

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance, Business & Financial Affairs Policy Committee	13 Y, 0 N, As CS	Lowrance	Cooper
2) Policy Council	10 Y, 0 N, As CS	Liepshutz	Ciccone
3) General Government Policy Council			
4)			
5)			

SUMMARY ANALYSIS

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

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

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

The CS/CS/HB 1277 provides that sellers of travel who are engaged in selling pre-arranged travel, tourist related services, or tour-guide services to any person traveling directly from Florida to a terrorist nation are precluded from claiming an exemption from the chapter's provisions as they existed prior to the changes made in 2008 which the federal district court found unconstitutional. Consequently, such sellers of travel will be subject to the same registration, bond, recordkeeping and disclosure requirements applicable to all other sellers of travel who do not qualify for an exemption.

The bill also defines terrorist nation to mean any state, country, or nation designated by the U.S. Department of State as a state sponsor of terrorism.

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

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

HOUSE PRINCIPLES

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

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

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

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

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

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

² Section 559.928, F.S.

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

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

Effect of the Bill

The bill provides that sellers of travel who are engaged in selling pre-arranged travel, tourist related services, or tour-guide services to any person traveling directly from Florida to a terrorist nation are precluded from claiming an exemption from the chapter's provisions as they existed prior to the changes made in 2008, which the federal district court found unconstitutional. Consequently, such sellers of travel will be subject to the same registration, bond, and vacation certificate recordkeeping and disclosure requirements applicable to all other sellers of travel who do not qualify for an exemption.

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

The bill contains "whereas" clauses after the bill's title and before its enacting clause, as well as other language in the effective date section of the bill clarifying that sellers of travel to persons traveling directly from Florida to a "terrorist nation" are precluded from claiming an exemption from the chapter's provisions as they existed prior to the changes made in 2008.

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

B. SECTION DIRECTORY:

Section 1: Amends s. 559.935, F.S., to provide an exception to the exemptions applicable to sellers of travel services to persons traveling directly from Florida to a "terrorist nation."

Section 2: Provides an effective date of July 1, 2010, and applies to part XI, ch. 559, F.S., prior to and post July 1, 2008, except for those changes made by ch. 2008-214, L.O.F.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

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

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

2. Expenditures:

According to the Department, the bill will most likely result in federal rights litigation.⁵ A contingent fiscal liability of the state exists; approximately \$360,000 if the plaintiffs (sellers of travel) prevail in the existing litigation. This contingency reflects payment of minimum estimated legal costs from the Department of Financial Services' State Risk Management Trust Fund (self insurance fund). Federal law permits plaintiffs to seek from the court an award of legal fees and costs to be paid by the defendant, and the \$360,000 amount is the least amount that would be paid.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Precluding sellers of travel services to persons traveling from Florida directly to a "terrorist nation" from claiming an exemption available to other sellers, and that would otherwise be available to them *but for* the type travel services they provide, results in an indeterminate number of such sellers incurring costs associated with registration, bonding, recordkeeping and disclosure.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

2. Other:

According to the court in *ABC Charters, Inc. et al v. Bronson*⁶, the design and intent of the 2008 amendments to the Florida Sellers of Travel Act encroaches on federal foreign affairs powers in violation of the Supremacy Clause, the Foreign Commerce Clause, the Foreign Affairs Power, and the Interstate Commerce Clause of the U.S. Constitution.

CS/CS/HB 1277 contains "whereas" clauses⁷ following the title and preceding the enacting clause, as well as language in Section 2. of the bill that is intended to avoid the confusion that could have arisen under the original bill in regard to whether the Legislature intends to subject these sellers of travel to the chapter as it existed before the 2008 amendments, or to once again subject them to the chapter as it was amended in 2008. Since the court has already found the 2008 amendments

⁵ The Department provided a bill analysis on HB 1277, however, discussions with the Department have indicated that they anticipate this committee substitute will have the same fiscal impact as the original bill.

⁶ See *ABC Charters, Inc. et al., v. Bronson*, 2009 WL 1010435 (S.D. Fla.).

⁷ See 2009 *Guidelines for Bill Drafting*, (stating at p.46, "Such clauses do not become a part of the official law and are considered explanatory or clarifying matter only They may, however, be considered by the courts in construing legislative intent." The *Guidelines* are published by House Bill Drafting, The Florida House of Representatives.

unconstitutional and enjoined enforcement of them, it appears unlikely that the court would find an attempt to re-impose them constitutional. Therefore, CS/CS/HB 1277 clarifies that sellers of travel to persons traveling directly from Florida to a terrorist state are precluded from claiming an exemption from the chapter's provisions as they existed prior to the changes made in 2008, which the federal district court found unconstitutional.

Section 559.935, F.S., as it existed prior to enactment of the 2008 amendments, identified sellers of travel that were exempt from registration, bond, and vacation certificate recordkeeping and disclosure requirements. Generally, sellers of travel or their affiliates engaged in selling airline tickets or those offering vacation certificates, which have contracted with the Airlines Reporting Corporation (ARC)⁸, an airline-owned corporation that offers financial, marketing, ticket distribution and other services to sellers of travel, were exempt from state regulation. However, under CS/CS/HB 1277, sellers of travel that offer travel services to persons traveling directly from Florida to a "terrorist nation" will be ineligible to claim this exemption although it will remain available to other sellers of travel. Whether distinguishing sellers of travel services to persons traveling from Florida directly to a "terrorist nation" from other sellers of travel in regard to this exemption alone will alleviate the federal court's concerns or whether the court will still find an infringement upon federal powers remains an open question.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 25, 2010, the Insurance, Business & Financial Affairs Policy Committee considered a Proposed Committee Substitute (PCS), did not adopt any amendments, and reported the PCS favorably as a Committee Substitute.

On April 9, 2010, the Policy Council adopted an amendment that added several explanatory "whereas" clauses and other language to the bill. These "whereas" clauses clarify that the bill precludes sellers of travel services to persons traveling directly from Florida to a "terrorist nation" from claiming an exemption from the chapter's requirements as they existed prior to the amendments made in 2008, that a federal district court found unconstitutional. The Policy Council reported CS/HB 1277 favorably as a Council Substitute.

The analysis reflects the changes made by the Council Substitute to the Committee Substitute for House Bill 1277.

⁸ See ARC; *About Us*; available at <http://www.arccorp.com/aboutus/index.jsp>.