

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – Section 2 of the bill eliminates the requirement that the Department of Agriculture and Consumer Services (DACS) purchase, distribute and administer the brucella vaccine. Section 3 of the bill creates new duties for DACS by requiring the department to enforce the restrictions on gift certificates as revised by this bill.

Safeguard Individual Liberty – Section 3 of the bill limits restrictions on gift certificates to purchased instruments.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Division of Animal Industry

One of the long term responsibilities of DACS' Division of Animal Industry has been the administration of Florida's Brucellosis Eradication Program. The Cooperative State-Federal Brucellosis Eradication Program is administered under a Memorandum of Understanding between the appropriate agency in each of the states and the United States Department of Agriculture (USDA). This program includes all activities associated with detecting, controlling, and eliminating brucellosis from domestic livestock in the United States.

Bovine Brucellosis is a devastating cattle disease that is near eradication in the United States after more than 50 years of efforts by State Departments of Agriculture, the USDA, and the cattle industry. Florida released the last positive brucellosis herd in 2000. Since then, despite extensive surveillance and testing of slaughter animals and dairy milk, no additional cases of bovine brucellosis have been found.

Current Florida law, s. 585.155, F.S., requires all female calves born in the state that are to be used for dairy breeding purposes to be vaccinated with an approved Brucella abortus vaccine. In 2001, the law mandating vaccination of beef heifers was removed, yet vaccination has continued on a voluntary basis. While brucellosis vaccination was critical in eradicating this disease in Florida, the absence of this disease over the last 7 years, and the extremely low level of bovine brucellosis in the United States has reduced the threat of this disease to Florida cattle and thus also reduced the need for vaccination.

Florida's Brucellosis Class "Free" Status allows interstate movement of female cattle (beef and dairy) to most states without requirement for vaccination. Voluntary vaccination of beef heifers has continued in approximately 7% of Florida herds. Vaccination is predominately performed on those heifers that are retained for breeding purposes.

As is the current practice in most states, brucellosis vaccine may be purchased by Florida licensed veterinarians directly from an approved manufacturer. Federal requirements mandate that this vaccine be administered only by licensed veterinarians.

Professional Biologics is the only approved brucellosis vaccine manufacturer. Currently, in other states the vaccine is sold to distributors who then market the vaccine to veterinarians. The manufacturer suggested price for sale to veterinarians is \$18.20 per 25 dose bottle and \$4.30 per 5 dose bottle. Although the distributor has the right to increase the sales price to the veterinarian, the suggested price in total would be less than the state is paying in combined purchase and shipping costs per dose.

Supplies of vaccine currently on hand in Florida are adequate for the state to continue providing vaccine to veterinarians until December 2007; therefore, there will not be a shortage of vaccine available to producers this calendar year.

Gift Certificates, Section 501.95, Florida Statutes

Chapter Law 2007-256, L.O.F., created s. 501.95, F.S., to require that a gift certificate or credit memo sold or issued for consideration in this state not have an expiration date, expiration period, or any post-sale charge or fee, such as a service charge, dormancy fee, account maintenance fee, or cash-out fee. The law created several exemptions. The law includes the following exemptions:

- A gift certificate may have an expiration date of not less than three years if it is provided as a charitable contribution where payment of consideration is not required and the expiration date is prominently disclosed in writing to the consumer at the time it is provided.
- A gift certificate may have an expiration date of not less than one year if it is provided as a benefit pursuant to an employee incentive program, consumer-loyalty program, or promotional program where payment of consideration is not required and the expiration date is prominently disclosed in writing to the consumer at the time it is provided.
- A gift certificate may have an expiration date if it is provided as part of a larger package related to a convention, conference, vacation, or sporting or fine arts event having a limited duration and if the majority of the value paid by the recipient is attributable to the convention, conference, vacation, or sporting or fine arts event.
- The prohibitions against expiration dates, expiration periods, or post-sale charges or fees do not apply to gift certificates or credit memos sold or issued by a financial institution, as defined in s. 655.055, F.S., (state-chartered banks and credit unions), or by a money transmitter, as defined in s. 560.103, F.S., if the gift certificate or credit memo is redeemable by multiple unaffiliated merchants that accept monetary consideration remitted through the financial institution or money transmitter that sold or issued the gift certificate or credit memo.

Subsequent to the 2007 Legislative Session, concerns have been expressed that inclusion of specific exemptions in the law might be interpreted to inadvertently apply the law to promotional programs and other instruments which have not been purchased for monetary consideration. Some retailers have expressed a reluctance to issue coupons or conduct other promotional campaigns out of fear that they could be vulnerable to lawsuits.

Effect of Proposed Changes

Provisions Relating to Brucellosis Vaccination

According to DACS, yearly costs of vaccine purchased and distributed to the state total approximately \$140,000. This figure includes approximately \$56,000 per year for purchase and \$84,000 per year for shipping costs. In 2006, approximately 60,000 calves were vaccinated in Florida. This compares to about 160,000 calves vaccinated in 2000. Heifer vaccination has been declining since Florida obtained Class "Free" Status. In October 2006, USDA published a listing of premises by species from the National Agricultural Statistics Service showing an estimated 7,900 (7,750 beef and 150 dairy) cattle premises in Florida. USDA reported that in 2006, 61,666 calves within 515 herds were vaccinated in the state, the majority being beef herds. According to DACS, although many dairy calves leave the state before reaching vaccination age, approximately 130,000 heifers are kept each year as replacement animals. The current level of vaccination likely reflects the producer's individual preference to vaccinate heifers rather than the provision of the vaccine at no charge to veterinarians. Veterinarians have been charging producers for the service of vaccinating heifers and identification since 1996 when USDA stopped paying fee-basis to veterinarians for this service. The additional cost of the vaccine is minimal and should not significantly impact the number of animals vaccinated.

Provisions Relating to the Gift Certificate Provisions

The bill amends the definition of "gift certificate" to provide that the instrument must be purchased and to exclude manufacturer or retailer discounts and coupons. This will exempt such items from the prohibitions against expiration dates and postsale charges and fees such as dormancy and account maintenance fees. The bill eliminates the requirement that no consideration be given to the issuer of a gift certificate by a consumer in order for gift certificates provided as charitable contributions to be allowed to expire after three years. The bill eliminates the requirement that no consideration be given by the consumer in order for gift certificates provided as a benefit pursuant to an employee-incentive program to be allowed to expire after one year. The bill permits a gift certificate to have an expiration date if it is provided as part of a loyalty program or promotional program. Current law prohibits expiration dates, unless the consumer did not pay for it, in which case the gift certificate may expire after one year. The bill eliminates the requirement that a consumer pay the majority of funds for the purchase of a larger convention, conference, vacation, sporting event, or fine arts event in order for a gift certificate that is packaged with such event to be allowed to have an expiration date.

The bill requires DACS to enforce the restrictions on gift certificates as revised by this bill, using the remedies in s. 501.142(3), (4), and (5). The available remedies are:

- Issuance of a notice of non-compliance pursuant to s. 120.695, F.S.;
- Imposition of an administrative fine not to exceed \$100 for each violation;
- Directing the person to cease and desist specified activity.

Any administrative proceeding that could result in an order imposing any of these penalties would be governed by ch. 120, F.S. Moneys recovered would be deposited in the General Inspection Trust Fund.

The amendment of s. 501.95, F.S., is to be retroactively applied to all gift cards purchased and credit memos issued on or after June 28, 2007 (the day s. 501.95, F.S., became effective).

C. SECTION DIRECTORY:

Section 1. Amends s. 585.155, F.S., to require that all female cattle vaccinated with the Brucella abortus vaccine be identified according to federal regulations.

Section 2. Repeals s. 585.105, F.S., relating to the purchase, distribution, and administration of approved Brucella vaccine.

Section 3. Amends s. 501.95, F.S., relating to gift certificates and credit memos by limiting application of prohibitions to purchased instruments and providing for enforcement by the Department of Agriculture and Consumer Services.

Section 4. States subsections (3), (4), and (5) of section 501.142, F.S., relating to retail sales establishments; preemption; notice of refund policy; exceptions; and penalty.

Section 5. Provides the amendment of s. 501.95, F.S., is to be retroactively applied to all gift cards purchased and credit memos issued on or after June 28, 2007.

Section 6. Provides that the effective date of the bill is upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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Any monies recovered by DACS as a penalty under section 3 of the bill will be deposited into the General Inspection Trust Fund.

2. Expenditures:

For FY 2007-2008, it is estimated that a cost savings in the DACS recurring expense budget, as a result of the provisions in this bill relating to brucellosis vaccination, will be a reduction of \$80,000. Enforcement of the gift certificate restrictions should have a minimal impact on DACS, which is funded in HB 5001C.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If enacted, this legislation would cause the cost burden to be shifted to the producers who elect to vaccinate their heifers. Veterinarians would purchase the vaccine through the normal distribution channels and would, most likely, pass this cost to the cattle producer on a per animal basis. The cost of vaccine for each individual animal would be less than \$1. If vaccination continues at current levels, the combined cost to all producers requesting vaccination of their heifers would be less than \$62,000 annually. The compliance cost would remain unchanged.

The individual producers would be required to cover the cost of the vaccine and, therefore, have a minimal financial loss from this bill. The bill would not prohibit producers from continuing to vaccinate or start vaccinating if they choose. A majority of dairy heifers are transported out of state prior to reaching vaccination age and thus this industry would experience minimal impact from the bill. This bill would have no impact on the cattle market since vaccination of Florida heifers is no longer required for interstate movement.

The bill removes the potential liability that retail stores and other business interests could have been exposed to due to the application of some of the provisions as passed in SB 1638 to discount and promotion coupons or free gift cards.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

N/A.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

N/A.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On October 4, 2007, the Policy & Budget Council considered and adopted an amendment that:

- Exempts from the definition of “gift certificate” manufacturer or retailer discounts and coupons.
- Eliminates the requirement that no consideration be given to the issuer of a gift certificate by a consumer in order for gift certificates provided as charitable contributions to be allowed to expire after three years.
- Eliminates the requirement that no consideration be given to the issuer by the consumer in order for gift certificates provided as a benefit pursuant to an employee-incentive program to be allowed to expire after one year.
- Permits a gift certificate to have an expiration date if it is provided as part of a loyalty program or promotional program.
- Directs the Department of Agriculture and Consumer Services to enforce the gift certificate provisions of this bill.
- The amendment of s. 501.95, F.S., is to be retroactively applied to all gift cards purchased and credit memos issued on or after June 28, 2007.