees to pay any authorized motor vehicle dealer licensed in this state for the parts and labor advanced or incurred by such authorized motor vehicle dealer for or on account of any delivery and preparation obligations imposed on its dealers or relating to warranty obligations;
- An annual license fee; and
- Any other information needed to safeguard the public interest which DHSMV may, by rule, prescribe.

The requirements regulating the contractual business relationship between a motor vehicle dealer and a manufacturer are primarily found in ss. 320.60-320.071, F.S., (the Florida Automobile Dealers Act).[1] These sections of law specify, in part:

- The conditions and situations under which the DHSMV may grant, deny, suspend, or revoke a license;
- The process, timing, and notice requirements for manufacturers to discontinue, cancel, modify, or otherwise replace a franchise agreement with a dealer, and the conditions under which the DHSMV may deny such a change;
- The procedures a manufacturer must follow if it wants to add a dealership in an area already served by a dealer, the protest process, and the DHSMV's role in these circumstances;

[1] Walter E. Forehand and John W. Forehand, *Motor Vehicle Dealer and Motor Vehicle Manufacturers: Florida Reacts to Pressures in the Marketplace,* 29 Fla. St. Univ. Law Rev. 1058 (2002) (No section of the statute provides a short title; however, many courts have referred to the provisions as such.), http://www.law.fsu.edu/journals/lawreview/downloads/293/Forehand.pdf.

- Amounts of damages that can be assessed against a manufacturer in violation of Florida statutes; and
- The DHSMV's authority to adopt rules to implement these sections of law.

Prohibitions for Manufacturers - Current Situation:

There are currently 38 different criteria that could lead the DHSMV to take action against a motor vehicle manufacturer. A violation of any of these provisions entitles a motor vehicle dealer to rights and remedies contained within the Florida Automobile Dealers Act, including an administrative protest, obtaining an injunction against the manufacturer, and receiving treble damages and attorney's fees, if the manufacturer is found to have violated the Act.

A manufacturer is prohibited from coercing or attempting to coerce a motor vehicle dealer into accepting delivery of motor vehicles, parts, or accessories, or any other commodities which have not been ordered by the dealer.

A manufacturer is precluded from requiring a dealer to relocate, expand, improve, remodel, renovate, or alter previously approved facilities unless the requirements are reasonable and justifiable in light of the current and reasonably foreseeable projections of economic conditions, financial expectations, and market.

A manufacturer cannot withhold a bonus or other incentive that is available to its other same line-make Florida dealers if the manufacturer offers to enter into an agreement or to selectively offer incentive programs to dealers in Florida, other regions, or other states. A manufacturer may not discriminate against a dealer with respect to a program, bonus, incentive, or other benefit within a zone or region that includes Florida.

A manufacturer may periodically audit the transactions of a motor vehicle dealer relating to certain financial operations by the dealer. Audits of warranty payments may only be performed during the one-year period immediately following the date a warranty claim was paid. Audits of incentive payments may only be performed during an 18-month period immediately following the date the incentive was paid.

Section 320.64(26), F.S., details the types of actions against a dealer by a manufacturer if the dealer distributes cars for foreign export. This section provides that, in a legal challenge, the manufacturer must prove that the motor vehicle dealer had "actual knowledge that the customer's intent was to export or resell the motor vehicle." This section also states that if the disputed vehicle is titled in any state of the United States, there is a "conclusive presumption"[2] that the dealer had no actual knowledge that the customer intended to export or resell the motor vehicle.

Prohibitions for Manufacturers - Effect of Proposed Changes:

The bill address several issues related to motor vehicle manufacturers, distributors, and importers, and the franchise contracts between these businesses and motor vehicle dealers. The bill amends two existing provisions and adds two additional provisions.[3]

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[2] BLACK'S LAW DICTIONARY, p. 263 (5th ed. 1979) (Defines conclusive presumption to mean "a presumption that cannot be overcome by any additional evidence or argument.").

[3] The DHSMV has held in an administrative decision that amendments to the Florida Automobile Dealers Act do not apply to dealers having franchise agreements which were signed prior to the effective date of the amendment. *See Motorsports of Delray, LLC v. Yamaha Motor Corp., U.S.A.*, Case No. 09-0935 (Fla. DOAH Dec. 9, 2009). In this holding, the DHSMV ruled that a 2006 amendment to the Florida Automobile Dealers Act, which requires that if a dealer's franchise agreement is terminated the manufacturer must buyback from the dealer its unsold vehicles, parts, signs, special tools, and other items, does not apply to a dealer terminated in 2008 because the dealer's franchise agreement was entered into prior to the effective date of the amendment. This Final Order was initially appealed but was later voluntarily dismissed. *See also, In re Am. Suzuki Motor Corp.*, 494 B.R. 466, 480 (Bankr.

The bill amends s. 320.64, F.S., to specify that a manufacturer is prohibited from committing certain actions against motor vehicle dealers and requires certain procedures be followed by the manufacturer when dealing with motor vehicle dealers. Specifically, the manufacturer:

- May not take adverse action against a motor vehicle dealer due to a delivered motor vehicle being resold or exported by the customer unless such resale or export occurred within 30 days after the date of the original sale and may not require a dealer to inquire of a customer whether they are going to sell or export the vehicle.

- May not require a dealer to inquire of a customer whether the customer taking delivery will be the end user of the motor vehicle and may not use as a basis for termination of a motor vehicle dealer the fact that a customer resold or exported a vehicle.

- May not refuse to pay a bonus to a motor vehicle dealer who does not comply with the conditions of an offered bonus program related to improvements to facilities or additions of signs if the dealer's facility was required or approved to make improvements within the last 10 years and the new program's improvements would replace or alter those previously approved improvements.[4] A dealer whose existing facilities were approved within the last 10 years is deemed to be in full compliance with such program's eligibility requirements. The manufacturer is required to give such a motor vehicle dealer at least 80 percent of the total bonus offered to other participants. However, the manufacturer can have such a program if it offers to pay in a lump sum payment to assist dealers in making the improvements.

- May not require or coerce a dealer to purchase goods from a vendor selected by the manufacturer without first making available to the dealer the option to obtain the goods or services from a vendor chosen by the dealer. This does not include goods that include material subject to the intellectual property rights of the manufacturer.

- Must provide the dealer with written notice of the right to choose a vendor and if the manufacturer disputes whether the vendor's materials are substantially similar in quality to the materials by the manufacturer's vendor, the manufacturer must provide a written statement disclosing the identity of the vendor selected by the manufacturer, indicating whether the manufacturer has an ownership interest, providing the agreement between the vendor and the manufacturer for payment, and providing the basis for the amount of compensation and whether the compensation is paid directly to the vendor or by credit. It provides that "if the notice required under this paragraph discloses such an ownership interest or any such compensation, that program or incentive shall increase the dealer's benefits by the amount of a prorated share of such compensation or fair market value of such ownership."

- Must provide the dealer with the right to purchase signs or other image elements of like kind and quality from a vendor selected by the dealer, if goods and services offered by the manufacturer are supplied to the dealer by a manufacturer's vendor and are to be leased to the dealer. Dealer must also be given the opportunity to purchase the signs at a price substantially similar to the capitalized lease costs.

- May not require a motor vehicle dealer to participate in a dealer advertising or marketing pool or threaten to take adverse action for refusing to do so.

C.D. Cal. 2013) (The DHSMV has indicated it will be applying this holding to every amendment to the Florida Automobile Dealers Act. That means dealers have different protections under the law depending on when they signed their franchise agreement.).

[4] *Id.* The bill adds the phrase "notwithstanding the terms of any franchise agreement" to s. 320.64 (38), F.S., which may or may not be interpreted to apply to contracts previously entered into between the manufacturers and dealers.

Vicarious Liability of Rental Companies - Current Situation:

Section 324.021, F.S., currently limits the liability of a rental car company as the owner of a vehicle rented to a customer. A motor vehicle dealer that loans a vehicle to a customer for up to 10 days is considered a rental car company under the statute. According to the statute, rental car company liability would be limited to up to the first $100,000 per person for bodily injury, $300,000 per incident for bodily injury, and $50,000 per incident for property damage. However, federal law overrides this provision of the Florida Statutes.

The federal law, called the Graves Amendment, applies to owners of motor vehicles that are in the business of renting or leasing motor vehicles. The law preempts all state law related to the vicarious liability of such owners for the negligence of the driver, except when there is negligence or criminal wrongdoing on the part of the owner.[5] Thus, Florida law may not statutorily require that rental car companies be vicariously liable for the acts of renters. However, the law does not forbid the states from imposing "financial responsibility" or insurance standards on the owner or rental car company for the privilege of registering the vehicle and operating the vehicle in Florida. This means that the state can still require that proof of insurance coverage be provided for the privilege of driving on Florida's roads.[6] However, s. 324.021, F.S., was not drafted to require proof of certain types or amounts of insurance. It only set limits on the amount of liability for rental car companies.

In *Vargas v. Enterprise Leasing Company*, 60 So. 3d 1037, 1043 (Fla. 2011), the Florida Supreme Court upheld the constitutionality of the Graves Amendment, held that the Graves Amendment preempted Florida law related to rental car companies and that Florida's vicarious liability standard for rental car companies did not fall within any exceptions.

Vicarious Liability of Rental Companies - Effect of Proposed Changes:

The bill amends s. 324.021, F.S., within the "Financial Responsibility" chapter, to provide that motor vehicle dealers who loan vehicles to customers as temporary replacement vehicles have the same immunity from vicarious liability as owners of motor vehicles that are in the business of renting or leasing motor vehicles or rental car companies.

Any liability on the part of the dealer for loaning a car to a customer who is negligent and has an accident is removed as to any damage or injury unless the motor vehicle dealer is negligent or criminally responsible. The bill provides that it is not negligent for a motor vehicle dealer to provide a temporary replacement vehicle to a customer, if the motor vehicle dealer obtains the driver license and insurance information from the customer, even if this information is later determined to be fraudulent. The bill does not establish limits for coverage or require proof of any set amount of coverage. The bill changes the definition of "rental company," removing the requirement currently in the definition that the length of the loan by a motor vehicle dealer only be "up to 10 days."

B. SECTION DIRECTORY:

Section 1 amends s. 320.64, F.S., prohibiting a manufacturer from taking certain actions against a motor vehicle dealer and requiring certain procedures be followed by manufacturers when dealing with motor vehicle dealers.

Section 2 amends s. 324.021, F.S., relating to the vicarious liability of a motor vehicle dealer for loaning a motor vehicle to a customer.

Section 3 provides an effective date of July 1, 2015.

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[5] 49 U.S.C. § 30106 (2012).
[6] *Id.*

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The DHSMV already regulates this industry, so the additional grounds proposed in the bill for regulatory actions should result in no additional state impact. However, it is possible the DHSMV may experience an increase in the number of administrative hearings as a result of the bill. The bill may have an indeterminate fiscal impact.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent the agreements between dealers and motor vehicle manufacturers, distributors, and importers change due to compliance with existing laws, the parties may be positively or negatively impacted. Dealers may experience increased revenue from new limitations and procedures governing the incentives, bonuses, and other benefit programs.

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:

   The Federal Contracts Clause provides that no state shall pass any law impairing the obligation of contracts. U.S. Const. art I s. 10. However, the Contracts Clause prohibition must be weighed against the State's inherent power to safeguard its people's interests. Three factors are considered when evaluating a claim that the Contracts Clause has been violated: (1) whether the law substantially impairs a contractual relationship; (2) whether there is a significant and legitimate public purpose for the law; and (3) whether the adjustments of rights and responsibilities of the contracting parties are based upon reasonable conditions and are of an appropriate nature.[7]

   Some state laws regulating contracts between automobile manufacturers and dealers have been found to have violated the constitution while other laws have been upheld as constitutional. See *Alliance of Auto. Mfrs., Inc. v. Currey*, 984 F. Supp. 2d 32 (D. Conn. 2013) (Upholding state law that

[7] *Vesta Fire Ins. Corp. v. State of Fla.*, 141 F.3d 1427, 1433 (11th Cir. 1998).

revised statutory method for calculating reasonable compensation for vehicle warranty work and prohibited manufacturers from recovering any additional cost of the new method from the dealers.); *Arapahoe Motors, Inc. v. Gen. Motors Corp.*, No. CIV.A. 99 N 1985, 2001 WL 36400171, at *13 (D. Colo. Mar. 28, 2001) (the retroactive application of state law would be unconstitutional as it would create a new obligation or impose a new duty upon General Motors.).

B. RULE-MAKING AUTHORITY:

The DHSMV already regulates this industry, and has rule making authority. The additional grounds proposed in the bill for regulatory actions may result in some additional rule making.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to motor vehicle manufacturers, factory branches, distributors, importers, and dealers; amending s. 320.64, F.S.; prohibiting certain actions against a motor vehicle dealer; amending s. 324.021, F.S., relating to financial responsibility for owning or operating a motor vehicle; revising definitions; providing a limitation on liability for certain owners who provide a temporary replacement vehicle to a person whose motor vehicle is being serviced; providing an effective date.

WHEREAS, motor vehicle manufacturers have vast control over motor vehicle dealer operations, and

WHEREAS, at the beginning of the relationship and at renewal periods determined entirely by the manufacturer, a dealer must sign a contract of adhesion drafted by the manufacturer and must do so generally without any negotiation, and

WHEREAS, due to the unequal bargaining power wielded by manufacturers, which has been recognized on both the state and federal levels for more than the past 40 years, licensees or franchisors demand, at the time of their appointment, that the motor vehicle dealers provide dealership facilities in the size, configuration, and appearance approved by the licensee or franchiser, and such facilities require dealer investments

generally costing tens of millions of dollars and benefit the public by their location, appearance, and good working conditions for the dealer's employees, and

WHEREAS, without regard to the dealer's investment in an approved facility, licensee-franchisers often establish new facility standards or offer so-called "voluntary" incentive programs for new renovations and alterations before the dealer has had time to sufficiently depreciate the approved facility's investment, and

WHEREAS, such programs, in effect, economically coerce a dealer either to comply with the costly new facility demands or risk not receiving the incentive and being placed at an unfair competitive disadvantage which negatively affects Florida consumers by, among other things, reducing competition and increasing consumer costs, and

WHEREAS, the federal Graves Amendment has eliminated liability for motor vehicle rental and leasing companies while their vehicles are being operated by their customers; however, motor vehicle dealers in Florida are still subjected to damages for claims, demands, and suits during the time that their service customers are operating temporary replacement vehicles owned, but not then being operated, by the motor vehicle dealer or its rental affiliate, and

WHEREAS, absent negligence or criminal conduct by the motor vehicle dealer, subjecting motor vehicle dealers to vicarious liability under the dangerous instrumentality doctrine is both

unfair and economically disadvantageous to motor vehicle dealers and Florida consumers in that it causes dealers to suffer higher insurance costs which they pass on to the consuming public, and often serves to relieve the actual tortfeasor from liability, NOW, THEREFORE,

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

Section 1. Subsections (26) and (38) of section 320.64, Florida Statutes, are amended, and subsections (39) and (40) are added to that section, to read:

320.64 Denial, suspension, or revocation of license; grounds.—A license of a licensee under s. 320.61 may be denied, suspended, or revoked within the entire state or at any specific location or locations within the state at which the applicant or licensee engages or proposes to engage in business, upon proof that the section was violated with sufficient frequency to establish a pattern of wrongdoing, and a licensee or applicant shall be liable for claims and remedies provided in ss. 320.695 and 320.697 for any violation of any of the following provisions. A licensee is prohibited from committing the following acts:

(26) Notwithstanding the terms of any franchise agreement, including any licensee's program, policy, or procedure, the applicant or licensee has refused to allocate, sell, or deliver motor vehicles; charged back or withheld payments or other

things of value for which the dealer is otherwise eligible under a sales promotion, program, or contest; prevented a motor vehicle dealer from participating in any promotion, program, or contest; or has taken or threatened to take any adverse action against a dealer, including charge-backs, reducing vehicle allocations, or terminating or threatening to terminate a franchise because the dealer sold or leased a motor vehicle to a customer who exported the vehicle to a foreign country or who resold the vehicle, unless the licensee proves that the dealer knew or reasonably should have known that the customer intended to export or resell the motor vehicle. There is a rebuttable presumption that the dealer neither knew nor reasonably should have known of its customer's intent to export or resell the vehicle if the vehicle is titled or registered in any state in this country. A licensee may not take any action against a motor vehicle dealer, including reducing its allocations or supply of motor vehicles to the dealer, or charging back a dealer for an incentive payment previously paid, unless the licensee first meets in person, by telephone, or video conference with an officer or other designated employee of the dealer. At such meeting, the licensee must provide a detailed explanation, with supporting documentation, as to the basis for its claim that the dealer knew or reasonably should have known of the customer's intent to export or resell the motor vehicle. Thereafter, the motor vehicle dealer shall have a reasonable period, commensurate with the number of motor vehicles at issue, but not

less than 15 days, to respond to the licensee's claims. If, following the dealer's response and completion of all internal dispute resolution processes provided through the applicant or licensee, the dispute remains unresolved, the dealer may file a protest with the department within 30 days after receipt of a written notice from the licensee that it still intends to take adverse action against the dealer with respect to the motor vehicles still at issue. If a protest is timely filed, the department shall notify the applicant or licensee of the filing of the protest, and the applicant or licensee may not take any action adverse to the dealer until the department renders a final determination, which is not subject to further appeal, that the licensee's proposed action is in compliance with the provisions of this subsection. In any hearing pursuant to this subsection, the applicant or licensee has the burden of proof on all issues raised by this subsection. A licensee, by agreement, program, rule, policy, standard, or otherwise, may not take adverse action against a motor vehicle dealer, including, without limitation, reducing allocations, product deliveries, or planning volumes or imposing any monetary penalty or chargeback, due to a motor vehicle being sold, leased, or delivered to a customer or resold or exported unless such resale or export occurred within 30 days after the date of sale, lease, or delivery of such motor vehicle to the customer. A licensee may not require a motor vehicle dealer in any manner to inquire of any customer whether the customer taking delivery of a motor

vehicle will be the end user of the motor vehicle. Notwithstanding the terms of any franchise agreement, a licensee may not use as a basis for termination of a motor vehicle dealer that one or more customers of that motor vehicle dealer resold or exported a motor vehicle.

(38) Notwithstanding the terms of any franchise agreement, the applicant or licensee has failed or refused to offer a bonus, incentive, or other benefit program, in whole or in part, to a dealer or dealers in this state which it offers to all of its other same line-make dealers nationally or to all of its other same line-make dealers in the licensee's designated zone, region, or other licensee-designated area of which this state is a part, unless the failure or refusal to offer the program in this state is reasonably supported by substantially different economic or marketing considerations than are applicable to the licensee's same line-make dealers in this state. For purposes of this chapter, a licensee may not establish this state alone as a designated zone, region, or area or any other designation for a specified territory.

(a) A licensee may offer a bonus, rebate, incentive, or other benefit program to its dealers in this state which is calculated or paid on a per vehicle basis and is related in part to a dealer's ~~facility or the~~ expansion, improvement, remodeling, alteration, or renovation of a dealer's existing facility; however, except for a motor vehicle dealer whose existing facility was required or approved by a licensee within

the 10-year period before the effective date of such bonus, rebate, incentive, or other benefit program, and who shall be entitled to the facility-related portion of such bonus, rebate, incentive, or other benefit, ~~.~~ any dealer who does not comply with the facility-related ~~facility~~ criteria or eligibility requirements of such program is entitled to receive at least 80 percent ~~a reasonable percentage~~ of the total bonus, incentive, rebate, or other benefit offered by the licensee under that program by complying with its ~~the~~ criteria or eligibility requirements that are not related ~~unrelated~~ to the dealer's facility ~~under that program~~. ~~For purposes of the previous sentence, the percentage unrelated to the facility criteria or requirements is presumed to be "reasonable" if it is not less than 80 percent of the total of the per vehicle bonus, incentive, rebate, or other benefits offered under the program.~~

(b) Notwithstanding the terms of any franchise agreement, an applicant or licensee, by agreement, program, incentive, bonus, rebate, standard, policy, or otherwise may not require a motor vehicle dealer to make improvements, renovations, remodeling, or alterations to its dealership facilities or to install new signs or other image elements that replace or alter the dealer's facilities, signs, or image elements that were required or approved by the licensee or applicant, or one of its common entities or affiliates, within the preceding 10 years. If a licensee, applicant, or common entity offers any bonus, incentive, rebate, or other program that is available to more

than one dealer in this state and is premised, wholly or in part, on dealer facility improvements, renovations, expansion, remodeling, or alterations or installation of signs or other image elements, a motor vehicle dealer whose existing facilities, signs, or other image elements were required or approved by the licensee or applicant within 10 years preceding the effective date thereof is deemed to be in full compliance with such program's facilities-related eligibility requirements for the duration of that 10-year period, whether or not the dealer makes the facility improvements, remodeling, expansion, renovations, or alterations. This paragraph does not apply to a program under which a licensee offers to pay a lump sum payment to assist dealers in making facility improvements or to pay for signs or image elements when such payments are not calculated or paid on a per-vehicle or unit-volume basis, and does not apply to any letter of intent or any expansion, improvement, alteration, remodeling, or renovation being implemented by a dealer on the effective date of this paragraph.

(39) Notwithstanding the terms of any franchise agreement, the applicant or licensee:

(a) Required or coerced, or attempted to require or coerce, a motor vehicle dealer to purchase goods or services from a vendor selected, identified, or designated by the applicant or licensee, or one of its affiliates, by agreement, standard, policy, program, incentive provision, or otherwise without making available to the motor vehicle dealer the option

to obtain the goods or services of substantially similar design and quality from a vendor chosen by the motor vehicle dealer. If the dealer exercises such option, the dealer will qualify and be eligible for all benefits described in such agreement, program, or incentive. For purposes of this paragraph, the term "goods" does not include material subject to intellectual property rights of, or special tools and training as required by, the licensee or applicant, or parts to be used in repairs under warranty obligations of a licensee or applicant.

(b) Failed to provide written notice to a motor vehicle dealer of the dealer's rights under paragraph (a) when requiring the dealer to purchase goods or services from a vendor selected, identified, or designated by the licensee or applicant.

(c) Failed to provide to a motor vehicle dealer, when the applicant or licensee claims that a vendor chosen by the motor vehicle dealer cannot supply goods and services of substantially similar design and quality pursuant to paragraph (a), a written statement disclosing the identity of the vendor selected, identified, or designated by the licensee or applicant and stating:

1. Whether the licensee or applicant, or one of its affiliates, or any officer, director, or employee of the applicant or licensee, has an ownership interest, actual or beneficial, in the vendor and, if so, the percentage of the ownership interest;

2. Whether the licensee or applicant, or one of its

affiliates, has an agreement or arrangement by which the vendor pays to the licensee or applicant, or one of its affiliates or common entity, or any officer, director, or employee of the applicant or licensee any compensation and, if so, the basis and amount of the compensation to be paid as a result of any purchases by the motor vehicle dealer or any motor vehicle dealer in the state that has made any similar purchases; and

3. Whether the compensation is to be paid by direct payment by the vendor or by credit from the vendor for the benefit of the recipient.

If the notice required under this paragraph discloses such an ownership interest or any such compensation, that program or incentive shall increase the dealer's benefits by the amount of a pro rata share of such compensation or fair market value of such ownership.

(d) Failed to provide to a motor vehicle dealer, if the goods and services to be supplied to the dealer by a vendor selected, identified, or designated by the applicant or licensee are signs of other image elements to be leased to the motor vehicle dealer, the right to purchase the signs or other image elements of like kind and quality from a vendor selected by the motor vehicle dealer. If the vendor selected by the applicant or licensee is the only available vendor, the motor vehicle dealer must be given the opportunity to purchase the signs or other image elements at a price substantially similar to the

capitalized lease costs thereof. This paragraph does not allow a motor vehicle dealer to impair or eliminate the intellectual property rights of the applicant or licensee, and does not permit a motor vehicle dealer to erect or maintain signs that do not conform to the intellectual property usage guidelines of the applicant or licensee.

(40) Has, in any manner, by agreement, policy, program, standard, or otherwise, required a motor vehicle dealer to participate in, contribute to, affiliate with, or join a dealer advertising or marketing group, fund, pool, association, or other entity, or, in any manner, taken or threatened to take any adverse action against a motor vehicle dealer who refuses to join or participate in such group, fund, pool, association, or other entity. The term "adverse action" includes, without limitation, reduction of allocations, charging fees for a licensee's or dealer advertising or marketing group's advertising or marketing, termination or threatening to terminate the motor vehicle dealer, reducing any incentive or bonus for which the motor vehicle dealer is eligible, or any action that fails to take into account the interests of a motor vehicle dealer.

A motor vehicle dealer who can demonstrate that a violation of, or failure to comply with, any of the preceding provisions by an applicant or licensee will or can adversely and pecuniarily affect the complaining dealer, shall be entitled to pursue all

of the remedies, procedures, and rights of recovery available under ss. 320.695 and 320.697.

Section 2. Paragraph (c) of subsection (9) of section 324.021, Florida Statutes, is amended to read:

324.021 Definitions; minimum insurance required.—The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

(9) OWNER; OWNER/LESSOR.—

(c) Application.—

1. The limits on liability in subparagraphs (b)2. and 3. do not apply to an owner of motor vehicles that are used for commercial activity in the owner's ordinary course of business, other than a rental company that rents or leases motor vehicles. For purposes of this paragraph, the term "rental company" includes only an entity that is engaged in the business of renting or leasing motor vehicles to the general public and that rents or leases a majority of its motor vehicles to persons with no direct or indirect affiliation with the rental company. The term also includes a motor vehicle dealer that provides temporary replacement vehicles to its customers ~~for up to 10 days~~. The term "rental company" also includes:

a. A related rental or leasing company that is a subsidiary of the same parent company as that of the renting or leasing company that rented or leased the vehicle.

b. The holder of a motor vehicle title or an equity interest in a motor vehicle title if the title or equity interest is held pursuant to or to facilitate an asset-backed securitization of a fleet of motor vehicles used solely in the business of renting or leasing motor vehicles to the general public and under the dominion and control of a rental company, as described in this subparagraph, in the operation of such rental company's business.

2. Furthermore, with respect to commercial motor vehicles as defined in s. 627.732, the limits on liability in subparagraphs (b)2. and 3. do not apply if, at the time of the incident, the commercial motor vehicle is being used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Authorization Act of 1994, as amended, 49 U.S.C. ss. 5101 et seq., and that is required pursuant to such act to carry placards warning others of the hazardous cargo, unless at the time of lease or rental either:

a. The lessee indicates in writing that the vehicle will not be used to transport materials found to be hazardous for the purposes of the Hazardous Materials Transportation Authorization Act of 1994, as amended, 49 U.S.C. ss. 5101 et seq.; or

b. The lessee or other operator of the commercial motor vehicle has in effect insurance with limits of at least $5,000,000 combined property damage and bodily injury liability.

3. A motor vehicle dealer that provides a temporary

replacement vehicle at no charge to a person whose vehicle is being repaired, serviced, or adjusted by the dealer, or any rental or leasing affiliate of the dealer which rents or provides a temporary replacement vehicle to a service customer of the dealer, is not liable, vicariously or otherwise, by reason of being the owner of the temporary replacement vehicle for harm to persons or property that arises out of the use, operation, or possession of the temporary replacement vehicle while the vehicle is used, operated, or controlled by or in the possession of the motor vehicle dealer's service customer, or such customer's designee, if there is no negligence or criminal wrongdoing on the part of the temporary replacement motor vehicle's owner. For purposes of this section, and notwithstanding any other provision of law, it is not negligent, and negligence may not be deemed, inferred, or found, for a motor vehicle dealer to give possession, control, or use of a temporary replacement vehicle to a motor vehicle dealer's customer, if the motor vehicle dealer obtains the driver license and insurance information from the customer or the customer's designee. Any subsequent determination that the driver license or insurance information provided to the motor vehicle dealer was in any way false, fraudulent, misleading, or invalid does not alter the protections provided by this section, unless the motor vehicle dealer had actual knowledge of the false, fraudulent, misleading, or invalid information. For purposes of this section, the term "motor vehicle dealer" includes any

rental or leasing affiliate owned or controlled by such motor vehicle dealer.

Section 3. This act shall take effect July 1, 2015.

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: Business & Professions Subcommittee

Representative Trujillo offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Present paragraph (h) of subsection (10) of section 320.64, Florida Statutes, is redesigned as paragraph (i) and amended, a new paragraph (h) is added to that subsection, and subsections (25) and (26) of that section are amended, and subsections (39) through (41), are added to that section to read:

320.64 Denial, suspension, or revocation of license; grounds.—A license of a licensee under s. 320.61 may be denied, suspended, or revoked within the entire state or at any specific location or locations within the state at which the applicant or licensee engages or proposes to engage in business, upon proof

that the section was violated with sufficient frequency to establish a pattern of wrongdoing, and a licensee or applicant shall be liable for claims and remedies provided in ss. 320.695 and 320.697 for any violation of any of the following provisions. A licensee is prohibited from committing the following acts:

(10)

(h) If an applicant or licensee offers any bonus, incentive, rebate, or other program, standard or policy that is available to a motor vehicle dealer in this state which is premised, wholly or in part, on dealer facility improvements, renovations, expansion, remodeling, alterations, or installation of signs or other image elements, a motor vehicle dealer who completes an approved facility in reliance upon such offer shall be deemed to be in full compliance with all of the applicant's or licensee's facility, sign, and image-related requirements for the duration of a 10-year period following such completion. If during the aforesaid 10-year period an applicant or licensee establishes a program, standard or policy that offers a new bonus, incentive, rebate or other benefit, a motor vehicle dealer that had completed an approved facility in reliance upon the prior program, standard or policy but does not comply with the facility, sign or image-related provisions under the new program, standard or policy, except as hereinafter provided, shall not be eligible for benefits under the facility, sign or image-related provisions of the new program, standard or policy,

but shall remain entitled to all the benefits under the older program, standard or policy plus any increase in the benefits between the old and new programs, standards or policies during the remainder of the 10-year period. Nothing contained in this subsection shall in any way obviate, affect, or alter the provisions of Section 320.64(38).

(i) ~~(h)~~ A violation of paragraphs (b) through (h) ~~(g)~~ is not a violation of s. 320.70 and does not subject any licensee to any criminal penalty under s. 320.70.

(25) The applicant or licensee has undertaken or engaged in an audit of warranty, maintenance, and other service-related payments or incentive payments, including payments to a motor vehicle dealer under any licensee-issued program, policy, or other benefit, which previously have been paid to a motor vehicle dealer in violation of this section or has failed to comply with any of its obligations under s. 320.696. An applicant or licensee may reasonably and periodically audit a motor vehicle dealer to determine the validity of paid claims as provided in s. 320.696. Audits of warranty, maintenance, and other service-related payments shall be performed by an applicant or licensee only during the 12-month ~~1-year~~ period immediately following the date the claim was paid. Audits ~~Audit~~ of incentive payments shall ~~only~~ be performed only during the 12-month ~~for an 18-month~~ period immediately following the date the incentive was paid. As used in this section, the term "incentive" includes any bonus, incentive, or other monetary or

nonmonetary thing of value. After such time periods have elapsed, all warranty, maintenance, and other service-related payments and incentive payments shall be deemed final and incontrovertible for any reason notwithstanding any otherwise applicable law, and the motor vehicle dealer shall not be subject to any charge-back or repayment. An applicant or licensee may deny a claim or, as a result of a timely conducted audit, impose a charge-back against a motor vehicle dealer for warranty, maintenance, or other service-related payments or incentive payments only if the applicant or licensee can show that the warranty, maintenance, or other service-related claim or incentive claim was false or fraudulent or that the motor vehicle dealer failed to substantially comply with the reasonable written and uniformly applied procedures of the applicant or licensee for such repairs or incentives, but only for that portion of the claim so shown. Notwithstanding the terms of any franchise agreement, guideline, program, policy, or procedure, an applicant or licensee may only deny or charge back that portion of a warranty, maintenance, or other service-related claim or incentive claim which the applicant or licensee has proven to be false or fraudulent or for which the dealer failed to substantially comply with the reasonable, written, and uniformly applied procedures of the applicant or licensee for such repairs or incentives, as set forth in this subsection. An applicant or licensee may not charge a motor vehicle dealer back subsequent to the payment of a warranty, maintenance, or

service-related claim or incentive claim unless, within 30 days after a timely conducted audit, a representative of the applicant or licensee first meets in person, by telephone, or by video teleconference with an officer or employee of the dealer designated by the motor vehicle dealer. At such meeting the applicant or licensee must provide a detailed explanation, with supporting documentation, as to the basis for each of the claims for which the applicant or licensee proposed a charge-back to the dealer and a written statement containing the basis upon which the motor vehicle dealer was selected for audit or review. Thereafter, the applicant or licensee must provide the motor vehicle dealer's representative a reasonable period after the meeting within which to respond to the proposed charge-backs, with such period to be commensurate with the volume of claims under consideration, but in no case less than 45 days after the meeting. The applicant or licensee is prohibited from changing or altering the basis for each of the proposed charge-backs as presented to the motor vehicle dealer's representative following the conclusion of the audit unless the applicant or licensee receives new information affecting the basis for one or more charge-backs and that new information is received within 30 days after the conclusion of the timely conducted audit. If the applicant or licensee claims the existence of new information, the dealer must be given the same right to a meeting and right to respond as when the charge-back was originally presented. After all internal dispute resolution processes provided through

the applicant or licensee have been completed, the applicant or licensee shall give written notice to the motor vehicle dealer of the final amount of its proposed charge-back. If the dealer disputes that amount, the dealer may file a protest with the department within 30 days after receipt of the notice. If a protest is timely filed, the department shall notify the applicant or licensee of the filing of the protest, and the applicant or licensee may not take any action to recover the amount of the proposed charge-back until the department renders a final determination, which is not subject to further appeal, that the charge-back is in compliance with the provisions of this section. In any hearing pursuant to this subsection, the applicant or licensee has the burden of proof that its audit and resulting charge-back are in compliance with this subsection.

(26) Notwithstanding the terms of any franchise agreement, including any licensee's program, policy, or procedure, the applicant or licensee has refused to allocate, sell, or deliver motor vehicles; charged back or withheld payments or other things of value for which the dealer is otherwise eligible under a sales promotion, program, or contest; prevented a motor vehicle dealer from participating in any promotion, program, or contest; or has taken or threatened to take any adverse action against a dealer, including charge-backs, reducing vehicle allocations, or terminating or threatening to terminate a franchise because the dealer sold or leased a motor vehicle to a customer who exported the vehicle to a foreign country or who

resold the vehicle, unless the licensee proves that the dealer knew or reasonably should have known that the customer intended to export or resell the motor vehicle. There is a rebuttable presumption that the dealer neither knew nor reasonably should have known of its customer's intent to export or resell the vehicle if the vehicle is titled or registered in any state in this country. A licensee may not take any action against a motor vehicle dealer, including reducing its allocations or supply of motor vehicles to the dealer, or charging back a dealer for an incentive payment previously paid, unless the licensee first meets in person, by telephone, or video conference with an officer or other designated employee of the dealer. At such meeting, the licensee must provide a detailed explanation, with supporting documentation, as to the basis for its claim that the dealer knew or reasonably should have known of the customer's intent to export or resell the motor vehicle. Thereafter, the motor vehicle dealer shall have a reasonable period, commensurate with the number of motor vehicles at issue, but not less than 15 days, to respond to the licensee's claims. If, following the dealer's response and completion of all internal dispute resolution processes provided through the applicant or licensee, the dispute remains unresolved, the dealer may file a protest with the department within 30 days after receipt of a written notice from the licensee that it still intends to take adverse action against the dealer with respect to the motor vehicles still at issue. If a protest is timely filed, the

department shall notify the applicant or licensee of the filing of the protest, and the applicant or licensee may not take any action adverse to the dealer until the department renders a final determination, which is not subject to further appeal, that the licensee's proposed action is in compliance with the provisions of this subsection. In any hearing pursuant to this subsection, the applicant or licensee has the burden of proof on all issues raised by this subsection. In addition to the requirements, protections, and procedures set forth in this subsection, an applicant or licensee, by agreement, program, rule, policy, standard or otherwise, may not take adverse action against a motor vehicle dealer, including, without limitation, reducing allocations, product deliveries, or planning volumes, or imposing any penalty or charge-back, because a motor vehicle that was sold, leased, or delivered to a customer was resold or exported more than 120 days after it was delivered to the customer. If the applicant or licensee does not provide written notification to the motor vehicle dealer of such resale or export within 12 months of the date of the motor vehicle dealer's delivery of the vehicle to the customer, the motor vehicle dealer shall not be subject to any adverse action. Notwithstanding the provisions of any franchise agreement, program, policy, or procedure, a motor vehicle dealer's franchise agreement may not be terminated, canceled, discontinued, or nonrenewed by an applicant or licensee on the basis of any act related to a customer's exporting or reselling

of a motor vehicle, unless the applicant or licensee proves by clear and convincing evidence before a trier of fact that the motor vehicle dealer knowingly engaged in a pattern of conduct of selling to known exporters and that the majority owner, or if there is no majority owner, the person designated as the dealer-principal or a person similarly designated in the franchise agreement, at the time the motor vehicle was sold, leased or delivered, had actual knowledge that the customer intended to export or resell the motor vehicle.

(39) Notwithstanding the terms of any agreement, program, incentive, bonus, policy, or rule, an applicant or licensee fails to make any payment pursuant to any of the foregoing for any temporary replacement motor vehicle loaned, rented, or provided by a motor vehicle dealer to or for its service or repair customers, even if the temporary replacement motor vehicle has been leased, rented, titled or registered to the motor vehicle dealer's rental or leasing division or an entity that is owned or controlled by the motor vehicle dealer.

(40) Notwithstanding the terms of any franchise agreement, the applicant or licensee has required or coerced, or attempted to require or coerce, a motor vehicle dealer to purchase goods or services from a vendor selected, identified, or designated by an applicant or licensee, or one of its parents, subsidiaries, divisions, or affiliates, by agreement, standard, policy, program, incentive provision, or otherwise, without making available to the motor vehicle dealer the option to obtain the

goods or services of like kind, design, and quality from a vendor chosen by the motor vehicle dealer. If the motor vehicle dealer exercises such option, the dealer must provide written notice of its desire to use the alternative goods or services to the licensee or applicant, along with samples and/or clear descriptions of the alternative goods or services that the dealer desires to use. The licensee or applicant shall have the opportunity to evaluate the alternative good or service for up to 30 days, and provide its written consent to use said good or service; such consent may not be unreasonably withheld by the applicant or licensee. If the motor vehicle dealer does not receive a response from the applicant or licensee within the 30 days, consent to use the alternative goods or services shall be deemed granted. Provided that the dealer complies with the terms of this subsection, a dealer using such alternative goods or services shall qualify and be eligible for all benefits described in such agreement, standard, policy, program, incentive provision, or otherwise. For purposes of this subsection, the term "goods and services" are limited to such goods and services used to construct or renovate dealership facilities, or furniture and fixtures at the dealership facilities, but shall not include: (i) any intellectual property of the licensee or applicant, including without limitation, to signage incorporating the licensee's or applicant's trademark or copyright, any facility or building materials protected by the licensee's or applicant's trademark

or trade dress rights, (ii) any special tools and training as required by the licensee or applicant, or (iii) parts to be used in repairs under warranty obligations of a licensee or applicant.

(41)(a) An applicant or licensee may not, by agreement, policy, program, standard, or otherwise, require a motor vehicle dealer, directly or indirectly, to advance or pay for, or to reimburse the applicant or licensee for, any costs related to the creation, development, showing, or publication in any media of any advertisement for a motor vehicle, or require a motor vehicle dealer to participate in, contribute to, affiliate with, or join a dealer advertising or marketing group, fund, pool, association, or other entity and may not take or threaten to take any adverse action against a motor vehicle dealer that refuses to join or participate in such group, fund, pool, association, or other entity. For purposes of this subsection, the term "adverse action" includes, without limitation, reduction of allocations, charging fees for a licensee's or dealer's advertising or a marketing group's advertising or marketing, termination of or threatening to terminate the motor vehicle dealer's franchise, reducing any incentive for which the motor vehicle dealer is eligible, or any action that fails to take into account the equities of the motor vehicle dealer.

(b) An applicant or licensee may not require a dealer to participate in, and may not preclude only a portion of its motor vehicle dealers in a designated market area from establishing, a

voluntary motor vehicle dealer advertising or marketing group, fund, pool, association, or other entity. Except as provided in an agreement, when motor vehicle dealers choose to form an independent advertising or marketing group, an applicant or licensee shall not be required to fund such group.

(c) Nothing in this subsection shall prohibit an applicant or licensee from offering advertising or promotional materials to a motor vehicle dealer for a fee or charge, so long as the use of such advertising or promotional materials is voluntary for the motor vehicle dealer.

A motor vehicle dealer who can demonstrate that a violation of, or failure to comply with, any of the preceding provisions by an applicant or licensee will or can adversely and pecuniarily affect the complaining dealer, shall be entitled to pursue all of the remedies, procedures, and rights of recovery available under ss. 320.695 and 320.697.

Section 2. This act shall apply to all franchise agreements entered into, renewed, or amended subsequent to October 1, 1988.

Section 3. If any provision of this act or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 4. This act shall take effect upon becoming a law.

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 motor vehicle manufacturer licenses; amending s. 320.64, F.S.; providing that a motor vehicle dealer who received approval of a facility from an applicant or licensee within a specified timeframe is deemed to be in full compliance with facility-related requirements; revising provisions relating to when an applicant or licensee has undertaken or engaged in an audit of service- related payments or incentive payments; limiting the timeframe for the performance of such audits; providing that an applicant or licensee may only deny or charge back that portion of a service-related claim or incentive claim which the applicant or licensee has proven to be false or fraudulent or for which the dealer failed to substantially comply with certain procedures; prohibiting an applicant or licensee from taking adverse action against a motor vehicle dealer because a motor vehicle sold, leased, or delivered to a customer was resold or exported after a specified period after delivery to the customer, subject to certain requirements and restrictions; prohibiting an applicant or licensee from failing to make any payment due a motor vehicle dealer that substantially complies with the terms of a certain contract

between the two parties regarding reimbursement for temporary replacement vehicles under certain circumstances; allowing a motor vehicle dealer to purchase goods or services from a local vendor under certain circumstances; defining the term "goods and services"; prohibiting the applicant or licensee from failing to provide a motor vehicle dealer a written statement disclosing the identity of its approved vendor under certain circumstances and subject to certain requirements; prohibiting an applicant or licensee from requiring a motor vehicle dealer to pay for certain advertising or marketing, or to participate in or affiliate with a dealer advertising or marketing entity; providing that an applicant or licensee may not take or threaten to take any adverse action against a motor vehicle dealer who refuses to join or participate in such entity; defining the term "adverse action"; providing that an applicant or licensee may not require a dealer to participate in, and may not preclude only some of its motor vehicle dealers in a designated market area from establishing, a voluntary motor vehicle dealer advertising or marketing entity; amending s. 320.641, F.S.; specifying the circumstances under which a complainant motor vehicle dealer prevails in a certain cause of action; providing for application of this act to all existing franchise agreements; providing a severability clause; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1141 Natural Gas Rebate Program
SPONSOR(S): Ray
TIED BILLS: None. **IDEN./SIM. BILLS:** SB 1538

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee		Whittier	Luczynski
2) Government Operations Subcommittee			
3) Agriculture & Natural Resources Appropriations Subcommittee			
4) Regulatory Affairs Committee			

SUMMARY ANALYSIS

Currently, there is not an incentive program in Florida for those who are considering converting a locomotive or ship to natural gas; however, in 2013, the Legislature created the Natural Gas Fuel Fleet Vehicle Rebate Program within the Department of Agriculture and Consumer Services (DACS). The purpose of the program is to award rebates for up to 50 percent of the eligible costs incurred in the conversion or retrofitting of a diesel or gasoline powered motor vehicle to a natural gas powered motor vehicle.

The bill creates the Heavy Transportation Industry Natural Gas Rebate Program within DACS. Similar to the Natural Gas Fuel Fleet Vehicle Rebate Program, the purpose of the program is to award rebates for up to 50 percent of the eligible costs for converting traditionally-fueled locomotives and ships to natural gas fueled locomotives and ships. Applicants must have placed these locomotives and ships into service on or after January 1, 2015, for commercial business or governmental purposes. An applicant is eligible to receive a maximum rebate of $500,000 per vehicle up to a total of $1 million per fiscal year.

The bill requires DACS to determine and publish on its website, on an ongoing basis, the amount of available funding for rebates remaining in each fiscal year and to provide, by October 1, 2016, and by October 1 of each subsequent year, an annual assessment of the use of the rebate program to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Office of Program Policy Analysis and Government Accountability (OPPAGA).

The bill directs OPPAGA to complete and submit a report reviewing the rebate program and an analysis of the economic benefits to the state to the Governor, the President of the Senate and the Speaker of the House of Representatives by January 31, 2017.

The bill provides an effective date of July 1, 2015.

Although the bill refers to appropriated funds, no appropriation is provided in the bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

U.S. Environmental Protection Agency Standards

The U.S. Environmental Protection Agency (EPA) has adopted very stringent standards to reduce emissions of diesel particulate matter (PM) and nitrogen oxide (NOx) from locomotives and marine diesel engines. The EPA's goal is to tighten emissions on existing engines when remanufactured and set long term standards referred to as Tier-4 standards.[1]

According to the EPA, there is a coordinated strategy that includes Clean Air Act standards, as well as implementation of the international standards for marine engines and their fuels contained in Annex VI to the International Convention on the Prevention of Pollution from Ships (a treaty called MARPOL).[2, 3]

The EPA estimates that by 2030, compliance with this standard will result in an annual reduction of 800,000 tons of NOx emissions and 27,000 tons of PM emissions;[4] however, compliance with these emissions mandates will be costly for the rail and maritime industries. The three most common methods of achieving these goals are:

- Using costly ultra-low sulfur diesel (road grade diesel),
- Installing scrubber systems on the engines which are similar to those of coal power plants, or
- Using natural gas (the lowest cost alternative).[5]

Florida does not have a Liquefied Natural Gas (LNG) plant at this time and transports by truck any railroad LNG from Macon, Georgia, to destinations in Florida. Any railroad or ship LNG needs must be met by transporting the commodity from out of state. However, as a result of the growing demands for natural gas, several companies are looking to build LNG plants but need a specific demand for the capital intensive projects. The Florida Natural Gas Association asserts, "This legislation will help focus the use of liquefied natural gas as the means to meet the emission mandates and aid the guarantee of liquefied natural gas sources in Florida which will provide fuel for our growing trade and tourism industries."[6]

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[1] Email from a representative of the Florida Natural Gas Association, RE: Rail and maritime industries and EPA's emission mandates (Mar. 13, 2015).

[2] United States Environmental Protection Agency, Office of Transportation and Air Quality, *EPA Finalizes More Stringent Standards for Control of Emissions from New Marine Compression-Ignition Engines at or Above 30 Liters per Cylinder*, pg. 1 (Dec. 2009), *available at* http://www.epa.gov/otaq/regs/nonroad/marine/ci/420f09068.pdf.

[3] According to the EPA, the MARPOL Annex VI contains a program that applies stringent engine emission standards and fuel sulfur limits to ships that operate in specially designated Emission Control Areas (ECAs). The quality of fuel that complies with the ECA standard changes over time. The United States has obtained designation for the North American ECA and the US Caribbean ECA. The effective dates of the standards for an area depend on the area's designation date. By 2030, this coordinated strategy is expected to reduce annual emissions of NOx in the United States by about 1.2 million tons and PM emissions by about 143,000 tons. United States Environmental Protection Agency, *Ocean Vessels and Large Ships*, http://www.epa.gov/otaq/oceanvessels.htm (last visited Mar. 13, 2015).

[4] Email from a representative of the Florida Natural Gas Association, RE: Rail and maritime industries and EPA's emission mandates (Mar. 13, 2015).

[5] *Id.*

[6] *Id.*

Natural Gas Fuel

During the past several years, exploration has uncovered a supply of natural gas in the United States which has resulted in a reduction in the price of natural gas and an increased interest in natural gas powered vehicles, fuel plants, and refueling infrastructure.

Natural gas is touted as the cleanest of the fossil fuels. The Natural Gas Supply Association points out that, "Pollutants emitted in the United States, particularly from the combustion of fossil fuels, have led to the development of many pressing environmental problems. Natural gas, emitting fewer harmful chemicals into the atmosphere than other fossil fuels, can help to mitigate some of these environmental issues." These concerns include:

- Greenhouse Gas Emissions;
- Smog, Air Quality and Acid Rain;
- Industrial and Electric Generation Emissions; and
- Pollution from the Transportation Sector.[7]

When compared using equivalent units of measure, natural gas is less expensive per gallon than traditional fuels. The U.S. Department of Energy reports that in the Fall of 2014, the national average price for gasoline was $3.34 a gallon, the price for diesel was $3.77 a gallon, and for a gasoline gallon equivalent of compressed natural gas was $2.16.[8]

Florida East Coast Industries (FECI) reported that, in April 2014, using equivalent units of measure, the national price for railroad diesel was $2.95 a gallon and a diesel gallon equivalent of railroad LNG was $1.47.[9]

Currently, most locomotives use diesel and most ships today use bunker fuel which is crude oil.[10] To refuel locomotives with LNG, railroads use a tender that sits between two locomotives. There are 14 railroads in Florida.[11] Total diesel fuel used by railroads in Florida is approximately 70 million gallons a year, which is the equivalent of approximately 119 million gallons of natural gas.[12]

To refuel ships with LNG, another ship transports the LNG in ISO tanks to a port and then transfers the natural gas to the ship's fuel tank. Each ship requires about 25,000 to 30,000 gallons of natural gas per day, resulting in the need for approximately 10 million gallons annually per ship.[13] The FECI notes that, "... by converting ships to natural gas, you get not only the cost savings but significant environmental benefit since crude is a lot dirtier than natural gas."

Although initial savings in fuel costs may be offset by the cost of a natural gas vehicle, locomotive, or ship over gasoline, diesel, or crude oil, cost savings are expected after a few years.

Natural Gas Fuel Fleet Vehicle Rebate Program

Currently, there is not an incentive program in Florida for those who are considering converting a locomotive or ship to natural gas; however, in 2013, the Legislature created the Natural Gas Fuel Fleet Vehicle Rebate Program (rebate program) within DACS, the purpose of which is to "help reduce

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[7] NaturalGas.Org, http://www.naturalgas.org/environment/naturalgas/ (last visited Mar. 13, 2015).
[8] United States Department of Energy, *Clean Cities Alternative Fuel Price Report*, pg. 4-5 (Oct. 2014),*available at* http://www.afdc.energy.gov/uploads/publication/alternative_fuel_price_report_oct_2014.pdf.
[9] Email from a representative of Florida East Coast Industries, RE: Rail and maritime industries and liquefied natural gas (Mar. 14, 2015).
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id.*

transportation costs in this state and encourage freight mobility investments that contribute to the economic growth of the state."[14]

Section 377.810, F.S., provides the following definitions under the program:

- "Conversion costs" means the excess cost associated with retrofitting a diesel or gasoline powered motor vehicle to a natural gas fuel powered motor vehicle.
- "Department" means the Department of Agriculture and Consumer Services.
- "Eligible costs" means the cost of conversion or the incremental cost incurred by an applicant in connection with an investment in the conversion, purchase, or lease lasting at least 5 years, of a natural gas fleet vehicle placed into service on or after July 1, 2013. The term does not include costs for project development, fueling stations, or other fueling infrastructure.
- "Fleet vehicles" means three or more motor vehicles registered in this state and used for commercial business or governmental purposes.
- "Incremental costs" means the excess costs associated with the purchase or lease of a natural gas fuel motor vehicle as compared to an equivalent diesel- or gasoline-powered motor vehicle.
- "Natural gas fuel" means any:
    - Liquefied petroleum gas product,
    - Compressed natural gas product, or
    - Combination thereof used in a motor vehicle as defined in s. 206.01(23).

  The term includes, but is not limited to, all forms of fuel commonly or commercially known or sold as natural gasoline, butane gas, propane gas, or any other form of liquefied petroleum gas, compressed natural gas, or liquefied natural gas. This term does not include natural gas or liquefied petroleum placed in a separate tank of a motor vehicle for cooking, heating, water heating, or electric generation.[15]

Beginning with Fiscal Year 2013-2014 and continuing through Fiscal Year 2017-2018 (five years), DACS is required to award rebates for the eligible costs of conversion or retrofitting of a diesel or gasoline powered motor vehicle to a natural gas fuel powered motor vehicle. Specifically, DACS is to award rebates for up to 50 percent of the eligible costs of a natural gas fuel fleet vehicle or bi-fuel natural gas fuel operating system placed into service on or after July 1, 2013. An applicant is eligible to receive a maximum rebate of $25,000 per vehicle up to a total of $250,000 per applicant per fiscal year, on a first-come, first-served basis. The DACS must reserve 40 percent of the annual allocation for governmental applicants and 60 percent for commercial applicants. The total amount that DACS can award for these rebates is $6 million[16] per year.[17]

The law provides steps for application and authorizes DACS to adopt rules to implement and administer the section by December 31, 2013.

The DACS must determine and publish on its website on an ongoing basis the amount of available funding for rebates remaining in each fiscal year and to provide, by October 1 each year, an annual assessment of the use of the rebate program to the Governor, the President of the Senate, the Speaker of the House of Representatives, and OPPAGA. By January 31, 2016, OPPAGA is to provide a report reviewing the rebate program to the Governor, the President of the Senate, and the Speaker of the House of Representatives.[18]

The Florida Natural Gas Vehicle Coalition reports that in Florida, the Natural Gas Fuel Fleet Vehicle Rebate Program has produced 1,820 jobs and $68 million in wages since its inception. When the legislation was passed there were approximately 32 Compressed Natural Gas (CNG) stations in

[14] s. 377.810(1), F.S.
[15] s. 377.810(2), F.S.
[16] The rebate is funded through the state's General Revenue Fund.
[17] s. 377.810(3), F.S.
[18] s. 377.810(7) and (8), F.S.

Florida. According to Biofuels Digest, there are now 61 active CNG fueling stations with an additional 29 planned.[19] The Digest quotes a report from Fishkind & Associates that, "... a CNG station costs on average $1.5 million, meaning investment in CNG station infrastructure has been $91.5 million over the past two years."[20]

Effects of Proposed Changes

The bill creates the Heavy Transportation Industry Natural Gas Rebate Program within DACS. Similar to the Natural Gas Fuel Fleet Vehicle Rebate Program, the purpose of the program is to award rebates for up to 50 percent of the eligible costs for converting traditionally-fueled locomotives and ships to natural gas fueled locomotives and ships. Applicants must have placed these locomotives and ships into service on or after January 1, 2015, for commercial business or governmental purposes. An applicant is eligible to receive a maximum rebate of $500,000 per vehicle up to a total of $1 million per fiscal year.

The bill provides the following definitions under the program:

- "Conversion costs" means the excess cost associated with retrofitting a diesel or gasoline powered locomotive or ship to a natural gas fuel powered motor vehicle.
- "Department" means the Department of Agriculture and Consumer Services.
- "Eligible costs" means the cost of conversion or the incremental cost incurred by an applicant in connection with an investment in the conversion, purchase, or lease lasting at least 5 years, of a locomotive or ship placed into service on or after January 1, 2015. The term does not include costs for project development, fueling stations, or other fueling infrastructure.
- "Fleet vehicles" means three or more locomotives or ships registered in this state and used for commercial business or governmental purposes.
- "Incremental costs" means the excess costs associated with the purchase or lease of a natural gas fuel locomotive or ship as compared to an equivalent diesel- or gasoline-powered locomotive or ship.
- "Natural gas fuel" means any:
    - Liquefied petroleum gas product,
    - Compressed natural gas product, or
    - Combination thereof used in a motor vehicle as defined in s. 206.01(23).

  This term includes, but is not limited to, all forms of fuel commonly or commercially known or sold as natural gasoline, butane gas, propane gas, or any other form of liquefied petroleum gas, compressed natural gas, or liquefied natural gas. This term does not include natural gas or liquefied petroleum placed in a separate tank of a motor vehicle for cooking, heating, water heating, or electric generation.

The bill provides steps for application and authorizes DACS to adopt rules to implement and administer the section by January 1, 2016.

The DACS must determine and publish on its website on an ongoing basis the amount of available funding for rebates remaining in each fiscal year and to provide, by October 1, 2016, and by October 1 of each subsequent year, an annual assessment of the use of the rebate program to the Governor, the President of the Senate, the Speaker of the House of Representatives, and OPPAGA. By January 31, 2017, OPPAGA is to provide a report reviewing the rebate program to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

[19] Isabel Lane, *Florida's natural gas vehicle incentive program creates 200% growth in fueling stations*, BIOFUELSDIGEST (Oct. 6, 2014), http://www.biofuelsdigest.com/bdigest/2014/10/06/floridas-natural-gas-vehicle-incentive-program-creates-200-growth-in-fueling-stations/.
[20] *Id.*

B. SECTION DIRECTORY:

Section 1. Creates the heavy transportation industry natural gas rebate program within the Department of Agriculture and Consumer Services; defines terms; prescribes powers and duties of the department; provides rebate eligibility requirements; provides limits on awards; requires the department to adopt rules and publish certain information on its website; requires a report by the Office of Program Policy Analysis and Government Accountability.

Section 2. Provides an effective date of July 1, 2015.

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:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may result in increased savings for owners of locomotives or ships that convert from being powered by traditional fuels to being powered by natural gas fuel. It may lead to the creation of a natural gas plant and refueling infrastructure in the state.

D. FISCAL COMMENTS:

The bill provides the following:

> The total amount of rebates allocated to certified applicants in each fiscal year may not exceed the amount appropriated for the program in the fiscal year. Rebates shall be allocated to eligible applicants on a first-come, first-served basis, determined by the date the application is received, until all appropriated funds for the fiscal year are expended or the program ends, whichever comes first.

Although the bill refers to appropriated funds, no appropriation is provided in the bill.

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 provides rule-making authority to DACS to implement and administer the section, including rules relating to the forms required to claim a rebate under this section, the required documentation and basis for establishing eligibility for a rebate, procedures and guidelines for claiming a rebate, and the collection of economic impact data from applicants. The rules must be adopted by January 1, 2016.

C. DRAFTING ISSUES OR OTHER COMMENTS:

- Although the bill refers to appropriated funds, no appropriation is provided in the bill. There is also not a sunset date for the program.
- The bill defines "fleet vehicles" but the term is not used in the bill.
- "Excess cost" is used in the definition of "conversion costs" and is necessary to determine "eligible costs;" however, the term is neither defined nor obvious from the context of the bill language.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to a natural gas rebate program; creating s. 377.811, F.S.; creating the heavy transportation industry natural gas rebate program within the Department of Agriculture and Consumer Services; defining terms; prescribing powers and duties of the department with respect to the program; providing rebate eligibility requirements; providing limits on rebate awards; specifying policies and procedures for the application process; requiring the department to adopt rules by a specified date; requiring the department to publish on its website the availability of rebate funds; requiring the department to submit an annual assessment to the Governor, the Legislature, and the Office of Program Policy Analysis and Government Accountability by a specified date; requiring the office to submit a report to the Governor and Legislature by a specified date; providing reporting requirements; providing an effective date.

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

Section 1. Section 377.811, Florida Statutes, is created to read:

377.811 Heavy transportation industry natural gas rebate

program.—

(1) CREATION AND PURPOSE OF PROGRAM.—A heavy transportation industry natural gas rebate program is created within the department for the purpose of helping to reduce transportation costs in this state and encouraging freight mobility investments that contribute to the economic growth of the state.

(2) DEFINITIONS.—As used in this section, the term:

(a) "Conversion costs" means the excess cost associated with retrofitting a diesel or gasoline powered locomotive or ship to a natural gas fuel powered motor vehicle.

(b) "Department" means the Department of Agriculture and Consumer Services.

(c) "Eligible costs" means the cost of conversion or the incremental cost incurred by an applicant in connection with an investment in the conversion, purchase, or lease lasting at least 5 years, of a locomotive or ship placed into service on or after January 1, 2015. The term does not include costs for project development, fueling stations, or other fueling infrastructure.

(d) "Fleet vehicles" means three or more locomotives or ships registered in this state and used for commercial business or governmental purposes.

(e) "Incremental costs" means the excess costs associated with the purchase or lease of a natural gas fuel locomotive or ship as compared to an equivalent diesel- or gasoline-powered

locomotive or ship.

(f) "Natural gas fuel" means any liquefied petroleum gas product, compressed natural gas product, or combination thereof used in a motor vehicle as defined in s. 206.01(23). This term includes, but is not limited to, all forms of fuel commonly or commercially known or sold as natural gasoline, butane gas, propane gas, or any other form of liquefied petroleum gas, compressed natural gas, or liquefied natural gas. This term does not include natural gas or liquefied petroleum placed in a separate tank of a motor vehicle for cooking, heating, water heating, or electric generation.

(3) HEAVY TRANSPORTATION INDUSTRY NATURAL GAS REBATE.—The department shall award rebates for eligible costs. A rebate may not exceed 50 percent of the eligible costs of a natural gas locomotive or ship with a dedicated or bi-fuel natural gas fuel operating system placed into service on or after January 1, 2015. An applicant is eligible to receive a maximum rebate of $500,000 per vehicle up to a total of $1 million per fiscal year. All natural gas locomotives and ships eligible for the rebate must comply with applicable United States Environmental Protection Agency emission standards.

(4) APPLICATION PROCESS.—

(a) An applicant seeking to obtain a rebate shall submit an application to the department by a specified date each year as established by department rule. The application shall require a complete description of all eligible costs, proof of purchase

or lease of the locomotive or ship for which the applicant is seeking a rebate, a copy of the vehicle registration certificate, a description of the total rebate sought by the applicant, and any other information deemed necessary by the department. The application form adopted by department rule must include an affidavit from the applicant certifying that all information contained in the application is true and correct.

(b) The department shall determine the rebate eligibility of each applicant in accordance with the requirements of this section and department rule. The total amount of rebates allocated to certified applicants in each fiscal year may not exceed the amount appropriated for the program in the fiscal year. Rebates shall be allocated to eligible applicants on a first-come, first-served basis, determined by the date the application is received, until all appropriated funds for the fiscal year are expended or the program ends, whichever comes first. Incomplete applications submitted to the department will not be accepted and do not secure a place in the first-come, first-served application process.

(5) RULES.—The department shall adopt rules to implement and administer this section by January 1, 2016, including rules relating to the forms required to claim a rebate under this section, the required documentation and basis for establishing eligibility for a rebate, procedures and guidelines for claiming a rebate, and the collection of economic impact data from applicants.

(6) PUBLICATION.—The department shall determine and publish on its website on an ongoing basis the amount of available funding for rebates remaining in each fiscal year.

(7) ANNUAL ASSESSMENT.—By October 1, 2016, and each year thereafter that the program is funded, the department shall provide an annual assessment of the use of the rebate program during the previous fiscal year to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Office of Program Policy Analysis and Government Accountability. The assessment must include, at a minimum, the following information:

(a) The name of each applicant awarded a rebate under this section;

(b) The amount of the rebates awarded to each applicant;

(c) The type and description of each eligible locomotive or ship for which each applicant applied for a rebate; and

(d) The aggregate amount of funding awarded for all applicants claiming rebates under this section.

(8) REPORT.—By January 31, 2017, the Office of Program Policy Analysis and Government Accountability shall submit a report reviewing the rebate program to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The review shall include an analysis of the economic benefits resulting to the state from the program.

Section 2. This act shall take effect July 1, 2015.

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: Business & Professions Subcommittee

Representative Ray offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 377.811, Florida Statutes, is created to read:

377.811.--Heavy transportation industry natural gas rebate program.—

(1) CREATION AND PURPOSE OF PROGRAM.—There is created within the Department of Agriculture and Consumer Services a heavy transportation industry natural gas rebate program. The purpose of this program is to help reduce transportation costs in this state, encourage the use of a domestic fuel source, and encourage heavy transportation industry investments that contribute to the economic growth of the state.

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

(a) "Conversion costs" means the costs associated with retrofitting a diesel, gasoline, or heavy fuel oil powered locomotive, waterborne ship, or other high horsepower engine to a natural gas fuel powered eligible vehicle.

(b) "Department" means the Department of Agriculture and Consumer Services.

(c) "Eligible costs" means the conversion costs or the incremental costs incurred by an applicant in connection with an investment in the conversion, purchase, or lease lasting at least 10 years, of a natural gas fuel powered eligible vehicle. The term does not include costs for project development, fueling stations, or other fueling infrastructure.

(d) "High horsepower engine" means any engine that provides over 500 horsepower and is used for non-highway transportation purposes.

(e) "Incremental costs" means the excess costs associated with the purchase or lease of a natural gas fuel powered eligible vehicle as compared to an equivalent diesel, gasoline, or heavy fuel oil powered eligible vehicle.

(f) "Natural gas fuel" means any liquefied petroleum gas product, compressed natural gas product, or combination thereof used in an eligible vehicle. This term includes, but is not limited to, all forms of fuel commonly or commercially known or sold as natural gasoline, butane gas, propane gas, or any other form of liquefied petroleum gas, compressed natural gas, or

liquefied natural gas. The term does not include natural gas or liquefied petroleum placed in a separate tank for cooking, heating, water heating, or electric generation.

(g) "Eligible vehicle" means one or more locomotives, waterborne ships, or other high horsepower engine used for transportation purposes registered in this state or with another applicable state or federal regulatory body and used for commercial business or governmental purposes. Eligible vehicles must be newly constructed or repowered, and placed into service on or after July 1, 2015. Waterborne ships must be built and documented in the United States with a coastwise endorsement under 46 USC Sec 55102 [Jones Act], and used to provide regular transportation of merchandise between one or more ports in Florida and other domestic ports.

(3) HEAVY TRANSPORTATION INDUSTRY NATURAL GAS REBATE.—The department shall award rebates for eligible costs as defined in this section. A rebate may not exceed 50 percent of the eligible costs of a natural gas eligible vehicle with a dedicated or bi-fuel natural gas fuel operating system placed into service on or after July 1, 2015. An applicant is eligible to receive a maximum rebate of $500,000 per eligible vehicle up to a total of $1,000,000 per fiscal year. All eligible vehicles must comply with applicable United States Environmental Protection Agency emission standards.

(4) APPLICATION PROCESS.—

(a) An applicant seeking to obtain a rebate shall submit an application to the department by a specified date each year as established by department rule. The application shall require a complete description of all eligible costs, proof of purchase or lease of the eligible vehicle for which the applicant is seeking a rebate, a copy of the vehicle registration certificate or equivalent documentation, a description of the total rebate sought by the applicant, and any other information deemed necessary by the department. The application form adopted by department rule must include an affidavit from the applicant certifying that all information contained in the application is true and correct.

(b) The department shall determine the rebate eligibility of each applicant in accordance with the requirements of this section and department rule. The total amount of rebates allocated to certified applicants in each fiscal year may not exceed the amount appropriated for the program in the fiscal year. Rebates shall be allocated to eligible applicants on a first-come, first-served basis, determined by the date and time the application is received, until all appropriated funds for the fiscal year are expended or the program ends, whichever comes first. Incomplete applications submitted to the department will not be accepted and do not secure a place in the first-come, first-served application process.

(5) RULES.—The department may adopt rules to implement and administer this section by December 31, 2015, including rules

relating to the forms required to claim a rebate under this section, the required documentation and basis for establishing eligibility for a rebate, procedures and guidelines for claiming a rebate, and the collection of economic impact data from applicants.

(6) PUBLICATION.—The department shall determine and publish on its website on an ongoing basis the amount of available funding for rebates remaining in each fiscal year.

(7) ANNUAL ASSESSMENT.—By December 1, 2016, and each year thereafter that the program is funded, the department shall provide an annual assessment of the use of the rebate program during the previous fiscal year to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Office of Program Policy Analysis and Government Accountability. The assessment shall include, at a minimum, the following information:

(a) The name of each applicant awarded a rebate under this section;

(b) The amount of the rebates awarded to each applicant;

(c) The type and description of each eligible vehicle for which each applicant applied for a rebate; and

(d) The aggregate amount of funding awarded for all applicants claiming rebates under this section.

(8) Beginning in the 2015-2016 fiscal year and each year thereafter through the 2019-2020 fiscal year, the sum of $10 million in recurring funds is appropriated in each fiscal year

from the General Revenue Fund to the Department of Agriculture and Consumer Services for the purpose of funding the heavy transportation industry natural gas rebate program created by this act.

Section 2. This act shall take effect July 1, 2015.

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 a natural gas rebate program; creating s. 377.811, F.S.; creating the heavy transportation industry natural gas rebate program within the Department of Agriculture and Consumer Services; providing definitions; prescribing powers and duties of the department with respect to the program; prescribing limits on rebate awards; providing policies and procedures for application approval; authorizing the department to adopt rules by a specified date; requiring the department to publish on its website the availability of rebate funds; requiring the department to submit an annual assessment to the Governor, the Legislature, and the Office of Program Policy Analysis and Government Accountability by a specified date; providing an appropriation; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1287 Veterinary Medical Practice
SPONSOR(S): Renuart and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 716

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee		Haston SH	Luczynski NJ
2) Regulatory Affairs Committee			

SUMMARY ANALYSIS

Chapter 474, F.S., governs the regulation of veterinary medical practice. The chapter provides the minimum education and competency requirements for veterinarian licensure. The chapter also creates the Board of Veterinary Medicine that is responsible for adopting rules to regulate the practice of veterinary medicine.

Current law requires each person who provides veterinary medical services to maintain medical records. The law also sets forth, among other things, the confidentiality requirements for animal medical patient records and the conditions in which the records can be furnished.

Current law provides that certain individuals and groups who engage in veterinary medical practices under certain conditions are exempt from chapter 474. Under current law, those identified in the exemption provision are exempt from all of chapter 474, including the requirements for veterinary medical patient records.

This bill requires those individuals and groups otherwise exempt from chapter 474, F.S., to comply with the requirements for veterinary medical patients records.

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

The bill provides an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Chapter 474, F.S., governs the practice of veterinary medicine. The chapter creates the Board of Veterinary Medicine (the "board"); the board is responsible for creating rules to regulate the practice of veterinary medicine. Any person wishing to be licensed as a veterinarian must apply to the Department of Business and Professional Regulation ("DBPR") to take a licensure examination.[1] Section 474.207, F.S., sets forth the various education and competency requirements for veterinarian licensure.

Section 474.2165, F.S., provides various requirements and procedures for veterinary medical patient records. Each person who provides veterinary medical services must maintain medical records. Among other things, the section sets forth the confidentiality requirements for veterinary medical patient records and the conditions in which the records can be furnished.

Chapter 474, F.S., provides for certain exemptions, describing classes of individuals and groups to which or whom the chapter does not apply.[2] The following are exempt:

- Any faculty member practicing only in conjunction with teaching duties at an accredited school or college of veterinary medicine located in Florida;
- A person practicing as an intern or resident veterinarian who does not hold a valid license issued under chapter 474, F.S., and who is a graduate in training at an accredited school or college of veterinary medicine located in Florida;
- A student in a school or college of veterinary medicine while in the performance of duties assigned by her or his instructor or when working as a preceptor under the immediate supervision of a licensee, if such preceptorship is required for graduation from an accredited school or college of veterinary medicine;
- Any doctor of veterinary medicine in the employ of a state agency or the U.S. Government while actually engaged in the performance of her or his official duties;
- Any person administering to the ills of injuries of her or his own animals (but only a veterinarian may immunize a or treat an animal for diseases that are communicable to humans and that are of public health significance);
- A person hired on a part-time or temporary basis, or as an independent contractor, by an owner to assist with herd management and animal husbandry tasks for herd and flock animals, or a person hired on a part-time or temporary basis, or as an independent contractor, by an owner under limited circumstances;
- State agencies, accredited schools, institutions, foundations, business corporations or associations, physicians licensed to practice medicine and surgery in all its branches, graduate doctors of veterinary medicine, or persons under the direct supervision thereof, which or who conduct experiments and scientific research on animals in the development of pharmaceuticals, biologicals, serums, or methods of treatment, or techniques for the diagnosis or treatment of human ailments, or when engaged in the study and development of methods and techniques directly or indirectly applicable to the problems of the practice of veterinary medicine;
- Any veterinary aide, nurse, laboratory technician, preceptor, or other employee of a licensed veterinarian who administers medication or who renders auxiliary or support assistance under the responsible supervision of a licensed veterinarian, including those tasks identified by rule of the board requiring immediate supervision;

[1] s. 474.207, F.S.
[2] s. 474.203, F.S.

- A veterinarian, licensed by and actively practicing veterinary medicine in another state, who is board certified in a specialty recognized by the board and who responds to a request of a veterinarian licensed in this state to assist with the treatment on a specific case of the animals of a single owner, as long as the veterinarian licensed in this state requests the other veterinarian's presence.

Current Situation

In 2014, the Legislature passed CS/HB 993, which became effective on July 1, 2014, and created a public records exemption for personal identifying information of a person employed by, under contract with, or volunteering for a public research facility, including a state university, that conducts animal research or is engaged in activities related to animal research.[3] Such information is exempt from public records requirements when the information is contained in the following records:

- Animal records, including animal care and treatment records;
- Research protocols and approvals;
- Purchase and billing records related to animal research or activities;
- Animal care and committee records; and
- Facility and laboratory records related to animal research or activities.[4]

Under current law, those groups or individuals identified in s. 474.203, F.S., are exempt from all of chapter 474, including the requirements relating to veterinary medical patient records set forth in s. 474.2165, F.S.[5] Thus, while personal identifying information contained in certain veterinary medical patient records are exempt from public records requirements,[6] such information may not receive the confidentiality protections that are afforded under s. 474.2165, F.S.

Effect of the Bill

The bill amends s. 474.203, F.S., requiring those otherwise exempt from chapter 474, F.S., to comply with the requirements for veterinary medical patients records set forth in s. 474.2165, F.S. Thus, individuals or groups who are otherwise not required to be licensed as a veterinarian are generally required to keep medical patient records private and comply with the other provisions related to the ownership and control of such records.

To the extent that some of the individuals described in s. 474.203, F.S., are employees of a state agency, this bill appears to have the effect of creating a public exemption. See drafting comments for further explanation.

The bill also makes technical amendments to s. 474.203, F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 474.203, F.S., relating to exemptions.

Section 2. Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

[3] Florida House of Representatives, Final Bill Analysis of 2014 Committee Substitute for House Bill 993, p. 1 (May 14, 2014).
[4] *Id.*
[5] s. 475.203, F.S.
[6] *See* Florida House of Representatives, Final Bill Analysis of 2014 Committee Substitute for House Bill 993, p. 1 (May 14, 2014).

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

2. Other:

   See notes in 'Drafting Issues or Other Comments' for discussion of public records issues.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

To the extent that some of the individuals described in s. 474.203, F.S., are employees of a state agency, this bill appears to have the effect of creating a public records exemption. Article I, s. 24(c) of the State Constitution requires a newly created public record exemption to be brought as a separate bill and requires a two-third vote of the members present and voting for final passage.

The sponsor has agreed to file an amendment to correct the form of the bill.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to veterinary medical practice; amending s. 474.203, F.S.; requiring individuals otherwise exempt from the requirements of chapter 474, F.S., relating to veterinary medical practice, to comply with the veterinary medical patient record requirements; providing an effective date.

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

Section 1. Section 474.203, Florida Statutes, is amended to read:

474.203 Exemptions.—This chapter, except s. 474.2165, does not apply to:

(1) Any faculty member practicing only in conjunction with teaching duties at a school or college of veterinary medicine located in this state and accredited by the American Veterinary Medical Association Council on Education. However, this exemption applies only to such a faculty member who does not hold a valid license issued under this chapter but who is a graduate of a school or college of veterinary medicine accredited by the American Veterinary Medical Association Council on Education or a school or college recognized by the American Veterinary Medical Association Educational Commission for Foreign Veterinary Graduates. The faculty member exemption automatically expires when such school or college terminates the

faculty member from such teaching duties. On December 31 of each year, such school or college shall provide the board with a written list of all faculty who are exempt from this chapter. Such school or college shall also notify the board in writing of any additions or deletions to such list.

(2) A person practicing as an intern or resident veterinarian who does not hold a valid license issued under this chapter and who is a graduate in training at a school or college of veterinary medicine located in this state and accredited by the American Veterinary Medical Association Council on Education or a school or college recognized by the American Veterinary Medical Association Educational Commission for Foreign Veterinary Graduates. Such intern or resident must be a graduate of a school or college of veterinary medicine accredited by the American Veterinary Medical Association Council on Education or a school or college of veterinary medicine recognized by the American Veterinary Medical Association Educational Commission for Foreign Veterinary Graduates ~~of the American Veterinary Medical Association~~. This exemption expires when such intern or resident completes or is terminated from such training. Each school or college at which such intern or resident is in training shall, on July 1 of each year, provide the board with a written list of all such interns or residents designated for this exemption, and the school or college shall also notify the board of any additions or deletions to the list.

(3) A student in a school or college of veterinary

medicine while in the performance of duties assigned by her or his instructor or when working as a preceptor under the immediate supervision of a licensee, if such preceptorship is required for graduation from an accredited school or college of veterinary medicine. The licensed veterinarian is responsible for all acts performed by a preceptor under her or his supervision.

(4) Any doctor of veterinary medicine in the employ of a state agency or the United States Government while actually engaged in the performance of her or his official duties; however, this exemption does not apply to such person when the person is not engaged in carrying out her or his official duties or is not working at the installations for which her or his services were engaged.

(5)(a) Any person, or the person's regular employee, administering to the ills or injuries of her or his own animals, including, but not limited to, castration, spaying, and dehorning of herd animals, unless title is transferred or employment provided for the purpose of circumventing this law. This exemption does not apply to any person licensed as a veterinarian in another state or foreign jurisdiction and practicing temporarily in this state. However, only a veterinarian may immunize or treat an animal for diseases that are communicable to humans and that are of public health significance.

(b) A person hired on a part-time or temporary basis, or

as an independent contractor, by an owner to assist with herd management and animal husbandry tasks for herd and flock animals, including castration, dehorning, parasite control, and debeaking, or a person hired on a part-time or temporary basis, or as an independent contractor, by an owner to provide farriery and manual hand floating of teeth on equines. This exemption does not apply to any person who has been convicted of a violation of chapter 828 that relates to animal cruelty or a similar offense in another jurisdiction.

(6) State agencies, accredited schools, institutions, foundations, business corporations or associations, physicians licensed to practice medicine and surgery in all its branches, graduate doctors of veterinary medicine, or persons under the direct supervision thereof, which or who conduct experiments and scientific research on animals in the development of pharmaceuticals, biologicals, serums, or methods of treatment, or techniques for the diagnosis or treatment of human ailments, or when engaged in the study and development of methods and techniques directly or indirectly applicable to the problems of the practice of veterinary medicine.

(7) Any veterinary aide, nurse, laboratory technician, preceptor, or other employee of a licensed veterinarian who administers medication or who renders auxiliary or supporting assistance under the responsible supervision of a licensed veterinarian, including those tasks identified by rule of the board requiring immediate supervision. However, the licensed

veterinarian is responsible for all such acts performed under this subsection by persons under her or his supervision.

(8) A veterinarian, licensed by and actively practicing veterinary medicine in another state, who is board certified in a specialty recognized by the board and who responds to a request of a veterinarian licensed in this state to assist with the treatment on a specific case of a specific animal or with the treatment on a specific case of the animals of a single owner, as long as the veterinarian licensed in this state requests the other veterinarian's presence. A veterinarian who practices under this subsection is not eligible to apply for a premises permit under s. 474.215.

For the purposes of chapters 465 and 893, persons exempt pursuant to subsection (1), subsection (2), or subsection (4) are deemed to be duly licensed practitioners authorized by the laws of this state to prescribe drugs or medicinal supplies.

Section 2. This act shall take effect July 1, 2015.

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: Business & Professions Subcommittee

Representative Renuart offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 474.2167, Florida Statutes, is created to read:

474.2167 Confidentiality of Animal Medical Records.—

(1) The following records held by a state college of veterinary medicine that is accredited by the American Veterinary Medical Association Council on Education are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a) Any medical record generated that relates to diagnosing the medical condition of any animal, prescribing, dispensing, or administering drugs, medicine, appliances,

applications, or treatment of whatever nature for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease thereof to any animal, or performing any manual procedure for the diagnosis of or treatment for pregnancy or fertility or infertility of any animal; and

(b) Any such medical record that is transferred by a previous records owner in connection with the transaction of official business by a state college of veterinary medicine that is accredited by the American Veterinary Medical Association Council on Education.

(2) Records made confidential and exempt by this subsection may be disclosed to another governmental entity in the performance of its duties and responsibilities.

(3) This exemption applies to the records described in subsection (1) held before, on, or after the effective date of this exemption.

(4) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that any medical record generated that relates to diagnosing the medical condition of any animal, prescribing, dispensing, or administering drugs, medicine, appliances, applications, or treatment of whatever nature for the prevention, cure, or relief of a wound, fracture, bodily injury,

or disease thereof to any animal, or performing any manual procedure for the diagnosis of or treatment for pregnancy or fertility or infertility of any animal, which is held by a state college of veterinary medicine that is accredited by the American Veterinary Medical Association Council on Education, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The Legislature also finds that it is a public necessity that any such medical record that is transferred by a previous records owner in connection with the transaction of official business by a state college of veterinary medicine that is accredited by the American Veterinary Medical Association Council on Education and that is held by such state college be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The Legislature also finds that it is a public necessity that this exemption apply to such animal medical records held by such a state college of veterinary medicine before, on, or after the effective date of the exemption. The Legislature finds that the release of such animal medical records will compromise the confidentiality protections otherwise afforded to animals and the owners or agents of such animals treated by licensed veterinarians. The Legislature finds that owners or agents of animals have the right to the privacy of the medical records of their animals. The Legislature finds that the privacy concerns that result from the release of animal medical records outweighs any public

benefit that may be derived from the disclosure of the information.

Section 3. This act shall take effect July 1, 2015.

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 public records; creating s. 474.2167, F.S.; providing an exemption from the public records requirements for medical records related to diagnosing the medical condition of an animal and the treatment of such animal by a state college of veterinary medicine or records transferred by a previous records owner; providing for disclosure of such information under specified conditions; providing for retroactive application of the exemption; providing for legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.