

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 and Tourism Committee

BILL: SB 888

INTRODUCER: Senator Anitere Flores

SUBJECT: Relating to Consumer Protection

DATE: January 18, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Juliachs	Hrdlicka	CM	Pre-meeting
2.			RI	
3.			BC	
4.				
5.				
6.				

I. Summary:

SB 888 amends several statutes concerning consumer protection provisions that fall under the purview of the Department of Agriculture and Consumer Services. Specifically, the bill merges the responsibilities and duties of the Division of Standards into the Division of Consumer Services, which is to be renamed the Division of Consumer Protection. The bill also amends statutory provisions relating to professional surveyors and mappers, business opportunities, motor vehicle repair shops, charitable organizations, pawnshops, health studios, sellers of travel, intrastate movers, games promotions, telemarketing, brake fluid and anti-freeze products, fair rides, and licensing.

This bill amends the following sections of the Florida Statutes: ss. 20.14 , 14.26, 213.053, 320.275, 366.85, 472.005, 472.006, 472.011, 472.0131, 472.015, 472.018, 472.0202, 472.0203, 472.025, 472.0351, 493.6105, 493.6113, 493.6118, 493.6120, 496.404, 496.411, 496.412, 501.015, 501.017, 501.605, 501.607, 501.911, 501.913, 507.04, 525.07, 526.143, 526.50, 526.51, 526.52, 526.53, 526.55, 539.001, 559.805, 559.904, 559.928, 559.9285, 559.935, 570.29, 570.544, 616.242, and 849.0915, F.S.

This bill creates the following sections of the Florida Statutes: ss. 472.0337 and 472.0357, F.S.

This bill repeals the following sections of the Florida Statutes: ss. 570.46 and 570.47, F.S.

II. Present Situation:

The Florida Department of Agriculture and Consumer Services (department) is charged with the responsibility of supporting Florida's agricultural economy, as well as protecting consumers from unsafe products and from deceptive business practices. To assist with carrying out its mission of protecting Florida's general public, the department is organized under the divisions of Consumer Protection, Licensing, and Standards.¹

Presently, the Division of Consumer Services is responsible for overseeing and regulating the following activities and entities: business opportunities, motor vehicle repair shops, charitable organizations, Florida Do Not Call, dance studios, pawnshops, health studios, sellers of travel, intrastate movers, game promotions, telemarketing, and professional surveyors and mappers. The Division of Standards protects consumers from unfair and unsafe business practices and products, including gasoline, brake fluid, antifreeze, liquefied petroleum gas, amusement rides, and weighing and measuring devices. Finally, the Division of Licensing is responsible for regulating private security and investigative industries, along with issuing concealed weapon and firearm licenses.

Notably, in 2009, the Division of Consumer Services underwent a significant change when the Legislature transferred² the Board of Professional Surveyors and Mappers (board) from the Department of Business and Professional Regulation to the Department of Agriculture of Consumer Services.³ The effect was to transfer the operations of the board from ch. 455, F.S., to ch. 472, F.S.

III. Effect of Proposed Changes:

Department of Agriculture and Consumer Services

Section 48 amends s. 570.44, F.S., by renaming the Division of Consumer Services to the Division of Consumer Protection. The section also provides that the director of the division shall supervise, direct, and coordinate the activities of the division and shall, under the direction of the department, enforce the provisions of chs. 472, 496, 501, 507, 525, 526, 527, 531, 539, 559, 616, and 849, F.S.

As amended by this bill, the effect of section 48 is to shift the duties and responsibilities of the Division of Standards to the Division of Consumer Services, which will then be renamed the Division of Consumer Protection.

Section 46 repeals s. 570.46, F.S., and removes the Division of Standards.

Section 47 repeals s. 570.47, F.S., and removes the Division of Standards.

Section 29 amends s. 501.911, F.S., to provide that ss. 501.91-591.923, F.S., will now be administered by the Division of Consumer Protection as opposed to the Division of Standards.

¹ Section 20.14, F.S. (2011).

² The definition of a "type two transfer" is provided in s. 20.06(2), F.S.

³ Chapter 2009-66, L.O.F. (2009)

The following is a list of statutes that are amended to rename the Division of Consumer Services to the Division of Consumer Protection:

Section 1 amends s. 14.26, F.S.

Section 2 amends s. 20.14, F.S.

Section 3 amends s. 213.053, F.S.

Section 4 amends s. 320.275, F.S.

Section 5 amends s. 366.85, F.S.

Section 45 amends s. 570.29, F.S.

Division of Consumer Services

Professional Surveyors and Mappers^{4, 5}

Section 6 amends s. 472.005, F.S., to redefine “license” and introduce the terms “consumer member” and “licensee.” The term “license” means a registration, certificate, or license issued by the department pursuant to the chapter.

“Consumer member” is defined as a person appointed to serve on the board who is not, and never has been, a professional surveyor or mapper in any jurisdiction or a member of any closely related profession regulated by the board.

“Licensee” means any person or business entity that has been issued, pursuant to this chapter, a registration, certificate, or license by the department.⁶

Section 7 amends s. 472.006, F.S., by instructing the department to work with the Department of Revenue regarding the suspension or denial of the license of any licensee found to be in violation of a support order, subpoena, order to show cause, or written agreement; providing a basis for reinstating a denied or suspended license; and relieving the department of certain liability associated with the denial or suspension of a license.⁷

It should be noted that the provisions above are mandated under federal law under the current federal matching funds scheme concerning state child support enforcement programs.⁸ In 1996, Congress passed the Personal Responsibility and Work Opportunity Reconciliation Act, which

⁴ The term “Board” refers to the Board of Professional Surveyors and Mappers.

⁵ The provisions found under this section transfers existing statutory language that was inadvertently omitted during the transfer of the Board of Professional Surveyors and Mappers from the Department of Business and Professional Regulation to the Department of Agriculture and Consumer Services.

⁶ The inclusion of the terms “licensee” and “consumer member” derives from identical language contained in s. 455.01, F.S.

⁷ This provision derives from identical language contained in s. 455.203(9), F.S.

⁸ 42 U.S.C. 666(a)(16) (2006).

required states to target parents who owed overdue child support by enacting license restriction laws. As such, the provisions reflected in section 7 both comply with federal law and further the declared public policy of this state, which is that “children shall be maintained from the resources of their parents, thereby relieving, at least in part, the burden presently borne by the general citizenry through public assistance programs.”⁹

Section 8 amends s. 472.011, F.S., to authorize the department to waive license renewal fees by rule when the General Inspection Trust Fund¹⁰ contains funds that exceed the amount required to cover the necessary functions of the board. This section also authorizes the board to collect a special assessment for the purpose of eliminating a cash deficit, or if there is not a cash deficit, in the amount sufficient to maintain the financial integrity of the profession.¹¹

Section 9 amends s. 427.0131, F.S., to specify that applicants who have taken and failed an examination developed by the department or a contracted vendor may review their last exam.¹²

Section 10 amends s. 472.015, F.S., to permit the department to require applicants to provide social security numbers when applying for an initial or renewal license. As already discussed in section 7, this requirement originates from federal law which provides that the use of a social security number is limited to administering child support enforcement activities.¹³

This section also specifies that an application is considered to be received upon receipt by the department of the application in its proper format and with any additional documentation or fee prescribed either by law or rule. Furthermore, the department may not issue a license by endorsement to any applicant who is under investigation in this state, any other state, or any other jurisdiction for any act that would constitute a violation under this chapter until the investigation is complete and disciplinary proceedings have been terminated.¹⁴

Section 11 amends s. 472.018, F.S., by authorizing the board to use the standard recognized by the Federal Poverty Income Guidelines as produced by the United States Department of Health and Human Services when determining indigency.

Additionally, the section requires that each continuing education provider must provide to the department, in an electronic format, information regarding the continuing education status of licensees. After a licensee completes a course, the information must be submitted electronically by the continuing education provider to the department within 30 calendar days after completion. However, on the 30th day before the renewal deadline, the time period for a continuing education provider to submit such information to the department is reduced to 10 business days after completion of the course.¹⁵

⁹ Section 409.2551, F.S. (2011).

¹⁰ Section 570.20, F.S. (2011) (All donations and all inspection fees and other funds authorized and received from in the enforcement of the inspection laws administered by the department are paid into the General Inspection Trust Fund of Florida.).

¹¹ This provision derives from identical language contained in s. 455.219, F.S.

¹² This provision derives from identical language contained in s. 455.217, F.S.

¹³ 42 U.S.C. 666(a)(13)(a) (2006).

¹⁴ This provision derives from identical language contained in s. 455.213, F.S. Current law provides for denial to any applicant who also is under investigation in another state for acts that would violate ch. 455, F.S.

¹⁵ This provision derives from identical language contained in s. 455.2178, F.S.

Finally, this section also directs the department to establish a system for monitoring license compliance with continuing education requirements, as well as authorized the department to refuse to renew a license until the licensee has satisfied all applicable continuing education requirements. Further, the department is not precluded from imposing additional penalties pursuant to this chapter or rules adopted pursuant to this chapter.

Section 12 amends s. 472.0202, F.S., to correct a statutory citation and clarify when a licensee is subject to discipline for practicing without an active license.

Section 13 amends s. 472.0203, F.S., to allow the department to communicate with a licensee via electronic communication concerning license renewal.

Section 14 amends s. 472.025, F.S., to make technical changes concerning the regulation of seals so that it is now surrendered to the executive director of the board.

Section 15 creates s. 472.0337, F.S., which grants the department powers with respect to investigations, administration of oaths, taking depositions, and other powers.¹⁶

Section 16 amends s. 472.0351, F.S., by clarifying the grounds for commencing disciplinary actions for licensure violations and specifying the manner that a licensee may be disciplined, as well as repealing provisions that contain duplicative violations. This section further clarifies the ability of the board to discipline licenses and impose license restrictions as disciplinary penalties.¹⁷

Section 17 creates s. 472.0357, F.S., to provide that a person giving false information when applying for a license commits a third degree felony.¹⁸

Business Opportunities

Section 40 amends s. 559.805, F.S., by removing the requirement that every seller of a business opportunity provide the department with the social security number of every independent agent who will engage in the offer or sale of business opportunities on behalf of the seller in this state. The seller of a business opportunity, however, must still provide the name, home and business address, telephone number, present employer, and birth date for each independent agent.

Motor Vehicle Repair Shops

Section 41 amends s. 559.904, F.S., by removing the term “occupational license” and replacing it with “business tax receipt” as it relates to motor vehicle repair shops.¹⁹

¹⁶ This provision derives from identical language contained in s. 455.233, F.S.

¹⁷ This provision derives from identical language contained in s. 455.227, F.S.

¹⁸ This provision derives from identical language contained in s. 455.0357, F.S. A third degree felony is punishable by up to 5 years imprisonment and a fine of \$5,000. *See* ss. 775.082(3)(d) and 775.083(1)(c).

¹⁹ The Legislature enacted ch. 2006-152, L.O.F., which reclassified “local occupational license” to “local business tax.” This change proposes to match the statute, as amended by this bill, to its modern term as codified in s. 205.022(2), F.S.

Charitable Organizations

Section 22 amends s. 496.404, F.S., by updating references due to the renaming.

Section 23 amends s. 496.411, F.S., by updating references due to the renaming.

Section 24 amends s. 496.412, F.S., by updating references due to the renaming.

Pawnshops

Section 39 amends s. 539.001, F.S., by requiring that a licensee who seeks to move a pawnshop to another location must give written notice to the agency at least 30 days before the move. However, the requirement for the notice to be sent via certified or registered mail with return receipt requested is removed from the statute.

Health Studios

Section 25 amends s. 505.015, F.S., by removing the term “occupational license” and replacing it with “business tax receipt” as it relates to health studios.²⁰

Section 26 amends s. 501.017, F.S., to provide for “at least” 10-point boldfaced font in health studio contracts, which are required to include the language stipulated in s. 501.017(1)(a), F.S. As currently written, the statute requires exactly 10-point boldfaced type.

Sellers of Travel

Section 42 amends s. 559.928, F.S., by removing the term “occupational license” and replacing it with “business tax receipt” as it relates to sellers of travel.²¹ Additionally, an independent agent representing a seller of travel is no longer required to submit their social security number when filing their annual affidavit. However, they are still required to submit their name, legal business or trade name, mailing address, business address, telephone number, and address of each seller of travel represented by the independent agent.

Section 43 amends s. 559.9285, F.S., by correcting a cross-reference.

Section 44 amends s. 559.935, F.S., by removing the term “occupational license” and replacing it with “business tax receipt” as it relates to sellers of travel.²²

Intrastate Movers

Section 31 amends s. 507.04, F.S., to reduce the period of notification of cancellation of insurance coverage for household moving services required to be provided to the department from at least 30 to 10 days prior to cancellation of coverage.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

Game Promotions

Section 50 amends s. 849.0915, F.S., by renaming the Division of Consumer Services to the Division of Consumer Protection.

Telemarketing

Section 27 amends s. 501.605, F.S., by removing the requirement to submit a social security number for an application to become a commercial telephone seller for applicant, principal officers, managers, and salespersons.

Section 28 amends s. 501.607, F.S., by removing the requirement to submit a social security number for an application to become a salesperson for applicant, principal officers, managers, and salespersons.

Division of Standards

Section 30 amends s. 501.913, F.S., to require that a registrant of a brand of antifreeze, who is no longer producing for distribution such brand, to submit a notarized affidavit on company letterhead stating the following: that the brand is no longer in production; that the brand will not be distributed in the state; and that all existing products of the brand will be removed by the registrant from the state within 30 days after expiration of the registration or the registrant will reregister the brand for 2 subsequent registration periods.

Section 32 amends s. 525.07, F.S., to prohibit a person from removing, using, selling, offering for sale, distributing, offering for distribution, or disposing of petroleum fuel that has been placed under a stop-sale order without receiving permission from the department.

Section 33 amends s. 526.143, F.S., to authorize the department to temporarily waive requirements for maintaining generators at retail motor fuel outlets that are used in preparation for, or response to, an emergency or major disaster in another state.

Section 34 amends s. 526.50, F.S., to define the terms “brand” and “formula” as they relate to brake fluid. As such, “brand” means the product name appearing on the label of a container of brake fluid while “formula” means the name of the chemical mixture or composition of the brake fluid product.

Section 35 amends s. 526.51, F.S., to require that to reregister a previously registered brand and formula combination of brake fluid, an applicant must submit a completed application to the department before the first day of the permit year. Any late submissions will incur a penalty of \$25 that will be in addition to the standard fee.

This section also requires a registrant of a brand of brake fluid, who is no longer producing for distribution such brand, to submit a notarized affidavit on company letterhead stating the following: that the brand is no longer in production; that the brand will not be distributed in the state; and that all existing products of the brand will be removed by the registrant from the state

within 30 days after expiration of the registration or the registrant will reregister the brand for 2 subsequent registration periods.

Furthermore, all first-time applicants for a brand and formula combination must be accompanied by a certified report from an independent testing laboratory demonstrating that the quality of the brake fluid is not less than the specifications established by the department.

Section 36 amends s. 526.52, F.S., to clarify quality standards for brake fluid products by referring to the United States Department of Transportation Motor Vehicle Safety Standard No. 116, or other specified standard identified in department rule.

Section 37 amends s. 526.53, F.S., to require that stop-sale orders for brake fluid be served by the department on the owner of the brand name, the distributor, or other entity responsible for selling or distributing the brake fluid product.

The section also requires that unregistered brake fluid held by the department or its representative that has not been registered within 30 days after the issuance of a stop-sale order may be given to any tax-supported institution or agency of the state, if the product satisfies legal specifications. If the product does not satisfy legal specifications, then the product may be disposed of as authorized by rule of the department.

Section 38 amends s. 526.55, F.S., by replacing criminal sanctions with administrative and monetary sanctions for violations of laws regulating the sale of brake fluid, including an administrative fine of up to \$5,000.

Section 49 amends s. 616.243, F.S., by removing language referring to the “Bureau of Fair Rides Inspection” and replacing it with “fair rides inspection program.” As such, the department shall by rule establish fees to cover the costs and expenditures associated with the fair rides inspection program, as opposed to the Bureau of Fair Rides Inspection.

Division of Licensing

Section 18 amends s. 493.6105, F.S., to allow the department to waive the firearms training requirement for a first-time applicant of a Class “G”²³ license under the following conditions: the applicant provides proof that he or she is currently certified as a law enforcement officer or correctional officer pursuant to the requirements of the Criminal Justice Standards and Training Commission or has successfully completed the training required for certification within the last 12 months; the applicant provides proof that he or she is currently certified as a federal law enforcement officer and has received law enforcement firearms training administered by a federal law enforcement agency; or the applicant submits a valid firearm certificate among those specified in s. 493.6105(6)(a), F.S.²⁴

²³ Class “G” license refers to the license required for an armed security guard.

²⁴ Certificates include the following: The Florida Criminal Justice Standards and Training Commission Instructor Certificate and written confirmation by the commission that the applicant possesses an active firearms certification; The National Rifle Association Private Security Firearm Instructor Certificate; or a firearms instructor certificate issued by a federal law enforcement agency.

Section 19 amends s. 493.6113, F.S., to allow the department to waive the firearms training requirement for an applicant who is renewing their Class “G” license under the following conditions: the applicant provides proof that he or she is currently certified as a law enforcement officer or correctional officer pursuant to the requirements of the Criminal Justice Standards and Training Commission and has completed law enforcement firearms requalification training annually during the preceding 2 years of the licensure period; the applicant provides proof that he or she is currently certified as a federal law enforcement officer and has received law enforcement firearms training administered by a federal law enforcement agency annually during the preceding 2 years of the licensure period; or the applicant submits a valid firearm certificate among those specified in s. 493.6105(6)(a), F.S., and provides proof of having completed requalification training during the preceding 2 years of the licensure period.

Section 20 amends s. 493.6118, F.S., to expand the group of licensees subject to disciplinary action to include Class “DS”²⁵ and “RS”²⁶ schools. As such, upon entry of a final order imposing an administrative fine against owners, as well as corporate or agency officers or partners, of a class “DS” and “RS” agency, school, or training facility, the license or pending requests for approval of a license for the school, its owners, and officers are automatically suspended if 30 days have elapsed since the entry of the final order and the fine has not been paid. All parties are jointly and severally liable²⁷ for fines levied against the agency, school, or training facility.

Section 21 amends s. 493.6120, F.S., to state that any owner, officer, partner, or manager of a school or training facility that knew or should have known of an activity that resulted in the revocation of the school or training facility license shall have their personal license suspended for 3 years and may not have any financial interest or be employed by the school or training facility during suspension.

Section 51 provides that this act shall take effect July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

²⁵ Class “DS” license refers to a security officer school or training facility.

²⁶ Class “RS” license refers to a recovery agent school or training facility.

²⁷ The effect of joint and several liability is to make each party liable for the entire amount of the fine regardless of that individual party’s relative degree of fault or responsibility for the violation.

D. Other Constitutional Issues:

A strict separation of powers doctrine is found in Article II, Section 3 of the Florida Constitution. Accordingly, two tenets encompassing separation of powers are that no branch of government may encroach on another branch's power and that no branch may delegate its constitutionally assigned powers to another branch.²⁸ For these reasons, the doctrine of separation of powers is inextricably linked to agency operations and may potentially raise constitutional issues when dealing with statutes that authorize agency action.

As such, "the Legislature may not delegate the power to enact a law or the right to exercise unrestricted discretion in applying the law," but is required to delineate "ascertainable minimal standards and guidelines" when authorizing agency actions.²⁹ As amended by this bill, the agency action authorized by the Legislature will likely satisfy constitutional requirements.

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

The Revenue Estimating Conference has not yet determined the impact of this bill.

B. Private Sector Impact:

According to the Department of Agriculture and Consumer Services, that waiver of the firearms training requirement for a first time or renewing applicant of a Class "G" license who is either a retired law enforcement officer or federal law enforcement officer that has undergone proper firearms training will allow such groups to qualify and remain eligible for a Class "G" license at a minimum expense and inconvenience. As such, the effect of these changes will provide greater opportunities for employment in the private investigation and security industries.³⁰

Additionally, this bill imposes a \$25 late fee for any late submissions of applications to reregister a previously registered brand and formulation combination of brake fluid, as well as imposes an administrative fine of to \$5,000 for any violations of law regarding the regulation of brake fluid.

²⁸ *Sloban v. Fla. Bd. of Pharmacy*, 982 So. 2d 26, 29 (Fla. 1st DCA 2008) (quoting *Chiles v. Children A, B, C, D, E, & F*, 589 So. 2d 260, 264 (Fla. 1991).

²⁹ *Id.*

³⁰ Memorandum to Senate Committee on Commerce and Tourism from Department of Agriculture and Consumer Services (on file with the Senate Committee on Commerce and Tourism).

C. Government Sector Impact:

According to the Department of Agriculture and Consumer Services, the merger of the divisions of Consumer Services and Standards would reduce expenses by approximately \$800,000.³¹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

³¹ Memorandum to Senate Committee on Commerce and Tourism from Department of Agriculture and Consumer Services (on file with the Senate Committee on Commerce and Tourism).