

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Commerce Committee

BILL: CS/SB 2516

INTRODUCER: Commerce Committee and Senator Baker

SUBJECT: Sellers of Travel

DATE: April 7, 2010 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Callaghan	Cooper	CM	Fav/CS
2.	_____	_____	MS	_____
3.	_____	_____	CJ	_____
4.	_____	_____	GA	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This CS specifies that sellers of travel that provide travel services to terrorist states do not qualify for the exemptions in s. 559.935, F.S., which exempts certain sellers of travel issuing airline tickets or offering vacation certificates and who have contracted with the Airlines Reporting Corporation for a specified number of years.

Consequently, these sellers of travel are not exempt from the registration, bonding, administrative, recordkeeping, and disclosure requirements provided for in the Sellers of Travel Act.

This CS substantially amends s. 559.935, F.S.

II. Present Situation:

Sellers of 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.¹ When a seller of travel registers with the department, a registrant must provide:

- The registrant's legal business or trade name, mailing address, and business locations;
- The full names, addresses, and telephone numbers of its owners or corporate officers and directors;
- The Florida agent of the corporation;
- A statement whether the seller of travel is a domestic or foreign corporation, its state and date of incorporation, its charter number, and, if a foreign corporation, the date it registered with the Department of State, and occupational license, if applicable;
- The date the seller of travel registered its fictitious name if the seller of travel is operating under a fictitious or trade name;
- The name of all other corporations, business entities, and trade names through which each owner of the seller of travel operated, was known, or did business as a seller of travel within the preceding 5 years;
- A list of all authorized independent agents, including the agent's trade name, full name, mailing address, business address, and telephone numbers;
- The business location and address of each branch office and full name and address of the manager or supervisor;
- The certification of business activities and dealings with terrorist states, as required under s. 559.9285, F.S.; and
- Proof of purchase of adequate bonds as required under the act.²

Registrants must, prior to registration and annually thereafter, certify the type of business activities and dealings they conduct with terrorist states. Specifically, s. 559.9285, F.S., requires sellers of travel to certify whether, and to what extent, they offer for sale, at wholesale or retail, prearranged travel, tourist-related services, or tour-guide services that originate in Florida, but are for direct travel to a terrorist state or are for consumption in a terrorist state. Additionally, the seller of travel must provide to the department the names of the specific terrorist states it does business with and the types of services being offered for travelers to those states.

The amount of the registration fee and bond required under current law depends on the level of business activities and dealings that a seller of travel conducts with a terrorist state. Those sellers that do not conduct, or conduct limited, business with terrorist states have lower registration fees and required bond amounts.

Specifically, s. 559.928(2)(a), F.S., contains a registration fee schedule that requires a registrant to pay:

- \$300 per year, if the registrant certifies it does not conduct business activities and dealings with terrorist states.

¹ Section 559.928, F.S.

² Section 559.928(1), F.S.

- \$1,000 per year, if the registrant certifies it conducts limited business activities and dealings with terrorist states.
- \$2,500 per year, if the registrant certifies that it offers for sale prearranged travel, tourist-related services, or tour-guide services directly to any terrorist state and also engages in any other business dealings or commerce with any terrorist state.

For required performance bonds under s. 559.929, F.S., those sellers of travel that do not conduct business with terrorist states are required to be bonded for up to \$25,000, or \$50,000 if the seller of travel is offering vacation certificates. For sellers of travel conducting limited business with terrorist states, they must be bonded for up to \$100,000, or \$150,000 if the seller of travel is offering vacation certificates. Comparatively, sellers of travel not only offering for sale prearranged travel, tourist-related services, or tour-guide services directly to any terrorist state, but also engaging in any other business dealings or commerce with any terrorist state are required to be bonded up to \$250,000, or \$300,000 if the seller of travel is offering vacation certificates. A seller of travel that certifies that it does any business with a terrorist state is not eligible for a waiver of the bond requirement.

The department may deny or refuse to renew the registration of any seller of travel if the department determines that the seller of travel, or any of its directors, officers, owners, or general partners:

- Has failed to meet the requirements for registration;
- Has been convicted of a crime involving fraud, dishonest dealing, or any other act of moral turpitude;
- Has not satisfied a civil fine or penalty arising out of any administrative or enforcement action brought by any governmental agency or private person based upon conduct involving fraud, dishonest dealing, or any violation of the act;
- Has pending against her or him any criminal, administrative, or enforcement proceedings in any jurisdiction, based upon conduct involving fraud, dishonest dealing, or any other act of moral turpitude; or
- Has had a judgment entered against her or him in any action brought by the department or the Department of Legal Affairs under the Florida Deceptive and Unfair Trade Practices Act or the act.

The act also provides for vacation certificate disclosures, content, and form;³ vacation certificate cancellation and refund provisions,⁴ and requires copies of documents pertaining to vacation certificates to be submitted with the registration application.⁵ In addition, all contracts and advertisements must include the department's registration number.⁶ Section 559.931, F.S., also requires sellers of travel to keep certain business records for at least 3 years.

The act lists a number of prohibitions⁷ on sellers of travel and violations may result in administrative,⁸ civil⁹ or criminal penalties.¹⁰ Violations may also be considered an unfair or

³ Section 559.932, F.S.

⁴ Section 559.933, F.S.

⁵ Section 559.9295, F.S.

⁶ Section 559.928(5) & (6), F.S.

⁷ Section 559.9335, F.S.

deceptive act or practice or unfair method of competition in violation of the Florida Deceptive and Unfair Trade Practices Act.¹¹

Section 559.935, F.S., identifies sellers of travel that are exempt by the department 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),¹² an airline-owned corporation that offers financial, marketing, ticket distribution and other services to sellers of travel, are exempt from state regulation. However, sellers of travel that conduct any business with terrorist states do not qualify for an exemption.¹³

Terrorist States

Currently, four countries are designated by the U.S. Department of State as terrorist states: Cuba, Iran, Syria, and Sudan.¹⁴ Designated countries that repeatedly support international terrorism, and are therefore placed on the “terrorism list,” are subject to certain U.S. government sanctions including:

- Restrictions on U.S. foreign assistance;
- A ban on defense exports and sales; and
- Controls over exports of dual use items, requiring 30-day Congressional notification for goods or services that could significantly enhance a listed country’s military capability or ability to support terrorism.

Additionally, the federal government may impose miscellaneous financial and other restrictions on terrorist states, including:

- Requiring the U.S. to oppose loans by the World Bank and other international financial institutions;
- Denying diplomatic immunity to allow families of terrorist victims to file civil lawsuits in U.S. courts;
- Denying companies and individuals tax credits for income earned in terrorist-list countries;
- Denial of duty-free treatment for goods exported to the U.S.;
- Authority to prohibit any U.S. citizen from engaging in a financial transaction with a terrorist-list government without a Treasury Department license; and
- Prohibition of Defense Department contracts above \$100,000 with companies owned or substantially controlled by terrorist-list states.¹⁵

⁸ Section 559.9355, F.S.

⁹ Section 559.936, F.S.

¹⁰ Section 559.937, F.S.

¹¹ Section 559.934, F.S.

¹² See ARC; *About Us*; available at <http://www.arccorp.com/aboutus/index.jsp>.

¹³ Section 559.935(2), F.S.

¹⁴ See U.S. Department of State; *State Sponsors of Terrorism*, available at <http://www.state.gov/s/ct/c14151.htm>.

¹⁵ U.S. Department of State; *Country Reports on Terrorism 2008: Chapter 3: State Sponsors of Terrorism*; available at <http://www.state.gov/s/ct/rls/crt/2008/122436.htm>. Note: This report is required to be submitted to Congress pursuant to Title 22 of the United States Code, Section 2656f(a).

Federal Restrictions on Travel to Terrorist States

The U.S. Supreme Court has recognized an international right to travel.¹⁶ However, this right may be infringed 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 countries such as Cuba, Iran, North Korea, Syria, and Sudan.¹⁷ The ability to travel to these and other countries varies, as do the requirements for and 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.¹⁸

Because of its proximity to Florida, Cuba is the most likely terrorist nation receiving regular charter air and vessel travelers to and from Florida. Under the Cuban Assets Control Regulations, OFAC may issue general licenses and specific licenses for travel to Cuba. General licenses may be issued to:

- Persons visiting “close relatives” who are nationals of Cuba;
- Persons visiting “close relatives” who are U.S. Government employees assigned to the U.S. Interests Section in Havana, Cuba;
- Journalists and support personnel;
- Official government travelers on official U.S. and foreign government business;
- Officials of intergovernmental organizations of which the United States is a member if traveling on official business;
- Full-time professionals engaging in travel related to professional research or professional meetings organized by an international professional organization;
- Employees of a U.S. telecommunications services provider or an entity representing such a provider; or
- Employees of a producer or distributor of agricultural commodities, medicine, or medical devices or an entity representing such a firm.¹⁹

Specific licenses may be issued on a case-by-case basis for:

- Educational activities;
- Religious activities;
- Humanitarian projects and support for the Cuban people;
- Free-lance journalism;
- Professional research and professional meetings;
- Public performances, athletic and other competitions, and exhibitions;
- Activities of private foundations or research or education institutions;
- Activities related to the exportation, importation, or transmission of information or informational materials;
- Activities related to U.S. exportations to Cuba; or

¹⁶ 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*, 63 J. Air L. & Com. 819.

¹⁷ See 31 C.F.R. Part 596.

¹⁸ See U.S. Department of the Treasury’s Office of Foreign Assets Control; *OFAC Sanctions Programs*; available at <http://www.treas.gov/offices/enforcement/ofac/programs/>.

¹⁹ United States Treasury Department’s Office of Foreign Assets Control; *Cuba: What you need to know about U.S. sanctions against Cuba*; Updated September 3, 2009; available at <http://www.treas.gov/offices/enforcement/ofac/programs/cuba/cuba.pdf>.

- Persons visiting “close relatives” who are neither Cuban nationals nor U.S. government employees assigned to the U.S. Interests Section in Havana, Cuba.²⁰

ABC Charters, Inc. v. Charles H. Bronson²¹

In 2008, the Legislature amended the Sellers of Travel Act (act) to regulate those sellers of travel conducting business with terrorist states.²² The act:

- Requires sellers of travel to annually certify whether they conduct business with terrorist states;
- Increases registration and performance bond amounts for those sellers of travel conducting business with terrorist states;
- Deletes an exemption from registration, security, vacation certificate recordkeeping and disclosure requirements for sellers of travel who are affiliates of the Airlines Reporting Corporation, if those sellers of travel offer travel services to any terrorist state or engage in other business dealings or commerce with any terrorist state; and
- Provides certain civil and criminal penalties for sellers of travel that conduct business with terrorist states and violate state or federal laws.²³

Several sellers of travel challenged these new requirements and penalties in a federal district court shortly after the legislation was passed.²⁴ In *ABC Charters, Inc. v. Charles H. Bronson*, the sellers of travel requested the court to enjoin the Department of Agriculture and Consumer Services (department) from enforcing the new requirements and penalties alleging that the requirements and the penalties were unconstitutional. The court not only permanently enjoined the department from enforcing the new requirements and penalties under the Sellers of Travel Act, but it also granted a motion for summary judgment ruling that there was no genuine issue as to any material fact and that as a matter of law the new requirements and penalties were unconstitutional.

The court in *ABC Charters, Inc.*, found that the new requirements and penalties under the Sellers of Travel Act:

- Are designed and structured to end or seriously hamper federally licensed travel from Florida to Cuba;
- Significantly burdens travel and charter service providers impairing the ability of the U.S. to chose between a range of policy options in developing its foreign relations with Cuba;
- Are expressly preempted by the federal Airline Deregulation Act, which extends to indirect air carriers, including the sellers of travel;
- Are preempted because it is in conflict with federal laws and regulations under the federal Trading with the Enemy Act and the Office of Foreign Assets Control’s Cuba Asset Control Regulations;

²⁰*Id.*

²¹ *ABC Charters, Inc. v. Charles H. Bronson*, Case No. 08-21865, U.S. District Court, Southern District of Florida, (June 30, 2008), “Complaint” is on file with the Commerce Committee.

²² See CS/CS/SB 1310 (2008) and 2008-214, L.O.F.

²³ See CS/CS/SB 1310 (2008).

²⁴ *Supra* fn. 21.

- Are impliedly preempted by federal laws and regulations as federal laws and regulations occupy the field as to regulation interactions and transactions with Cuba by persons and businesses in the U.S.;
- Impermissibly discriminate, under the Foreign Commerce Clause,²⁵ against the flow of foreign commerce and regulate conduct outside the borders of the U.S.; and
- Are preempted because an extensive web of federal laws under the Interstate Commerce Clause²⁶ exist, which regulate persons doing business with or traveling to Cuba.

In *ABC Charters, Inc.*, the United States filed a Statement of Interest stating that the new requirements and penalties under the Sellers of Travel Act interfere with the federal government's broad and exclusive authority over foreign affairs.²⁷ The federal court adopted this statement and found such interference existed.

In summary, the court found that any provision in ss. 559.926-559.939, F.S., the Sellers of Travel Act, stemming from CS/CS/SB 1310 (2008), is unconstitutional and the Department of Agriculture and Consumer sources is permanently enjoined from enforcing such provisions.

III. Effect of Proposed Changes:

Section 1 amends s. 559.935, F.S., to specify that sellers of travel that provide travel services to terrorist states do not qualify for the exemptions in s. 559.935, F.S.

Section 559.935, F.S., exempts specified sellers of travel issuing airline tickets or offering vacation certificates from the registration, bonding, administrative, recordkeeping, and disclosure requirements under the Sellers of Travel Act if they have contracted with the Airlines Reporting Corporation.²⁸ Specifically, a seller of travel issuing airline tickets is exempt only if it has contracted with the Airlines Reporting Corporation for the most recent consecutive 3 years or more under the same ownership and control. For a seller of travel offering vacation certificates to be exempt, it must have contracted with the Airlines Reporting Corporation for the most recent consecutive 5 years or more under the same ownership and control.

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, but does not apply to those changes made by ch. 2008-214, L.O.F.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

²⁵ See art. I, s. 8, U.S. Const., stating that Congress shall have the power... "to regulate Commerce with foreign Nations..."

²⁶ See art. I, s. 8, U.S. Const., stating that Congress shall have the power... "to regulate Commerce... among the several States..."

²⁷ *ABC Charters, Inc. v. Charles H. Bronson*, Case No. 08-21865, U.S. District Court, Southern District of Florida, (April 14, 2009), "Order Granting Motion for Summary Judgment" is on file with the Commerce Committee.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Should this CS become law, it creates a provision of law similar to a provision in CS/CS/SB 1310 (2008), which was struck down by the federal court in *ABC Charters, Inc. v. Charles H. Bronson*, as unconstitutional. Based on the court's opinion in *ABC Charters, Inc.*, this CS, if enacted, could be challenged as being unconstitutional on the grounds that its provisions are preempted by federal law, violate the federal government's foreign affair powers, violate the Foreign Commerce Clause,²⁹ and violate the Interstate Commerce Clause.³⁰

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Sellers of travel subject to the registration, bonding, administrative, recordkeeping, and disclosure requirements of the Sellers of Travel Act will incur costs related to such regulation.

C. Government Sector Impact:

Should this CS become law and should it be challenged in court as unconstitutional,³¹ the state may incur costs associated with such litigation.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

²⁹ *Supra* fn. 24.

³⁰ *Supra* fn. 25.

³¹ See "Constitutional Issues: D. Other Constitutional Issues" on page 8 of this analysis.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by the Commerce Committee on April 7, 2010:

The CS replaces the bill as filed and specifies that sellers of travel that provide travel services to terrorist states do not qualify for the exemptions in s. 559.935, F.S., which exempts certain sellers of travel issuing airline tickets through the Airlines Reporting Corporation.

Consequently, these sellers of travel are not exempt from the registration, bonding, administrative, recordkeeping, and disclosure requirements of the Sellers of Travel Act.

It also includes clarification on the application of the effective date.

- B. **Amendments:**

None.