

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

COMMERCE AND TOURISM

Senator Detert, Chair
Senator Abruzzo, Vice Chair

MEETING DATE: Monday, March 10, 2014

TIME: 4:00 —6:00 p.m.

PLACE: *Toni Jennings Committee Room, 110 Senate Office Building*

MEMBERS: Senator Detert, Chair; Senator Abruzzo, Vice Chair; Senators Bean, Hays, Hukill, Margolis, Richter, Ring, Simpson, Stargel, and Thompson

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 172 Soto (Similar CS/H 407)	Notaries Public; Requiring a notary public to record certain information about each notarial act in a journal; requiring that a notary public retain a notarial journal for a specified period; requiring a notary public to notify the Department of State if a notarial journal is lost or destroyed during the retention period; providing that failure to comply with the notarial journal requirement constitutes grounds for suspension, nonrenewal, or denial of a notary public commission, etc.	
		CM 03/10/2014 RI	
2	CS/SB 298 Criminal Justice / Soto	Arrest Booking Photographs; Prohibiting a person who publishes or disseminates an arrest booking photograph through a publicly accessible print or electronic medium from soliciting or accepting payment of a fee or other consideration to remove, correct, or modify such photograph; authorizing an action to enjoin publication or dissemination of an arrest booking photograph if the publisher or disseminator unlawfully solicits or accepts a fee or other consideration to remove, correct, or modify such photograph; specifying the time period during which an arrest booking photograph must be removed pursuant to court order; providing a civil penalty, etc.	
		CJ 02/03/2014 Fav/CS CM 03/10/2014 RC	

COMMITTEE MEETING EXPANDED AGENDA

Commerce and Tourism

Monday, March 10, 2014, 4:00 —6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	SB 320 Sachs (Identical H 347)	Commercial Parasailing; Citing this act as the "White-Miskell Act"; requiring the operator of a vessel engaged in commercial parasailing to ensure that specified requirements are met; requiring the owner of a vessel engaged in commercial parasailing to obtain and maintain an insurance policy; requiring the operator to have a current and valid license issued by the United States Coast Guard; prohibiting commercial parasailing unless certain equipment is present on the vessel and certain weather conditions are met; requiring that a weather log be maintained and made available for inspection, etc. RI 01/09/2014 Temporarily Postponed RI 02/13/2014 Favorable CM 03/10/2014 CA	
4	SB 504 Lee (Identical H 853)	Tax Credits or Refunds; Providing procedures, requirements, and calculation methodologies that allow dealers to obtain tax credits or refunds for taxes paid on worthless or uncollectable private-label credit card or dealer credit accounts or receivables; providing limitations on the amount that may be recovered, etc. CM 03/10/2014 AFT AP	
5	SB 792 Flores (Similar H 1015)	Tax on Sales, Use, and Other Transactions; Specifying a period during which the sale of clothing, wallets, bags, school supplies, personal computers, and personal computer related accessories are exempt from the sales tax, etc. CM 03/10/2014 AFT AP	
6	SB 1018 Detert (Similar H 7051)	Department of Agriculture and Consumer Services; Removing the requirement that an applicant for private investigative, private security, and repossession services provide a written statement by a fingerprint technician or licensed physician under certain conditions; requiring a health studio to maintain a bond in favor of the department, rather than the state; repealing provisions relating to the Commercial Weight-Loss Practices Act; prohibiting a telephone solicitor or a person from initiating an outbound telephone call to a consumer, a donor, or a potential donor under certain circumstances, etc. CM 03/10/2014 AP	

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Other Related Meeting Documents

An electronic copy of the Appearance Request form is available to download from any Senate committee page on the Senate's website, www.flsenate.gov

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 Committee on Commerce and Tourism

BILL: SB 172

INTRODUCER: Senator Soto

SUBJECT: Notaries Public

DATE: March 7, 2014

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Malcolm</u>	<u>Hrdlicka</u>	<u>CM</u>	<u>Pre-meeting</u>
2. _____	_____	<u>RI</u>	_____

I. Summary:

SB 172 requires a notary public (notary or notaries) to maintain a paper or electronic notarial journal to record certain information at the time of a notarial act. The journal must be kept for at least 5 years, and the notary must notify the Department of State (DOS) immediately if the journal is lost, stolen, misplaced, destroyed, or rendered unusable. Failure to comply is grounds for suspension or nonrenewal of the notary's commission and grounds for the denial of a subsequent commission by the Governor.

II. Present Situation:

Notary Public Administration

Notaries are referenced in the State Constitution as public officers, which are appointed and commissioned by the Governor.¹

A notary has been defined as a
public officer whose function it is to attest and certify, by his or her hand
and official seal, certain classes of documents in order to give them credit
and authenticity in foreign jurisdictions, to take acknowledgements of and
certify deeds and other conveyances, and to perform certain official acts,
chiefly in commercial matters.²

¹ See Fla. Const. art. II, s. 5, and art. IV, s. 1.; s. 117.01(1), F.S. Notaries differ from other types of public officers (e.g., legislators, law enforcement, clerks of court). For example, notaries are not eligible for the same types of benefits and protections provided for public officers, such as those provided under chs. 111 and 112, F.S.

² 66 C.J.S. Notaries s. 1 (2013); see also *Commercial Union Ins. Co. of New York v. Burt Thomas-Aitken Const. Co.*, 230 A.2d 498, 499 (N.J. 1967). The dictionary defines a notary public as a "person authorized by a state to administer oaths, certify documents, attest to the authenticity of signatures, and perform official acts in commercial matters, such as protesting negotiable instruments." Black's Law Dictionary (9th ed. 2009).

Simply stated, a notary verifies the identities of individuals involved in certain legal transactions and is the gatekeeper for preventing fraudulent transactions. Examples of functions a notary performs include administering oaths and acknowledging deeds and other instruments.³

The appointment, commissioning, and activities of notaries are regulated under ch. 117, F.S. Administrative oversight of notaries is provided by both DOS and the Executive Office of the Governor (EOG). The EOG's notary section is responsible for appointing, investigating, and educating notary applicants. It also has the discretion to suspend notary commissions. The Division of Corporations (division) within DOS is responsible for processing notary applications, approving and recording the required bond, issuing notary commissions and certificates of notarial authority, and recording the results of actions taken by the EOG against a notary.

Legal Qualifications for Florida Notaries Public

Notary applicants must meet certain qualifications prior to being commissioned by the Governor. Among the qualifications, an applicant is required to:

- Be at least 18 years of age;
- Be a legal resident of the state and maintain such residency throughout his or her term of appointment;
- Be able to read, write, and understand the English language;
- Submit an affidavit of good character from an unrelated third-party;
- Submit a statement as to whether the applicant has been convicted of a felony;
- Obtain a bond for \$7,500, payable to any individual harmed as a result of a breach of duty by the notary; and
- Provide any other information the Governor deems necessary.⁴

In addition, first-time notary applicants must submit proof that the applicant has, within 1 year prior to the application, completed at least 3 hours of interactive or classroom instruction.⁵

Notary applicants, including renewals, must pay a \$25 application fee and a \$10 commission fee.⁶ Applicants must also pay a \$4 fee, which is used to educate and assist notaries.

A notary is appointed for a 4-year term and no person may be automatically reappointed as a notary.⁷ Accordingly, “the application process must be completed regardless of whether an applicant is requesting his or her first notary commission, a renewal of a commission, or any subsequent commission.”⁸

Notary Misconduct

Under s. 117.01, F.S., the Governor is responsible for disciplining notaries. The Governor may suspend a notary for any of the grounds provided in Article IV, section 7 of the Florida

³ Sections 117.03-.04, F.S.

⁴ Section 117.01, F.S.

⁵ Section 668.50(11)(b), F.S.

⁶ Section 117.01(2), F.S.

⁷ *Id.* at (1), (6).

⁸ *Id.* at (6).

Constitution.⁹ Acts of malfeasance, misfeasance, or neglect of duty that may result in suspension include:

- A material false statement on the application;
- A complaint found to have merit by the Governor;
- Failure to cooperate or respond to an investigation regarding a complaint;
- Official misconduct as defined in s. 838.022, F.S.;
- False or misleading advertising;
- Unauthorized practice of law;
- Failure to report a change in address or telephone number, or failure to submit documentation to request an amended commission after a lawful name change;
- Commission of fraud, misrepresentation, or any intentional violation of ch. 117, F.S.;
- Charging fees in excess of fees authorized by state law; and
- Failure to maintain the required surety bond.

Additional examples of notary misconduct include forgery of signatures, notarization of signatures of persons not present before the notary, and notarization of blank documents that are later drafted with fraudulent terms.¹⁰ The National Notary Association reports that in Florida, notary misconduct is especially prevalent in fraudulent real estate transactions where the elderly and those who speak English poorly are targeted.¹¹ Notary misconduct is punishable as a third-degree felony or second-degree misdemeanor.¹²

According to DOS, there were 400,432 notaries registered in the state as of January 14, 2014.¹³ In 2013, the Governor removed 12 notaries from office and suspended 46 others.¹⁴ As of March 5, 2014, 28 notaries have been suspended, two have been publicly censured, and none have been removed from office during 2014.¹⁵

Notarial Journals

Florida notaries are not required to keep a journal of notarial acts although the Governor's Task Force on Notaries Public in 1989 recommended the mandatory use of journals.¹⁶ The Governor's Reference Manual for Notaries advises notaries that, "[t]he best way to protect yourself is to

⁹ The grounds for suspension under article IV, section 7 are malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform official duties, or commission of a felony.

¹⁰ See Lilly, Joanna, *The Unlawful Notary*, available at <http://www.lastwordedits.com/unlawfulnotary.pdf> (last visited Mar. 5, 2014).

¹¹ National Notary Association, *The Growing Real Estate Problem in Florida: How Requiring a Thumbprint in a Notary Recordbook Can Significantly Diminish Real Property Scams in the State*, 4, Mar. 2003, available at http://cdn.nationalnotary.org/News_and_Resources/Library/reFraudfla.pdf (last visited Mar. 5, 2014).

¹² See ss. 117.05(1), (3)(e), (7), and (8), and 117.105, F.S.

¹³ DOS, Division of Corporations, *Yearly Statistics, Total Active Registrations & Notaries*, available at http://sunbiz.org/corp_stat.html (last visited Mar. 5, 2014).

¹⁴ Executive Orders issued by Governor Rick Scott, Executive orders issued in 2013, available at <http://www.flgov.com/2013-executive-orders> (last visited Mar. 5, 2014).

¹⁵ Executive Orders issued by Governor Rick Scott, Executive orders issued in 2014, available at <http://www.flgov.com/2014-executive-orders> (last visited Mar. 5, 2014).

¹⁶ *Governor's Reference Manual for Notaries*, 42 (Dec. 1, 1999 ed.) available at http://www.flgov.com/wp-content/uploads/notary/notary_manual.pdf (last visited Mar. 5, 2014).

document your notarial acts in a journal (record book or log).”¹⁷ Currently, 14 states and the District of Columbia currently require notarial journals.¹⁸

The Governor’s Reference Manual recommends a notarial journal be bound and have consecutively numbered pages so that a page cannot be removed without being detected. It also recommends the journal record the following information:

- The date of the notarial act;
- The type of notarial act;
- The name or brief description of the document;
- The party’s printed name, address, and signature;
- The type of identification relied upon in identifying the party;
- The fee charged; and
- Any additional comments the notary considers important.¹⁹

It also recommends storing completed journals for at least 5 years.²⁰

III. Effect of Proposed Changes:

Section 1 creates s. 117.055, F.S., to require a notary to keep a sequentially numbered paper or electronic journal of each notarial act. The journal must include the following:

- The date and time of the notarial act;
- The type of notarial act;
- The type, title, name, or description of the document, proceeding, or transaction;
- The signer’s printed name, signature, and complete address; and
- An indication that the signer is personally known to the notary or that the signer presented a form of identification.²¹ The notary must record the type, unique identification number, and expiration date of any identification presented.

The journal must be retained for at least 5 years following the date of the last entry in the journal. If a journal is lost, stolen, misplaced, destroyed, or rendered unusable, the notary must immediately notify DOS in writing of the circumstances of the incident.

A notary’s failure to comply with these requirements constitutes grounds for suspension or nonrenewal of the notary’s commission and grounds for the denial of any subsequent commission by the Governor.

The bill also permits DOS to adopt rules and forms to administer this section.

¹⁷ *Id.*

¹⁸ *Notary Recordbook Requirements*, American Society of Notaries, available at <http://www.notaries.org/notaryrecordbookrequirements.html> (last visited Mar. 5, 2014).

¹⁹ *Governor’s Reference Manual* at 42.

²⁰ *Id.* at 43.

²¹ Acceptable forms of identification include a state-issued identification card or driver’s license, an identification card or driver’s license issued by Canada or Mexico, and a military-issued identification card. Section 117.05(5)(b)2., F.S.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

Notaries in Florida will be required to purchase, accurately maintain, and retain for at least 5 years a notarial journal.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill authorizes DOS to adopt rules to administer the journal requirements.

VIII. Statutes Affected:

The bill creates section 117.055 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of 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.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Commerce and Tourism (Abruzzo) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 117.055, Florida Statutes, is created to
read:

117.055 Notarial journal.—

(1) When performing a notarial act that requires notarizing
a signature, a notary public shall record the following
information in a bound sequential paper journal or an electronic



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journal that creates sequential and nonmodifiable records:

(a) The date and time of the notarial act.

(b) The type of notarial act.

(c) The type, title, name, or description of the document, proceeding, or transaction requiring the notarial act.

(d) The signer's printed name and signature or, in the case of an electronic journal, the signer's name and electronic signature pursuant to s. 668.50(2)(h).

(e) The signer's complete residence address.

(f) Whether the signer is personally known to the notary public or presented satisfactory evidence of his or her identity pursuant to s. 117.05(5)(b). The notary shall record the type, last 4 digits of the unique identification number, and expiration date of the identification presented.

(g) The names of witnesses to the notarial act, if any.

(2) A notary public must retain a notarial journal for at least 5 years after the date of the last recorded notarial act in the notarial journal. If a notarial journal is lost, stolen, misplaced, destroyed, erased, compromised, rendered unusable, or becomes otherwise inaccessible during the retention period, the notary public must immediately notify the Department of State in writing of the circumstances of the incident.

(3) The notarial journal is the exclusive property of the notary public and must be kept in a locked and secure area, under the direct and exclusive control of the notary public. Access to an electronic notarial journal must be protected by a password or other secure means of authentication.

(4) Failure of a notary public to comply with this section constitutes grounds for suspension or nonrenewal of the notary



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public's commission and grounds for the denial of a subsequent
commission by the Governor.

Section 2. Section 117.10, Florida Statutes, is amended to
read:

117.10 Law enforcement and correctional officers.—Law
enforcement officers, correctional officers, and correctional
probation officers, as defined in s. 943.10, and traffic
accident investigation officers and traffic infraction
enforcement officers, as described in s. 316.640, are authorized
to administer oaths when engaged in the performance of official
duties. Sections 117.01, 117.04, 117.045, 117.05, 117.055, and
117.103 do not apply to the provisions of this section. An
officer may not notarize his or her own signature.

Section 3. This act shall take effect July 1, 2014.

===== T I T L E A M E N D M E N T =====
And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to notaries public; creating s.
117.055, F.S.; requiring a notary public to record
specified information in a notarial journal when
performing certain notarial acts; requiring that a
notary public retain a notarial journal for a
specified period; requiring a notary public to notify
the Department of State if the notarial journal is
lost, stolen, misplaced, destroyed, erased,
compromised, rendered unusable, or becomes otherwise



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inaccessible during the retention period; providing
that a notarial journal is the exclusive property of a
notary public; requiring a notary public to secure the
journal; providing that failure to comply with the
notarial journal requirements constitutes grounds for
suspension, nonrenewal, or denial of a notary public
commission; amending s. 117.10, F.S.; exempting
certain acts of specified law enforcement and
correctional officers from the notarial journal
requirements; providing an effective date.

By Senator Soto

14-00024-14

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A bill to be entitled

An act relating to notaries public; creating s. 117.055, F.S.; requiring a notary public to record certain information about each notarial act in a journal; requiring that a notary public retain a notarial journal for a specified period; requiring a notary public to notify the Department of State if a notarial journal is lost or destroyed during the retention period; providing that failure to comply with the notarial journal requirement constitutes grounds for suspension, nonrenewal, or denial of a notary public commission; authorizing the department to adopt rules and forms; providing an effective date.

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

Section 1. Section 117.055, Florida Statutes, is created to read:

117.055 Required use of notarial journal.—

(1) A notary public shall record the following information regarding each notarial act in a sequential paper or electronic journal at the time of such act:

(a) The date and time of the notarial act.

(b) The type of notarial act.

(c) The type, title, name, or description of the document, proceeding, or transaction requiring the notarial act.

(d) The signer's printed name and signature.

(e) The signer's complete address.

(f) An indication that the signer is personally known to

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14-00024-14

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the notary public or that the signer presented a specific form of identification pursuant to s. 117.05(5)(b)2. The notary must record the type, unique identification number, and expiration date of any identification presented.

(2) A notary public must retain a notarial journal for at least 5 years following the date of the last entry in the notarial journal. If a notarial journal is lost, stolen, misplaced, destroyed, or rendered unusable during the retention period, the notary public must immediately notify the Department of State in writing of the circumstances of the incident.

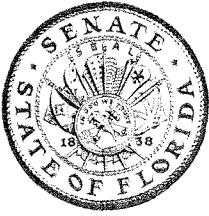
(3) Failure of a notary public to comply with this section constitutes grounds for suspension or nonrenewal of the commission of the notary public and grounds for the denial of any subsequent commission by the Executive Office of the Governor.

(4) The Department of State may adopt rules and forms to administer this section.

Section 2. This act shall take effect July 1, 2014.

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Judiciary, *Vice Chair*
Appropriations Subcommittee on Criminal and
Civil Justice
Appropriations Subcommittee on General Government
Community Affairs
Environmental Preservation and Conservation
Ethics and Elections

SELECT COMMITTEE:

Select Committee on Patient Protection
and Affordable Care Act

SENATOR DARREN SOTO

Deputy Democratic Whip
14th District

October 9, 2013

The Honorable Nancy Detert
Committee on Commerce & Tourism
310 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chairwoman Detert,

I respectfully request that Senate Bill 172, Notaries Public, be placed on the agenda as soon as possible.

Senate Bill 172 requires a notary public to record certain information about each notarial act in a journal for at least 5 years following the date of the last entry. If a notarial journal is lost, stolen, misplaced, destroyed, or rendered unusable during the retention period, the notary public must immediately notify the Department of State in writing of the circumstances of the incident. Failure to comply constitutes ground for suspension or nonrenewal of the commission of the notary public and grounds for the denial of any subsequent commission by the Executive Office of the Governor.

Thank you for your consideration. Should you have any questions or concerns, please feel free to contact me at 850-487-5014.

Sincerely,

A handwritten signature in cursive script that reads "Darren M. Soto".

Darren M. Soto
State Senator, District 14

Cc: Jennifer Hrdlicka, Staff Director
Patty Blackburn, Committee Administrative Assistant

REPLY TO:

□ 220 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

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 Committee on Commerce and Tourism

BILL: CS/SB 298

INTRODUCER: Criminal Justice Committee and Senators Soto and Dean

SUBJECT: Arrest Booking Photographs

DATE: March 7, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Siples</u>	<u>Hrdlicka</u>	<u>CM</u>	<u>Pre-meeting</u>
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 298 prohibits a person engaged in publishing or otherwise disseminating arrest booking photographs through a publicly accessible print or electronic medium from soliciting or accepting a fee or other consideration to remove, correct, or modify an arrest booking photograph of an arrestee.

An arrestee who is the subject of an arrest booking photograph that has been published may file a civil action enjoining publication of the photograph if the publisher solicits or accepts a fee or other consideration to remove, correct, or modify that photograph. If the court enjoins publication, the court must issue an order specifying that the photograph be removed from publication no later than 14 days after the order is entered. A civil penalty of \$1,000 per day will be imposed by the court for each day of noncompliance with the order.

A prevailing arrestee is entitled to attorney fees and costs relating to issuance of the injunction and any appeal of the injunction in which the arrestee is the prevailing party.

If, subsequent to the 14-day period for removal, the publisher subject to the injunction demonstrates to the court that it has complied with statutory requirements, the court will terminate the injunction.

The provisions of the bill do not apply to state and local governments or government agencies.

II. Present Situation:

Public Disclosure of Criminal Record Information

Unless a specific exemption applies, all “materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge” are public records and open for public inspection.¹

Criminal record information may be obtained and published by non-governmental publishers. This information includes, but is not limited to, booking photographs, arrest reports, charging documents, sentencing orders, and criminal history information.² Like all other records prepared by Florida government agencies, criminal record information is subject to public disclosure unless specifically exempted. If the record contains exempt and non-exempt information, the record is provided with exempt information redacted.³ For example, if a law enforcement record contains non-exempt information but also contains active criminal intelligence information or active criminal investigative information, both of which are exempt from public disclosure,⁴ the law enforcement record must be provided upon request with exempt information excised.⁵

Arrest Record Information

The public record information that is perhaps most relevant to the bill is public record information pertaining to a person’s arrest for the alleged commission of a crime.⁶ This information includes, but is not limited, to the arrest report and “booking” photograph (often referred to as a “mug shot”).⁷

With few exceptions, arrest record information (including booking photographs) is not exempt from public disclosure.⁸ An example of an exemption would be the name of an alleged victim of

¹ Office of the Attorney General Pam Bondi, *Public Records: A Guide for Law Enforcement Agencies* (2012 Edition), at p.1. and endnote 1, citing *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980) and endnote 2, citing *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979) available at [http://myfloridalegal.com/webfiles.nsf/WF/RMAS-935PV5/\\$file/2012LEGuide.pdf](http://myfloridalegal.com/webfiles.nsf/WF/RMAS-935PV5/$file/2012LEGuide.pdf) (last viewed on Feb. 28, 2014).

² The Florida Department of Law Enforcement is the central repository of criminal history information for the State of Florida. For a fee, a search of Florida criminal history information regarding a person may be performed. Excluded from the search is sealed or expunged information. See <https://web.fdle.state.fl.us/search/app/default> (last viewed on Feb. 28, 2014).

³ Office of the Attorney General, *Public Records*, at p. 15 and endnote 67, citing *City of Riviera Beach v. Barfield*, 642 So.2d 1135, 1137 (Fla. 4th DCA 1994), *review denied*, 651 So.2d 1192 (Fla. 1995).

⁴ Section 119.071(2)(c)1., F.S.

⁵ Office of the Attorney General, *Public Records*, at p. 5 and endnote 21, citing *Op. Att’y Gen. 91-74* (Oct. 1, 1991), and *Palm Beach Daily News v. Terlizze* (Fla. 15th Cir. Ct. Apr. 5, 1991).

⁶ An arrest does not establish that a person committed the crime for which he or she is arrested. An arrestee is presumed innocent of committing the crime until such time as guilt has been determined in a court of law. However, if guilt is not determined, e.g., the prosecutor does not file a charge or the arrestee is acquitted, this does not necessarily mean that the arrest itself was invalid.

⁷ There is an intake process involved if an arrestee is to be jailed. Some law enforcement agencies refer to “booking” as one part of a multi-component intake process; others refer to the intake process as “booking.” Regardless of how the term is used, a photograph is taken of the arrestee prior to being jailed and that photograph is referred to as a “booking” photograph.

⁸ “This office has consistently stated that crime and arrest reports are public records that are generally open to inspection.... Thus, an arrest report, including the booking photograph, prepared by a law enforcement agency is subject to disclosure.” *Op. Att’y Gen. 94-90* (Oct. 25, 1994) (footnotes omitted), Office of the Attorney General (Florida), available at <http://www.myfloridalegal.com/ago.nsf/Opinions/83A1D5004064269D852562210063168E> (last viewed on Feb. 28, 2014).

sexual battery that appears in the arrest report.⁹ In providing the arrest report pursuant to a public record request, this name would be redacted from the copy of the report provided to the requestor.

Arrest record information is requested by many persons and entities, including members of the public, traditional news companies, companies that provide criminal history or criminal record information for a service or subscriber fee (e.g., so that a private employer may determine if a job applicant has a criminal history), and companies that are often referred to as “mug shot companies.” This information is often available to the public within hours of the booking process being completed.¹⁰ For this reason, an expungement of criminal records relevant to a particular crime would not capture arrest record information that was obtained by the public when access to that information was authorized.

A “mug shot company” may be described as a business that obtains publicly-available arrest record information (primarily booking photographs) and publishes that information, typically by posting it on a website. Generally, this information remains on the website until a fee is paid to the publisher or the publisher is compensated by a third-party that advertises that it will obtain removal of the information from the website upon payment of a fee to the third-party. Since few, if any, mug shot companies appear to provide sufficient information on their company structure, location of company offices, and company officers, it may be difficult to determine whether the mug shot publisher and the third-party offering publication removal services are under the same ownership or are affiliated.

Traditional news companies that publish arrest record information (like booking photographs) and private companies that provide arrest record information for a service or subscriber fee may also profit, directly or indirectly, from the publication of arrest record information, but the removal of this information, if it occurs, is neither contingent upon nor results from payment of a fee or receipt of compensation. Further, unlike the mug shot companies, this information may only be available to subscribers, or if publicly available, often becomes less accessible after a certain period of time has elapsed.

The charge or fee for removal of the booking photograph and other arrest record information from publication on mug shot companies’ websites varies but is typically in the hundreds of dollars. Even if the mug shot company removes the arrest record information from its website upon payment of fee or receipt of compensation, there is no guarantee that this information will not appear on the website of another mug shot company that may or may not be affiliated with the mug shot company that previously removed the information from its website. Therefore, the person who paid to have his or her arrest record information removed from one website may find

⁹ Section 119.071(2)(j)1., F.S.

¹⁰ Recent news articles have reported that mug shot companies often obtain booking photographs by “web scraping” the photographs from law enforcement websites that publish the photographs. *See, e.g., Adam Geller, Don’t Want Arrest Mug Shot Online? ‘Pay us,’ Sites Say*, MSN NEWS, June 23, 2013, available at <http://news.msn.com/crime-justice/dont-want-arrest-mug-shot-online-pay-us-sites-say> (last viewed on Feb. 28, 2014) and David Segal, *Mugged by a Mug Shot Online*, THE NEW YORK TIMES, Oct. 5, 2013, available at <http://www.nytimes.com/2013/10/06/business/mugged-by-a-mug-shot-online.html?pagewanted=all&r=0> (last visited Mar. 4, 2014). Techopedia® defines “web scraping” as “a term for various methods used to collect information from across the Internet. Generally, this is done with software that simulates human Web surfing to collect specified bits of information from different websites.” This information is available at <http://www.techopedia.com/definition/5212/web-scraping> (last viewed on Mar. 3, 2014).

himself or herself subsequently engaged in what has been described as “an expensive game of Whac-A-Mole.”¹¹

Criminal Use of Public Records

Section 817.569, F.S., provides that a person who knowingly uses any public record, or who knowingly uses information obtainable only through such public record, to facilitate or further the commission of:

- A first degree misdemeanor, commits a first degree misdemeanor; or
- A felony, commits a third degree felony.

The fee-for-removal practice used by mug shot companies as described above is not a first degree misdemeanor or felony in Florida.

Right of Publicity

Section 540.08(1), F.S., prohibits a person from publishing, printing, displaying, or otherwise publicly using for purposes of trade or for any commercial or advertising purpose the name, portrait, photograph, or other likeness of any natural person without the person’s express written or oral consent to such use. There are exceptions to the statute for:

- Publication, printing, display, or use of the name or likeness of any person in any newspaper, magazine, book, news broadcast or telecast, or other news medium or publication as part of any bona fide news report or presentation having a current and legitimate public interest and where such name or likeness is not used for advertising purposes; and
- The use of such name, portrait, photograph, or other likeness in connection with the resale or other distribution of literary, musical, or artistic productions or other articles of merchandise or property where such person has consented to the use on or in connection with the initial sale or distribution.¹²

The statute also provides that, in the event the necessary consent is not obtained, the person whose name, portrait, photograph, or other likeness is so used may bring an action to enjoin such unauthorized publication, printing, display or other public use, and to recover damages for any loss or injury sustained by reason thereof, including an amount which would have been a reasonable royalty, and punitive or exemplary damages.

Recently, a Florida federal district court held that a person who claimed that the operator of two websites who published her booking photograph and advertised the service of removing booking photographs from a particular website in exchange for payment stated a cause of action for violation of s. 540.08, F.S.¹³ It remains to be determined whether the operator violated the

¹¹ Andrew Knapp, *South Carolina attorneys, lawmakers aim to disrupt business of publishing jail mug shots*, THE POST AND COURIER (Charleston, S.C.), Nov. 17, 2013, available at <http://www.postandcourier.com/article/20131117/PC1610/131119492> (last viewed on Mar. 3, 2014).

¹² Section 540.08(4), F.S.

¹³ Order (January 10, 2014), *Shannon L. Bilotta v. Citizen Information Associates, LLC, et al.*, Case No. 8:13-cv-2811-T-30GW, U.S. District Court (Middle District-Tampa Division) (on file with the Senate Committee on Commerce and Tourism).

statute, and if so determined, what impact the decision would have on any similar suits that might be filed in other federal district courts or in the state courts.

Laws and Legislation of Other States

The National Conference of State Legislatures (NCSL) states that “[s]ince 2012, several states have considered or passed legislation related to the release of booking photographs or mug shots, including legislation that requires removal of mug shots if criminal charges are dropped or prohibits charges for removing photographs.”¹⁴ According to the NCSL, Georgia, Illinois, Oregon, Texas, and Utah have passed legislation to prohibit commercial sites from charging fees for removing inaccurate mug shots upon request or by prohibiting law enforcement from releasing mug shots to sites that charge a fee.

All of these bills were enacted into law in 2013. Therefore, it is too early to know if these bills will be challenged in court, and if so, whether they will pass constitutional scrutiny.

Private Sector Response

According to recent news reports, the private sector is also taking steps to address the fee-for-removal practice. Google® has adjusted algorithms so that the mug shot companies will not appear on the first page of Google search results. MasterCard®, Visa®, Discover®, American Express®, PayPal®, and Wells Fargo® appear to be in the process of terminating or determining whether to terminate their relationship with mug shot companies.¹⁵

Florida Law Enforcement Response

The Pinellas County Sheriff’s Office announced that it would no longer post booking photographs on its agency’s website.¹⁶ The names, addresses, and initial charges of those arrested will still be available on the website. The agency will still provide access to the mug shots to other law enforcement agencies and the media, but those entities must request access to those photographs and must log into a newly created system to retrieve them. Members of the public may also submit requests for mug shots.

III. Effect of Proposed Changes:

Section 1 creates s. 119.17, F.S., to establish a procedure for the removal of arrest booking photographs that are publicly accessible through a print or electronic medium and makes the fee-for-removal practice unlawful.¹⁷

¹⁴ National Conference of State Legislatures, “Mug Shots and Booking Photo Websites” (Feb. 17, 2014), available at <http://www.ncsl.org/research/telecommunications-and-information-technology/mug-shots-and-booking-photo-websites.aspx> (last visited Mar. 6, 2014).

¹⁵ See David Segal, *Mugged by a Mug Shot Online*, and Jose Pagliery *Mug Shot Extortion Sites Still Up and Running ... for Now*, CNN Money, Oct. 16, 2013, available at <http://money.cnn.com/2013/10/16/technology/mug-shot-websites/index.html> (last viewed on Mar. 3, 2014).

¹⁶ Stephen Thompson, *Pinellas Sheriff Limiting Access to Mugshots Online*, THE ST. PETERSBURG TRIBUNE, Jan. 9, 2014, available at <http://tbo.com/pinellas-county/pinellas-sheriff-targeting-websites-limits-access-to-mug-shots-20140109/> (last visited Mar. 4, 2014).

¹⁷ The practice under the bill is not a crime.

The bill prohibits a person engaged in publishing or otherwise disseminating arrest booking photographs through a publicly accessible print or electronic medium from soliciting or accepting a fee or other consideration to remove, correct, or modify an arrest booking photograph of an arrestee.¹⁸

The bill's prohibition is directed at the fee-for-removal practice and not at publication of an arrest booking photograph if the publisher is not engaged in the fee-for-removal practice. Nothing in the bill prohibits a publisher from profiting from publication of arrest booking photographs (such as through subscriber fees or advertising). What the bill prohibits is the publisher profiting from unpublishing the arrest booking photographs.

An arrestee who is the subject of an arrest booking photograph that has been published may file a civil action enjoining publication of the photograph if the publisher solicits or accepts a fee or other consideration to remove, correct, or modify that photograph. If the court enjoins publication, the court must order that the photograph be removed from publication no later than 14 days after entry of the order. The court shall impose a civil penalty of \$1,000 per day for each day of noncompliance with the order.

If the court enjoins publication, the arrestee is entitled to reasonable attorney fees and costs relating to issuance of the injunction and any appeal of the injunction in which the arrestee is the prevailing party.

If, subsequent to the 14-day period for removal, the publisher subject to the injunction demonstrates to the court that it has complied with statutory requirements, the court shall terminate the injunction. Consistent with the bill's approach to prohibit the fee-for-removal practice, if the publisher demonstrates to the court that it has ceased to engage in this practice ("cured" the statutory violation), the injunction is terminated and the publisher is free to publish the photographs.

The provisions of this bill do not apply to state and local governments or government agencies.¹⁹

Section 2 provides an effective date of October 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹⁸ "Fee or other consideration" does not include a fee or consideration, including attorney fees, solicited or accepted in connection with the actual or attempted settlement of an actual or threatened lawsuit or arbitration claim or other judicial or quasi-judicial proceeding.

¹⁹ Specifically, the bill provides that s. 119.17, F.S., the new section created by the bill, does not apply to any state, regional, county, local, or municipal governmental entity of this state, whether executive, judicial, or legislative, or any department, division, bureau, commission, authority, or political subdivision of this state.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

An arrestee who is the subject of an arrest booking photograph that has been published may file a civil action enjoining publication of the photograph if the publisher solicits or accepts a fee or other consideration to remove, correct, or modify that photograph. The bill's prohibition is directed at the fee-for-removal practice. The bill does not authorize a civil action for simply publishing the photograph or information.²⁰ Staff did not find any case in which a civil action for engaging in a similar fee-for-removal practice was held to be unconstitutional.

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

None.

B. Private Sector Impact:

Private publishers of arrest booking photographs who engage in the fee-for-removal practice may be subject to a civil action enjoining publication of an arrest booking photograph. Publishers subject to an order enjoining publication may be ordered to pay attorney fees and costs to the prevailing arrestee(s). Additionally, those publishers who fail to comply with an injunction may incur civil penalties.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

²⁰ See e.g., *Florida Star v. B.J.F.*, 491 U.S. 524 (1989) (imposing damages on a Florida newspaper that lawfully obtained and published the name of a rape victim violated the First Amendment). In *Florida Star*, the Court opined: "We do not hold that truthful publication is automatically constitutionally protected, or that there is no zone of personal privacy within which the State may protect the individual from intrusion by the press, or even that a State may never punish publication of the name of a victim of a sexual offense. We hold only that where a newspaper publishes truthful information which it has lawfully obtained, punishment may lawfully be imposed, if at all, only when narrowly tailored to a state interest of the highest order..." 491 U.S. at 541. In regard to commercial speech (rather than "core" speech), "the Supreme Court held that '[c]ommercial free speech that is not false or deceptive and does not concern unlawful activities ... may be restricted only in the service of a substantial government interest, and only through means that directly advance that interest.'" *Innovative Database Systems v. Morales*, 990 F.2d 217, 220 (5th Cir. 1993) (quoting *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626, 638 (1985)).

VIII. Statutes Affected:

This bill creates section 119.172 of the Florida Statutes.

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

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

CS by Criminal Justice on February 3, 2014:

- Provides that an arrestee who is the subject of an arrest booking photograph that has been published may file a civil action enjoining publication of the photograph if the publisher solicits or accepts a fee or other consideration to remove, correct, or modify that photograph.
- Provides that, if the court enjoins publication, the court shall order that the photograph be removed from publication no later than 14 days after the order is entered.
- Provides that the court shall impose a civil penalty of \$1,000 per day for each day of noncompliance with the order.
- Provides that if the court enjoins publication, the arrestee is entitled to attorney fees and costs relating to issuance of the injunction and any appeal of the injunction in which the arrestee is the prevailing party.
- Provides that, if, subsequent to the 14-day period for removal, the publisher subject to the injunction demonstrates to the court that it has complied with statutory requirements, the court shall terminate the injunction.

B. Amendments:

None.

By the Committee on Criminal Justice; and Senator Soto

591-01605-14

2014298c1

A bill to be entitled

An act relating to arrest booking photographs; creating s. 119.17, F.S.; defining terms; prohibiting a person who publishes or disseminates an arrest booking photograph through a publicly accessible print or electronic medium from soliciting or accepting payment of a fee or other consideration to remove, correct, or modify such photograph; authorizing an action to enjoin publication or dissemination of an arrest booking photograph if the publisher or disseminator unlawfully solicits or accepts a fee or other consideration to remove, correct, or modify such photograph; specifying the time period during which an arrest booking photograph must be removed pursuant to court order; providing a civil penalty; requiring the reasonable attorney fees and costs; requiring the court to terminate an injunction under certain circumstances; providing applicability; providing an effective date.

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

Section 1. Section 119.17, Florida Statutes, is created to read:

119.17 Arrest booking photographs.—

(1) As used in this section, the term:

(a) "Arrestee" means an individual who has been arrested for a violation of law in this state.

(b) "Arrest booking photograph" means a photograph of an

Page 1 of 3

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591-01605-14

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arrestee taken for the purpose of recording the arrestee's image as part of the arrest and booking process.

(c) "Fee or other consideration" does not include a fee or consideration, including attorney fees and costs, solicited or accepted in connection with the actual or attempted settlement or compromise of a lawsuit, threatened lawsuit, arbitration claim, threatened arbitration claim, or other judicial or quasi-judicial proceeding.

(2) A person engaged in publishing or otherwise disseminating arrest booking photographs through a publicly accessible print or electronic medium may not solicit or accept a fee or other consideration to remove, correct, or modify an arrest booking photograph of an arrestee.

(3) If a person engaged in publishing or otherwise disseminating arrest booking photographs through a publicly accessible print or electronic medium solicits or accepts a fee or other consideration to remove, correct, or modify an arrest booking photograph in violation of subsection (2), the arrestee who is the subject of the arrest booking photograph may bring an action to enjoin the publication or other dissemination of the arrest booking photograph.

(a) If the court enjoins the publication or other dissemination of the arrest booking photograph, the court shall specify in its order that the arrest booking photograph must be removed from publication or other dissemination not later than 14 days after the date the order is entered. The court shall impose a civil penalty of \$1,000 per day for each day of noncompliance with the order.

(b) If the court enjoins publication or other dissemination

Page 2 of 3

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59 of an arrestee's arrest booking photograph, the arrestee is
60 entitled to reasonable attorney fees and costs relating to
61 issuance of the injunction and to any appeal of the order
62 issuing the injunction in which the arrestee is the prevailing
63 party.

64 (c) If, subsequent to the 14-day period for removal
65 pursuant to paragraph (a), the person subject to the injunction
66 demonstrates to the court that he or she is in compliance with
67 this section, the court shall terminate the injunction.

68 (4) This section does not apply to any state, regional,
69 county, local, or municipal governmental entity of this state,
70 whether executive, judicial, or legislative, or any department,
71 division, bureau, commission, authority, or political
72 subdivision of this state.

73 Section 2. This act shall take effect October 1, 2014.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Judiciary, *Vice Chair*
Appropriations Subcommittee on Criminal and
Civil Justice
Appropriations Subcommittee on General Government
Community Affairs
Environmental Preservation and Conservation
Ethics and Elections

SELECT COMMITTEE:

Select Committee on Patient Protection
and Affordable Care Act

SENATOR DARREN SOTO

Deputy Democratic Whip
14th District

November 4, 2013

The Honorable Nancy Detert
Committee on Commerce & Tourism
310 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chairwoman Detert,

I respectfully request that Senate Bill 298, Booking Photographs, be placed on the agenda as soon as possible.

Senate Bill 298 prohibits individuals and businesses from collecting compensation for the removal of a booking photograph or other information related to a criminal charge or conviction from the Internet or other public medium. This bill also requires individuals and businesses that publish booking photographs or criminal record information on an Internet website or other public medium to provide contact information.

Thank you for your consideration. Should you have any questions or concerns, please feel free to contact me at 850-487-5014.

Sincerely,

A handwritten signature in cursive script that reads "Darren M. Soto".

Darren M. Soto
State Senator, District 14

Cc: Jennifer Hrdlicka, Staff Director
Patty Blackburn, Committee Administrative Assistant

REPLY TO:

□ 220 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

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 Committee on Commerce and Tourism

BILL: SB 320

INTRODUCER: Senators Sachs and Margolis

SUBJECT: Commercial Parasailing

DATE: March 7, 2014

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Niles	Imhof	RI	Favorable
2. Askey	Hrdlicka	CM	Pre-meeting
3. _____	_____	CA	_____

I. Summary:

SB 320 creates regulations for commercial parasailing. The bill establishes minimum requirements for liability insurance, including liability coverage in the amounts of at least \$1 million per occurrence and a \$2 million annual aggregate.

The bill requires that the operator of the vessel engaged in commercial parasailing evaluate weather conditions and wind speeds as defined in the bill and maintain a weather log. The bill requires that the vessel operator have licensure from the United States Coast Guard appropriate for the number of passengers and the displacement of the vessel.

The bill creates a second-degree misdemeanor for violations of the bill.

The bill provides an effective date of October 1, 2014.

II. Present Situation:

Parasailing Activity

The Florida Fish and Wildlife Conservation Commission (FWC) estimates there are approximately 100 active commercial parasail operators in Florida, generally operating along the Atlantic Ocean and Gulf of Mexico coastlines.¹ One exception is at Walt Disney World where parasailing takes place on Bay Lake, in Orange County.²

¹2014 Legislative Analysis for SB 320, Legislative Affairs Office, Florida Fish and Wildlife Conservation Commission, December 4, 2013.

² *Id.*

Data compiled by the FWC indicates that:³

- From January 1, 2001, through October 30, 2013, 21 accidents involving parasail vessels occurred in Florida, resulting in 23 injuries and 6 fatalities;
- In 10 of the accidents, high winds or sudden wind gusts were a contributing factor;
- In 6 of the 10 accidents with wind as a contributing factor, there was equipment failure as a result of wind;
- The boating accident reports state that many of the wind gusts were produced by sudden thunderstorms in the area of the parasailing operation;
- The other 11 accidents were caused by a variety of factors, including equipment failure and operator error; and
- Equipment failure was also a contributing factor in one fatal accident in 2012. The investigation revealed the personal harness was in poor condition and was unable to sustain the stress of supporting an individual under a parasail.

July 1, 2013 Incident

The most recent incident occurred in Panama City Beach on July 1, 2013.⁴ Two Indiana teenage girls were parasailing when weather conditions caused the vessel to lose connection and control of the parasail. The teenagers were critically injured after they were detached from the boat then hit a building, power line and a parked car.⁵ As of August 6, 2013, both teens were released from the hospital but may require additional surgeries.

The United States Coast Guard's (USCG) report of the July 1, 2013, incident identifies the vessel involved as the "Why Knot" and the owner as Aquatic Adventures.⁶ Aquatic Adventures owns ten parasailing vessels in Panama City, Florida, and while not a member of a parasail organization, it uses the Water Sports Industry Association (WSIA) Parasail Training Manual as part of its captain training program.⁷ The USCG report found that facts contributing to this accident included:

- The vessel operators' failure to become aware of and respond appropriately to weather conditions;
- Using equipment in a way that deviated from product instructions and the WSIA Parasail Training manual; and
- Failure to adhere to WSIA proximity to shore guidelines.⁸

The captain and employees of Aquatic Adventures failed to consult all available data, including weather radar data that would have warned of an approaching severe weather system.⁹ Although

³ *Id.*

⁴ United States Coast Guard, *UPDATE: Coast Guard investigates parasail accident near the Commodore Condominiums in Panama City Beach* (July 18, 2013), available at <http://www.uscgnews.com/go/doc/4007/1855061/UPDATE-Coast-Guard-investigates-parasail-accident-near-the-Commodore-Condominiums-in-Panama-City-Beach> (Last visited March 3, 2014).

⁵ Dennis Pillion, *Second girl injured in Panama City Beach parasailing accident released from Indiana hospital*, AL.com, http://blog.al.com/gulf-coast/2013/08/second_girl_injured_in_parasai.html (Last visited March 3, 2014).

⁶ United States Coast Guard, *Report of Investigation into the Circumstances Surrounding the Incident Involving M/V "Why Knot" Personal Injury on 07/01/2013*, 4 (Dec. 16, 2013).

⁷ *Id.*

⁸ *Id.* at 29-30.

⁹ *Id.* at 11-12 and 31.

“Why Knot” was equipped with an operational VHF Marine Band Radio, Aquatic Adventures employees relied only on handheld radios to collaborate on conditions.¹⁰

The parasail used during the incident is described as a 39 foot parasail canopy¹¹ manufactured in 2012 and designed to operate in winds not greater than 12 to 14 miles per hour.¹² “Why Knot” was built in 1998 when parasail sizes were typically smaller and carried less wind resistance. The winch mechanism used to pull in the parasail did not include a hydraulic break, a feature included in new winch systems.¹³ According to the USCG, the combination of parasail size and wind conditions may have exceeded the capabilities of the winch.¹⁴

The WSIA Parasail Training Manual indicates appropriate distance from the shoreline to conduct parasailing operations, given wind speed and towline length in order to provide time and space for reactive measures.¹⁵ According to the USCG, due to the inappropriate proximity of the vessel to the shoreline, the captain was not able to maneuver the vessel in a way to prevent the towline from disconnecting.

The USCG issued a Marine Safety Alert regarding parasailing operations on July 22, 2013, noting that a series of parasail incidents involving weather conditions and equipment maintenance since 2006 had resulted in 11 deaths and 52 injuries.¹⁶ The alert referenced the “Standard Guide for Monitoring Weather Conditions for Safe Parasail Operation,”¹⁷ that was adopted by the industry.¹⁸ The industry is currently working on standards for crew requirements, equipment specifications, and owner/operator operational guidelines for parasailing operations.¹⁹ However, these standards are voluntary recommendations and there is no enforcement authority in place.

Licensing and Endorsement Suggestion by United States Coast Guard

According to the USCG, there are currently no regulations specifically pertaining to parasail equipment, and operators/owners choose equipment based on industry standards that vary by location and vessel type. There are also no regulations providing appropriate weather conditions to conduct parasail operations nor regulations requiring operators to monitor the prevailing or forecasted weather conditions.²⁰ Currently, the USCG promotes parasail safety by reactive rather than proactive measures, for example, taking action against the license of an operator for acts of misconduct or negligence or pursuing civil or criminal penalties when appropriate for negligent

¹⁰ *Id.* at 7.

¹¹ *Id.* at 21. Larger parasails, such as 39-42 foot sized, have become more popular due to their ability to carry more weight in lighter wind conditions.

¹² *Id.* at 6.

¹³ *Id.* at 21.

¹⁴ *Id.* at 18 and 21.

¹⁵ *Id.* at 30.

¹⁶ USCG, *Marine Safety Alert, Assistant Commandment for Prevention Policy: Parasailing Operations* (July 22, 2013) available at <http://www.uscg.mil/d7/sectmiami/pdf/KYRSafetyAlert.pdf> (Last visited March 3, 2014).

¹⁷ Developed by ASTM International, formerly known as the American Society for Testing and Materials (ASTM).

¹⁸ See ASTM Standard F2993-13 published on April 1, 2013 at <http://www.astm.org/Standards/F2993.htm> (Last visited March 3, 2013).

¹⁹ See ASTM Subcommittee F24.65 on Parasailing at <http://www.astm.org/COMMIT/SUBCOMMIT/F2465.htm> (Last visited March 3, 2013).

²⁰ USCG, *Report of Investigation*, at 31.

operations.²¹ The USCG suggests that proactive initiatives to require vessels to hold a parasailing endorsement could aid in preventing future parasailing accidents.²²

Under 46 U.S.C. s. 7101, the USCG has the authority and discretion to issue a license to an inspected²³ or uninspected vessel based on the applicant's ability to operate a vessel for particular service. In issuing a license, the Coast Guard can consider qualifications that are necessary, reasonable, and related to a profession, which may include suitable career patterns and other qualifying requirements appropriate to the particular industry of operation.²⁴

Parasailing requires operators to perform functions beyond the level of a traditional passenger vessel. Therefore, as noted above, the USCG may consider necessary, reasonable, and related qualifications to the parasailing industry during the licensing process, affectively addressing known or latent unsafe conditions prior to a harmful occurrence.²⁵ According to the USCG, requirement of a parasail endorsement might provide a means of determining and verifying professional qualifications necessary to serve on a particular vessel, as well as require actions on the part of parasail operators instead of solely relying on their ability to implement voluntary industry standards.²⁶

Current Regulation

Section 327.37, F.S., requires vessels towing persons on water skis, parasails, aquaplanes, or similar activities (watersports) to meet the following safety requirements when operating in state waters.²⁷

- There must be a person in the vessel, in addition to the operator, in a position to observe the progress of the person being towed, or the vessel must be equipped with a wide-angle rear view mirror mounted that permits the operator of the vessel to observe the progress of the person being towed. Use of a wide angle mirror does not satisfy this requirement for a vessel towing a person attached to a parasail or similar device.
- Water sports may not be conducted from one-half hour after sunset to one-half hour before sunrise.
- A noninflatable type I, type II, type III, or type V personal flotation device approved by the USCG must be worn by those engaged in water sports;
- A person may not operate or manipulate any vessel, tow rope, or other device to cause the water skis, parasail, aquaplane, innertube, sled, or similar device or any person to collide or strike against or be likely to collide or strike against any vessel, bridge, wharf, pier, dock, buoy, platform, piling, channel marker, or other object, except slalom buoys, ski jumps, or like objects used normally in competitive or recreational skiing; and
- A person may not operate any vessel towing a parasail or engage in parasailing within 100 feet of the marked channel of the Florida Intracoastal Waterway.

²¹ *Id.* at 34. See 46 U.S.C s. 7701 and 46 U.S.C. s. 2304.

²² *Id.* at 32.

²³ The Coast Guard inspects commercial passenger vessels carrying six or more passengers for hire under 46 C.F.R. Subchapter T - Small Passenger Vessels, (Parts 175 – 187).

²⁴ USCG, *Report of Investigation*, at 32.

²⁵ *Id.*

²⁶ *Id.*

²⁷ See s. 327.48, F.S.

A violation of s. 327.37, F.S., is a noncriminal infraction.²⁸ The civil penalty that may be imposed in county court is \$50. However, any person who fails to appear or otherwise properly respond to the boating citation, shall also be charged with the offense of failing to respond to the citation. Upon conviction for such failure to respond, the violator is guilty of a second-degree misdemeanor punishable by up to 60 days in jail and a fine not exceeding \$500.

According to the FWC, the Federal Aviation Administration (FAA) regulates parasails as kites because a parasail is a parachute held aloft by wind resulting from the movement of the boat towing it.²⁹ Because parasails impact national airspace, the FAA feels that it has a responsibility to regulate parasails “to maintain a safe atmosphere for the flying public.”³⁰ The regulations provide that no person may operate a parasail, unless waived:³¹

- Less than 500 feet from the base of any cloud;
- More than 500 feet above the surface of the earth;
- From an area where the ground visibility is less than 3 miles; or
- Within 5 miles of the boundary of any airport.

Even if the parasail operation meets the regulations set by the FAA, for parasail operations flying over 150 feet the operator is still required to give the following information to the nearest FAA air traffic control facility at least 24 hours before the operation:

- The names and addresses of the owners and operators;
- The size and weight of the parasail;
- The location of the operation;
- The height above the surface of the earth at which the parasail is to be operated; and
- The date, time, and duration of the operation.

Additionally, the parasail must have colored pennants at 50 foot intervals or less, starting at 150 feet above the surface of the earth that are visible for at least 1 mile, if it is operated between sunrise and sunset.³²

A parasail operator may obtain a certificate of authorization or a waiver from the FAA containing special provisions allowing deviation from the regulations.³³ According to the FWC, common special provisions imposed by the FAA are:³⁴

- Attendance by parasail operators at an annual operator safety and standardization meeting sponsored by the FAA, if available in the area, and if an operator is unable to attend a scheduled annual meeting, the operator must arrange for an individual meeting;
- Prohibitions against conducting parasail operations when the ceiling is less than 1,000 feet above ground level, the ground visibility is less than 2 miles, winds are above 20 miles per hour, or gusts of wind are occurring at 15 miles per hour or greater;

²⁸ Section 327.73(1)(i), F.S.

²⁹ See 14 C.F.R. Part 101.

³⁰ FAA, *Air Traffic Bulletin*, Issue #2012-2 (April 2012), available at http://www.faa.gov/air_traffic/publications/media/ATB2012-2.pdf (last visited March 3, 2014).

³¹ 14 C.F.R. Part 101.13.

³² 14 C.F.R. Part 101.17.

³³ 14 C.F.R. Part 101.3.

³⁴ See *supra* note 1.

- Time restrictions including a prohibition on parasail operations between sunset and sunrise or during any period when a suspension of airport traffic or diversion of other aircraft will cause a hardship to scheduled air carrier operations;
- Distance limits requiring that parasail operations not be conducted closer than 500 feet to any aircraft, and the parasail not be maneuvered so as to force any aircraft toward the swim line (an imaginary line along the coast marking the offshore boundary where most people are likely to swim) or a populated beach;
- Requirements that parasail operators yield the right-of-way to all aircraft;
- Constant observation by the vessel captain and all crew members of the parasail and surrounding airspace to ensure safety, with the observers in a position to observe the operation and airspace and to halt or restrict the parasail operations if necessary; and
- Requirements that the holder of the certificate of waiver or authorization contact the air traffic control tower of an airport when proposed parasail operations are to be conducted within 5 miles of the airport at least one week prior to conducting parasail operations for the purpose of providing real-time notice of activities including the proposed area of operation, the duration of the activity, and the altitude of the parasail.

III. Effect of Proposed Changes:

Section 1 of the bill provides that the title for the act is the White-Miskell Act. The bill is named for two women who died from parasailing accidents in Pompano Beach. Amber White, 15, died in 2007 after windy conditions caused the line connecting the parasail she and her sister were riding to break free of its vessel and they collided with a hotel roof. Kathleen Miskell, 28, died in 2012 after a harness malfunction caused her to drop 200 feet into the water where she drowned.

Section 2 of the bill amends s. 327.02, F.S., to define “commercial parasailing” as the towing, for consideration, of a person by a motorboat when one or more persons are tethered to the vessel, ascend above the water, and remain suspended under a canopy while the vessel is underway (excluding ultralight air vehicles). The bill also defines “sustained wind speed” as a wind speed determined by averaging the observed wind speed rounded up to the nearest whole knot of speed over a 2 minute period.

Section 3 of the bill creates s. 327.375, F.S., to regulate commercial parasailing.

The owner or operator of a vessel must obtain and maintain minimum bodily injury liability insurance coverage of at least \$1 million per occurrence and \$2 million annual aggregate. Proof of insurance must be available for inspection at the location where commercial parasailing is offered or provided for consideration. The insurance carrier’s name and address and the policy number be made available to customers requesting that information.

The operator of a vessel must have a current and valid license issued by the USCG which is appropriate for the number of passengers and displacement of the vessel.

A parasailing vessel must be equipped with a functional VHF marine transceiver and a separate electronic device capable of providing access to National Weather forecasts and current weather conditions. An operator must use all available means to determine weather conditions and record

this information in a weather log each time passengers are to be taken out on the water. The log must be available for inspection at all times at the operator's place of business.

The bill prohibits commercial parasailing during wind speeds that exceed 20 miles per hour, wind gusts 15 miles per hour greater than the present wind speed, wind speed during gusts that exceeds 25 miles per hour, or when a lightning storm comes within 7 miles of the parasailing area.

A person or operator who violates this section commits a second-degree misdemeanor, punishable as provided in ss. 775.082 or 775.083, F.S.³⁵

Sections 4 to 9 amend ss. 320.08, 327.391, 328.17, 342.07, 713.78, and 715.07, F.S., to conform and correct statutory cross-references.

Section 10 provides an effective date of October 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

According to the FWC, commercial parasailing operators in Florida may incur additional costs to obtain the insurance coverage stated in the bill, and those costs will vary with each operator's claims history and current coverage amounts.³⁶

³⁵ Sections 775.082, and 775.083, F.S., provide that a misdemeanor of the second-degree are punishable by up to 60 days in jail, a fine of up to \$500, or both at the discretion of the court.

³⁶ 2014 Legislative Analysis for SB 320, Legislative Affairs Office, Florida Fish and Wildlife Conservation Commission, December 4, 2013.

C. Government Sector Impact:

According to the FWC, there may be a fiscal impact from costs associated with the FWC law enforcement officers educating current commercial parasailing operators on new regulations and how operators may come into compliance. The impact is estimated to be nominal and can likely be absorbed within existing resources.³⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 327.02, 320.08, 327.391, 328.17, 342.07, 713.78, and 715.07.

This bill creates section 327.375 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of 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.

³⁷ *Id.*



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LEGISLATIVE ACTION

Senate

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House

The Committee on Commerce and Tourism (Detert) recommended the following:

Senate Amendment (with title amendment)

Delete lines 131 - 347

and insert:

(15) "Kite boarding" or "kite surfing" means an activity in which a kite board or surf board is teathered to a kite so as to harness the power of the wind and propel the board across a body of water.

(16)~~(14)~~ "Length" means the measurement from end to end over the deck parallel to the centerline, l excluding sheer.



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11 ~~(17)(15)~~ "Lien" means a security interest that ~~which~~ is
12 reserved or created by a written agreement recorded with the
13 Department of Highway Safety and Motor Vehicles pursuant to s.
14 328.15 and that ~~which~~ secures payment or performance of an
15 obligation and is generally valid against third parties.

16 ~~(18)(16)~~ "Lienholder" means a person holding a security
17 interest in a vessel, which interest is recorded with the
18 Department of Highway Safety and Motor Vehicles pursuant to s.
19 328.15.

20 ~~(19)(17)~~ "Live-aboard vessel" means:

21 (a) A ~~Any~~ vessel used solely as a residence and not for
22 navigation;

23 (b) A ~~Any~~ vessel represented as a place of business or a
24 professional or other commercial enterprise; or

25 (c) A ~~Any~~ vessel for which a declaration of domicile has
26 been filed pursuant to s. 222.17.

27
28 A commercial fishing boat is expressly excluded from the term
29 "live-aboard vessel."

30 ~~(20)(18)~~ "Livery vessel" means a ~~any~~ vessel leased, rented,
31 or chartered to another for consideration.

32 ~~(21)(19)~~ "Manufactured vessel" means a ~~any~~ vessel built
33 after October 31, 1972, for which a federal hull identification
34 number is required pursuant to federal law, or a ~~any~~ vessel
35 constructed or assembled before ~~prior to~~ November 1, 1972, by a
36 duly licensed manufacturer.

37 ~~(22)(20)~~ "Marina" means a licensed commercial facility that
38 ~~which~~ provides secured public moorings or dry storage for
39 vessels on a leased basis. A commercial establishment authorized



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by a licensed vessel manufacturer as a dealership ~~is shall be~~ considered a marina for nonjudicial sale purposes.

~~(23)(21)~~ "Marine sanitation device" means ~~any~~ equipment, other than a toilet, for installation on board a vessel, which is designed to receive, retain, treat, or discharge sewage, and any process to treat such sewage. Marine sanitation device Types I, II, and III shall be defined as provided in 33 C.F.R. part 159.

~~(24)(22)~~ "Marker" means ~~a any~~ channel mark or other aid to navigation, an information or regulatory mark, an isolated danger mark, a safe water mark, a special mark, an inland waters obstruction mark, or mooring buoy in, on, or over the waters of the state or the shores thereof, and includes, but is not limited to, a sign, beacon, buoy, or light.

~~(25)~~ "Moored ballooning" means the operation of a lighter-than-air craft in which air heated by a flame is trapped in a large fabric bag and which is secured with lines or anchors.

~~(26)(23)~~ "Motorboat" means ~~a any~~ vessel equipped with machinery for propulsion, irrespective of whether the propulsion machinery is in actual operation.

~~(27)(24)~~ "Muffler" means an automotive-style sound-suppression device or system designed to effectively abate the sound of exhaust gases emitted from an internal combustion engine and prevent excessive sound when installed on such an engine.

~~(28)(25)~~ "Navigation rules" means, for vessels on:

(a) ~~For vessels on~~ Waters outside ~~of~~ established navigational lines of demarcation as specified in 33 C.F.R. part 80, the International Navigational Rules Act of 1977, 33 U.S.C.



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s. 1602, as amended, including the appendix and annexes thereto, through October 1, 2012.

(b) ~~For vessels on~~ All waters not outside of such established lines of demarcation, the Inland Navigational Rules Act of 1980, 33 C.F.R. parts 83-90, as amended, through October 1, 2012.

(29) ~~(26)~~ "Nonresident" means a citizen of the United States who has not established residence in this state and has not continuously resided in this state for 1 year and in one county for the 6 months immediately preceding the initiation of a vessel titling or registration action.

(30) ~~(27)~~ "Operate" means to be in charge of, ~~or~~ in command of, ~~or~~ in actual physical control of a vessel upon the waters of this state, ~~or~~ to exercise control over or to have responsibility for a vessel's navigation or safety while the vessel is underway upon the waters of this state, or to control or steer a vessel being towed by another vessel upon the waters of the state.

(31) ~~(28)~~ "Owner" means a person, other than a lienholder, having the property in or title to a vessel. The term includes a person entitled to the use or possession of a vessel subject to an interest in another person which is ~~reserved~~ or created by agreement and securing payment of performance of an obligation. ~~but~~ The term does not include ~~excludes~~ a lessee under a lease not intended as security.

(32) ~~(29)~~ "Person" means an individual, partnership, firm, corporation, association, or other entity.

(33) ~~(30)~~ "Personal watercraft" means a vessel less than 16 feet in length which uses an inboard motor powering a water jet



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98 pump, as its primary source of motive power and which is
99 designed to be operated by a person sitting, standing, or
100 kneeling on the vessel, rather than in the conventional manner
101 of sitting or standing inside the vessel.

102 ~~(34)~~ ~~(31)~~ "Portable toilet" means a device consisting of a
103 lid, seat, containment vessel, and support structure which ~~that~~
104 is specifically designed to receive, retain, and discharge human
105 waste and which ~~that~~ is capable of being removed from a vessel
106 by hand.

107 ~~(35)~~ ~~(32)~~ "Prohibited activity" means ~~such~~ activity that ~~as~~
108 will impede or disturb navigation or creates a safety hazard on
109 waterways of this state.

110 ~~(36)~~ ~~(33)~~ "Racing shell," "rowing scull," or "racing kayak"
111 means a manually propelled vessel that ~~which~~ is recognized by
112 national or international racing associations for use in
113 competitive racing and in which all occupants, with the
114 exception of a coxswain, if one is provided, row, scull, or
115 paddle and that ~~which~~ is not designed to carry and does not
116 carry any equipment not solely for competitive racing.

117 ~~(37)~~ ~~(34)~~ "Recreational vessel" means a ~~any~~ vessel:

118 (a) Manufactured and used primarily for noncommercial
119 purposes; or

120 (b) Leased, rented, or chartered to a person for his or her
121 ~~the person's~~ noncommercial use.

122 ~~(38)~~ ~~(35)~~ "Registration" means a state operating license on
123 a vessel which is issued with an identifying number, an annual
124 certificate of registration, and a decal designating the year
125 for which a registration fee is paid.

126 ~~(39)~~ ~~(36)~~ "Resident" means a citizen of the United States



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who has established residence in this state and has continuously resided in this state for 1 year and in one county for the 6 months immediately preceding the initiation of a vessel titling or registration action.

(40)~~(37)~~ "Sailboat" means a ~~any~~ vessel whose sole source of propulsion is the wind.

(41) "Sustained wind speed" means a wind speed determined by averaging the observed wind speed rounded up to the nearest mile per hour over a 2-minute period.

(42)~~(38)~~ "Unclaimed vessel" means an ~~any~~ undocumented vessel, including its machinery, rigging, and accessories, which is in the physical possession of a ~~any~~ marina, garage, or repair shop for repairs, improvements, or other work with the knowledge of the vessel owner and for which the costs of such services have been unpaid for more than ~~a period in excess of~~ 90 days after ~~from~~ the date written notice of the completed work is given by the marina, garage, or repair shop to the vessel owner.

(43)~~(39)~~ "Vessel" is synonymous with boat as referenced in s. 1(b), Art. VII of the State Constitution and includes every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

(44)~~(40)~~ "Waters of this state" means any navigable waters of the United States within the territorial limits of this state, ~~and~~ the marginal sea adjacent to this state and the high seas when navigated as a part of a journey or ride to or from the shore of this state, and all the inland lakes, rivers, and canals under the jurisdiction of this state.

Section 3. Section 327.37, Florida Statutes, is amended to



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read:

327.37 Water skis, parasails, ~~and~~ aquaplanes, kite boards, kite surfboards, and moored balloons regulated.—

(1)(a) A person may not operate a vessel on any waters of this state towing a person on water skis, or an aquaplane, or similar device unless there is in such vessel a person, in addition to the operator, in a position to observe the progress of the person being towed, or the vessel is equipped with a wide-angle rear view mirror mounted in such manner as to permit the operator of the vessel to observe the progress of the person being towed. This subsection does not apply to class A motorboats operated by the person being towed and designed to be incapable of carrying the operator in the motorboat.

(b) A person may not operate a vessel on any waters of this state towing a person attached to a parasail or similar device unless there is a person in the vessel, in addition to the operator, in a position to observe the progress of the person being towed. A wide-angle rear view mirror is not acceptable for this purpose.

(2)(a) A person may not engage in water skiing, parasailing, aquaplaning, or any similar activity at any time between the hours from one-half hour after sunset to one-half hour before sunrise.

(b) A person may not engage in water skiing, parasailing, aquaplaning, or any similar activity unless such person is wearing a noninflatable type I, type II, type III, or type V personal flotation device approved by the United States Coast Guard.

(3) The provisions of subsections (1) and (2) do not apply



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to a performer engaged in a professional exhibition or a person preparing to participate or participating in an official regatta, boat race, marine parade, tournament, or exhibition held pursuant to s. 327.48.

(4) A person may not operate or manipulate any vessel, tow rope, or other device by which the direction or location of water skis, parasail, aquaplane, innertube, sled, or similar device may be affected or controlled, in such a way as to cause the water skis, parasail, aquaplane, innertube, sled, or similar device or any person thereon to collide or strike against or be likely to collide or strike against any vessel, bridge, wharf, pier, dock, buoy, platform, piling, channel marker, or other object, except slalom buoys, ski jumps, or like objects used normally in competitive or recreational skiing.

(5) A person may not operate any vessel towing a parasail or engage in parasailing within 100 feet of the marked channel of the Florida Intracoastal Waterway or within 5 miles of the boundary of any airport except under a certificate of waiver issued by the Administrator of the Federal Aviation Administration pursuant to Title 14, chapter 1, part 101 of the Code of Federal Regulations.

(6) A person may not engage in kite boarding, kite surfing, or moored ballooning within 5 miles of the boundary of an airport except under a certificate of waiver issued by the Administrator of the Federal Aviation Administration pursuant to Title 14 of the Code of Federal Regulations Part 101.

Section 4. Section 327.375, Florida Statutes, is created to read:

327.375 Commercial parasailing.—



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(1) The operator of a vessel engaged in commercial parasailing shall ensure that the provisions of this section and s. 327.37 are met.

(2) The owner or operator of a vessel engaged in commercial parasailing may not offer or provide for consideration any parasailing activity unless the owner or operator first obtains and maintains in full force and effect a liability insurance policy from an insurance carrier licensed in this state or approved by the Office of Insurance Regulation or an eligible surplus lines insurer. Such policy must provide bodily injury liability coverage in the amounts of at least \$1 million per occurrence and \$2 million annual aggregate. Proof of insurance must be available for inspection at the location where commercial parasailing is offered or provided for consideration, and each customer who requests such proof shall be provided with the insurance carrier's name and address and the insurance policy number.

(3) The operator of a vessel engaged in commercial parasailing must have a current and valid license issued by the United States Coast Guard authorizing the operator to carry passengers for hire. The license must be appropriate for the number of passengers carried and the displacement of the vessel. The license must be carried on the vessel and be available for inspection while engaging in commercial parasailing activities.

(4) A vessel engaged in commercial parasailing must be equipped with a functional VHF marine transceiver and a separate electronic device capable of providing access to National Weather Service forecasts and current weather conditions.

(5) (a) Commercial parasailing is prohibited if the current



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observed wind conditions in the area of operation include a sustained wind speed of more than 20 miles per hour; if wind gusts are 15 miles per hour higher than the sustained wind speed; if the wind speed during gusts exceeds 25 miles per hour; if rain or heavy fog results in reduced visibility of less than 0.5 mile; or if a known lightning storm comes within 7 miles of the parasailing area.

(b) The operator of the vessel engaged in commercial parasailing shall use all available means to determine prevailing and forecasted weather conditions and record this information in a weather log each time passengers are to be taken out on the water. The weather log must be available for inspection at all times at the operator's place of business.

(6) A person or operator who violates this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 5. Paragraph (d) of subsection (5) of section 320.08, Florida Statutes, is amended to read:

320.08 License taxes.—Except as otherwise provided herein, there are hereby levied and imposed annual license taxes for the operation of motor vehicles, mopeds, motorized bicycles as defined in s. 316.003(2), tri-vehicles as defined in s. 316.003, and mobile homes, as defined in s. 320.01, which shall be paid to and collected by the department or its agent upon the registration or renewal of registration of the following:

(5) SEMITRAILERS, FEES ACCORDING TO GROSS VEHICLE WEIGHT; SCHOOL BUSES; SPECIAL PURPOSE VEHICLES.—

(d) A wrecker, as defined in s. 320.01, which is used to tow a vessel as defined in s. 327.02(39), a disabled, abandoned,



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stolen-recovered, or impounded motor vehicle as defined in s. 320.01, or a replacement motor vehicle as defined in s. 320.01: \$41 flat, of which \$11 shall be deposited into the General Revenue Fund.

Section 6. Subsection (1) of section 327.391, Florida Statutes, is amended to read:

327.391 Airboats regulated.—

(1) The exhaust of every internal combustion engine used on any airboat operated on the waters of this state shall be provided with an automotive-style factory muffler, underwater exhaust, or other manufactured device capable of adequately muffling the sound of the exhaust of the engine as described in s. 327.02~~(24)~~. The use of cutouts or flex pipe as

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete line 4

and insert:

amending s. 327.37, F.S.; prohibiting kite boarding, kite surfing, or moored ballooning within 5 miles of the boundary of an airport without a certification of waiver issued by the Administrator of the Federal Aviation Administration; creating s. 327.375, F.S.; requiring the operator of a



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LEGISLATIVE ACTION

Senate

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House

The Committee on Commerce and Tourism (Detert) recommended the following:

Senate Substitute for Amendment (954708) (with title amendment)

Delete lines 131 - 347
and insert:

(15) "Kite boarding" or "kite surfing" means an activity in which a kite board or surf board is tethered to a kite so as to harness the power of the wind and propel the board across a body



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of water. For the purposes of this subsection, "kite" has the same meaning as under 14 C.F.R. part 101.

~~(16)(14)~~ "Length" means the measurement from end to end over the deck parallel to the centerline, excluding sheer.

~~(17)(15)~~ "Lien" means a security interest that ~~which~~ is reserved or created by a written agreement recorded with the Department of Highway Safety and Motor Vehicles pursuant to s. 328.15 and that ~~which~~ secures payment or performance of an obligation and is generally valid against third parties.

~~(18)(16)~~ "Lienholder" means a person holding a security interest in a vessel, which interest is recorded with the Department of Highway Safety and Motor Vehicles pursuant to s. 328.15.

~~(19)(17)~~ "Live-aboard vessel" means:

(a) A ~~Any~~ vessel used solely as a residence and not for navigation;

(b) A ~~Any~~ vessel represented as a place of business or a professional or other commercial enterprise; or

(c) A ~~Any~~ vessel for which a declaration of domicile has been filed pursuant to s. 222.17.

A commercial fishing boat is expressly excluded from the term "live-aboard vessel."

~~(20)(18)~~ "Livery vessel" means a ~~any~~ vessel leased, rented, or chartered to another for consideration.

~~(21)(19)~~ "Manufactured vessel" means a ~~any~~ vessel built after October 31, 1972, for which a federal hull identification number is required pursuant to federal law, or a ~~any~~ vessel constructed or assembled before ~~prior to~~ November 1, 1972, by a



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duly licensed manufacturer.

(22)~~(20)~~ "Marina" means a licensed commercial facility that
~~which~~ provides secured public moorings or dry storage for
vessels on a leased basis. A commercial establishment authorized
by a licensed vessel manufacturer as a dealership is ~~shall be~~
considered a marina for nonjudicial sale purposes.

(23)~~(21)~~ "Marine sanitation device" means ~~any~~ equipment,
other than a toilet, for installation on board a vessel, which
is designed to receive, retain, treat, or discharge sewage, and
any process to treat such sewage. Marine sanitation device Types
I, II, and III shall be defined as provided in 33 C.F.R. part
159.

(24)~~(22)~~ "Marker" means a ~~any~~ channel mark or other aid to
navigation, an information or regulatory mark, an isolated
danger mark, a safe water mark, a special mark, an inland waters
obstruction mark, or mooring buoy in, on, or over the waters of
the state or the shores thereof, and includes, but is not
limited to, a sign, beacon, buoy, or light.

(25) "Moored ballooning" means the operation of a moored
balloon as defined in 14 C.F.R. part 101.

(26)~~(23)~~ "Motorboat" means a ~~any~~ vessel equipped with
machinery for propulsion, irrespective of whether the propulsion
machinery is in actual operation.

(27)~~(24)~~ "Muffler" means an automotive-style sound-
suppression device or system designed to effectively abate the
sound of exhaust gases emitted from an internal combustion
engine and prevent excessive sound when installed on such an
engine.

(28)~~(25)~~ "Navigation rules" means, for vessels on:



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(a) ~~For vessels on~~ Waters outside of established navigational lines of demarcation as specified in 33 C.F.R. part 80, the International Navigational Rules Act of 1977, 33 U.S.C. s. 1602, as amended, including the appendix and annexes thereto, through October 1, 2012.

(b) ~~For vessels on~~ All waters not outside of such established lines of demarcation, the Inland Navigational Rules Act of 1980, 33 C.F.R. parts 83-90, as amended, through October 1, 2012.

(29)~~(26)~~ "Nonresident" means a citizen of the United States who has not established residence in this state and has not continuously resided in this state for 1 year and in one county for the 6 months immediately preceding the initiation of a vessel titling or registration action.

(30)~~(27)~~ "Operate" means to be in charge of, ~~or~~ in command of, ~~or~~ in actual physical control of a vessel upon the waters of this state, ~~or~~ to exercise control over or to have responsibility for a vessel's navigation or safety while the vessel is underway upon the waters of this state, or to control or steer a vessel being towed by another vessel upon the waters of the state.

(31)~~(28)~~ "Owner" means a person, other than a lienholder, having the property in or title to a vessel. The term includes a person entitled to the use or possession of a vessel subject to an interest in another person which is~~reserved~~ or created by agreement and securing payment of performance of an obligation.~~but~~ The term does not include ~~excludes~~ a lessee under a lease not intended as security.

(32)~~(29)~~ "Person" means an individual, partnership, firm,



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corporation, association, or other entity.

(33)~~(30)~~ "Personal watercraft" means a vessel less than 16 feet in length which uses an inboard motor powering a water jet pump, as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on the vessel, rather than in the conventional manner of sitting or standing inside the vessel.

(34)~~(31)~~ "Portable toilet" means a device consisting of a lid, seat, containment vessel, and support structure which ~~that~~ is specifically designed to receive, retain, and discharge human waste and which ~~that~~ is capable of being removed from a vessel by hand.

(35)~~(32)~~ "Prohibited activity" means ~~such~~ activity that ~~as~~ will impede or disturb navigation or creates a safety hazard on waterways of this state.

(36)~~(33)~~ "Racing shell," "rowing scull," or "racing kayak" means a manually propelled vessel that ~~which~~ is recognized by national or international racing associations for use in competitive racing and in which all occupants, with the exception of a coxswain, if one is provided, row, scull, or paddle and that ~~which~~ is not designed to carry and does not carry any equipment not solely for competitive racing.

(37)~~(34)~~ "Recreational vessel" means a ~~any~~ vessel:

(a) Manufactured and used primarily for noncommercial purposes; or

(b) Leased, rented, or chartered to a person for his or her ~~the person's~~ noncommercial use.

(38)~~(35)~~ "Registration" means a state operating license on a vessel which is issued with an identifying number, an annual



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certificate of registration, and a decal designating the year for which a registration fee is paid.

(39)~~(36)~~ "Resident" means a citizen of the United States who has established residence in this state and has continuously resided in this state for 1 year and in one county for the 6 months immediately preceding the initiation of a vessel titling or registration action.

(40)~~(37)~~ "Sailboat" means a ~~any~~ vessel whose sole source of propulsion is the wind.

(41) "Sustained wind speed" means a wind speed determined by averaging the observed wind speed rounded up to the nearest mile per hour over a 2-minute period.

(42)~~(38)~~ "Unclaimed vessel" means an ~~any~~ undocumented vessel, including its machinery, rigging, and accessories, which is in the physical possession of a ~~any~~ marina, garage, or repair shop for repairs, improvements, or other work with the knowledge of the vessel owner and for which the costs of such services have been unpaid for more than ~~a period in excess of~~ 90 days after ~~from~~ the date written notice of the completed work is given by the marina, garage, or repair shop to the vessel owner.

(43)~~(39)~~ "Vessel" is synonymous with boat as referenced in s. 1(b), Art. VII of the State Constitution and includes every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

(44)~~(40)~~ "Waters of this state" means any navigable waters of the United States within the territorial limits of this state, ~~and~~ the marginal sea adjacent to this state and the high seas when navigated as a part of a journey or ride to or from



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the shore of this state, and all the inland lakes, rivers, and
canals under the jurisdiction of this state.

Section 3. Section 327.37, Florida Statutes, is amended to
read:

327.37 Water skis, parasails, ~~and~~ aquaplanes, kite boards,
kite surfboards, and moored balloons regulated.—

(1) (a) A person may not operate a vessel on any waters of
this state towing a person on water skis, or an aquaplane, or
similar device unless there is in such vessel a person, in
addition to the operator, in a position to observe the progress
of the person being towed, or the vessel is equipped with a
wide-angle rear view mirror mounted in such manner as to permit
the operator of the vessel to observe the progress of the person
being towed. This subsection does not apply to class A
motorboats operated by the person being towed and designed to be
incapable of carrying the operator in the motorboat.

(b) A person may not operate a vessel on any waters of this
state towing a person attached to a parasail or similar device
unless there is a person in the vessel, in addition to the
operator, in a position to observe the progress of the person
being towed. A wide-angle rear view mirror is not acceptable for
this purpose.

(2) (a) A person may not engage in water skiing,
parasailing, aquaplaning, or any similar activity at any time
between the hours from one-half hour after sunset to one-half
hour before sunrise.

(b) A person may not engage in water skiing, parasailing,
aquaplaning, or any similar activity unless such person is
wearing a noninflatable type I, type II, type III, or type V



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personal flotation device approved by the United States Coast Guard.

(3) The provisions of subsections (1) and (2) do not apply to a performer engaged in a professional exhibition or a person preparing to participate or participating in an official regatta, boat race, marine parade, tournament, or exhibition held pursuant to s. 327.48.

(4) A person may not operate or manipulate any vessel, tow rope, or other device by which the direction or location of water skis, parasail, aquaplane, innertube, sled, or similar device may be affected or controlled, in such a way as to cause the water skis, parasail, aquaplane, innertube, sled, or similar device or any person thereon to collide or strike against or be likely to collide or strike against any vessel, bridge, wharf, pier, dock, buoy, platform, piling, channel marker, or other object, except slalom buoys, ski jumps, or like objects used normally in competitive or recreational skiing.

(5) A person may not operate any vessel towing a parasail or engage in parasailing within 100 feet of the marked channel of the Florida Intracoastal Waterway or within 5 miles of the boundary of any airport except under a certificate of waiver issued by the Administrator of the Federal Aviation Administration pursuant to 14 C.F.R. part 101.

(6) A person may not engage in kite boarding, kite surfing, or moored ballooning within 5 miles of the boundary of an airport except under a certificate of waiver issued by the Administrator of the Federal Aviation Administration pursuant to 14 C.F.R. part 101.

Section 4. Section 327.375, Florida Statutes, is created to



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read:

327.375 Commercial parasailing.—

(1) The operator of a vessel engaged in commercial parasailing shall ensure that the provisions of this section and s. 327.37 are met.

(2) The owner or operator of a vessel engaged in commercial parasailing may not offer or provide for consideration any parasailing activity unless the owner or operator first obtains and maintains in full force and effect a liability insurance policy from an insurance carrier licensed in this state or approved by the Office of Insurance Regulation or an eligible surplus lines insurer. Such policy must provide bodily injury liability coverage in the amounts of at least \$1 million per occurrence and \$2 million annual aggregate. Proof of insurance must be available for inspection at the location where commercial parasailing is offered or provided for consideration, and each customer who requests such proof shall be provided with the insurance carrier's name and address and the insurance policy number.

(3) The operator of a vessel engaged in commercial parasailing must have a current and valid license issued by the United States Coast Guard authorizing the operator to carry passengers for hire. The license must be appropriate for the number of passengers carried and the displacement of the vessel. The license must be carried on the vessel and be available for inspection while engaging in commercial parasailing activities.

(4) A vessel engaged in commercial parasailing must be equipped with a functional VHF marine transceiver and a separate electronic device capable of providing access to National



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Weather Service forecasts and current weather conditions.

(5) (a) Commercial parasailing is prohibited if the current observed wind conditions in the area of operation include a sustained wind speed of more than 20 miles per hour; if wind gusts are 15 miles per hour higher than the sustained wind speed; if the wind speed during gusts exceeds 25 miles per hour; if rain or heavy fog results in reduced visibility of less than 0.5 mile; or if a known lightning storm comes within 7 miles of the parasailing area.

(b) The operator of the vessel engaged in commercial parasailing shall use all available means to determine prevailing and forecasted weather conditions and record this information in a weather log each time passengers are to be taken out on the water. The weather log must be available for inspection at all times at the operator's place of business.

(6) A person or operator who violates this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 5. Paragraph (d) of subsection (5) of section 320.08, Florida Statutes, is amended to read:

320.08 License taxes.—Except as otherwise provided herein, there are hereby levied and imposed annual license taxes for the operation of motor vehicles, mopeds, motorized bicycles as defined in s. 316.003(2), tri-vehicles as defined in s. 316.003, and mobile homes, as defined in s. 320.01, which shall be paid to and collected by the department or its agent upon the registration or renewal of registration of the following:

(5) SEMITRAILERS, FEES ACCORDING TO GROSS VEHICLE WEIGHT; SCHOOL BUSES; SPECIAL PURPOSE VEHICLES.—



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(d) A wrecker, as defined in s. 320.01, which is used to tow a vessel as defined in s. 327.02~~(39)~~, a disabled, abandoned, stolen-recovered, or impounded motor vehicle as defined in s. 320.01, or a replacement motor vehicle as defined in s. 320.01: \$41 flat, of which \$11 shall be deposited into the General Revenue Fund.

Section 6. Subsection (1) of section 327.391, Florida Statutes, is amended to read:

327.391 Airboats regulated.—

(1) The exhaust of every internal combustion engine used on any airboat operated on the waters of this state shall be provided with an automotive-style factory muffler, underwater exhaust, or other manufactured device capable of adequately muffling the sound of the exhaust of the engine as described in s. 327.02~~(24)~~. The use of cutouts or flex pipe as

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete line 4

and insert:

amending s. 327.37, F.S.; prohibiting kite boarding, kite surfing, or moored ballooning within 5 miles of the boundary of an airport without a certification of waiver issued by the Administrator of the Federal Aviation Administration; creating s. 327.375, F.S.; requiring the operator of a

By Senator Sachs

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A bill to be entitled

An act relating to commercial parasailing; providing a short title; amending s. 327.02, F.S.; defining terms; creating s. 327.375, F.S.; requiring the operator of a vessel engaged in commercial parasailing to ensure that specified requirements are met; requiring the owner of a vessel engaged in commercial parasailing to obtain and maintain an insurance policy; providing minimum coverage requirements for the insurance policy; providing requirements for proof of insurance; specifying the insurance information that must be provided upon request; requiring the operator to have a current and valid license issued by the United States Coast Guard; prohibiting commercial parasailing unless certain equipment is present on the vessel and certain weather conditions are met; requiring that a weather log be maintained and made available for inspection; providing a criminal penalty; amending ss. 320.08, 327.391, 328.17, 342.07, 713.78, and 715.07, F.S.; conforming cross-references; providing an effective date.

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

Section 1. This act may be cited as the "White-Miskell Act."

Section 2. Section 327.02, Florida Statutes, is amended to read:

327.02 Definitions.—As used in this chapter and in chapter

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328, unless the context clearly requires a different meaning, the term:

(1) "Airboat" means a vessel that is primarily designed for use in shallow waters and powered by an internal combustion engine with an airplane-type propeller mounted above the stern and used to push air across a set of rudders.

(2) "Alien" means a person who is not a citizen of the United States.

(3) "Boating accident" means a collision, accident, or casualty involving a vessel in or upon, or entering into or exiting from, the water, including capsizing, collision with another vessel or object, sinking, personal injury, death, disappearance of a ~~any~~ person from on board under circumstances that ~~which~~ indicate the possibility of death or injury, or property damage to any vessel or dock.

(4) "Canoe" means a light, narrow vessel with curved sides and with both ends pointed. A canoe-like vessel with a transom may not be excluded from the definition of a canoe if the width of its transom is less than 45 percent of the width of its beam or it has been designated as a canoe by the United States Coast Guard.

(5) "Commercial parasailing" means providing or offering to provide, for consideration, any activity involving the towing of a person by a motorboat if:

(a) One or more persons are tethered to the towing vessel;

(b) The person or persons ascend above the water; and

(c) The person or persons remain suspended under a canopy, chute, or parasail above the water while the vessel is underway.

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The term does not include ultralight glider towing conducted under rules of the Federal Aviation Administration governing ultralight vehicles as defined in 14 C.F.R. part 103.

~~(6)(5)~~ "Commercial vessel" means:

(a) ~~A~~ any vessel primarily engaged in the taking or landing of saltwater fish or saltwater products or freshwater fish or freshwater products, or ~~a~~ any vessel licensed pursuant to s. 379.361 from which commercial quantities of saltwater products are harvested, from within and without the waters of this state for sale ~~either to the consumer or to a~~ retail dealer, or wholesale dealer.

(b) Any other vessel, except a recreational vessel as defined in this section.

~~(7)(6)~~ "Commission" means the Fish and Wildlife Conservation Commission.

~~(8)(7)~~ "Dealer" means ~~a~~ any person authorized by the Department of Revenue to buy, sell, resell, or otherwise distribute vessels. Such person must ~~shall~~ have a valid sales tax certificate of registration issued by the Department of Revenue and a valid commercial or occupational license required by any county, municipality, or political subdivision of the state in which the person operates.

~~(9)(8)~~ "Division" means the Division of Law Enforcement of the Fish and Wildlife Conservation Commission.

~~(10)(9)~~ "Documented vessel" means a vessel for which a valid certificate of documentation is outstanding pursuant to 46 C.F.R. part 67.

~~(11)(10)~~ "Floating structure" means a floating entity, with or without accommodations built thereon, which is not primarily

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used as a means of transportation on water but which serves purposes or provides services typically associated with a structure or other improvement to real property. The term ~~"floating structure"~~ includes, but is not limited to, ~~an each~~ entity used as a residence, place of business or office with public access; ~~a~~ hotel or motel; ~~a~~ restaurant or lounge; ~~a~~ clubhouse; ~~a~~ meeting facility; ~~a~~ storage or parking facility; or a ~~mining platform, dredge, dragline, or similar facility or~~ entity represented as such. Floating structures are expressly excluded from the definition of the term "vessel" provided in this section. Incidental movement upon water or resting partially or entirely on the bottom does ~~shall~~ not, in and of itself, preclude an entity from classification as a floating structure.

~~(12)(11)~~ "Florida Intracoastal Waterway" means the Atlantic Intracoastal Waterway, the Georgia state line north of Fernandina to Miami; the Port Canaveral lock and canal to the Atlantic Intracoastal Waterway; the Atlantic Intracoastal Waterway, Miami to Key West; the Okeechobee Waterway, Stuart to Fort Myers; the St. Johns River, Jacksonville to Sanford; the Gulf Intracoastal Waterway, Anclote to Fort Myers; the Gulf Intracoastal Waterway, Carrabelle to Tampa Bay; Carrabelle to Anclote open bay section, ~~(using the Gulf of Mexico)~~; the Gulf Intracoastal Waterway, Carrabelle to the Alabama state line west of Pensacola; and the Apalachicola, Chattahoochee, and Flint Rivers in Florida.

~~(13)(12)~~ "Homemade vessel" means ~~a~~ any vessel built after October 31, 1972, for which a federal hull identification number is not required to be assigned by the manufacturer pursuant to

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117 federal law, or a any vessel constructed or assembled before
 118 ~~prior to~~ November 1, 1972, by an entity other than a licensed
 119 manufacturer for ~~its his or her~~ own use or the use of a specific
 120 person. A vessel assembled from a manufacturer's kit or
 121 constructed from an unfinished manufactured hull ~~is shall be~~
 122 considered to be a homemade vessel if such a vessel is not
 123 required to have a hull identification number assigned by the
 124 United States Coast Guard. A rebuilt or reconstructed vessel may
 125 ~~not shall in no event~~ be construed to be a homemade vessel.

126 ~~(14)(13)~~ "Houseboat" means a any vessel that which is used
 127 primarily as a residence for at least ~~a minimum of~~ 21 days
 128 during any 30-day period, in a county of this state if such, and
 129 ~~this~~ residential use of the vessel is to the preclusion of its
 130 ~~the use of the vessel~~ as a means of transportation.

131 ~~(15)(14)~~ "Length" means the measurement from end to end
 132 over the deck parallel to the centerline, excluding sheer.

133 ~~(16)(15)~~ "Lien" means a security interest that which is
 134 reserved or created by a written agreement recorded with the
 135 Department of Highway Safety and Motor Vehicles pursuant to s.
 136 328.15 and that which secures payment or performance of an
 137 obligation and is generally valid against third parties.

138 ~~(17)(16)~~ "Lienholder" means a person holding a security
 139 interest in a vessel, which interest is recorded with the
 140 Department of Highway Safety and Motor Vehicles pursuant to s.
 141 328.15.

142 ~~(18)(17)~~ "Live-aboard vessel" means:

143 (a) A Any vessel used solely as a residence and not for
 144 navigation;

145 (b) A Any vessel represented as a place of business or a

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146 professional or other commercial enterprise; or

147 (c) A Any vessel for which a declaration of domicile has
 148 been filed pursuant to s. 222.17.

149
 150 A commercial fishing boat is expressly excluded from the term
 151 "live-aboard vessel."

152 ~~(19)(18)~~ "Livery vessel" means a any vessel leased, rented,
 153 or chartered to another for consideration.

154 ~~(20)(19)~~ "Manufactured vessel" means a any vessel built
 155 after October 31, 1972, for which a federal hull identification
 156 number is required pursuant to federal law, or a any vessel
 157 constructed or assembled before ~~prior to~~ November 1, 1972, by a
 158 duly licensed manufacturer.

159 ~~(21)(20)~~ "Marina" means a licensed commercial facility that
 160 ~~which~~ provides secured public moorings or dry storage for
 161 vessels on a leased basis. A commercial establishment authorized
 162 by a licensed vessel manufacturer as a dealership ~~is shall be~~
 163 considered a marina for nonjudicial sale purposes.

164 ~~(22)(21)~~ "Marine sanitation device" means ~~any~~ equipment,
 165 other than a toilet, for installation on board a vessel, which
 166 is designed to receive, retain, treat, or discharge sewage, and
 167 any process to treat such sewage. Marine sanitation device Types
 168 I, II, and III shall be defined as provided in 33 C.F.R. part
 169 159.

170 ~~(23)(22)~~ "Marker" means a any channel mark or other aid to
 171 navigation, an information or regulatory mark, an isolated
 172 danger mark, a safe water mark, a special mark, an inland waters
 173 obstruction mark, or mooring buoy in, on, or over the waters of
 174 the state or the shores thereof, and includes, but is not

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limited to, a sign, beacon, buoy, or light.

~~(24)-(23)~~ "Motorboat" means a ~~any~~ vessel equipped with machinery for propulsion, irrespective of whether the propulsion machinery is in actual operation.

~~(25)-(24)~~ "Muffler" means an automotive-style sound-suppression device or system designed to effectively abate the sound of exhaust gases emitted from an internal combustion engine and prevent excessive sound when installed on such an engine.

~~(26)-(25)~~ "Navigation rules" means, for vessels on:

(a) ~~For vessels on~~ Waters outside ~~of~~ established navigational lines of demarcation as specified in 33 C.F.R. part 80, the International Navigational Rules Act of 1977, 33 U.S.C. s. 1602, as amended, including the appendix and annexes thereto, through October 1, 2012.

(b) ~~For vessels on~~ All waters not outside of such established lines of demarcation, the Inland Navigational Rules Act of 1980, 33 C.F.R. parts 83-90, as amended, through October 1, 2012.

~~(27)-(26)~~ "Nonresident" means a citizen of the United States who has not established residence in this state and has not continuously resided in this state for 1 year and in one county for the 6 months immediately preceding the initiation of a vessel titling or registration action.

~~(28)-(27)~~ "Operate" means to be in charge of, ~~or~~ in command of, ~~or~~ in actual physical control of a vessel upon the waters of this state, ~~or~~ to exercise control over or to have responsibility for a vessel's navigation or safety while the vessel is underway upon the waters of this state, or to control

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or steer a vessel being towed by another vessel upon the waters of the state.

~~(29)-(28)~~ "Owner" means a person, other than a lienholder, having the property in or title to a vessel. The term includes a person entitled to the use or possession of a vessel subject to an interest in another person which is, reserved or created by agreement and securing payment of performance of an obligation, ~~but~~ The term does not include ~~excludes~~ a lessee under a lease not intended as security.

~~(30)-(29)~~ "Person" means an individual, partnership, firm, corporation, association, or other entity.

~~(31)-(30)~~ "Personal watercraft" means a vessel less than 16 feet in length which uses an inboard motor powering a water jet pump, as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on the vessel, rather than in the conventional manner of sitting or standing inside the vessel.

~~(32)-(31)~~ "Portable toilet" means a device consisting of a lid, seat, containment vessel, and support structure which that is specifically designed to receive, retain, and discharge human waste and which that is capable of being removed from a vessel by hand.

~~(33)-(32)~~ "Prohibited activity" means ~~such~~ activity that as will impede or disturb navigation or creates a safety hazard on waterways of this state.

~~(34)-(33)~~ "Racing shell," "rowing scull," or "racing kayak" means a manually propelled vessel that which is recognized by national or international racing associations for use in competitive racing and in which all occupants, with the

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exception of a coxswain, if one is provided, row, scull, or paddle and ~~that which~~ is not designed to carry and does not carry any equipment not solely for competitive racing.

~~(35)-(34)~~ "Recreational vessel" means ~~a any~~ vessel:

(a) Manufactured and used primarily for noncommercial purposes; or

(b) Leased, rented, or chartered to a person for his or her ~~the person's~~ noncommercial use.

~~(36)-(35)~~ "Registration" means a state operating license on a vessel which is issued with an identifying number, an annual certificate of registration, and a decal designating the year for which a registration fee is paid.

~~(37)-(36)~~ "Resident" means a citizen of the United States who has established residence in this state and has continuously resided in this state for 1 year and in one county for the 6 months immediately preceding the initiation of a vessel titling or registration action.

~~(38)-(37)~~ "Sailboat" means ~~a any~~ vessel whose sole source of propulsion is the wind.

~~(39)~~ "Sustained wind speed" means a wind speed determined by averaging the observed wind speed rounded up to the nearest mile per hour over a 2-minute period.

~~(40)-(38)~~ "Unclaimed vessel" means an any undocumented vessel, including its machinery, rigging, and accessories, which is in the physical possession of ~~a any~~ marina, garage, or repair shop for repairs, improvements, or other work with the knowledge of the vessel owner and for which the costs of such services have been unpaid for more than a period in excess of 90 days ~~after from~~ the date written notice of the completed work is

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given by the marina, garage, or repair shop to the vessel owner.

~~(41)-(39)~~ "Vessel" is synonymous with boat as referenced in s. 1(b), Art. VII of the State Constitution and includes every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

~~(42)-(40)~~ "Waters of this state" means any navigable waters of the United States within the territorial limits of this state, ~~and~~ the marginal sea adjacent to this state and the high seas when navigated as a part of a journey or ride to or from the shore of this state, and all the inland lakes, rivers, and canals under the jurisdiction of this state.

Section 3. Section 327.375, Florida Statutes, is created to read:

327.375 Commercial parasailing.—

(1) The operator of a vessel engaged in commercial parasailing shall ensure that the provisions of this section and s. 327.37 are met.

(2) The owner or operator of a vessel engaged in commercial parasailing may not offer or provide for consideration any parasailing activity unless the owner or operator first obtains and maintains in full force and effect a liability insurance policy from an insurance carrier licensed in this state or approved by the Office of Insurance Regulation or an eligible surplus lines insurer. Such policy must provide bodily injury liability coverage in the amounts of at least \$1 million per occurrence and \$2 million annual aggregate. Proof of insurance must be available for inspection at the location where commercial parasailing is offered or provided for consideration,

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291 and each customer who requests such proof shall be provided with
 292 the insurance carrier's name and address and the insurance
 293 policy number.

294 (3) The operator of a vessel engaged in commercial
 295 parasailing must have a current and valid license issued by the
 296 United States Coast Guard authorizing the operator to carry
 297 passengers for hire. The license must be appropriate for the
 298 number of passengers carried and the displacement of the vessel.
 299 The license must be carried on the vessel and be available for
 300 inspection while engaging in commercial parasailing activities.

301 (4) A vessel engaged in commercial parasailing must be
 302 equipped with a functional VHF marine transceiver and a separate
 303 electronic device capable of providing access to National
 304 Weather Service forecasts and current weather conditions.

305 (5) (a) Commercial parasailing is prohibited if the current
 306 observed wind conditions in the area of operation include a
 307 sustained wind speed of more than 20 miles per hour; if wind
 308 gusts are 15 miles per hour higher than the sustained wind
 309 speed; if the wind speed during gusts exceeds 25 miles per hour;
 310 if rain or heavy fog results in reduced visibility of less than
 311 0.5 mile; or if a known lightning storm comes within 7 miles of
 312 the parasailing area.

313 (b) The operator of the vessel engaged in commercial
 314 parasailing shall use all available means to determine
 315 prevailing and forecasted weather conditions and record this
 316 information in a weather log each time passengers are to be
 317 taken out on the water. The weather log must be available for
 318 inspection at all times at the operator's place of business.

319 (6) A person or operator who violates this section commits

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320 a misdemeanor of the second degree, punishable as provided in s.
 321 775.082 or s. 775.083.

322 Section 4. Paragraph (d) of subsection (5) of section
 323 320.08, Florida Statutes, is amended to read:

324 320.08 License taxes.—Except as otherwise provided herein,
 325 there are hereby levied and imposed annual license taxes for the
 326 operation of motor vehicles, mopeds, motorized bicycles as
 327 defined in s. 316.003(2), tri-vehicles as defined in s. 316.003,
 328 and mobile homes, as defined in s. 320.01, which shall be paid
 329 to and collected by the department or its agent upon the
 330 registration or renewal of registration of the following:

331 (5) SEMITRAILERS, FEES ACCORDING TO GROSS VEHICLE WEIGHT;
 332 SCHOOL BUSES; SPECIAL PURPOSE VEHICLES.—

333 (d) A wrecker, as defined in s. 320.01, which is used to
 334 tow a vessel as defined in s. 327.02~~(39)~~, a disabled, abandoned,
 335 stolen-recovered, or impounded motor vehicle as defined in s.
 336 320.01, or a replacement motor vehicle as defined in s. 320.01:
 337 \$41 flat, of which \$11 shall be deposited into the General
 338 Revenue Fund.

339 Section 5. Subsection (1) of section 327.391, Florida
 340 Statutes, is amended to read:

341 327.391 Airboats regulated.—

342 (1) The exhaust of every internal combustion engine used on
 343 any airboat operated on the waters of this state shall be
 344 provided with an automotive-style factory muffler, underwater
 345 exhaust, or other manufactured device capable of adequately
 346 muffling the sound of the exhaust of the engine as described in
 347 s. 327.02(25) ~~s. 327.02(24)~~. The use of cutouts or flex pipe as
 348 the sole source of muffling is prohibited, except as provided in

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subsection (4). Any person who violates this subsection commits a noncriminal infraction punishable as provided in s. 327.73(1).

Section 6. Subsection (4) of section 328.17, Florida Statutes, is amended to read:

328.17 Nonjudicial sale of vessels.—

(4) A marina, as defined in s. 327.02(20), shall have:

(a) A possessory lien upon any vessel for storage fees, dockage fees, repairs, improvements, or other work-related storage charges, and for expenses necessary for preservation of the vessel or expenses reasonably incurred in the sale or other disposition of the vessel. The possessory lien attaches ~~shall attach~~ as of the date the vessel is brought to the marina or as of the date the vessel first occupies rental space at the marina facility.

(b) A possessory lien upon any vessel in a wrecked, junked, or substantially dismantled condition, which has been left abandoned at a marina, for expenses reasonably incurred in the removal and disposal of the vessel. The possessory lien attaches ~~shall attach~~ as of the date the vessel arrives at the marina or as of the date the vessel first occupies rental space at the marina facility. If the funds recovered from the sale of ~~the vessel~~, or from the scrap or salvage value of the vessel, are insufficient to cover the expenses reasonably incurred by the marina in removing and disposing of the vessel, all costs in excess of recovery shall be recoverable against the owner of the vessel. For a vessel damaged as a result of a named storm, the provisions of this paragraph shall be suspended for 60 days after following the date the vessel is damaged in the named storm. The operation of the provisions specified in this

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paragraph run concurrently with, and do not extend, the 60-day notice periods provided in subsections (5) and (7).

Section 7. Subsection (2) of section 342.07, Florida Statutes, is amended to read:

342.07 Recreational and commercial working waterfronts; legislative findings; definitions.—

(2) As used in this section, the term "recreational and commercial working waterfront" means a parcel or parcels of real property which ~~that~~ provide access for water-dependent commercial activities, including hotels and motels as defined in s. 509.242(1), or provide access for the public to the navigable waters of the state. Recreational and commercial working waterfronts require direct access to or a location on, over, or adjacent to a navigable body of water. The term includes water-dependent facilities that are open to the public and offer public access by vessels to the waters of the state or that are support facilities for recreational, commercial, research, or governmental vessels. These facilities include public lodging establishments, docks, wharfs, lifts, wet and dry marinas, boat ramps, boat hauling and repair facilities, commercial fishing facilities, boat construction facilities, and other support structures over the water. As used in this section, the term "vessel" has the same meaning as in s. 327.02(39). Seaports are excluded from the definition.

Section 8. Paragraph (b) of subsection (1) of section 713.78, Florida Statutes, is amended to read:

713.78 Liens for recovering, towing, or storing vehicles and vessels.—

(1) For the purposes of this section, the term:

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407 (b) "Vessel" means every description of watercraft, barge,
408 and airboat used or capable of being used as a means of
409 transportation on water, other than a seaplane or a "documented
410 vessel" as defined in s. 327.02~~(9)~~.

411 Section 9. Paragraph (b) of subsection (1) of section
412 715.07, Florida Statutes, is amended to read:

413 715.07 Vehicles or vessels parked on private property;
414 towing.-

415 (1) As used in this section, the term:

416 (b) "Vessel" means every description of watercraft, barge,
417 and airboat used or capable of being used as a means of
418 transportation on water, other than a seaplane or a "documented
419 vessel" as defined in s. 327.02~~(9)~~.

420 Section 10. This act shall take effect October 1, 2014.



The Florida Senate

Committee Agenda Request

To: Senator Nancy Detert, Chair
Committee on Commerce and Tourism

Subject: Committee Agenda Request

Date: February 18, 2014

I respectfully request that **Senate Bill # 320**, relating to Commercial Parasailing, be placed on the:

- ☒ committee agenda at your earliest possible convenience.
- ☒ next committee agenda.

A handwritten signature in blue ink, appearing to read "Maria Sachs", with a stylized flourish at the end.

Senator Maria Sachs
Florida Senate, District 34

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 Committee on Commerce and Tourism

BILL: SB 504

INTRODUCER: Senator Lee

SUBJECT: Tax Credits or Refunds

DATE: March 7, 2014

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Hrdlicka	Hrdlicka	CM	Pre-meeting
2. _____	_____	AFT	_____
3. _____	_____	AP	_____

I. Summary:

Florida currently allows sales tax dealers to obtain a credit or refund of sales tax remitted on dealer-financed sales when the dealer has to “write-off” the debt as uncollectible. SB 504 allows the dealer to take a credit or obtain a refund of the sales tax remitted when a purchaser uses a private-label credit card or other credit program to make the purchase.

The Revenue Estimating Conference (REC) estimates that this bill will reduce general revenue receipts by \$4.4 million in Fiscal Year 2014-15, with a recurring negative impact of \$10.3 million.

II. Present Situation:

Chapter 212, F.S., contains the state’s statutory provisions authorizing the levying and collection of Florida’s sales and use tax, as well as the requirements on dealers to collect and remit sales tax. Florida imposes a 6 percent tax on tangible personal property sold, used, consumed, distributed, stored for use or consumption, rented, or leased in Florida.¹ The full amount of sales tax is due at the time the transaction occurs, even if the transaction is a credit sale, installment sale, or a sale made on any kind of deferred payment plan.

Generally, every dealer making retail sales in Florida must register with the Florida Department of Revenue (DOR) to collect sales tax on behalf of the state and remit such sales tax to the department.² Chapter 212, F.S., provides for a dealer to take a credit or obtain a refund of taxes remitted under certain circumstances, like on returned retail purchases. A dealer who has remitted sales tax on tangible personal property or services may take a credit or obtain a refund for any tax paid by the dealer on the unpaid balance due on worthless accounts. The dealer must

¹ See ss. 212.05 and 212.06, F.S.

² Sections 212.18 and 212.06(2), F.S.

take the credit or obtain a refund within 12 months following the month in which the bad debt has been charged off by the dealer for federal income tax purposes.³ If any amount of such worthless account is subsequently paid, the dealer is required to remit the appropriate tax to the DOR. “The dealer that paid the tax and charged off the account is the only person allowed to take the credit or claim the refund. In the case of private-label credit cards, the lender that issued the credit card may not take the credit or claim the refund for any amounts subsequently charged off by the lender.”⁴

III. Effect of Proposed Changes:

Section 1 amends s. 212.17, F.S., to create another method for a dealer to take a credit or obtain a refund for taxes remitted for a charged-off debt related to a consumer account with a private-label credit card or dealer credit program.⁵

The dealer may take a credit or obtain a refund on taxes remitted on the unpaid balance of a worthless or uncollectible account, including all transaction amounts that are outstanding at the time of charge-off, no matter when the original transaction occurred. The dealer cannot have previously taken a credit or obtained a refund for any portion of the account.

The worthless account must have been charged-off as bad debt on the lender’s books and records on or after January 1, 2014, and the dealer must take the credit or obtain the refund within 12 months following the month in which the bad debt has been charged off by the lender for federal income tax purposes. The “lender” is defined as the owner of a private-label credit card account or dealer credit account through purchasing the account from the dealer, an affiliate of the dealer, or a third party; through originating the account; or through affiliation with the purchaser or originator or an assignee of such person.

A dealer may estimate the basis of the credit or refund by using one of the following methods:

- Applying an apportionment method using the dealer’s Florida and non-Florida sales, the dealer’s taxable and nontaxable sales, and the amount of tax the dealer remitted to the DOR; or
- Applying a specified percentage of the accounts giving rise to the credit or refund. This percentage is derived from a sampling of the dealer’s or lender’s records in accordance with a methodology agreed upon by the DOR and the dealer.

³ Section 212.17(3), F.S. Generally, a charge-off is a declaration by a creditor that the debt is unlikely to be collected. “A debt becomes worthless when the surrounding facts and circumstances indicate there is no reasonable expectation of payment.” See Internal Revenue Service, Topic 453 – Bad Debt Deduction, available at <http://www.irs.gov/taxtopics/tc453.html> (last visited 2/24/2014).

⁴ DOR Bill Analysis, SB 504, January 3, 2014.

⁵ “Dealer credit” is defined as “program arrangements where credit is extended for a specific purchase from a dealer” and does not include titled property (for example, a car). “Private-label credit card” is defined as a dealer charge or credit card that is branded with the name or logo of the dealer and can be used for purchases from the dealer or its affiliates or franchises.

When calculating the credit or refund, payments on the worthless account are allocated based on the terms and conditions of the contract between the dealer or lender and the consumer. However, the amount of credit or refund is limited to the following percentages of the taxes remitted to the DOR attributable to the worthless account:

- 25 percent, for amounts charged-off during the 2014 calendar year;
- 50 percent, for amounts charged-off during the 2015 calendar year;
- 75 percent, for amounts charged-off during the 2016 calendar year; and
- 100 percent, for amount charged-off on or after January 1, 2017.

A dealer's credit or refund of taxes remitted on a charged-off debt may be claimed on any return filed by an entity that is related by direct or indirect common ownership of 50 percent or more. The lender is not authorized to take a credit or obtain a refund, unless it is related to the dealer by direct or indirect common ownership of 50 percent or more.

If any amount of such worthless account is subsequently paid to the dealer or lender, the dealer is required to remit to the DOR tax on the portion of "the taxable percentage on the amount collected" for which a credit or refund was granted.⁶

Section 2 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18 of the Florida Constitution, excuses counties and municipalities from complying with laws requiring them to spend funds or take an action unless certain conditions are met.

Subsection (b) of the provision prohibits the Legislature from "enacting, amending, or repealing any general law if the anticipated effect" is to reduce county or municipal aggregate revenue generating authority as it existed on February 1, 1989. The exception to this prohibition is if the Legislature passes such a law by two-thirds of the membership of each chamber.

Subsection (c) of the provision prohibits the Legislature from "enacting, amending, or repealing any general law if the anticipated effect" is to reduce the percentage of a state tax shared with counties and municipalities. The exception to this prohibition is if the Legislature passes such a law by two-thirds of the membership of each chamber.

Subsection (d) provides an exemption from the prohibitions. Laws determined to have an "insignificant fiscal impact," which means an amount not greater than the average statewide population for the applicable fiscal year times \$0.10 are exempt (April 1, 2013, statewide population estimate was about 19.3 million).⁷ The REC estimated that the

⁶ The application of the term "taxable percentage" is unclear.

⁷ Office of Economic and Demographic Research, Florida Population Estimates for Counties and Municipalities, April 1, 2013, available at http://edr.state.fl.us/Content/population-demographics/data/2013_Pop_Estimates.pdf (last visited 2/26/2014).

provisions of this bill will have a fiscal impact of \$2.3 million at the local level in Fiscal Year 2014-15.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The REC estimates that this bill will reduce general revenue receipts by \$4.4 million in Fiscal Year 2014-15, and adopted the following estimate of the recurring impacts of this bill:

	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19
General Revenue	(10.3)	(11.3)	(11.8)	(12.3)	(12.9)
State Trust	(Insignificant)	(Insignificant)	(Insignificant)	(Insignificant)	(Insignificant)
Revenue Sharing	(0.3)	(0.4)	(0.4)	(0.4)	(0.4)
Local Gov't Half Cent	(1.0)	(1.1)	(1.1)	(1.2)	(1.2)
Local Option	(1.0)	(1.1)	(1.1)	(1.2)	(1.3)
Total Local Impact	(2.3)	(2.6)	(2.6)	(2.8)	(2.9)
Total Impact	(12.6)	(13.9)	(14.4)	(15.1)	(15.8)

B. Private Sector Impact:

Dealers and their affiliates may be able to take a credit or obtain a refund for more bad debts related to private-label credit cards or dealer credit programs than under current law.

C. Government Sector Impact:

The DOR stated that the bill would have an insignificant impact on operations.⁸

⁸ DOR, 2014 Bill Analysis, SB 504 (January 3, 2013).

VI. Technical Deficiencies:

The DOR raised several issues in its analysis of the bill that present difficulty in implementation, administration, or enforcement of the bill.⁹ These include:

- As the term “dealer credit” is defined, the DOR stated that assuming that the term relates to credit extended by a dealer, as opposed to a lender, current law already provides for the taking of a credit or obtaining a refund for such worthless accounts. DOR recommends removing references to “dealer credit” from the bill.
- It is unclear if an “uncollectible” account has a different meaning from “worthless,” and thus creates a distinct standard.
- The ability for an entity related by direct or indirect common ownership of at least 50 percent to take a credit or obtain a refund may be burdensome on such entities and the DOR because the DOR would be required to trace all transfers of debt, determine ownership interests, and verify the claim. This would likely require an audit of the parties involved.
- The definition of “lender” is unclear in two ways:
 - The term “lender” includes accounts transferred from a third party, and the tracing of such relationships may be burdensome on such entities and the DOR because the DOR would be required to trace all transfer of the debt, determine the ownership interest, and verify the claim. This would likely require an audit of the parties involved.
 - The term “lender” includes persons who own an interest in a worthless account, and the tracing of such relationships may be burdensome on such entities and the DOR because the DOR would be required to trace all transfer of the debt, determine the ownership interest, and verify the claim. This would likely require an audit of the parties involved. Additionally it is unclear to the DOR how to apportion the proper credit or refund if not all of the lenders with interest charge off the account.
- The bill on lines 146 and 147 refer to paragraph (1)(a) and (1)(b), respectively. It is likely that the correct references should be to sub-subparagraphs (4)(h)3.a. and 3.b.
- If a cardholder is able to use the private-label credit card to make purchases from persons other than the dealer, the bill is unclear about the rights of the other dealers in taking a credit or obtaining a refund of the taxes paid on the charged-off debt.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 212.17 of the Florida Statutes.

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

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

None.

⁹ DOR, 2014 Bill Analysis, SB 504 (January 3, 2013).

B. Amendments:

None.

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



897220

LEGISLATIVE ACTION

Senate

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House

The Committee on Commerce and Tourism (Detert) recommended the following:

Senate Amendment (with title amendment)

Delete lines 55 - 176

and insert:

(3) A dealer who has paid the tax imposed by this chapter on tangible personal property or services may take a credit or obtain a refund for any tax paid by the dealer on the unpaid balance due on worthless accounts, including installment credit, within 12 months after ~~following~~ the month in which the bad debt has been charged off for federal income tax purposes. If any



897220

accounts so charged off for which a credit or refund has been obtained are subsequently, thereafter in whole or in part, paid to the dealer, the amount so paid shall be included in the first return filed after such collection and the tax paid accordingly. This subsection does not apply to open-end or revolving credit accounts.

(4) ~~(a)~~ The department shall:

(a) Design, prepare, print and furnish to all dealers, except dealers filing through electronic data interchange, or make available or prescribe to the dealers, all necessary forms for filing returns and instructions to ensure a full collection from dealers and an accounting for the taxes due. The, but failure of a any dealer to secure such forms does not relieve the dealer from the payment of the tax at the time and in the manner provided.

~~(b) The department shall~~ Prescribe the format and instructions necessary for filing returns in a manner that is initiated through an electronic data interchange to ensure a full collection from dealers and an accounting for the taxes due. The failure of a any dealer to use such format does not relieve the dealer from the payment of the tax at the time and in the manner provided.

(5) The department and its assistants are ~~hereby~~ authorized and empowered to administer the oath for the purpose of enforcing and administering ~~the provisions of~~ this chapter.

(6) The department may ~~has authority to~~ adopt rules ~~pursuant to ss. 120.536(1) and 120.54 to~~ administer and enforce ~~the provisions of this section chapter.~~

(7) If ~~The department, where~~ admissions, license fees,



897220

40
41 ===== T I T L E A M E N D M E N T =====

42 And the title is amended as follows:

43 Delete lines 3 - 9

44 and insert:

45 212.17, F.S.; providing that the provision that allows
46 a dealer to obtain a tax credit or refund for taxes
47 paid on worthless accounts does not apply to open-end
48 or revolving credit accounts; providing an effective
49 date.



192286

LEGISLATIVE ACTION

Senate

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House

The Committee on Commerce and Tourism (Simpson) recommended the following:

Senate Amendment (with title amendment)

Delete lines 66 - 153

and insert:

(4) With respect to the payment of taxes on purchases made through a private-label credit card program:

(a) If consumer accounts or receivables are found to be worthless or uncollectible, the dealer may claim a credit for, or obtain a refund of, the tax remitted by the dealer on the unpaid balance due if:



192286

11 1. The accounts or receivables have been charged off as bad
12 debt on the lender's books and records on or after January 1,
13 2014;

14 2. A credit was not previously claimed and a refund was not
15 previously allowed on any portion of the accounts or
16 receivables; and

17 3. The credit or refund is claimed within 12 months after
18 the month in which the bad debt is charged off by the lender for
19 federal income tax purposes.

20 (b) If the dealer or the lender subsequently collects, in
21 whole or in part, the accounts or receivables for which a credit
22 or refund has been granted under paragraph (a), the dealer must
23 include the taxable percentage of the amount collected in the
24 first return filed after the collection and pay the tax on the
25 portion of that amount for which a credit or refund was granted.

26 (c) The credit or refund allowed includes all credit sale
27 transaction amounts that are outstanding in the specific
28 private-label credit card account or receivable at the time the
29 account or receivable is charged off, regardless of the date on
30 which the credit sale transaction actually occurred.

31 (d) A dealer may use one of the following methods to
32 determine the amount of the credit or refund:

33 1. An apportionment method to substantiate the amount of
34 tax imposed under this chapter which is included in the bad debt
35 to which the credit or refund applies. The method must use the
36 dealer's Florida and non-Florida sales, the dealer's taxable and
37 nontaxable sales, and the amount of tax the dealer remitted to
38 this state; or

39 2. A specified percentage of the accounts or receivables



192286

giving rise to the credit or refund, which is derived from a sampling of the dealer's or lender's records in accordance with a methodology agreed upon by the department and the dealer.

(e) For purposes of computing the credit or refund, payments on the accounts or receivables shall be allocated based on the terms and conditions of the contract between the dealer or lender and the consumer.

(f) The credit or refund for tax on bad debt may be claimed on any return filed by an entity related by a direct or indirect common ownership of 50 percent or more.

(g) The amount of the credit or refund a dealer is eligible to recover under this subsection is limited to the following:

1. For amounts charged off during the calendar year ending December 31, 2014, 25 percent of the tax paid to the department which is attributable to bad debt.

2. For amounts charged off during the calendar year ending December 31, 2015, 50 percent of the tax paid to the department which is attributable to bad debt.

3. For amounts charged off during the calendar year ending December 31, 2016, 75 percent of the tax paid to the department which is attributable to bad debt.

4. For amounts charged off on or after January 1, 2017, the full amount paid to the department which is attributable to bad debt.

(h) As used in this subsection, the term:

1. "Dealer's affiliates" means an entity affiliated with the dealer under 26 U.S.C. s. 1504 or an entity that would be an affiliate under that section if the entity were a corporation.

2. "Lender" means a person who owns or has owned a private-



192286

label credit card account or an interest in a private-label
credit card receivable that:

a. The person purchased directly from a dealer who remitted
the tax imposed under this chapter or from the dealer's
affiliates, or that was transferred from a third party;

b. The person originated pursuant to that person's contract
with a dealer who remitted the tax imposed under this chapter or
with the dealer's affiliates; or

c. Is affiliated in the manner described under 26 U.S.C. s.
1504, regardless of whether the different entities are
corporations, to a person described in sub-subparagraph a. or
sub-subparagraph b. or to an assignee or other transferee of
such person.

3. "Private-label credit card" means a charge card or
credit card that carries, refers to, or is branded with the name
or logo of a dealer and can be used for purchases from the
dealer whose name or logo appears on the card or for purchases
from the dealer's affiliates or franchisees.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete lines 6 - 7

and insert:

uncollectible private-label credit card accounts or
receivables; providing limitations

By Senator Lee

24-00725A-14

2014504__

A bill to be entitled

An act relating to tax credits or refunds; amending s. 212.17, F.S.; providing procedures, requirements, and calculation methodologies that allow dealers to obtain tax credits or refunds for taxes paid on worthless or uncollectable private-label credit card or dealer credit accounts or receivables; providing limitations on the amount that may be recovered; providing definitions; providing an effective date.

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

Section 1. Section 212.17, Florida Statutes, is reordered and amended to read:

212.17 Tax credits or refunds for returned goods, rentals, or admissions; goods acquired for dealer's own use and subsequently resold; additional powers of department.—

(1) (a) ~~If in the event~~ purchases are returned to a dealer by the purchaser or consumer after the tax imposed by this chapter has been collected from or charged to the account of the consumer or user, the dealer ~~is shall be~~ entitled to reimbursement of the amount of tax collected or charged by the dealer, in the manner prescribed by the department.

(b) A registered dealer that purchases property for the dealer's own use, pays tax on acquisition, and sells the property subsequent to acquisition without ~~ever~~ having used the property is entitled to reimbursement, in the manner prescribed by the department, of the amount of tax paid on the property's acquisition.

Page 1 of 7

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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2014504__

(c) If the tax has not been remitted by a dealer to the department, the dealer may deduct the same in submitting his or her return upon receipt of a signed statement ~~by of~~ the dealer as to the gross amount of such refunds during the period covered by ~~the said~~ signed statement, which ~~may period shall~~ not be longer than 90 days. The department shall issue to the dealer an official credit memorandum equal to the net amount remitted by the dealer for such tax collected or paid. Such memorandum shall be accepted by the department at full face value from the dealer to whom it is issued ~~upon, in~~ the remittance ~~of for~~ subsequent taxes accrued under ~~the provisions of~~ this chapter. If a dealer has retired from business and ~~has~~ filed a final return, a refund of tax may be made if it can be established to the satisfaction of the department that the tax was not due.

(2) A dealer who has paid the tax imposed by this chapter on tangible personal property sold under a retained title, conditional sale, or similar contract, or under a contract in which wherein the dealer retains a security interest in the property pursuant to chapter 679, may take credit or obtain a refund for the tax paid by the dealer on the unpaid balance due him or her when he or she repossesses the property, ~~(with or without judicial process,)~~ ~~the property~~ within 12 months after following the month in which the property was repossessed. If ~~When~~ such repossessed property is resold, the sale is subject in all respects to the tax imposed by this chapter.

(3) Except as provided under subsection (4), a dealer who has paid the tax imposed by this chapter on tangible personal property or services may take a credit or obtain a refund for any tax paid by the dealer on the unpaid balance due on

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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worthless accounts within 12 months ~~after following~~ the month in which the bad debt has been charged off for federal income tax purposes. If any accounts so charged off for which a credit or refund has been obtained are ~~subsequently, thereafter~~ in whole or in part, paid to the dealer, the amount so paid shall be included in the first return filed after such collection and the tax paid accordingly.

(4) With respect to the payment of taxes on purchases made through a private-label credit card or dealer credit program:

(a) If consumer accounts or receivables are found to be worthless or uncollectible, the dealer may claim a credit for, or obtain a refund of, the tax remitted by the dealer on the unpaid balance due if:

1. The accounts or receivables have been charged off as bad debt on the lender's books and records on or after January 1, 2014;

2. A credit was not previously claimed and a refund was not previously allowed on any portion of the accounts or receivables; and

3. The credit or refund is claimed within 12 months after the month in which the bad debt is charged off by the lender for federal income tax purposes.

(b) If the dealer or the lender subsequently collects, in whole or in part, the accounts or receivables for which a credit or refund has been granted under paragraph (a), the dealer must include the taxable percentage of the amount collected in the first return filed after the collection and pay the tax on the portion of that amount for which a credit or refund was granted.

(c) The credit or refund allowed includes all credit sale

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transaction amounts that are outstanding in the specific private-label credit card account or receivable at the time the account or receivable is charged off, regardless of the date on which the credit sale transaction actually occurred.

(d) A dealer may use one of the following methods to determine the amount of the credit or refund:

1. An apportionment method to substantiate the amount of tax imposed under this chapter which is included in the bad debt to which the credit or refund applies. The method must use the dealer's Florida and non-Florida sales, the dealer's taxable and nontaxable sales, and the amount of tax the dealer remitted to this state; or

2. A specified percentage of the accounts or receivables giving rise to the credit or refund, which is derived from a sampling of the dealer's or lender's records in accordance with a methodology agreed upon by the department and the dealer.

(e) For purposes of computing the credit or refund, payments on the accounts or receivables shall be allocated based on the terms and conditions of the contract between the dealer or lender and the consumer.

(f) The credit or refund for tax on bad debt may be claimed on any return filed by an entity related by a direct or indirect common ownership of 50 percent or more.

(g) The amount of the credit or refund a dealer is eligible to recover under this subsection is limited to the following:

1. For amounts charged off during the calendar year ending December 31, 2014, 25 percent of the tax paid to the department which is attributable to bad debt.

2. For amounts charged off during the calendar year ending

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December 31, 2015, 50 percent of the tax paid to the department which is attributable to bad debt.

3. For amounts charged off during the calendar year ending December 31, 2016, 75 percent of the tax paid to the department which is attributable to bad debt.

4. For amounts charged off on or after January 1, 2017, the full amount paid to the department which is attributable to bad debt.

(h) For purposes of this subsection, the term:

1. "Dealer credit" means program arrangements where credit is extended for a specific purchase from a dealer. The term does not include arrangements for purchases of titled property such as motor vehicles, vessels, or motor homes.

2. "Dealer's affiliates" means an entity affiliated with the dealer under 26 U.S.C. s. 1504, or an entity that would be an affiliate under that section had the entity been a corporation.

3. "Lender" means a person who owns or has owned a private-label credit card account or a dealer credit account, or an interest in a private-label credit card receivable or dealer credit receivable that:

a. The person purchased directly from a dealer who remitted the tax imposed under this chapter or from the dealer's affiliates, or transferred from a third party;

b. The person originated pursuant to that person's contract with a dealer who remitted the tax imposed under this chapter or with the dealer's affiliates; or

c. Is affiliated in the manner described under 26 U.S.C. s. 1504, regardless of whether the different entities are

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corporations, to a person described in paragraph (1) (a) or paragraph (1) (b), or an assignee or other transferee of such person.

4. "Private-label credit card" means a charge card or credit card that carries, refers to, or is branded with the name or logo of a dealer and can be used for purchases from the dealer whose name or logo appears on the card or for purchases from the dealer's affiliates or franchisees.

(6)(4)(a) The department shall:

(a) Design, prepare, print and furnish to all dealers, except dealers filing through electronic data interchange, or make available or prescribe to the dealers, all necessary forms for filing returns and instructions to ensure a full collection from dealers and an accounting for the taxes due. ~~The, but~~ failure of a ~~any~~ dealer to secure such forms does not relieve the dealer from the payment of the tax at the time and in the manner provided.

(b) ~~The department shall~~ Prescribe the format and instructions necessary for filing returns in a manner that is initiated through an electronic data interchange to ensure a full collection from dealers and an accounting for the taxes due. The failure of a ~~any~~ dealer to use such format does not relieve the dealer from the payment of the tax at the time and in the manner provided.

(7)(5) The department and its assistants are ~~hereby~~ authorized and empowered to administer the oath for the purpose of enforcing and administering ~~the provisions of~~ this chapter.

(8)(6) The department ~~may~~ ~~has authority to~~ adopt rules pursuant to ~~ss. 120.536(1) and 120.54~~ to administer and enforce

24-00725A-14

2014504__

175 ~~the provisions of this section chapter.~~

176 (5)(7) If ~~The department,~~ where admissions, license fees,
177 ~~or~~ rental payments, or payments for services are made and
178 ~~thereafter~~ returned to the payors after the taxes ~~thereon~~ have
179 been paid, the department shall return or credit the taxpayer
180 for taxes ~~so~~ paid on the moneys returned in the same manner as
181 ~~is~~ provided for returns or credits of taxes if ~~where~~ purchases
182 or tangible personal property are returnable to a dealer.

183 Section 2. This act shall take effect July 1, 2014.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Judiciary, *Chair*
Appropriations Subcommittee on Health
and Human Services
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Banking and Insurance
Ethics and Elections
Gaming
Rules
Transportation

SENATOR TOM LEE

Deputy Majority Leader
24th District

December 30, 2013

The Honorable Nancy Detert
Senate Commerce and Tourism Committee, Chair
416 Senate Office Building
404 South Monroe St.
Tallahassee, FL 32399

Dear Chair Detert,

I respectfully request that SB 504 related to the *Tax Credits or Refunds*, be placed on the Senate Commerce and Tourism committee agenda at your earliest convenience.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "Tom Lee".

Tom Lee
Senator, District 24

Cc: Jennifer Hrdlicka, Staff Director

REPLY TO:

- ☐ 915 Oakfield Drive, Suite D, Brandon, Florida 33511 (813) 653-7061
- ☐ 418 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5024

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

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 Committee on Commerce and Tourism

BILL: SB 792

INTRODUCER: Senator Flores

SUBJECT: Tax on Sales, Use, and Other Transactions

DATE: March 7, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Baye	Hrdlicka	CM	Pre-meeting
2.			AFT	
3.			AP	

I. Summary:

SB 792 provides for a state and local sales tax exemption for a 3-day period from August 1 through August 3, 2014, for the purchases of clothing costing \$75 or less, school supplies costing \$15 or less, and personal computers and related accessories costing \$750 or less.

The bill appropriates \$235,695 from the General Revenue Fund to the Department of Revenue for the purpose of administering this act. Any funds from this appropriation that are unexpended or unencumbered as of June 30, 2014, shall revert and be reappropriated for the same purpose in Fiscal Year 2014-15.

The Revenue Estimating Conference has not yet adopted an impact for this bill. See Tax/Fee Issues.

II. Present Situation:

Pursuant to ch. 212, F.S., the State of Florida levies a 6 percent sales and use tax on most sales of tangible personal property and a limited number of services, including books, clothing, footwear, wallets, bags, school supplies, and computers.¹ Section 212.08, F.S., provides for specific exemptions from the sales and use tax imposed by the chapter. Exemptions are generally specifically exempted items, items which are exempted when used for particular purposes, and exempt purchases or sales by certain types of organizations, such as the government, churches, and charitable organizations.

Local governments are authorized to levy several types of local discretionary sales surtaxes pursuant to s. 212.055, F.S. The rate of the discretionary sales surtax depends on the county,

¹ Section 212.05, F.S.

while some counties do not have a surtax.² Rates currently range from .5-1.5 percent.³ Under s. 212.054, F.S., the local discretionary sales surtaxes apply to all transactions “subject to the state tax imposed on sales, use, services, rentals, admissions, and other transactions by this chapter and communications services as defined for purposes of ch. 202.”⁴ The surtax does not apply to any sales amount above \$5,000 on any item of tangible personal property.⁵

III. Effect of Proposed Changes:

SB 792 provides an exemption from state and local sales tax during the 3-day period beginning at 12:01 a.m. on August 1, 2014 through 11:59 p.m. on August 3, 2014, for the following items:

- Clothing, wallets, or bags having a sales price of \$75 or less per item.
 - Clothing includes footwear, but excludes watches, watchbands, jewelry, umbrellas, handkerchiefs, skis, swim fins, roller blades, and skates.
 - Bags include handbags, backpacks, fanny packs, and diaper bags, but excludes briefcases, suitcases, and other garment bags.
- School supplies having a sales price of \$15 or less per item. The term school supplies means pens, pencils, erasers, crayons, notebooks, notebook filler paper, legal pads, binders, lunch boxes, construction paper, markers, folders, poster board, composition books, poster paper, scissors, cellophane tape, glue or paste, rules, computer disks, protractors, compasses, and calculators.
- Personal computers and related accessories that have a sales price of \$750 or less and are purchased for noncommercial home or personal use.
 - Personal computers include electronic book readers, laptops, desktops, handhelds, tablets, or tower computers, but exclude cell phones, video game consoles, digital media receivers, or devices that are not primarily designed to process data.
 - Related accessories include keyboards, mice, personal digital assistants, monitors, other peripheral devices, modems, routers, and nonrecreational software regardless of whether the accessories are used in association with a personal computer base unit. The term excludes furniture or systems, devices, software, monitors with a television tuner, or other peripherals that are designed or intended primarily for recreational use.

The exemptions do not apply to sales within a theme park or entertainment complex, a public lodging establishment, or an airport.

The Department of Revenue is authorized to adopt emergency rules to administer this section. The bill provides an appropriation of \$235,695 in nonrecurring funds to the Department of Revenue from the General Revenue Fund for purposes of administering this act. Funds from the appropriation that remain unexpended or unencumbered as of June 30, 2014, shall revert and be reappropriated for the same purpose in Fiscal Year 2014-15.

This act will take effect upon becoming a law.

²Florida Department of Revenue, *Florida's Discretionary Sales Surtax*, <http://dor.myflorida.com/dor/forms/current/gt800019.pdf> (last visited Mar. 5, 2014).

³ Florida Department of Revenue, *Discretionary Sales Surtax Information*, http://dor.myflorida.com/dor/forms/current/dr15dss_1113.pdf (last visited Mar. 5, 2014).

⁴ Section 212.054, F.S.

⁵ Section 212.054(2)(b)1., F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18 of the Florida Constitution, excuses counties and municipalities from complying with laws requiring them to spend funds or to take an action unless certain conditions are met.

Subsection (b) of the provision prohibits the Legislature from “enacting, amending, or repealing any general law if the anticipated effect” is to reduce county or municipal aggregate revenue generating authority as it existed on February 1, 1989. The exception to this prohibition is if the Legislature passes such a law by two-thirds of the membership of each chamber.

Subsection (c) of the provision prohibits the Legislature from “enacting, amending, or repealing any general law if the anticipated effect” is to reduce the percentage of a state tax shared with counties and municipalities. The exception to this prohibition is if the Legislature passes such a law by two-thirds of the membership of each chamber.

Subsection (d) provides an exemption from the prohibitions. Laws determined to have an “insignificant fiscal impact,” which means an amount not greater than the average statewide population for the applicable fiscal year times \$0.10 are exempt (April 1, 2013, statewide population estimate was about 19.3 million)⁶.

The Revenue Estimating Conference estimated that the provisions of a similar proposal will have a negative fiscal impact of \$7.2 million at the local level.⁷

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference (REC) met on November 20, 2013, and adopted a impact for a similar proposal. The REC estimated the total impact of a 3-day school sales tax holiday to be nonrecurring, negative \$39 million for Fiscal Year 2013-14. The

⁶ Office of Economic and Demographic Research, Florida Population Estimates for Counties and Municipalities, April 1, 2013, available at http://edr.state.fl.us/Content/population-demographics/data/2013_Pop_Estimates.pdf (last visited Mar. 5, 2014).

⁷ Office of Economic and Demographic Research, Revenue Estimating Conference, Proposed Language (Nov. 20, 2013), available at <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2014/pdf/Impact1120.pdf> (last visited Mar. 5, 2014).

nonrecurring impact is estimated to be: General Revenue (\$31.8 million); State Trust Funds (insignificant); and local (\$7.2 million).⁸ While the REC has not estimated the effects of this particular bill, the exemptions in the 3-day school sales tax holiday and the current bill are very similar. The only difference is the REC estimates are based on exemptions of clothing items that do not exceed \$100; however, the bill only provides for exemptions on clothing items \$75 or less.⁹

B. Private Sector Impact:

During the specified exemption period, clothing, wallets, and bags selling for \$75 or less, school supplies selling for \$15 or less, and computers and related accessories selling for \$750 or less can be purchased tax free. Families will be able to save money on clothing and school supplies as the tax exemption period is just before the beginning of a new school year.

C. Government Sector Impact:

The bill provides an appropriation of \$235,695 in nonrecurring funds to the Department of Revenue from the General Revenue Fund for purposes of administering this act. Funds from the appropriation that remain unexpended or unencumbered as of June 30, 2014, shall revert and be reappropriated for the same purpose in Fiscal Year 2014-15.

The Department of Revenue analysis states that the bill will only require \$223,048 in administering this act. This will not have a practical impact or require a change in appropriation because the unexpended or unencumbered funds revert and are reappropriated for the same purpose in the next fiscal year.¹⁰

The Department of Revenue will use the appropriated funds to print and mail tax information publications to approximately 569,000 sales tax dealers.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill authorizes the Department of Revenue to adopt emergency rules.

VIII. Statutes Affected:

This bill creates general law not contained in a designated section of the Florida Statutes.

⁸ Office of Economic and Demographic Research, Revenue Estimating Conference, Proposed Language (Nov. 20, 2013), available at <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2014/pdf/Impact1120.pdf> (last visited Mar. 5, 2014).

⁹ Office of Economic and Demographic Research, Revenue Estimating Conference, Proposed Language (Nov. 20, 2013), available at <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2014/pdf/Impact1120.pdf> (last visited Mar. 5, 2014).

¹⁰ Department of Revenue, *Senate Bill 792 Agency Analysis* (Feb. 10, 2014).

IX. Additional Information:

A. Committee Substitute – Statement of 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.

By Senator Flores

37-00962-14

2014792__

A bill to be entitled

An act relating to the tax on sales, use, and other transactions; specifying a period during which the sale of clothing, wallets, bags, school supplies, personal computers, and personal computer related accessories are exempt from the sales tax; providing definitions; providing exceptions; authorizing the Department of Revenue to adopt emergency rules; providing an appropriation; providing an effective date.

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

Section 1. (1) The tax levied under chapter 212, Florida Statutes, may not be collected during the period from 12:01 a.m. on August 1, 2014, through 11:59 p.m. on August 3, 2014, on the sale of:

(a) Clothing, wallets, or bags, including handbags, backpacks, fanny packs, and diaper bags, but excluding briefcases, suitcases, and other garment bags, having a sales price of \$75 or less per item. As used in this paragraph, the term "clothing" means:

1. An article of wearing apparel intended to be worn on or about the human body, excluding watches, watchbands, jewelry, umbrellas, and handkerchiefs; and

2. All footwear, excluding skis, swim fins, roller blades, and skates.

(b) School supplies having a sales price of \$15 or less per item. As used in this paragraph, the term "school supplies"

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means pens, pencils, erasers, crayons, notebooks, notebook filler paper, legal pads, binders, lunch boxes, construction paper, markers, folders, poster board, composition books, poster paper, scissors, cellophane tape, glue or paste, rulers, computer disks, protractors, compasses, and calculators.

(c) Personal computers and related accessories that have a sales price of \$750 or less and are purchased for noncommercial home or personal use. As used in this paragraph, the term:

1. "Personal computer" means an electronic device that accepts information in digital or similar form and manipulates such information for a result based on a sequence of instructions. The term includes an electronic book reader and a laptop, desktop, handheld, tablet, or tower computer but does not include a cellular telephone, video game console, digital media receiver, or device that is not primarily designed to process data.

2. "Related accessories" includes keyboards, mice, personal digital assistants, monitors, other peripheral devices, modems, routers, and nonrecreational software regardless of whether the accessories are used in association with a personal computer base unit but does not include furniture or systems, devices, software, monitors with a television tuner, or other peripherals that are designed or intended primarily for recreational use.

(2) The tax exemptions provided in this section do not apply to sales within a theme park or entertainment complex as defined in s. 509.013, Florida Statutes, within a public lodging establishment as defined in s. 509.013, Florida Statutes, or within an airport as defined in s. 330.27, Florida Statutes.

(3) The Department of Revenue may, and all conditions are

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59 deemed met to, adopt emergency rules pursuant to ss. 120.536(1)
60 and 120.54, Florida Statutes, to administer this section.

61 Section 2. For the 2013-2014 fiscal year, the sum of
62 \$235,695 in nonrecurring funds is appropriated from the General
63 Revenue Fund to the Department of Revenue for the purpose of
64 administering this act. Funds from the appropriation that remain
65 unexpended or unencumbered as of June 30, 2014, shall revert and
66 be reappropriated for the same purpose in the 2014-2015 fiscal
67 year.

68 Section 3. This act shall take effect upon becoming a law.



The Florida Senate

Committee Agenda Request

To: Senator Nancy Detert, Chair
Committee on Commerce and Tourism

Subject: Committee Agenda Request

Date: February 14, 2014

I respectfully request that **Senate Bill #792**, relating to Tax on Sales, Use, and Other Transactions, be placed on the:

- ☐ committee agenda at your earliest possible convenience.
- ☒ next committee agenda.

A handwritten signature in cursive script that reads "Anitere Flores".

Senator Anitere Flores
Florida Senate, District 37

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 Committee on Commerce and Tourism

BILL: SB 1018

INTRODUCER: Senator Detert

SUBJECT: Department of Agriculture and Consumer Services

DATE: March 7, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Malcolm	Hrdlicka	CM	Pre-meeting
2.			AP	

I. Summary:

SB 1018 modifies or repeals several regulatory activities under the jurisdiction of the Florida Department of Agriculture and Consumer Services (DACS). Specifically, the bill:

- Eliminates the requirement that a private investigative, private security, or recovery service applicant obtain a letter from a fingerprinting technician or physician stating there is a physical condition that prevents obtaining legible fingerprints before the DACS can determine the applicant's eligibility for licensure based on a name-based background check.
- Requires a Class "G" statewide firearms licensee that fails to timely complete 4 hours of annual firearms training to complete the 28 hours training required for initial licensure.
- Permits a Class "G" licensee to carry a .40 caliber handgun or a .45 ACP handgun.
- Permits a Class "D" private security guard who holds a Class "G" license and who is performing bodyguard services to carry a concealed firearm while in plainclothes.
- Requires the DACS to serve an administrative complaint on a concealed weapons licensee by e-mail, regular mail, and certified mail. If service is ineffective and the licensee has an address in another state or in a foreign country, then the DACS must call the licensee's last known telephone number, publish notice in a Leon County newspaper, and post a notice on the DACS' website.
- Prohibits a person seeking to be licensed by the DACS to carry a concealed weapon from denying or failing to acknowledge an arrest contained in a sealed record.
- Standardizes regulations and procedures by which a consumer can pursue a claim against the bond or other security of a health studio, telemarketer, pawnbroker, or seller of travel.
- Repeals the Commercial Weight-Loss Practices Act.
- Repeals the ban on the sale of weight-loss pills to a person under 18 years of age.
- Prohibits a person soliciting contributions on behalf of a charity from calling donors who have previously communicated to them that they do not wish to receive any more calls.
- Repeals the Dance Studio Act.
- Prohibits a telemarketer from accepting novelty payments, such as remotely created checks or payment orders, cash-to-cash money transfers, and cash reload mechanisms.

- Provides that antifreeze and brake fluid registrations expire 1 year from the date of issuance.
- Clarifies inconsistent language regarding administrative fines for non-compliant petroleum products.
- Permits the DACS to adopt quality standards and labeling requirements for lubricating oils and to issue stop-use orders for non-compliant products.
- Requires a pawnbroker to use a scale that has been approved and certified by the DACS when it includes the weight of an object on a transaction form.

II. Present Situation:

The Florida Department of Agriculture and Consumer Services is charged with supporting Florida's agricultural economy and protecting consumers from unsafe or defective products and deceptive business practices. To carry out these functions, the DACS has the divisions of Consumer Services and Licensing.

The Division of Consumer Services is tasked with receiving the state's consumer complaints. It is also responsible for overseeing and regulating a broad range of business and non-profit activities and entities, including: commercial weight loss practices, telephone solicitations, dance studios, pawnshops, health studios, sellers of travel, and telemarketers. In addition, this division is also responsible for protecting consumers from unfair and unsafe business practices across a wide range of products, including petroleum products, brake fluid, antifreeze, lubricating oil, and weighing and measuring devices. The Division of Licensing is responsible for regulating and licensing private security, private investigative, and recovery services, as well as issuing concealed weapon and firearm licenses.

III. Effect of Proposed Changes:

Division of Licensing

Fingerprint Requirements

Currently, any person who applies for a private investigative, private security, or recovery service license must undergo a background check, which includes an examination of fingerprint records and criminal records.¹

Section 493.6108(1)(a)2., F.S., provides that after a second unsuccessful attempt for legible fingerprints, as determined by the Florida Department of Law Enforcement (FDLE) or the Federal Bureau of Investigation, the DACS may bypass a fingerprint background check and determine the applicant's eligibility for licensure by doing a criminal history background check based on the applicant's name. This bypass is only permitted if the fingerprints were taken by a law enforcement agency or the DACS and the applicant submits a written statement signed by the fingerprint technician or a licensed physician stating that the prints were the best that could be taken or that a physical condition precluded submittal of a legible set of prints.

Section 1 amends s. 493.6108, F.S., to repeal the requirement that a written statement from the applicant, signed by the fingerprint technician or licensed physician, be provided in the event of

¹ Section 493.6108(1), F.S.

two illegible fingerprints before the DACS may determine eligibility for licensure using a name-based criminal history background check. According to the DACS, “removing this requirement saves the applicant time by removing the requirement to consult a physician, thereby speeding up the application process.”² Additionally, “[t]he written statement did not provide the department with any additional information pertinent to issuing a license.”³

Annual Firearms Recertification Training

Currently, s. 493.6113(3)(b), F.S., requires holders of a Class “G”⁴ statewide firearms license to annually complete 4 hours of firearms recertification training.⁵ Upon completion of annual training, the licensee must submit proof of such training to the DACS. If documentation of the training is not submitted by the end of the first year of the 2-year term of the license, the license is automatically suspended until proof of the training is submitted. If the documentation is not submitted by the end of the second year of the 2-year term of the license, the license may not be renewed unless the applicant completes the minimum number of hours of range and classroom training required at the time of initial licensure.⁶

Section 2 amends s. 493.6113, F.S., to require a Class “G” licensee that fails to complete 4 hours of annual firearms recertification training by the end of the *first or second year* of the 2-year term license to complete the minimum number of hours of range and classroom training required at the time of initial licensure.

Permitted Firearms

Currently, s. 493.6115(6), F.S., allows a Class “G” licensee to carry a .38 caliber revolver, a .38 caliber or 9 millimeter semi-automatic pistol, or a .357 caliber revolver with .38 caliber ammunition while performing his or her duties authorized under ch. 493, F.S.

According to the DACS, over the past 10 to 15 years a significant number of law enforcement agencies have transitioned away from the standard .38 caliber revolver and the 9 millimeter semi-automatic pistol in favor of the .40 caliber or .45 caliber ACP round. Since 2001, a limited number of security agencies guarding critical infrastructure, such as deep-water ports and power plants, have requested and received waivers to carry these calibers. Currently, there are 74 firearms waivers on file with the DACS. “In at least one of the granted waivers, the primary reason for the request was that all of the law enforcement agencies in the area carried .40 caliber semi-automatic pistols and that if a situation developed, the ability to interchange ammunition could prove crucial.”⁷

Section 3 amends s. 493.6115, F.S., to allow a Class “G” licensee to carry a .40 caliber handgun or a .45 ACP handgun while performing his or her duties authorized under ch. 493, F.S. The

² DACS, *Agency Analysis of SB 1018*, 2 (Feb. 25, 2014) (on file with the Committee on Commerce and Tourism).

³ *Id.*

⁴ A Class “G” licensee permits Class “C,” “CC,” “D,” “M,” “MA,” or “MB” licensees to bear a firearm. Section 493.6115(2), F.S.

⁵ The DACS may waive the annual firearms recertification training for certain applicants, such as state and federal law enforcement officers and correctional officers. Section 6113(3)(b)1.-3., F.S.

⁶ Initial licensure requires a minimum of 28 hours of range and classroom training, of which no more than 8 hours may be range training. Section 493.6105(5), F.S.

⁷ DACS, *Agency Analysis* at 2.

DACS states that “[t]his change brings the authorized firearm caliber to a caliber level more consistent with what law enforcement agencies have been using for many years.”⁸ Additionally, “[t]his would be beneficial in the event of an emergency situation where licensees need to work with law enforcement.”⁹

Security Officer Uniforms and Clothing

Under s. 493.6305, F.S., which governs uniform requirements for private security officers, a private security officer that has a Class “G” statewide firearms license is only allowed to carry a concealed firearm in plainclothes while performing limited, special assignment duties. Because private security officers regulated under ch. 493, F.S., also includes bodyguards¹⁰ who generally perform their duties while armed and in plain clothes rather than in uniform, the current limitation on carrying a concealed weapon while in plainclothes for limited, special assignment duties is impractical.¹¹ According to the DACS, “this restricts the ability of security officers to work as bodyguards because most people needing bodyguards want those bodyguards to be armed and in plain clothes.”¹²

Section 4 amends s. 493.6305, F.S., to permit a Class “D” private security officer who holds a Class “G” statewide firearms license and who is performing bodyguard or executive protection services to carry a concealed firearm in plainclothes as needed to provided contracted services to the client.

Service of Process Requirements on Out-of-State Florida Concealed Weapon Licensees

Currently, ch. 120, F.S., the Administrative Procedures Act (APA), requires either personal service or service by certified mail of an administrative complaint when an agency seeks to revoke or suspend a license.¹³ If the agency cannot personally serve the licensee and service by certified mail is returned undeliverable, the agency must publish notice of the pending revocation or suspension for 4 consecutive weeks in a newspaper published in the county of the licensee’s last known address.¹⁴ If no newspaper is published in the county, the notice may be published in a newspaper of general circulation in that county.¹⁵ Prior to a 2012 amendment to the APA, an agency was also permitted to publish notice of pending revocation or suspension of a license in Leon County if a licensee had an out-of-state address.¹⁶ The 2012 amendment repealed this provision.

According to the DACS, the requirement that it publish notice to licensees with an out-of-state address in the county of their last known residence has created delays in serving administrative actions to out-of state licensees and caused a significant cost increase for the DACS.¹⁷ As of June 30, 2013, the DACS had more than 140,000 concealed weapon licensees with an out-of-state address. In Fiscal Year 2011-12, prior to the 2012 amendment, the DACS had expenditures of

⁸ *Id.*

⁹ *Id.*

¹⁰ Section 493.6101(19), F.S.

¹¹ DACS, *Agency Analysis* at 3.

¹² *Id.*

¹³ Section 120.60(5), F.S.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Chapter 2012-212, s. 10, L.O.F.

¹⁷ DACS, *Agency Analysis* at 7.

\$38,000 in publication costs. In Fiscal Year 2012-13, after the 2012 amendment, the DACS had expenditures of \$223,000 in publication costs, an increase of \$185,000. The DACS stated that it has expended considerable effort in locating cost-efficient publication options in newspapers across the United States after the 2012 amendment.¹⁸

Section 20 amends s. 570.07, F.S., to require the DACS to serve an administrative complaint on a concealed weapons licensee by regular mail and certified mail to the licensee's last known address and, if possible, by e-mail. If service under these methods is ineffective and the licensee has an address in another state or in a foreign territory or country, then the DACS must call the licensee's last known telephone number, if available, must publish notice within a Leon County newspaper, and must post a short, plain notice to the licensee on the DACS' website.

Sealed Criminal History Records

Currently, under s. 943.059(4), F.S., a person who has had his or her criminal history record sealed may deny or fail to acknowledge the arrests covered in the sealed record unless specific conditions apply, such as when the person is a candidate for employment with a criminal justice agency; is a candidate for admission to The Florida Bar; is seeking to be employed or used by a contractor or licensee in a sensitive position having direct contact with children, the disabled, or the elderly; is seeking to be employed or licensed by an education agency or facility; or is attempting to purchase a firearm from a licensed importer, manufacturer, or dealer. Section 943.059(4), F.S., also specifies what agencies or entities, such as The Florida Bar and the Department of Children and Families, have access to sealed records "for their respective licensing, access authorization, and employment purposes." The DACS is not included.

Section 21 amends s. 943.059, F.S., to prohibit a person seeking a concealed weapon license from the DACS pursuant to s. 790.06, F.S., from denying or failing to acknowledge any arrest covered in a sealed record. The bill also allows the DACS to access a sealed record for the purpose of determining an applicant's eligibility for licensure to carry a concealed weapon pursuant to s. 790.06, F.S.

Division of Consumer Services

Bond Requirements

Currently, health studios, telemarketers, pawnbrokers, and sellers of travel are generally required to obtain a bond, certificate of deposit, or letter of credit in amounts ranging from \$25,000 to \$300,000.¹⁹ The security is intended to compensate consumers for future violations of the provisions of the respective regulating statutes or other consumer complaints, such as fraud, misrepresentation, or breach of contract.²⁰ According to the DACS, ss. 501.016, 501.611, 539.001(4), and 559.929, F.S., were enacted separately and thus inconsistencies exist regarding how the respective bond programs are administered, especially with regard to how a consumer pursues a claim against the bond or other security.²¹

¹⁸ *Id.*

¹⁹ Sections 501.016, 501.611, 539.001(4), and 559.929, F.S.

²⁰ Sections 501.016(1), 501.611(4), 501.001(4)2., and 559.929(2), F.S.

²¹ DACS, *Agency Analysis* at 3.

Sections 5, 11, 18, and 19 amend ss. 501.016, 501.611, 539.001, and 559.929, F.S., respectively, to provide standardized regulations and procedures by which a consumer can pursue a claim against the bond or other security of a health studio, telemarketer, pawnbroker, or seller of travel. Although liability for an injury to a consumer may be determined by an administrative proceeding or through a civil action, claims against the bond or other security may only be paid by order of the DACS in an administrative proceeding pursuant to ch. 120, F.S.

In order for a consumer to file a claim against the bond or other security, he or she must do so through the DACS on an approved affidavit within 120 days of the injury or discovery of the injury, or a judgment being entered. Proceedings on the claim must be conducted in accordance with ch. 120, F.S., with the DACS acting only as a nominal party.

The health studio, telemarketer, pawnbroker, or seller of travel must pay any indebtedness due the consumer as determined by the DACS within 30 days of a final order being entered. If the business fails to pay within 30 days, the DACS must make demand upon the surety. If a surety fails to comply with a demand for payment, the DACS may file an action in circuit court to recover payment up to the amount of the bond or other security. If the court affirms the demand for payment from the surety, the DACS will be awarded court costs and reasonable attorney fees.

The bill also requires that a bond or other permitted security be filed on a form adopted by the DACS. Lastly, it requires that a bond or other security provided by a telemarketer be in favor of the DACS for the use and benefit of any consumer injured by the fraud, misrepresentation, breach of contract, financial failure, or violation of the Florida Telemarketing Act²² by the telemarketer.

According to the DACS, these changes will allow it to administer these bond programs more efficiently.²³

Commercial Weight-Loss Practices Act

Sections 501.057-.0581, F.S., the Commercial Weight-Loss Practices Act, regulate weight-loss providers²⁴ in Florida. Under the act, weight-loss providers must:

- Provide consumers an itemized statement of the cost of weight-loss programs;²⁵
- Disclose information about the provider and program, such as the duration of the program and information about the education and experience of the staff;²⁶ and
- Provide consumers with a Weight Loss Consumer Bill of Rights, which warns against the dangers of rapid weight loss, advises the consumer to seek the advice of a physician, and informs the consumer of his or her right to certain information under the act.²⁷

²² Part IV of ch. 501, F.S.

²³ DACS, *Agency Analysis* at 3.

²⁴ “Weight-loss provider” is defined as “any person engaged in the business of offering services to consumers to assist them in losing weight and making oral or written statements, visual descriptions, advertisements, or other representations that have the capacity, tendency, or effect of leading consumers to believe that participation in a weight-loss program will result in weight loss.” Section 501.0571(5), F.S. Physicians, chiropractors, podiatrists, naturopathists, optometrists, pharmacists, and physical therapists licensed in Florida and who give weight-loss advice or service that is incidental to their practice are excluded from the act. Section 501.0577, F.S.

²⁵ Section 501.0573, F.S.

²⁶ *Id.*

²⁷ Section 501.0575, F.S.

A violation of the act is an unfair and deceptive trade practice under part II of ch. 501, F.S., and, in addition to any other remedy provided by law, the DACS may bring a civil action in circuit court to enforce the act and may seek additional civil relief, including a civil penalty up to \$5,000 for each violation.²⁸

Section 6 repeals ss. 501.057-.0581, F.S., the Commercial Weight-Loss Practices Act. In recent years, the DACS has not received any complaints related to the act. Additionally, the DACS “has no nexus with this industry, which primarily includes medical staff and weight loss centers that are staffed by dietitians and nutritionists.”²⁹ According to the DACS, “these professions are regulated by the Agency for Healthcare Administration, which has much greater experience and expertise related to the weight loss industry.”³⁰

Sale of Weight-Loss Pills to Minors

Currently, s. 501.0583, F.S., prohibits the sale, delivery, or provision of a weight-loss pill to a person under 18 years of age. A weight-loss pill is defined as a “pill that is available without a prescription, the marketing, advertising, or packaging of which indicates that its primary purpose is for facilitating or causing weight loss.” A first violation of this section is punishable by a fine of \$100; a second violation is punishable by a fine of \$250; a third violation is punishable by a fine of \$500; and a fourth or subsequent violation is punishable by a fine up to \$1,000.

Section 7 repeals s. 501.0583, F.S., to repeal the prohibition on the sale, delivery, or provision, either directly or indirectly, of a weight-loss pill to a person under 18 years of age.

Do Not Call Program/Telephone Solicitations

Under s. 501.059(5), F.S., of the Florida Do Not Call program, a telephone solicitor is prohibited from calling a consumer who has previously communicated to the solicitor that he or she does not wish to receive a telephone call:

- Made by or on behalf of the seller whose goods or services are being offered; or
- Made on behalf of a charity for which a charitable contribution is being solicited.

Because the definition of a “telephone solicitor” does not include a person soliciting charitable contributions, there is nothing in current law to prohibit people soliciting contributions on behalf of a charity via telephone from calling donors who have previously communicated to them that they do not wish to receive any more solicitation calls.³¹

Section 8 amends s. 501.059, F.S., to prohibit any person soliciting contributions on behalf of a charity via telephone from calling donors who have previously communicated to them that they do not wish to receive any more charitable contribution solicitation calls.

²⁸ Section 501.0581, F.S.

²⁹ DACS, *Agency Analysis* at 3-4.

³⁰ *Id.*; see part X of ch. 468, F.S.

³¹ DACS, *Agency Analysis* at 4. “Telephone solicitor” is defined as “any natural person, firm, organization, partnership, association, or corporation, or a subsidiary or affiliate thereof, doing business in this state, who makes or causes to be made a telephonic sales call, including, but not limited to, calls made by use of automated dialing or recorded message devices.” Section 501.059(1)(d), F.S.

Dance Studio Act

The Dance Studio Act, s. 501.143, F.S., regulates ball room dance studios that provide dance lessons or services in Florida. Regulations under the act include:

- Registration with the DACS;³²
- Requirements that every contract with a customer include certain provisions, such as the customer's total payment obligations and cancellation provisions;³³
- Bond or other similar security requirements;³⁴ and
- Prohibited practices, such as coercive or misleading sales practices.

The DACS can seek an injunction or civil penalties for any violation of the act, and violations are generally misdemeanors. The act also permits a consumer to bring an action for treble damages for fraudulent violations of the act.³⁵

Ballroom dance studios are the only dance studios currently regulated by the DACS. According to the DACS, during the last 3 fiscal years, it has received 23 complaints related to dance studios and has recovered \$23,025 for consumers under its authority to conduct informal mediation processes. Additionally, the DACS notes that there has not been a bond payout under this program in the last 3 fiscal years.³⁶

Section 9 repeals s. 501.143, F.S., the Dance Studio Act thus deregulating the industry in Florida. According to the DACS, complaints related to dance studios would be handled through its non-regulated complaints section.³⁷

Telemarketing Payment Methods

There are two major categories of noncash retail payment methods used in telemarketing: conventional payment methods and novelty payment methods.³⁸ Conventional payment methods include credit cards, debit cards, and other types of electronic fund transfers processed electronically through networks that are monitored for fraud. These payment methods are subject to federal laws that require error resolution procedures and limit a consumer's liability for certain disputed transactions.³⁹

Novelty payment methods refers to four types of noncash payments—remotely created checks, remotely created payment orders, cash-to-cash money transfers (such as Western Union and Moneygram), and cash reload mechanisms (such as MoneyPak or ReloadIt).⁴⁰ Unlike conventional payment methods, novelty payment methods “are cleared via check clearing and money transfer networks that provide little or no systematic monitoring to detect or deter

³² Section 501.143(3), F.S.

³³ *Id.* at (4).

³⁴ *Id.* at (5).

³⁵ *Id.* at (7), (8), and (10).

³⁶ DACS, *Agency Analysis* at 4.

³⁷ *Id.*

³⁸ Telemarketing Sales Rule, 78 Fed. Reg. 41200, 41201 (proposed July 9, 2013) (to be codified at 16 C.F.R. 310).

³⁹ *Id.* Federal laws regulating conventional payment methods include the Truth-in-Lending Act, 15 U.S.C. 1601 et seq., Regulation Z, 12 CFR part 1026, the Electronic Fund Transfer Act, 15 U.S.C. 1693 et seq., and Regulation E, 12 CFR 1005. *Id.* at n24.

⁴⁰ For a more thorough explanation of the different types of novelty payments and their respective susceptibility to telemarketer fraud see *id.* at 41202-41215.

fraud.”⁴¹ Additionally, novelty payment methods do not provide consumers with sufficient recourse when unauthorized transactions or telemarketing fraud occurs.

Due to the lack of adequate consumer protections for novelty payment methods, the Federal Trade Commission (FTC) has found that unscrupulous telemarketers exploit these payment methods to defraud consumers. Schemes employed by fraudulent telemarketers to exploit the weaknesses in novelty payment methods include phony offers such as fake medical discount plans, soliciting for bogus charities, mystery shopper scams, and work at home opportunities.⁴² Due to the significant fraudulent activity associated with novelty payment methods, the FTC has proposed an amendment to its Telemarketing Sales Rule that will prohibit telemarketers from accepting novelty payment methods.⁴³ Currently, the Florida Telemarketing Act,⁴⁴ contains no restrictions on payment methods for telemarketers. However, the act prohibits a telephone salesperson from requiring that a customer pay by credit card or expressing a preference of such method of payment.⁴⁵

Sections 10 and 12 amend ss. 501.603 and 501.616, F.S., respectively, to prohibit a telemarketer from accepting novelty payments either directly or indirectly as payment for goods or services. “Novelty payment” is defined in the bill as a payment method that does not provide a means of systematic monitoring to detect and deter fraud, and it includes the following payment devices:

- A remotely created check, which is a check that is not created by the paying bank and that does not bear the signature of the person on whose account the check is drawn.
- A remotely created payment order, which is a payment instruction or order drawn on a person’s account which is initiated or created by the payee and does not bear the signature of the person on whose account the order is drawn and is cleared through the check clearing system.
- A cash-to-cash money transfer, which is the electronic transfer of the value of cash received from one person to another person in a different location that is sent by a money transfer provider⁴⁶ and received in the form of cash.
- A cash reload mechanism,⁴⁷ which is a system that makes it possible to convert cash into an electronic form that a person can use to add money to a general-use prepaid card or an online account with a payment intermediary.⁴⁸

The DACS will also have the discretion to further define novelty payment in rule to identify the ever-changing forms of unsystematic, fraud-prone payment methods.⁴⁹

⁴¹ *Id.* at 41201-41202.

⁴² *Id.* at 41207-41208, 41212-41213.

⁴³ *See id.* at 41223-41225.

⁴⁴ Part IV of ch. 501, F.S.

⁴⁵ Section 501.616(1), F.S.

⁴⁶ The term “money transfer provider” is defined in the bill to mean “a person or financial institution that provides cash-to-cash money transfers for a person in the normal course of business, regardless of whether the person holds an account with such person or financial institution.”

⁴⁷ The term “mechanism” is defined in the bill to mean “a system that is purchased by a person on a prepaid basis, that enables access to the funds via an authorization code or other security measure, and that is not directly used as a general-use prepaid card.”

⁴⁸ The definitions in the bill are nearly identical to those proposed by the FTC in its proposed rule. 78 Fed. Reg. at 41223-41224.

⁴⁹ DACS, *Agency Analysis* at 5.

Additionally, the bill repeals the prohibition against a telephone salesperson requiring a customer to pay by credit card or expressing a preference for such method of payment.

Antifreeze and Brake Fluid Registration

Currently, antifreeze and brake fluid distributed in Florida must be registered with the DACS. Section 501.913(1), F.S., requires each brand of antifreeze to be registered no later than July 1 of each year. Pursuant to s. 526.51, F.S., each brand of brake fluid must be re-registered by June 30 of each year.⁵⁰

According to the DACS, since Fiscal Year 2010-11, the number of antifreeze applications has increased more than 15 percent and the number of brake fluid applications has increased more than 30 percent.⁵¹

Sections 13 and 17 amend ss. 501.913 and 526.51, F.S., and **Section 16** repeals s. 526.50, F.S., to provide that antifreeze and brake fluid registrations expire 1 year from the date of issuance. The DACS believes that by distributing application cycles throughout the year, current staffing levels will be sufficient to process the workload and prevent large backlogs of registrations. The reduced processing time will allow applicants to bring products to market without delays due to registration bottlenecks and applicants will benefit from having a full year's registration before having to renew.⁵²

Petroleum Product Inspections

Under ch. 525, F.S., the DACS regularly conducts inspections on the petroleum distribution system and analyzes samples of petroleum products to ensure the quality and fairness of those products.⁵³ If a petroleum product fails to meet any standard adopted by the DACS under ch. 525, F.S., the DACS may impose a number of penalties, including levying fines and placing a stop-sale order on the product.⁵⁴ For second violations or repeat offenders, the DACS may impose greater fines, taking into consideration the violator's compliance records. If a new violation of ch. 525, F.S., occurs more than 3 years after the last-stop order was issued and during that 3-year period no other violation has occurred at the same location while the location was owned by the same person, then all previous fines must be disregarded by the DACS when levying a fine for the new violation.

Section 14 amends s. 525.16, F.S., to clarify inconsistent language regarding when a previous fine for violating ch. 525, F.S., may be disregarded when administering a fine for a new violation. According to the DACS, this change makes the language in s. 525.16(1)(a) and (b), F.S., consistent.⁵⁵

⁵⁰ Section 526.51, F.S., requires brake fluid to be re-registered no later than the last day of the "permit year," which is defined in s. 526.50(6), F.S. as "a period of 12 months commencing July 1 and ending on the next succeeding June 30." Consequently, brake fluid must be re-registered by June 30 of each year.

⁵¹ DACS, *Agency Analysis* at 5-6.

⁵² *Id.*

⁵³ Section 525.01(2), F.S.

⁵⁴ Sections 525.16(1)(a); 525.037(2), F.S.

⁵⁵ DACS, *Agency Analysis* at 6.

Lubricating Oil Standards and Labeling

Under part I of ch. 526, F.S., the DACS regulates liquid fuels, lubricating oils, greases, and other similar products. The majority of the requirements under part I of ch. 526, F.S., involve requirements designed to prevent deceptive labeling that may mislead consumers as to the nature, quality, or quantity of the product for sale.⁵⁶ If a product violates the labeling requirements, it is placed under an administrative stop-sale order that prevents the product from being sold until it is properly labeled.⁵⁷ If the product is not properly labeled within 30 days of the stop-sale order being issued, it must be disposed. Although part I of ch. 526, F.S., permits the DACS to regulate labeling of lubricating oils, it does not permit the DACS to establish quality standards for lubricating oils, such as those established by the Society of Automotive Engineers (SAE).⁵⁸

Section 15 creates s. 526.015, F.S., to permit the DACS to adopt quality standards and labeling requirements specifically for lubricating oils. The bill prohibits a person from selling or distributing, or offering for sale or distribution, a lubricating oil that fails to meet standard or labeling requirements adopted by the DACS. A product that fails to meet such requirements must be placed under a stop-sale order and the lot number of the product must be identified and tagged by the DACS to prevent its sale. A product that has been placed under a stop-sale order may not be sold or distributed or offered for sale or distribution. Once a product conforms to standard and labeling requirements or is removed from the premises in a manner approved by the DACS, the DACS must issue a release order.

Pawnbrokers

Under the Florida Pawnbroking Act, s. 539.001, F.S., when a pawnbroker completes a pawn or purchase transaction, he or she must complete a transaction form that must be signed by the pledgor or seller.⁵⁹ The form must include specific information such as a description of the pledged or purchased goods, including brand name, serial number, and, if known, precious metal type, weight, and content.⁶⁰ According to the DACS, law enforcement uses these descriptive elements on the transaction form to identify goods.⁶¹ The DACS also states that pawnbrokers must use a properly permitted scale when buying and selling precious metals by weight or when using weight as a descriptor on a pawn transaction form; however, several pawn shops have recently resisted using a permitted scale by claiming that they are not buying or selling metals by weight but are merely including the weight on the pawn transaction form as a descriptor.⁶²

Section 18 amends s. 539.001, F.S., to require a pawnbroker to use a scale that has been approved by the DACS and that complies with ch. 531, F.S.,⁶³ when it includes the weight of the object on transaction form.

⁵⁶ See s. 526.01, F.S.

⁵⁷ *Id.* at (3).

⁵⁸ DACS, *Agency Analysis* at 6-7.

⁵⁹ Section 539.001(8)(a), F.S.

⁶⁰ *Id.* at (8)(b).

⁶¹ DACS, *Agency Analysis* at 7.

⁶² *Id.*

⁶³ Chapter 531, F.S., regulates weighing and measuring devices.

Sections 22 and 23 amend ss. 205.1969 and 501.015, F.S., respectively, to conform cross-references and delete obsolete cross-references.

Section 24 provides and effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The Florida Supreme Court recently reiterated that “statutes granting power to an administrative agency ‘must clearly announce adequate standards to guide . . . in the execution of the powers delegated.’”⁶⁴ Accordingly, a statute that delegates rule-making authority “must so clearly define the power delegated that the administrative agency is precluded from acting through whim, showing favoritism, or exercising unbridled discretion.”⁶⁵ The bill permits the DACS to adopt by rule standards and labeling requirements for lubricating oils (Section 15). However, the bill does not provide limitations or standards to guide the DACS in its discretion to adopt such standards and requirements. As such, the bill may be an unconstitutional delegation of legislative authority.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Repealing the requirement that a written statement from certain applicants, signed by the fingerprint technician or licensed physician, be provided before the DACS may determine eligibility for licensure using a name-based criminal history background check will likely save those applicants time and money as they will no longer have to consult a physician.

⁶⁴ *S. Alliance for Clean Energy v. Graham*, 113 So. 3d 742, 748 (Fla. 2013)(quoting *Lewis v. Bank of Pasco Cnty.*, 346 So.2d 53, 55–56 (Fla.1976)).

⁶⁵ *Id.*

Repealing this requirement will also speed up the application process for those applicants.⁶⁶

Requiring a Class “G” statewide firearms licensee that fail to complete the annual 4-hour recertification training in the first year of the 2-year term license to re-complete the 28 hours of training required at the time of initial licensure will likely lead to increased costs for the licensee.

Permitting a Class “D” private security officer holding a Class “G” license to carry a concealed firearm while in plainclothes will provide such individuals additional employment options without having to additionally obtain a private investigative license, which may not be desired or obtainable due to experience requirements or additional costs.⁶⁷

Due to the repeal of the Dance Studio Act, dance studios will no longer have to pay a \$300 registration fee nor will they have to incur costs associated with complying with the security requirements of the act.

Pawnbrokers may incur additional costs associated with purchasing scales that comply with the requirements of ch. 531, F.S.

C. Government Sector Impact:

The DACS estimates the following fiscal impacts, beginning in Fiscal Year 2014-15:

- Related to the repeal of the Dance Studio Act, a reduction in revenues from registration fees of \$58,200 (194 registrations, \$300 annual fee) and a corresponding reduction in expenditures of \$17,455 in the General Inspection Trust Fund;
- Related to standardizing the bond requirements for health studios, telemarketers, pawnbrokers, and sellers of travel, an undetermined reduction in revenues due to the infrequency of litigation; and
- Related to the revisions to the service of process notice requirements for out-of-state licensees holding concealed weapons permits, a reduction in expenditures of \$185,000 in the Division of Licensing Trust Fund to publish notice in out-of-state publications. The DACS has not yet provided estimated fiscal information related to the revisions to the service of process notice requirements for out-of-state licensees related to the requirements to send notice by regular mail, certified mail, publishing in a Leon County publication, and making notice on its website.⁶⁸

The FDLE estimates it will need to hire a mainframe contract programmer to update computer coding to permit the DACS to access sealed records. The project is estimated to take 397 hours at a cost of \$33,745 plus \$2,000 for hardware for a total cost to the FDLE of \$35,745 in Fiscal Year 2014-15. The FDLE states the DACS has agreed to fund the programming thru the DACS Division of Licensing Trust Fund. Accordingly, the FDLE

⁶⁶ DACS, *Agency Analysis* at 2.

⁶⁷ *Id.* at 3.

⁶⁸ *Id.*

will require a non-recurring increase in the Operating Trust Fund authority of \$33,745 in the Contracted Services category and \$2,000 in the Operating Capital Outlay category, to be supported by a corresponding cash transfer from the DACS Division of Licensing Trust Fund.⁶⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill authorizes the DACS to adopt by rule standards and labeling requirements for lubricating oils. The DACS is also authorized to adopt rules that further define a novelty payment whose use is prohibited by telemarketers for payments.

VIII. Statutes Affected:

The bill substantially amends the following sections of the Florida Statutes: 493.6108, 493.6113, 493.6115, 493.6305, 501.016, 501.059, 501.603, 501.611, 501.616, 501.913, 525.16, 526.51, 539.001, 559.929, 570.07, 943.059, 205.1969, and 501.015.

The bill creates section 526.015 of the Florida Statutes.

The bill repeals the following sections of the Florida Statutes: 501.057, 501.0571, 501.0573, 501.0575, 501.0577, 501.0579, 501.0581, 501.0583, 501.143, and 526.50.

IX. Additional Information:

A. Committee Substitute – Statement of 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.

⁶⁹ FDLE, *Agency Analysis of SB 1018* (Mar. 5, 2014) (on file with the Committee on Commerce and Tourism).



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LEGISLATIVE ACTION

Senate

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House

The Committee on Commerce and Tourism (Detert) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (a) of subsection (1) of section
493.6108, Florida Statutes, is amended to read:

493.6108 Investigation of applicants by Department of
Agriculture and Consumer Services.—

(1) Except as otherwise provided, the department must
investigate an applicant for a license under this chapter before



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it may issue the license. The investigation must include:

(a)1. An examination of fingerprint records and police records. If a criminal history record check of an ~~any~~ applicant under this chapter is performed by means of fingerprint identification, the time limitations prescribed by s. 120.60(1) shall be tolled while ~~during the time~~ the applicant's fingerprints are under review by the Department of Law Enforcement or the United States Department of Justice, Federal Bureau of Investigation.

2. If a legible set of fingerprints, as determined by the Department of Law Enforcement or the Federal Bureau of Investigation, cannot be obtained after two attempts, the Department of Agriculture and Consumer Services may determine the applicant's eligibility based on ~~upon~~ a criminal history record check under the applicant's name conducted by the Federal Bureau of Investigation ~~Department of Law Enforcement if the fingerprints are taken by a law enforcement agency or the department and the applicant submits a written statement signed by the fingerprint technician or a licensed physician stating that there is a physical condition that precludes obtaining a legible set of fingerprints or that the fingerprints taken are the best that can be obtained.~~

Section 2. Paragraph (b) of subsection (3) of section 493.6113, Florida Statutes, is amended to read:

493.6113 Renewal application for licensure.—

(3) Each licensee is responsible for renewing his or her license on or before its expiration by filing with the department an application for renewal accompanied by payment of the prescribed license fee.



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(b) Each Class "G" licensee shall additionally submit proof that he or she has received during each year of the license period a minimum of 4 hours of firearms recertification training taught by a Class "K" licensee and has complied with such other health and training requirements that which the department adopts ~~shall adopt~~ by rule. Proof of completion of firearms recertification training shall be submitted to the department upon completion of the training. If the licensee fails to complete the required 4 hours of annual training during ~~documentation of completion of the required training is not submitted by the end of the first year of the 2-year term of the license, the individual's license shall be automatically suspended until proof of the required training is submitted to the department. The licensee must complete the minimum number of hours of range and classroom training required at the time of initial licensure and submit proof of having completed such training to the department before the license may be reinstated.~~ If the licensee fails to complete the required 4 hours of annual training during ~~documentation of completion of the required training is not submitted by the end of the second year of the 2-year term of the license, the licensee must complete the minimum number of hours of range and classroom training required at the time of initial licensure and submit proof of having completed such training to the department before the license may~~ shall not be renewed unless the renewal applicant completes the minimum number of hours of range and classroom training required at the time of initial licensure. The department may waive the firearms training requirement if:

1. The applicant provides proof that he or she is currently



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certified as a law enforcement officer or correctional officer under the Criminal Justice Standards and Training Commission and has completed law enforcement firearms requalification training annually during the previous 2 years of the licensure period;

2. 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 previous 2 years of the licensure period; or

3. The applicant submits a valid firearm certificate among those specified in s. 493.6105(6)(a) and provides proof of having completed requalification training during the previous 2 years of the licensure period.

Section 3. Subsection (6) of section 493.6115, Florida Statutes, is amended to read:

493.6115 Weapons and firearms.—

(6) In addition to any other firearm approved by the department, a licensee who has been issued a Class "G" license may carry a .38 caliber revolver; ~~or~~ a .380 caliber or 9 millimeter semiautomatic pistol; ~~or~~ a .357 caliber revolver with .38 caliber ammunition only; a .40 caliber handgun; or a .45 ACP handgun while performing duties authorized under this chapter. A ~~No~~ licensee may not carry more than two firearms upon her or his person when performing her or his duties. A licensee may only carry a firearm of the specific type and caliber with which she or he is qualified pursuant to the firearms training described ~~referenced~~ in subsection (8) or s. 493.6113(3)(b).

Section 4. Subsection (4) is added to section 493.6305, Florida Statutes, to read:



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493.6305 Uniforms, required wear; exceptions.—

(4) Class "D" licensees who are also Class "G" licensees and who are performing bodyguard or executive protection services may carry their authorized firearm concealed while wearing plain clothes as needed to provide contracted services to the client.

Section 5. Section 501.016, Florida Statutes, is amended to read:

501.016 Health studios; security requirements.—Each health studio that sells contracts for health studio services shall meet the following requirements:

(1) Each health studio shall maintain for each separate business location a bond issued by a surety company admitted to do business in this state. The principal sum of the bond must ~~shall~~ be \$25,000, and the bond, when required, must ~~shall~~ be obtained before a business tax receipt may be issued under chapter 205. Upon issuance of a business tax receipt, the licensing authority shall immediately notify the department of such issuance in a manner established by the department by rule. The bond must ~~shall~~ be in favor of the department ~~state~~ for the benefit of any person injured as a result of a violation of ss. 501.012-501.019. Liability for such injuries may be determined in an administrative proceeding of the department pursuant to chapter 120 or through a civil action. However, claims against the bond or certificate of deposit may be paid, in amounts up to the determined liability for such injuries, only by order of the department in an administrative proceeding pursuant to chapter 120. The aggregate liability of the surety to all persons for all breaches of the conditions of the bonds provided by this



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section may not ~~herein shall in no event~~ exceed the amount of the bond. The original surety bond required by this section shall be filed with the department on a form adopted by department rule.

(2) In lieu of maintaining the bond required in subsection (1), the health studio may furnish to the department on a form adopted by department rule:

(a) An irrevocable letter of credit from any foreign or domestic bank in the amount of \$25,000; or

(b) A guaranty agreement that is secured by a certificate of deposit in the amount of \$25,000.

The original letter of credit or certificate of deposit submitted in lieu of the bond shall be filed with the department. The department shall decide whether the security furnished in lieu of bond by the health studio complies ~~is in compliance~~ with the requirements of this section.

(3) A consumer may file a claim against the bond or other form of security. Such claim must be submitted to the department in writing on a form affidavit approved by department rule within 120 days after an alleged injury has occurred or is discovered to have occurred or a judgment has been entered. The proceedings shall be conducted in accordance with chapter 120. For proceedings conducted under ss. 120.569 and 120.57, the department may act only as a nominal party.

(4) The health studio shall pay to the department for distribution to the consumer any indebtedness determined by final order of the department within 30 days after the order is entered. If the health studio fails to make timely payment, the



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department shall make demand upon the surety, which may include an institution issuing a letter of credit or depository on a certificate of deposit. If a surety fails to comply with a demand for payment issued pursuant to a final order, the department may file an action in circuit court pursuant to s. 120.69 to recover payment up to the amount of the bond or other form of security. If the court affirms the department's demand for payment from the surety, the department shall be awarded court costs and reasonable attorney fees.

(5)~~(3)~~ A health studio that ~~which~~ sells contracts for future health studio services and ~~which~~ collects direct payment on a monthly basis for those services is ~~shall be~~ exempt from the security requirements of subsections (1) and (2) if provided ~~that~~ any service fee charged is a reasonable and fair ~~service~~ fee. The number of monthly payments in such a contract must ~~shall~~ be equal to the number of months in the contract. The contract must ~~shall~~ conform to all the requirements for future health studio services contracts ~~as~~ specified in ss. 501.012-501.019 and must ~~shall~~ specify in the terms of the contract the charges to be assessed for those health studio services.

(6)~~(4)~~ If the health studio furnishes the department with evidence satisfactory to the department that the aggregate dollar amount of all current outstanding contracts of the health studio is less than \$5,000, the department may, ~~at its discretion,~~ reduce the principal amount of the surety bond or other sufficient financial responsibility required in subsections (1) and (2) to a sum of at least ~~not less than~~ \$10,000. However, at any time the aggregate dollar amount of such contracts exceeds \$5,000, the health studio shall ~~so~~ notify



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the department and shall ~~thereupon~~ provide the bond or other documentation as required in subsections (1) and (2). Health studios whose bonds have been reduced shall ~~must~~ provide the department with an annually updated list of members. ~~Failure to file an annual report will result in~~ The department shall ~~increase~~ ~~raising~~ the security requirement to \$25,000 for a health studio that fails to file an annual report.

(7) ~~(5)~~ Each health studio shall furnish the department with a copy of the escrow account which would contain all funds received for future consumer services, whether provided under ~~by~~ contract or otherwise, sold before ~~prior to~~ the business location's full operation and specify a date certain for opening, if such an escrow account is established.

(8) ~~(6)~~ Subsections (1) and (2) do ~~shall~~ not apply to a health studio that has been operating in compliance with ss. 501.012-501.019 and rules adopted thereunder, ~~continuously~~ under the same ownership and control, continuously for the most recent 5-year period; ~~in compliance with ss. 501.012-501.019 and the rules adopted thereunder and~~ that has not had any civil, criminal, or administrative adjudication against it by any state or federal agency; and that has a satisfactory consumer complaint history. As used in this subsection, the term "satisfactory consumer complaint history" means that there are no unresolved consumer complaints regarding the health studio ~~are~~ on file with the department. A consumer complaint is unresolved if a health studio has not responded to the department's efforts to mediate the complaint or if there has been an adjudication that the health studio has violated ss. 501.012-501.019 or the rules adopted thereunder. Such exemption



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extends to all current and future business locations of an exempt health studio.

~~(9)-(7)~~ This section does not apply to a business, otherwise defined as a health studio, which sells a single contract of 30 days or less to a ~~any~~ member without any option for renewal or any other condition that ~~which~~ establishes any right in the member beyond the term of such contract ~~is exempt from the provisions of this section.~~ However, this exemption does ~~shall~~ not apply if the business offers any other health studio contract, regardless of ~~whatever~~ duration, at any time before or ~~during or prior to~~ the existence of such single contract of 30 days or less.

~~(10)-(8)~~ Except in the case of a natural disaster or an act of God, a health studio that is exempt from the requirements of subsections (1) and (2), but does not have any ~~that has no~~ business locations open for 14 consecutive days, waives its exemption and is considered to be a new health studio for the purposes of ss. 501.012-501.019.

Section 6. Sections 501.057, 501.0571, 501.0573, 501.0575, 501.0577, 501.0579, and 501.0581, Florida Statutes, are repealed.

Section 7. Section 501.0583, Florida Statutes, is repealed.

Section 8. Subsection (5) of section 501.059, Florida Statutes, is amended to read:

501.059 Telephone solicitation.—

(5) A telephone solicitor or person may not initiate an outbound telephone call to a consumer, donor, or potential donor who has previously communicated to the telephone solicitor or person that he or she does not wish to receive an outbound



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telephone call:

(a) Made by or on behalf of the seller whose goods or services are being offered; or

(b) Made on behalf of a charitable organization for which a charitable contribution is being solicited.

Section 9. Section 501.143, Florida Statutes, is repealed.

Section 10. Present subsections (8) through (11) of section 501.603, Florida Statutes, are redesignated as subsections (9) through (12), respectively, a new subsection (8) is added to that section, and subsection (2) of that section is amended, to read:

501.603 Definitions.—As used in this part, unless the context otherwise requires, the term:

(2) "Commercial telephone seller" means a person who engages in commercial telephone solicitation on his or her own behalf or through salespersons. The term, except that a commercial telephone seller does not include a salesperson as defined in subsection (11) or a person or entity operating under a valid affidavit of exemption filed with the department according to s. 501.608(1)(b) or exempted from this part by s. 501.604. The term ~~A commercial telephone seller does not include a salesperson as defined in subsection (10). A commercial telephone seller~~ includes, but is not limited to, owners, operators, officers, directors, partners, or other individuals engaged in the management activities of a business entity pursuant to this part.

(8) "Novelty payment" means a payment method that does not provide a means of systematic monitoring to detect and deter fraud. The term includes, but is not limited to, the following



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payment devices:

(a) A remotely created check, which is a check that is not created by the paying bank and that does not bear the signature of the person on whose account the check is drawn.

(b) A remotely created payment order, which is a payment instruction or order drawn on a person's account which is initiated or created by the payee and which does not bear the signature of the person on whose account the order is drawn and which is cleared through the check clearing system.

(c) A cash-to-cash money transfer, which is the electronic transfer of the value of cash received from one person to another person in a different location which is sent by a money transfer provider and received in the form of cash. As used in this paragraph, the term "money transfer provider" means a person or financial institution that provides cash-to-cash money transfers for a person in the normal course of business, regardless of whether the person holds an account with such person or financial institution.

(d) A cash reload mechanism, which is a system that makes it possible to convert cash into an electronic form which a person can use to add money to a general-use prepaid card or an online account with a payment intermediary. As used in this paragraph, the term "mechanism" means a system that is purchased by a person on a prepaid basis, that enables access to the funds via an authorization code or other security measure, and that is not directly used as a general-use prepaid card.

Section 11. Section 501.611, Florida Statutes, is amended to read:

501.611 Security.—



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(1) An application filed pursuant to s. 501.605 must be accompanied by:

(a) A bond executed by a corporate surety approved by the department and licensed to do business in this state;

(b) An irrevocable letter of credit issued for the benefit of the applicant by a bank whose deposits are insured by an agency of the Federal Government; or

(c) A certificate of deposit in a financial institution insured by an agency of the Federal Government, which may be withdrawn only on the order of the department, except that the interest may accrue to the applicant.

(2) The amount of the bond, letter of credit, or certificate of deposit must be a minimum of \$50,000, and the bond, letter of credit, or certificate of deposit must be in favor of the department for the use and benefit of any purchaser who is injured by the fraud, misrepresentation, breach of contract, financial failure, or violation of this part by the applicant ~~must be conditioned upon compliance by the applicant with the provisions of this part.~~ The department may, at its discretion, establish a bond of a greater amount to ensure the general welfare of the public and the interests of the telemarketing industry.

(3) The bond shall be posted with the department on a form adopted by ~~and shall remain in force throughout the period of licensure with the~~ department rule and shall remain in force throughout the period of licensure.

(4) The department or a ~~any~~ governmental agency, on behalf of an ~~any~~ injured purchaser or a ~~any~~ purchaser herself or himself who is injured by ~~the bankruptcy of the applicant or her~~



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~~or his breach of any agreement entered into in her or his~~
~~capacity as a licensee,~~ may bring and maintain an action to
recover against the bond, letter of credit, or certificate of
deposit.

(5) A purchaser may file a claim against the bond or other
form of security. Such claim must be submitted to the department
in writing on a form affidavit approved by department rule
within 120 days after an alleged injury has occurred or is
discovered to have occurred or a judgment has been entered. The
proceedings shall be conducted in accordance with chapter 120.
For proceedings conducted under ss. 120.569 and 120.57, the
department must act only as a nominal party.

(6) The commercial telephone seller shall pay to the
department for distribution to the consumer any indebtedness
determined by final order of the department within 30 days after
the order is entered. If the commercial telephone seller fails
to make timely payment, the department shall make demand upon
the surety, which may include an institution issuing a letter of
credit or depository on a certificate of deposit. If a surety
fails to comply with a demand for payment issued pursuant to a
final order, the department may file an action in circuit court
pursuant to s. 120.69 to recover payment up to the amount of the
bond or other form of security. If the court affirms the
department's demand for payment from the surety, the department
shall be awarded all court costs and reasonable attorney fees.

Section 12. Section 501.616, Florida Statutes, is amended
to read:

501.616 Unlawful acts and practices.—

(1) ~~A It shall be unlawful for any~~ commercial telephone



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seller or salesperson may not directly or indirectly accept a novelty payment as defined by s. 501.603(8) or rule as payment for goods or services offered or sold through telemarketing ~~to require that payment be by credit card authorization or otherwise to announce a preference for that method of payment.~~

(2) ~~A It shall be unlawful for any~~ commercial telephone seller may not ~~to~~ employ~~7~~ or be affiliated with an~~7~~ any unlicensed salesperson.

(3) ~~A It shall be unlawful for any~~ salesperson may not ~~to~~ be employed by~~7~~ or affiliated with~~7~~ an unlicensed commercial telephone seller.

(4) ~~A It shall be unlawful for any~~ commercial telephone seller or salesperson must ~~to~~ be licensed ~~unlicensed~~.

(5) ~~A It shall be unlawful for any~~ salesperson or commercial telephone seller may not ~~to~~ otherwise violate ~~the provisions of this part.~~

(6) ~~A It shall be unlawful for any~~ commercial telephone seller or salesperson may not ~~to~~ make a commercial telephone solicitation phone call before 8 ~~8:00~~ a.m. or after 9 ~~9:00~~ p.m. local time at the called person's location.

(7) ~~A It shall be unlawful for any~~ commercial telephone seller or salesperson making a commercial telephone solicitation call may not intentionally act ~~telephonic solicitations to take any intentional action~~ to prevent transmission of the telephone solicitor's name or telephone number to the party called when the equipment or service used by the telephone solicitor is capable of creating and transmitting the telephone solicitor's name or telephone number.

Section 13. Subsection (1) of section 501.913, Florida



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Statutes, is amended to read:

501.913 Registration.—

(1) Each brand of antifreeze to be distributed in this state shall be registered with the department before distribution. The person whose name appears on the label, the manufacturer, or the packager shall make application annually to the department on forms provided by the department ~~no later than July 1 of each year.~~ The registration certificate expires 1 year from the date of issue. The registrant assumes, by application to register the brand, full responsibility for the registration and the ~~quality,~~ and quantity of the product sold, offered, or exposed for sale in this state. If a registered brand is not in production for distribution in this state, ~~and~~ to ensure any remaining product that is still available for sale in this ~~the~~ state is properly registered, the registrant must submit a notarized affidavit on company letterhead to the department certifying that:

(a) The stated brand is no longer in production;

(b) The stated brand will not be distributed in this state;
and

(c) All existing product of the stated 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 two subsequent registration periods.

If production resumes, the brand must be reregistered before it is distributed in this state.

Section 14. Paragraph (b) of subsection (1) of section 525.16, Florida Statutes, is amended to read:



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525.16 Administrative fine; penalties; prosecution of cases
by state attorney.—

(1)

(b) If ~~a, 3 years after the day of issuance of the last~~
~~stop-sale order for a violation under this chapter, no new~~
violation does not occur ~~has occurred~~ at the same location while
the business is under the same ~~during the~~ proprietorship within
3 years after the date of issuance of the last previous stop-
sale order of the same person, all previous fines shall be
disregarded when administering a fine for a new ~~the next~~
violation.

Section 15. Section 526.015, Florida Statutes, is created
to read:

526.015 Lubricating oil standards; labeling requirements.—

(1) A person may not sell or distribute, or offer for sale
or distribution, a lubricating oil that fails to meet a quality
standard, such as those established by the Society of Automotive
Engineers or other similar standard, or a labeling requirement
designed to prevent deceptive or misleading practices as adopted
by rule of the department.

(2) A product that fails to meet a standard or labeling
requirement adopted by rule of the department shall be placed
under a stop-sale order by the department, and the lot number of
the product shall be identified and tagged by the department to
prevent its sale.

(3) A person may not sell or distribute, or offer for sale
or distribution, a product that has been placed under a stop-
sale order.

(4) If a product is made to conform to standards and



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labeling requirements or is removed from the premises in a manner approved by the department, the department shall issue a release order.

Section 16. Subsection (6) of section 526.50, Florida Statutes, is repealed.

Section 17. Subsection (1) of section 526.51, Florida Statutes, is amended to read:

526.51 Registration; renewal and fees; departmental expenses; cancellation or refusal to issue or renew.—

(1)(a) Application for registration of each brand of brake fluid shall be made on forms supplied by the department. The applicant shall provide ~~give~~ his or her name and address, ~~and~~ the brand name of the brake fluid, the state in which ~~that~~ he or she owns the brand name and has complete control over the product sold thereunder in this state, and ~~provide~~ the name and address of the resident agent in this state. If the applicant does not own the brand name but wishes to register the product with the department, a notarized affidavit that gives the applicant full authorization to register the brand name, which must be ~~and that is~~ signed by the owner of the brand name, must accompany the application for registration. The affidavit must include all affected brand names, the owner's company or corporate name and address, the applicant's company or corporate name and address, and a statement from the owner authorizing the applicant to register the product with the department. The owner of the brand name shall maintain complete control over each product sold under that brand name in this state. All first-time applications for a brand and formula combination must be accompanied by a certified report from an independent testing



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laboratory, setting forth the analysis of the brake fluid which shows its quality meets ~~to be not less than~~ the minimum specifications established by the department for brake fluids. A sample of at least ~~not less than~~ 24 fluid ounces of brake fluid shall be submitted, in a container with a label printed in the same manner that it ~~or containers, with labels representing exactly how the containers of brake fluid~~ will be labeled when sold, and the sample and container shall be analyzed and inspected by the department in order to verify ~~that~~ compliance with the department's specifications and labeling requirements ~~may be verified~~. Upon approval of the application, the department shall register the brand name of the brake fluid and issue to the applicant a permit, valid for 1 year from the date of issue, authorizing the registrant to sell the brake fluid in this state ~~during the permit year specified in the permit~~.

(b) ~~An~~ Each applicant shall pay a fee of \$100 with each application. A permit may be renewed by application to the department, accompanied by a renewal fee of \$50, on or before the expiration of the previously issued ~~last day of the permit year immediately preceding the permit year for which application is made for renewal of registration~~. To reregister a previously registered brand and formula combination, an applicant must submit a completed application and all materials as required in this section to the department before the expiration of the previously issued ~~first day of the permit year~~. A brand and formula combination for which a completed application and all materials required in this section are not received before the expiration of the previously issued ~~first day of the permit year~~ may not be registered with the department until a completed



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application and all materials required in this section have been received and approved. If the brand and formula combination was previously registered with the department and a fee, application, or materials required in this section are received after the expiration of the previously issued first day of the permit ~~year~~, a penalty of \$25 ~~accrues, which~~ shall be added to the fee. Renewals shall be accepted only on brake fluids that do not have a ~~no~~ change in formula, composition, or brand name. A ~~Any~~ change in formula, composition, or brand name of a ~~any~~ brake fluid constitutes a new product that must be registered in accordance with this part.

(c) If a registered brand and formula combination is no longer in production for distribution in this state, in order to ensure that any remaining product still available for sale in this state is properly registered, ~~if a registered brand and formula combination is no longer in production for distribution in this state,~~ the registrant must submit a notarized affidavit on company letterhead to the department certifying that:

1. The stated brand and formula combination is no longer in production;

2. The stated brand and formula combination will not be distributed in this state; and

3. Either all existing product of the stated brand and formula combination will be removed by the registrant from the state within 30 days after the expiration of the registration or that the registrant will reregister the brand and formula combination for 2 ~~two~~ subsequent years ~~registration periods~~.

If production resumes, the brand and formula combination must be



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reregistered before it is again distributed in this state.

Section 18. Paragraph (a) of subsection (4), paragraphs (b) and (d) of subsection (7), and paragraph (b) of subsection (8) of section 539.001, Florida Statutes, are amended to read:

539.001 The Florida Pawnbroking Act.—

(4) ELIGIBILITY FOR LICENSE.—

(a) To be eligible for a pawnbroker's license, an applicant must:

1. Be of good moral character;

2. Have a net worth of at least \$50,000 or file with the agency a bond, issued by a surety company qualified to do business in this state, in the amount of \$10,000 for each license. In lieu of the bond required in this section, the applicant may establish a certificate of deposit or an irrevocable letter of credit in a Florida banking institution in the amount of the bond. The original bond, certificate of deposit, or letter of credit shall be filed with the agency on a form adopted by agency rule, and the agency shall be the beneficiary to said document. The bond, certificate of deposit, or letter of credit must ~~shall~~ be in favor of the agency for the use and benefit of any consumer who is injured by the fraud, misrepresentation, breach of contract, financial failure, or violation of ~~any provision of~~ this section by the pawnbroker. Such liability may be enforced either by proceeding in an administrative action or by filing a judicial suit at law ~~in a court of competent jurisdiction~~. However, in such court suit, the bond, certificate of deposit, or letter of credit posted with the agency may ~~shall~~ not be amenable or subject to any judgment or other legal process issuing out of or from such



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court in connection with such lawsuit, but such bond, certificate of deposit, or letter of credit shall be amenable to and enforceable only by and through administrative proceedings before the agency. It is the intent of the Legislature that such bond, certificate of deposit, or letter of credit ~~shall~~ be applicable and liable only for the payment of claims duly adjudicated by order of the agency. The bond, certificate of deposit, or letter of credit shall be payable on a pro rata basis as determined by the agency, but the aggregate amount may not exceed the amount of the bond, certificate of deposit, or letter of credit. A consumer may file a claim against the bond, certificate of deposit, or letter of credit. Such claim must be submitted in writing to the agency on a form affidavit approved by agency rule within 120 days after an alleged injury has occurred or is discovered to have occurred or a judgment has been entered. The proceedings shall be conducted in accordance with chapter 120. For proceedings conducted under ss. 120.569 and 120.57, the agency may act only as a nominal party. The pawnbroker shall pay to the agency for distribution to the consumer any indebtedness determined by final order of the agency within 30 days after the order is entered. If the pawnbroker fails to make timely payment, the agency shall make demand upon the surety, which includes an institution issuing a letter of credit or depository on a certificate of deposit. If a surety fails to comply with a demand for payment pursuant to a final order, the agency may file an action pursuant to s. 120.69 in circuit court to recover payment, up to the amount of the bond or other form of security. If the agency is successful and the court affirms the agency's demand for payment from the



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surety, the agency shall be awarded all court costs and
reasonable attorney fees;

3. Not have been convicted of, or found guilty of, or pled guilty or nolo contendere to, or not have been incarcerated within the last 10 years as a result of having previously been convicted of, or found guilty of, or pled guilty or nolo contendere to, regardless of adjudication, a felony within the last 10 years and not be acting as a beneficial owner for someone who has been convicted of, or found guilty of, or pled guilty or nolo contendere to, regardless of adjudication, a felony within the last 10 years; and

4. Not have been convicted of, or found guilty of, or pled guilty or nolo contendere to, or not have been incarcerated within the last 10 years as a result of having previously been convicted of, or found guilty of, or pled guilty or nolo contendere to, regardless of adjudication, a crime that involves theft, larceny, dealing in stolen property, receiving stolen property, burglary, embezzlement, obtaining property by false pretenses, possession of altered property, or any other fraudulent or dishonest dealing within the last 10 years, and not be acting as a beneficial owner for someone who has been convicted, of, or found guilty of, or pled guilty or nolo contendere to, or has been incarcerated within the last 10 years as a result of having previously been convicted of, or found guilty of, or pled guilty or nolo contendere to, regardless of adjudication, a crime that involves theft, larceny, dealing in stolen property, receiving stolen property, burglary, embezzlement, obtaining property by false pretenses, possession of altered property, or any other fraudulent or dishonest



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dealing within the last 10 years.

(7) ORDERS IMPOSING PENALTIES.—

(b) Upon a finding as set forth in paragraph (a), the agency may enter an order doing one or more of the following:

1. Issuing a notice of noncompliance pursuant to s. 120.695.

2. Imposing an administrative fine of up to ~~not to exceed~~ \$5,000 for each act that ~~which~~ constitutes a violation of this section, ~~or~~ a rule, or an order.

3. Directing that the pawnbroker cease and desist specified activities.

4. Refusing to license or revoking or suspending a license.

5. Placing the licensee on probation for a period of time, subject to such conditions as the agency may specify.

~~(d)1. When the agency,~~ If a violation of this section occurs and the agency has reasonable cause to believe that a person is operating in violation of this section, ~~has reasonable cause to believe that a person is operating in violation of this section,~~ the agency may bring a civil action in the appropriate court for temporary or permanent injunctive relief and may seek other appropriate civil relief, including a civil penalty of up to ~~not to exceed~~ \$5,000 for each violation, restitution and damages for injured customers, court costs, and reasonable attorney ~~attorney's~~ fees.

2. The agency may terminate an ~~any~~ investigation or action upon agreement by the offender to pay a stipulated civil penalty, to make restitution or pay damages to customers, or to satisfy any other relief authorized in this section ~~herein~~ and requested by the agency.



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(8) PAWNBROKER TRANSACTION FORM.—

(b) The front of the pawnbroker transaction form must include:

1. The name and address of the pawnshop.

2. A complete and accurate description of the pledged goods or purchased goods, including the following information, if applicable:

a. Brand name.

b. Model number.

c. Manufacturer's serial number.

d. Size.

e. Color, as apparent to the untrained eye.

f. Precious metal type, weight, and content, if known.

Weight shall be obtained from a device properly approved by the agency and in compliance with ss. 531.39 and 531.40.

g. Gemstone description, including the number of stones.

h. In the case of firearms, the type of action, caliber or gauge, number of barrels, barrel length, and finish.

i. Any other unique identifying marks, numbers, names, or letters.

Notwithstanding sub-subparagraphs a.-i., in the case of multiple items of a similar nature delivered together in one transaction which do not bear serial or model numbers and which do not include precious metal or gemstones, such as musical or video recordings, books, and hand tools, the description of the items is adequate if it contains the quantity of items and a description of the type of items delivered.

3. The name, address, home telephone number, place of



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employment, date of birth, physical description, and right
thumbprint of the pledgor or seller.

4. The date and time of the transaction.

5. The type of identification accepted from the pledgor or
seller, including the issuing agency and the identification
number.

6. In the case of a pawn:

a. The amount of money advanced, which must be designated
as the amount financed;

b. The maturity date of the pawn, which must be 30 days
after the date of the pawn;

c. The default date of the pawn and the amount due on the
default date;

d. The total pawn service charge payable on the maturity
date, which must be designated as the finance charge;

e. The amount financed plus the finance charge that must be
paid to redeem the pledged goods on the maturity date, which
must be designated as the total of payments;

f. The annual percentage rate, computed according to ~~the~~
regulations adopted by the Federal Reserve Board under the
federal Truth in Lending Act; and

g. The front or back of the pawnbroker transaction form
must include a statement that:

(I) Any personal property pledged to a pawnbroker within
this state which is not redeemed within 30 days after ~~following~~
the maturity date of the pawn, or if the 30th day is not a
business day, ~~then~~ the following business day, is automatically
forfeited to the pawnbroker, and absolute right, title, and
interest in and to the property vests in and is deemed conveyed



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to the pawnbroker by operation of law, and ~~no~~ further notice is
not necessary;

(II) The pledgor is not obligated to redeem the pledged
goods; and

(III) If the pawnbroker transaction form is lost,
destroyed, or stolen, the pledgor must immediately advise the
issuing pawnbroker in writing by certified or registered mail,
return receipt requested, or in person evidenced by a signed
receipt.

(IV) A pawn may be extended upon mutual agreement of the
parties.

7. In the case of a purchase, the amount of money paid for
the goods or the monetary value assigned to the goods in
connection with the transaction.

8. A statement that the pledgor or seller of the item
represents and warrants that it is not stolen, that it has no
liens or encumbrances against it, and that the pledgor or seller
is the rightful owner of the goods and has the right to enter
into the transaction.

A ~~Any~~ person who knowingly gives false verification of
ownership or gives a false or altered identification and who
receives money from a pawnbroker for goods sold or pledged
commits:

a. If the value of the money received is less than \$300, a
felony of the third degree, punishable as provided in s.
775.082, s. 775.083, or s. 775.084.

b. If the value of the money received is \$300 or more, a
felony of the second degree, punishable as provided in s.



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775.082, s. 775.083, or s. 775.084.

Section 19. Section 559.929, Florida Statutes, is amended to read:

559.929 Security requirements.—

(1) An application must be accompanied by a performance bond in an amount set by the department under paragraph (a), paragraph (b), or paragraph (c). The surety on such bond must ~~shall~~ be a surety company authorized to do business in the state.

(a) Each seller of travel which ~~that~~ certifies its business activities under s. 559.9285(1)(a) shall provide a performance bond in an amount up to ~~not to exceed~~ \$25,000, or in the amount of \$50,000 if the seller of travel is offering vacation certificates.

(b) Each seller of travel which ~~that~~ certifies its business activities under s. 559.9285(1)(b) shall provide a performance bond in an amount up to ~~not to exceed~~ \$100,000, or in the amount of \$150,000 if the seller of travel is offering vacation certificates.

(c) Each seller of travel which ~~that~~ certifies its business activities under s. 559.9285(1)(c) shall provide a performance bond in an amount up to ~~not to exceed~~ \$250,000, or in the amount of \$300,000 if the seller of travel is offering vacation certificates.

(2) The bond must ~~shall~~ be in favor of the department on a form adopted by rule of the department for the use and benefit of a ~~any~~ traveler who is injured by the fraud, misrepresentation, breach of contract, financial failure, or violation ~~of any provision~~ of this part by the seller of travel.



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Such liability may be enforced either by proceeding in an administrative action as specified in subsection (3) or by filing a judicial suit at law ~~in a court of competent jurisdiction~~. However, in such court suit the bond posted with the department shall not be amenable or subject to any judgment or other legal process issuing out of or from such court in connection with such lawsuit, but such bond shall be amenable to and enforceable only by and through administrative proceedings before the department. It is the intent of the Legislature that such bond is ~~shall be~~ applicable and liable only for the payment of claims duly adjudicated by order of the department. The bond must ~~shall~~ be open to successive claims, but the aggregate amount awarded may not exceed the amount of the bond. In addition to the foregoing, a bond provided by a registrant or applicant for registration which certifies its business activities under s. 559.9285(1)(b) or (c) must ~~shall~~ be in favor of the department, with payment in the following order of priority:

(a) All expenses for prosecuting the registrant or applicant in an ~~any~~ administrative or civil action under this part, including attorney fees ~~for attorneys~~ and fees for other professionals, court costs or other costs of the proceedings, and all other expenses incidental to the action.

(b) The ~~All~~ costs and expenses of investigation before ~~prior to~~ the commencement of an administrative or civil action under this part.

(c) An ~~Any~~ unpaid administrative fine imposed by final order or an ~~any~~ unpaid civil penalty imposed by final judgment under this part.



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(d) Damages or compensation for a ~~any~~ traveler injured as provided in this subsection.

(3) A ~~Any~~ traveler may file a claim against the bond. Such claim must ~~which shall~~ be submitted to the department ~~made~~ in writing on a form affidavit approved by department rule ~~to the department~~ within 120 days after an alleged injury has occurred or is discovered to have occurred or a judgment has been entered. The proceedings shall be conducted ~~held~~ in accordance with chapter 120. The department may act only as a nominal party in proceedings conducted under ss. 120.569 and 120.57.

(4) Any indebtedness determined by final order of the department must be paid by the seller of travel to the department within 30 days after the order is entered, for distribution to the traveler. If the seller of travel fails to make payment within the 30 days, the department shall make demand upon the surety, which includes an institution issuing a letter of credit or depository on a certificate of deposit. Upon failure of a surety to comply with a demand for payment pursuant to a final order, the department may file an action in circuit court to recover payment, up to the amount of the bond or other form of security pursuant to s. 120.69. If the department is successful and the court affirms the department's demand for payment from the surety, the department shall be allowed all court costs incurred and reasonable attorney fees to be fixed and collected as a part of the costs of the suit.

~~(5)~~ ~~(4)~~ ~~If In any situation in which~~ the seller of travel is currently the subject of an administrative, civil, or criminal action by the department, the Department of Legal Affairs, or the state attorney relating to ~~concerning~~ compliance with this



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part, the right to proceed against the bond as provided in subsection (3) ~~is shall be~~ suspended until ~~after~~ any enforcement action becomes final.

~~(6)(5)~~ The department may waive the bond requirement on an annual basis if the seller of travel has had 5 or more consecutive years of experience as a seller of travel in this state Florida in compliance with this part, has not had a any civil, criminal, or administrative action instituted against the seller of travel in the vacation and travel business by a any governmental agency or an any action involving fraud, theft, misappropriation of property, violation of a any statute pertaining to business or commerce with a any terrorist state, or moral turpitude, and has a satisfactory consumer complaint history with the department, and certifies its business activities under s. 559.9285. Such waiver may be revoked if the seller of travel violates ~~any provision of~~ this part. A seller of travel which that certifies its business activities under s. 559.9285(1)(b) or (c) is not entitled to the waiver provided in this subsection.

Section 20. Effective January 1, 2015, paragraph (a) of subsection (4) of section 943.059, Florida Statutes, is amended to read:

943.059 Court-ordered sealing of criminal history records.— The courts of this state shall continue to have jurisdiction over their own procedures, including the maintenance, sealing, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a



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criminal justice agency to seal the criminal history record of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice agency to seal a criminal history record until the person seeking to seal a criminal history record has applied for and received a certificate of eligibility for sealing pursuant to subsection (2). A criminal history record that relates to a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in s. 907.041, or any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, without regard to whether that offense alone is sufficient to require such registration, or for registration as a sexual offender pursuant to s. 943.0435, may not be sealed, without regard to whether adjudication was withheld, if the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed or pled guilty or nolo contendere to committing the offense as a delinquent act. The court may only order sealing of a criminal history record pertaining to one arrest or one incident of alleged criminal activity, except as provided in this section. The court may, at its sole discretion, order the sealing of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the sealing of records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not seal any record pertaining to such additional arrests if



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the order to seal does not articulate the intention of the court to seal records pertaining to more than one arrest. This section does not prevent the court from ordering the sealing of only a portion of a criminal history record pertaining to one arrest or one incident of alleged criminal activity. Notwithstanding any law to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to sealing, correction, or confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the sealing of any criminal history record, and any request for sealing a criminal history record may be denied at the sole discretion of the court.

(4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal history record of a minor or an adult which is ordered sealed by a court of competent jurisdiction pursuant to this section is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and is available only to the person who is the subject of the record, to the subject's attorney, to criminal justice agencies for their respective criminal justice purposes, which include conducting a criminal history background check for approval of firearms purchases or transfers as authorized by state or federal law, to judges in the state courts system for the purpose of assisting them in their case-related decisionmaking responsibilities, as set forth in s. 943.053(5), or to those entities set forth in subparagraphs (a)1., 4., 5., 6., and 8. for their respective licensing, access authorization, and employment purposes.

(a) The subject of a criminal history record sealed under this section or under other provisions of law, including former



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s. 893.14, former s. 901.33, and former s. 943.058, may lawfully deny or fail to acknowledge the arrests covered by the sealed record, except when the subject of the record:

1. Is a candidate for employment with a criminal justice agency;
2. Is a defendant in a criminal prosecution;
3. Concurrently or subsequently petitions for relief under this section, s. 943.0583, or s. 943.0585;
4. Is a candidate for admission to The Florida Bar;
5. Is seeking to be employed or licensed by or to contract with the Department of Children and Families, the Division of Vocational Rehabilitation within the Department of Education, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the disabled, or the elderly;
6. Is seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities; ~~or~~
7. Is attempting to purchase a firearm from a licensed importer, licensed manufacturer, or licensed dealer and is subject to a criminal history check under state or federal law; or
8. Is seeking to be licensed by the Bureau of License Issuance of the Division of Licensing within the Department of



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Agriculture and Consumer Services to carry a concealed weapon or concealed firearm. This exception applies only to the determination of an applicant's eligibility in accordance with s. 790.06.

Section 21. Section 205.1969, Florida Statutes, is amended to read:

205.1969 Health studios; consumer protection.—A county or municipality may not issue or renew a business tax receipt for the operation of a health studio pursuant to ss. 501.012-501.019 ~~or ballroom dance studio pursuant to s. 501.143,~~ unless such business exhibits a current license, registration, or letter of exemption from the Department of Agriculture and Consumer Services.

Section 22. Subsection (6) of section 501.015, Florida Statutes, is amended to read:

501.015 Health studios; registration requirements and fees.—Each health studio shall:

(6) Be considered a new health studio and is ~~shall be~~ subject to the requirements of s. 501.016 each time the health studio changes ownership or, in the case of corporate ownership, each time the stock ownership is changed so as to effectively put the health studio under new management or control, notwithstanding s. 501.016(8) ~~the provisions of s. 501.016(6).~~ A change of ownership does not occur within the meaning of this subsection if:

(a) Substantially the same stockholders form a new corporate entity;

(b) In the opinion of the department, the change does not effectively place the health studio under new management and



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control; and

(c) The health studio has a satisfactory complaint history with the department.

Section 23. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2014.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to the Department of Agriculture and Consumer Services; amending s. 493.6108, F.S.; removing the requirement that an applicant for private investigative, private security, and repossession services provide a written statement by a fingerprint technician or licensed physician under certain conditions; amending s. 493.6113, F.S.; revising recertification training requirements for Class "G" licensees; amending s. 493.6115, F.S.; adding specific handguns to the list of firearms a Class "G" licensee may carry while performing his or her duties; amending s. 493.6305, F.S.; authorizing specified Class "D" licensees to carry an authorized concealed firearm under certain circumstances; amending s. 501.016, F.S.; requiring a health studio to maintain a bond in favor of the department, rather than the state; authorizing liability for specified injuries to be determined in an administrative proceeding or through



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997 a civil action; providing that certain claims may be
998 paid only upon an order of the department issued in an
999 administrative proceeding; requiring that a claim
1000 against the bond be filed on a form affidavit adopted
1001 by rule of the department; providing the process by
1002 which a consumer may file a claim against a bond or
1003 other form of security; requiring a health studio to
1004 pay the department indebtedness determined by final
1005 order within 30 days; providing the process by which
1006 the department may make a demand if the health studio
1007 fails to timely make the payment; providing that the
1008 department shall be awarded attorney fees and costs in
1009 certain circumstances; repealing ss. 501.057,
1010 501.0571, 501.0573, 501.0575, 501.0577, 501.0579, and
1011 501.0581, F.S., relating to the Commercial Weight-Loss
1012 Practices Act; repealing s. 501.0583, F.S., relating
1013 to selling, delivering, bartering, furnishing, or
1014 giving weight-loss pills to persons younger than 18
1015 years of age and related penalties and defense;
1016 amending s. 501.059, F.S.; prohibiting a telephone
1017 solicitor or a person from initiating an outbound
1018 telephone call to a consumer, a donor, or a potential
1019 donor under certain circumstances; repealing s.
1020 501.143, F.S., relating to the Dance Studio Act;
1021 amending s. 501.603, F.S.; defining the term "novelty
1022 payment"; conforming a cross-reference; amending s.
1023 501.611, F.S.; requiring the bond required of a
1024 commercial telephone seller to be in favor of the
1025 department for the use and benefit of a purchaser who



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1026 is injured by specified acts; requiring that a claim
1027 against the bond be filed on a form affidavit adopted
1028 by rule of the department; providing procedures that a
1029 purchaser must follow in filing a claim against the
1030 bond or other form of security; providing for payment
1031 of indebtedness by the commercial telephone seller to
1032 the department; requiring the department to make
1033 demand on a surety if a commercial telephone seller
1034 fails to pay certain indebtedness within 30 days and
1035 providing a process; providing that attorney fees and
1036 costs must be awarded to the department in certain
1037 circumstances; conforming provisions to changes made
1038 by the act; amending s. 501.616, F.S.; prohibiting a
1039 commercial telephone seller or salesperson from
1040 accepting a novelty payment; deleting a provision that
1041 prohibits a commercial telephone seller or salesperson
1042 from requiring payment to be made by credit card;
1043 amending s. 501.913, F.S.; providing that the
1044 registration certificate for each brand of antifreeze
1045 distributed in this state expires 1 year from the date
1046 of issue; amending s. 525.16, F.S.; requiring all
1047 previous fines to be disregarded if a new violation of
1048 provisions relating to gasoline and oil inspections
1049 has not occurred within 3 years after the date of a
1050 previous violation; creating s. 526.015, F.S.,
1051 relating to lubricating oil standards and labeling
1052 requirements; prohibiting a person from selling,
1053 distributing, or offering for sale or distribution
1054 lubricating oil that does not meet specified standards



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1055 or labeling requirements; requiring such noncompliant
1056 products to be placed under a stop-sale order and the
1057 lot identified and tagged by the department;
1058 prohibiting a person from selling, distributing, or
1059 offering for sale or distribution a product under
1060 stop-sale order; requiring the department to issue a
1061 release order under certain circumstances; repealing
1062 s. 526.50(6), F.S., relating to definition of terms
1063 related to the sale of brake fluid; amending s.
1064 526.51, F.S.; providing that a permit authorizing a
1065 registrant to sell brake fluid in this state is valid
1066 for a specified period from the date of issue;
1067 conforming provisions to changes made by the act;
1068 amending s. 539.001, F.S.; requiring that a claim
1069 against the bond be filed on a form affidavit adopted
1070 by rule of the department; providing the procedure
1071 that a consumer must follow in filing a claim against
1072 a bond or other form of security filed with the
1073 department by a pawnbroker; providing for payment of
1074 indebtedness by the pawnbroker to the department;
1075 providing the procedure that a consumer must follow if
1076 the pawnbroker fails to make the payment; providing
1077 that the agency shall be awarded attorney fees and
1078 costs in certain circumstances; requiring the weight
1079 of a precious metal to be obtained from a device that
1080 meets specified requirements; amending s. 559.929,
1081 F.S.; requiring that a claim against the bond be filed
1082 on a form affidavit adopted by rule of the department;
1083 providing the procedure that a consumer must follow in



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1084 filing a claim against a bond or other form of
1085 security filed with the department by a seller of
1086 travel; providing for payment of indebtedness by the
1087 seller of travel to the department; providing
1088 procedures that the agency must follow if the seller
1089 of travel fails to pay certain indebtedness within 30
1090 days and providing a process; providing that the
1091 agency shall be awarded attorney fees and costs in
1092 certain circumstances; amending s. 943.059, F.S.;
1093 providing an exception relating to the acknowledgement
1094 of arrests covered by a sealed criminal history record
1095 for a person seeking to be licensed to carry a
1096 concealed weapon or concealed firearm; providing
1097 applicability; amending ss. 205.1969 and 501.015,
1098 F.S.; conforming cross-references; providing effective
1099 dates.

By Senator Detert

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1 A bill to be entitled
 2 An act relating to the Department of Agriculture and
 3 Consumer Services; amending s. 493.6108, F.S.;
 4 removing the requirement that an applicant for private
 5 investigative, private security, and repossession
 6 services provide a written statement by a fingerprint
 7 technician or licensed physician under certain
 8 conditions; amending s. 493.6113, F.S.; revising
 9 recertification training requirements for Class "G"
 10 licensees; amending s. 493.6115, F.S.; adding specific
 11 handguns to the list of firearms a Class "G" licensee
 12 may carry while performing his or her duties; amending
 13 s. 493.6305, F.S.; authorizing specified Class "D"
 14 licensees to carry an authorized concealed firearm
 15 under certain circumstances; amending s. 501.016,
 16 F.S.; requiring a health studio to maintain a bond in
 17 favor of the department, rather than the state;
 18 authorizing liability for specified injuries to be
 19 determined in an administrative proceeding or through
 20 a civil action; providing that certain claims may be
 21 paid only upon an order of the department issued in an
 22 administrative proceeding; requiring that a claim
 23 against the bond be filed on a form affidavit adopted
 24 by rule of the department; providing the process by
 25 which a consumer may file a claim against a bond or
 26 other form of security; requiring a health studio to
 27 pay the department indebtedness determined by final
 28 order within 30 days; providing the process by which
 29 the department may make a demand if the health studio

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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30 fails to timely make the payment; providing that the
 31 department shall be awarded attorney fees and costs in
 32 certain circumstances; repealing ss. 501.057,
 33 501.0571, 501.0573, 501.0575, 501.0577, 501.0579, and
 34 501.0581, F.S., relating to the Commercial Weight-Loss
 35 Practices Act; repealing s. 501.0583, F.S., relating
 36 to selling, delivering, bartering, furnishing, or
 37 giving weight-loss pills to persons younger than 18
 38 years of age and related penalties and defense;
 39 amending s. 501.059, F.S.; prohibiting a telephone
 40 solicitor or a person from initiating an outbound
 41 telephone call to a consumer, a donor, or a potential
 42 donor under certain circumstances; repealing s.
 43 501.143, F.S., relating to the Dance Studio Act;
 44 amending s. 501.603, F.S.; defining the term "novelty
 45 payment"; conforming a cross-reference; amending s.
 46 501.611, F.S.; requiring the bond required of a
 47 commercial telephone seller to be in favor of the
 48 department for the use and benefit of a purchaser who
 49 is injured by specified acts; requiring that a claim
 50 against the bond be filed on a form affidavit adopted
 51 by rule of the department; providing procedures that a
 52 purchaser must follow in filing a claim against the
 53 bond or other form of security; providing for payment
 54 of indebtedness by the commercial telephone seller to
 55 the department; requiring the department to make
 56 demand on a surety if a commercial telephone seller
 57 fails to pay certain indebtedness within 30 days and
 58 providing a process; providing that attorney fees and

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59 costs must be awarded to the department in certain
 60 circumstances; conforming provisions to changes made
 61 by the act; amending s. 501.616, F.S.; prohibiting a
 62 commercial telephone seller or salesperson from
 63 accepting a novelty payment; deleting a provision that
 64 prohibits a commercial telephone seller or salesperson
 65 from requiring payment to be made by credit card;
 66 amending s. 501.913, F.S.; providing that the
 67 registration certificate for each brand of antifreeze
 68 distributed in this state expires 1 year from the date
 69 of issue; amending s. 525.16, F.S.; requiring all
 70 previous fines to be disregarded if a new violation of
 71 provisions relating to gasoline and oil inspections
 72 has not occurred within 3 years after the date of a
 73 previous violation; creating s. 526.015, F.S.,
 74 relating to lubricating oil standards and labeling
 75 requirements; prohibiting a person from selling,
 76 distributing, or offering for sale or distribution
 77 lubricating oil that does not meet specified standards
 78 or labeling requirements; requiring such noncompliant
 79 products to be placed under a stop-sale order and the
 80 lot identified and tagged by the department;
 81 prohibiting a person from selling, distributing, or
 82 offering for sale or distribution a product under
 83 stop-sale order; requiring the department to issue a
 84 release order under certain circumstances; repealing
 85 s. 526.50(6), F.S., relating to definition of terms
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88 registrant to sell brake fluid in this state is valid
 89 for a specified period from the date of issue;
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 92 against the bond be filed on a form affidavit adopted
 93 by rule of the department; providing the procedure
 94 that a consumer must follow in filing a claim against
 95 a bond or other form of security filed with the
 96 department by a pawnbroker; providing for payment of
 97 indebtedness by the pawnbroker to the department;
 98 providing the procedure that a consumer must follow if
 99 the pawnbroker fails to make the payment; providing
 100 that the agency shall be awarded attorney fees and
 101 costs in certain circumstances; requiring the weight
 102 of a precious metal to be obtained from a device that
 103 meets specified requirements; amending s. 559.929,
 104 F.S.; requiring that a claim against the bond be filed
 105 on a form affidavit adopted by rule of the department;
 106 providing the procedure that a consumer must follow in
 107 filing a claim against a bond or other form of
 108 security filed with the department by a seller of
 109 travel; providing for payment of indebtedness by the
 110 seller of travel to the department; providing
 111 procedures that the agency must follow if the seller
 112 of travel fails to pay certain indebtedness within 30
 113 days and providing a process; providing that the
 114 agency shall be awarded attorney fees and costs in
 115 certain circumstances; amending s. 570.07, F.S.;
 116 revising the duties of the department to include

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117 specified notification procedures by the Division of
 118 Licensing when an administrative complaint is served
 119 on a licensee; amending s. 943.059, F.S.; providing an
 120 exception relating to the acknowledgement of arrests
 121 covered by a sealed criminal history record for a
 122 person seeking to be licensed to carry a concealed
 123 weapon or concealed firearm; providing applicability;
 124 amending ss. 205.1969 and 501.015, F.S.; conforming
 125 cross-references; providing an effective date.
 126

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

128

129 Section 1. Paragraph (a) of subsection (1) of section
 130 493.6108, Florida Statutes, is amended to read:

131 493.6108 Investigation of applicants by Department of
 132 Agriculture and Consumer Services.—

133 (1) Except as otherwise provided, the department must
 134 investigate an applicant for a license under this chapter before
 135 it may issue the license. The investigation must include:

136 (a)1. An examination of fingerprint records and police
 137 records. If a criminal history record check of an any applicant
 138 under this chapter is performed by means of fingerprint
 139 identification, the time limitations prescribed by s. 120.60(1)
 140 shall be tolled while during the time the applicant's
 141 fingerprints are under review by the Department of Law
 142 Enforcement or the United States Department of Justice, Federal
 143 Bureau of Investigation.

144 2. If a legible set of fingerprints, as determined by the
 145 Department of Law Enforcement or the Federal Bureau of

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146 Investigation, cannot be obtained after two attempts, the
 147 Department of Agriculture and Consumer Services may determine
 148 the applicant's eligibility based on upon a Department of Law
 149 Enforcement criminal history record check under the applicant's
 150 name ~~conducted by the Department of Law Enforcement if the~~
 151 ~~fingerprints are taken by a law enforcement agency or the~~
 152 ~~department and the applicant submits a written statement signed~~
 153 ~~by the fingerprint technician or a licensed physician stating~~
 154 ~~that there is a physical condition that precludes obtaining a~~
 155 ~~legible set of fingerprints or that the fingerprints taken are~~
 156 ~~the best that can be obtained.~~

157 Section 2. Paragraph (b) of subsection (3) of section
 158 493.6113, Florida Statutes, is amended to read:

159 493.6113 Renewal application for licensure.—

160 (3) Each licensee is responsible for renewing his or her
 161 license on or before its expiration by filing with the
 162 department an application for renewal accompanied by payment of
 163 the prescribed license fee.

164 (b) Each Class "G" licensee shall additionally submit proof
 165 that he or she has received during each year of the license
 166 period a minimum of 4 hours of firearms recertification training
 167 taught by a Class "K" licensee and has complied with such other
 168 health and training requirements that which the department
 169 adopts shall adopt by rule. Proof of completion of firearms
 170 recertification training shall be submitted to the department
 171 upon completion of the training. If the licensee fails to
 172 complete the required 4 hours of annual training during
 173 ~~documentation of completion of the required training is not~~
 174 ~~submitted by the end of~~ the first year of the 2-year term of the

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175 license, the individual's license shall be automatically
 176 suspended ~~until proof of the required training is submitted to~~
 177 ~~the department. The licensee must complete the minimum number of~~
 178 ~~hours of range and classroom training required at the time of~~
 179 ~~initial licensure and submit proof of having completed such~~
 180 ~~training to the department before the license may be reinstated.~~
 181 If ~~the licensee fails to complete the required 4 hours of annual~~
 182 ~~training during documentation of completion of the required~~
 183 ~~training is not submitted by the end of the second year of the~~
 184 2-year term of the license, the licensee must complete the
 185 minimum number of hours of range and classroom training required
 186 at the time of initial licensure and submit proof of having
 187 completed such training to the department before the license may
 188 ~~shall not be renewed unless the renewal applicant completes the~~
 189 ~~minimum number of hours of range and classroom training required~~
 190 ~~at the time of initial licensure. The department may waive the~~
 191 firearms training requirement if:

192 1. The applicant provides proof that he or she is currently
 193 certified as a law enforcement officer or correctional officer
 194 under the Criminal Justice Standards and Training Commission and
 195 has completed law enforcement firearms requalification training
 196 annually during the previous 2 years of the licensure period;

197 2. The applicant provides proof that he or she is currently
 198 certified as a federal law enforcement officer and has received
 199 law enforcement firearms training administered by a federal law
 200 enforcement agency annually during the previous 2 years of the
 201 licensure period; or

202 3. The applicant submits a valid firearm certificate among
 203 those specified in s. 493.6105(6)(a) and provides proof of

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204 having completed requalification training during the previous 2
 205 years of the licensure period.

206 Section 3. Subsection (6) of section 493.6115, Florida
 207 Statutes, is amended to read:

208 493.6115 Weapons and firearms.—

209 (6) In addition to any other firearm approved by the
 210 department, a licensee who has been issued a Class "G" license
 211 may carry a .38 caliber revolver; ~~or~~ a .380 caliber or 9
 212 millimeter semiautomatic pistol; ~~or~~ a .357 caliber revolver with
 213 .38 caliber ammunition only; a .40 caliber handgun; or a .45 ACP
 214 handgun while performing duties authorized under this chapter. A
 215 ~~No~~ licensee may not carry more than two firearms upon her or his
 216 person when performing her or his duties. A licensee may only
 217 carry a firearm of the specific type and caliber with which she
 218 or he is qualified pursuant to the firearms training described
 219 ~~referenced~~ in subsection (8) or s. 493.6113(3)(b).

220 Section 4. Subsection (4) is added to section 493.6305,
 221 Florida Statutes, to read:

222 493.6305 Uniforms, required wear; exceptions.—

223 (4) Class "D" licensees who are also Class "G" licensees
 224 and who are performing bodyguard or executive protection
 225 services may carry their authorized firearm concealed while
 226 wearing plain clothes as needed to provide contracted services
 227 to the client.

228 Section 5. Section 501.016, Florida Statutes, is amended to
 229 read:

230 501.016 Health studios; security requirements.—Each health
 231 studio that sells contracts for health studio services shall
 232 meet the following requirements:

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(1) Each health studio shall maintain for each separate business location a bond issued by a surety company admitted to do business in this state. The principal sum of the bond ~~must~~ shall be \$25,000, and the bond, when required, ~~must~~ shall be obtained before a business tax receipt may be issued under chapter 205. Upon issuance of a business tax receipt, the licensing authority shall immediately notify the department of such issuance in a manner established by the department by rule. The bond ~~must~~ shall be in favor of the department state for the benefit of any person injured as a result of a violation of ss. 501.012-501.019. Liability for such injuries may be determined in an administrative proceeding of the department pursuant to chapter 120 or through a civil action. However, claims against the bond or certificate of deposit may be paid, in amounts up to the determined liability for such injuries, only by order of the department in an administrative proceeding pursuant to chapter 120. The aggregate liability of the surety to all persons for all breaches of the conditions of the bonds provided by this section may not herein shall in no event exceed the amount of the bond. The original surety bond required by this section shall be filed with the department on a form adopted by department rule.

(2) In lieu of maintaining the bond required in subsection (1), the health studio may furnish to the department on a form adopted by department rule:

(a) An irrevocable letter of credit from any foreign or domestic bank in the amount of \$25,000; or

(b) A guaranty agreement that is secured by a certificate of deposit in the amount of \$25,000.

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The original letter of credit or certificate of deposit submitted in lieu of the bond shall be filed with the department. The department shall decide whether the security furnished in lieu of bond by the health studio complies ~~is in compliance~~ with the requirements of this section.

(3) A consumer may file a claim against the bond or other form of security. Such claim must be submitted to the department in writing on a form affidavit approved by department rule within 120 days after an alleged injury has occurred or is discovered to have occurred or a judgment has been entered. The proceedings shall be conducted in accordance with chapter 120. For proceedings conducted under ss. 120.569 and 120.57, the department may act only as a nominal party.

(4) The health studio shall pay to the department for distribution to the consumer any indebtedness determined by final order of the department within 30 days after the order is entered. If the health studio fails to make timely payment, the department shall make demand upon the surety, which may include an institution issuing a letter of credit or depository on a certificate of deposit. If a surety fails to comply with a demand for payment issued pursuant to a final order, the department may file an action in circuit court pursuant to s. 120.69 to recover payment up to the amount of the bond or other form of security. If the court affirms the department's demand for payment from the surety, the department shall be awarded court costs and reasonable attorney fees.

(5) ~~(3)~~ A health studio that ~~which~~ sells contracts for future health studio services and ~~which~~ collects direct payment

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291 on a monthly basis for those services ~~is shall be~~ exempt from
 292 the security requirements of subsections (1) and (2) ~~if provided~~
 293 ~~that~~ any service fee charged is a reasonable and fair ~~service~~
 294 ~~fee~~. The number of monthly payments in such a contract must
 295 ~~shall~~ be equal to the number of months in the contract. The
 296 contract must ~~shall~~ conform to all the requirements for future
 297 health studio services contracts ~~as~~ specified in ss. 501.012-
 298 501.019 and must ~~shall~~ specify in the terms of the contract the
 299 charges to be assessed for those health studio services.

300 ~~(6)(4)~~ If the health studio furnishes the department with
 301 evidence satisfactory to the department that the aggregate
 302 dollar amount of all current outstanding contracts of the health
 303 studio is less than \$5,000, the department may, ~~at its~~
 304 ~~discretion~~, reduce the principal amount of the surety bond or
 305 other sufficient financial responsibility required in
 306 subsections (1) and (2) to a sum of at least not less than
 307 \$10,000. However, at any time the aggregate dollar amount of
 308 such contracts exceeds \$5,000, the health studio shall ~~se~~ notify
 309 the department and shall ~~thereupon~~ provide the bond or other
 310 documentation as required in subsections (1) and (2). Health
 311 studios whose bonds have been reduced shall ~~must~~ provide the
 312 department with an annually updated list of members. ~~Failure to~~
 313 ~~file an annual report will result in~~ The department shall
 314 increase raising the security requirement to \$25,000 for a
 315 health studio that fails to file an annual report.

316 ~~(7)(5)~~ Each health studio shall furnish the department with
 317 a copy of the escrow account which would contain all funds
 318 received for future consumer services, whether provided under ~~by~~
 319 contract or otherwise, sold before ~~prior to~~ the business

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320 location's full operation and specify a date certain for
 321 opening, if such an escrow account is established.

322 ~~(8)(6)~~ Subsections (1) and (2) ~~do shall~~ not apply to a
 323 health studio that has been operating in compliance with ss.
 324 501.012-501.019 and rules adopted thereunder, continuously under
 325 the same ownership and control, continuously for the most recent
 326 5-year period; ~~in compliance with ss. 501.012-501.019 and the~~
 327 ~~rules adopted thereunder and~~ that has not had any civil,
 328 criminal, or administrative adjudication against it by any state
 329 or federal agency; and that has a satisfactory consumer
 330 complaint history. As used in this subsection, the term
 331 "satisfactory consumer complaint history" means that there are
 332 no unresolved consumer complaints regarding the health studio
 333 ~~are~~ on file with the department. A consumer complaint is
 334 unresolved if a health studio has not responded to the
 335 department's efforts to mediate the complaint or if there has
 336 been an adjudication that the health studio has violated ss.
 337 501.012-501.019 or the rules adopted thereunder. Such exemption
 338 extends to all current and future business locations of an
 339 exempt health studio.

340 ~~(9)(7)~~ This section does not apply to a business, otherwise
 341 defined as a health studio, which sells a single contract of 30
 342 days or less to a any member without any option for renewal or
 343 any other condition that which establishes any right in the
 344 member beyond the term of such contract ~~is exempt from the~~
 345 ~~provisions of this section.~~ However, this exemption does shall
 346 not apply if the business offers any other health studio
 347 contract, regardless of whatever duration, at any time before or
 348 during ~~or prior to~~ the existence of such single contract of 30

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349 days or less.

350 ~~(10)(f)~~ Except in the case of a natural disaster or an act
 351 of God, a health studio that is exempt from the requirements of
 352 subsections (1) and (2), but does not have any that has no
 353 business locations open for 14 consecutive days, waives its
 354 exemption and is considered to be a new health studio for the
 355 purposes of ss. 501.012-501.019.

356 Section 6. Sections 501.057, 501.0571, 501.0573, 501.0575,
 357 501.0577, 501.0579, and 509.0581, Florida Statutes, are
 358 repealed.

359 Section 7. Section 501.0583, Florida Statutes, is repealed.

360 Section 8. Subsection (5) of section 501.059, Florida
 361 Statutes, is amended to read:

362 501.059 Telephone solicitation.—

363 (5) A telephone solicitor or person may not initiate an
 364 outbound telephone call to a consumer, donor, or potential donor
 365 who has previously communicated to the telephone solicitor or
 366 person that he or she does not wish to receive an outbound
 367 telephone call:

368 (a) Made by or on behalf of the seller whose goods or
 369 services are being offered; or

370 (b) Made on behalf of a charitable organization for which a
 371 charitable contribution is being solicited.

372 Section 9. Section 501.143, Florida Statutes, is repealed.

373 Section 10. Present subsections (8) through (11) of section
 374 501.603, Florida Statutes, are redesignated as subsections (9)
 375 through (12), respectively, a new subsection (8) is added to
 376 that section, and subsection (2) of that section is amended, to
 377 read:

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378 501.603 Definitions.—As used in this part, unless the
 379 context otherwise requires, the term:

380 (2) "Commercial telephone seller" means a person who
 381 engages in commercial telephone solicitation on his or her own
 382 behalf or through salespersons. ~~The term, except that a~~
 383 ~~commercial telephone seller~~ does not include a salesperson as
 384 defined in subsection (11) or a person or entity operating under
 385 a valid affidavit of exemption filed with the department
 386 according to s. 501.608(1)(b) or exempted from this part by s.
 387 501.604. The term A commercial telephone seller does not include
 388 a salesperson as defined in subsection (10). A commercial
 389 telephone seller includes, but is not limited to, owners,
 390 operators, officers, directors, partners, or other individuals
 391 engaged in the management activities of a business entity
 392 pursuant to this part.

393 (8) "Novelty payment" means a payment method that does not
 394 provide a means of systematic monitoring to detect and deter
 395 fraud. The term includes, but is not limited to, the following
 396 payment devices:

397 (a) A remotely created check, which is a check that is not
 398 created by the paying bank and that does not bear the signature
 399 of the person on whose account the check is drawn.

400 (b) A remotely created payment order, which is a payment
 401 instruction or order drawn on a person's account which is
 402 initiated or created by the payee and which does not bear the
 403 signature of the person on whose account the order is drawn and
 404 which is cleared through the check clearing system.

405 (c) A cash-to-cash money transfer, which is the electronic
 406 transfer of the value of cash received from one person to

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another person in a different location which is sent by a money transfer provider and received in the form of cash. As used in this paragraph, the term "money transfer provider" means a person or financial institution that provides cash-to-cash money transfers for a person in the normal course of business, regardless of whether the person holds an account with such person or financial institution.

(d) A cash reload mechanism, which is a system that makes it possible to convert cash into an electronic form which a person can use to add money to a general-use prepaid card or an online account with a payment intermediary. As used in this paragraph, the term "mechanism" means a system that is purchased by a person on a prepaid basis, that enables access to the funds via an authorization code or other security measure, and that is not directly used as a general-use prepaid card.

Section 11. Section 501.611, Florida Statutes, is amended to read:

501.611 Security.—

(1) An application filed pursuant to s. 501.605 must be accompanied by:

(a) A bond executed by a corporate surety approved by the department and licensed to do business in this state;

(b) An irrevocable letter of credit issued for the benefit of the applicant by a bank whose deposits are insured by an agency of the Federal Government; or

(c) A certificate of deposit in a financial institution insured by an agency of the Federal Government, which may be withdrawn only on the order of the department, except that the interest may accrue to the applicant.

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(2) The amount of the bond, letter of credit, or certificate of deposit must be a minimum of \$50,000, and the bond, letter of credit, or certificate of deposit must be in favor of the department for the use and benefit of any purchaser who is injured by the fraud, misrepresentation, breach of contract, financial failure, or violation of this part by the applicant ~~must be conditioned upon compliance by the applicant with the provisions of this part~~. The department may, at its discretion, establish a bond of a greater amount to ensure the general welfare of the public and the interests of the telemarketing industry.

(3) The bond shall be posted with the department on a form adopted by and shall remain in force throughout the period of licensure with the department rule and shall remain in force throughout the period of licensure.

(4) The department or a ~~any~~ governmental agency, on behalf of an ~~any~~ injured purchaser or a ~~any~~ purchaser herself or himself who is injured by ~~the bankruptcy of the applicant or her or his breach of any agreement entered into in her or his capacity as a licensee~~, may bring and maintain an action to recover against the bond, letter of credit, or certificate of deposit.

(5) A purchaser may file a claim against the bond or other form of security. Such claim must be submitted to the department in writing on a form affidavit approved by department rule within 120 days after an alleged injury has occurred or is discovered to have occurred or a judgment has been entered. The proceedings shall be conducted in accordance with chapter 120. For proceedings conducted under ss. 120.569 and 120.57, the

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department must act only as a nominal party.

(6) The commercial telephone seller shall pay to the department for distribution to the consumer any indebtedness determined by final order of the department within 30 days after the order is entered. If the commercial telephone seller fails to make timely payment, the department shall make demand upon the surety, which may include an institution issuing a letter of credit or depository on a certificate of deposit. If a surety fails to comply with a demand for payment issued pursuant to a final order, the department may file an action in circuit court pursuant to s. 120.69 to recover payment up to the amount of the bond or other form of security. If the court affirms the department's demand for payment from the surety, the department shall be awarded all court costs and reasonable attorney fees.

Section 12. Section 501.616, Florida Statutes, is amended to read:

501.616 Unlawful acts and practices.—

(1) ~~A It shall be unlawful for any~~ commercial telephone seller or salesperson may not accept a novelty payment, directly or indirectly, which includes, but is not limited to, a cash-to-cash money transfer, cash reload mechanism, remotely created check, remotely created payment order, or other novelty payment as defined by rule of the department as payment for goods or services offered or sold through telemarketing ~~to require that payment be by credit card authorization or otherwise to announce a preference for that method of payment.~~

(2) ~~A It shall be unlawful for any~~ commercial telephone seller may not ~~to~~ employ, or be affiliated with an, ~~any~~ unlicensed salesperson.

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(3) ~~A It shall be unlawful for any~~ salesperson may not ~~to~~ be employed by, or affiliated with, an unlicensed commercial telephone seller.

(4) ~~A It shall be unlawful for any~~ commercial telephone seller or salesperson must ~~to~~ be licensed ~~unlicensed~~.

(5) ~~A It shall be unlawful for any~~ salesperson or commercial telephone seller may not ~~to~~ otherwise violate the ~~provisions of~~ this part.

(6) ~~A It shall be unlawful for any~~ commercial telephone seller or salesperson may not ~~to~~ make a commercial telephone solicitation phone call before 8 ~~8:00~~ a.m. or after 9 ~~9:00~~ p.m. local time at the called person's location.

(7) ~~A It shall be unlawful for any~~ commercial telephone seller or salesperson making a commercial telephone solicitation call may not intentionally act telephonic solicitations to take any intentional action to prevent transmission of the telephone solicitor's name or telephone number to the party called when the equipment or service used by the telephone solicitor is capable of creating and transmitting the telephone solicitor's name or telephone number.

Section 13. Subsection (1) of section 501.913, Florida Statutes, is amended to read:

501.913 Registration.—

(1) Each brand of antifreeze to be distributed in this state shall be registered with the department before distribution. The person whose name appears on the label, the manufacturer, or the packager shall make application annually to the department on forms provided by the department ~~no later than~~ July 1 of each year. The registration certificate expires 1 year

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523 from the date of issue. The registrant assumes, by application
 524 to register the brand, full responsibility for the registration
 525 ~~and the~~ quality, and quantity of the product sold, offered, or
 526 exposed for sale in this state. If a registered brand is not in
 527 production for distribution in this state, ~~and~~ to ensure any
 528 remaining product that is still available for sale in ~~this the~~
 529 state is properly registered, the registrant must submit a
 530 notarized affidavit on company letterhead to the department
 531 certifying that:

532 (a) The stated brand is no longer in production;

533 (b) The stated brand will not be distributed in this state;
 534 and

535 (c) All existing product of the stated brand will be
 536 removed by the registrant from the state within 30 days after
 537 expiration of the registration or the registrant will reregister
 538 the brand for two subsequent registration periods.

539 If production resumes, the brand must be reregistered before it
 540 is distributed in this state.

542 Section 14. Paragraph (b) of subsection (1) of section
 543 525.16, Florida Statutes, is amended to read:

544 525.16 Administrative fine; penalties; prosecution of cases
 545 by state attorney.—

546 (1)

547 (b) If ~~a, 3 years after the day of issuance of the last~~
 548 ~~stop-sale order for a violation under this chapter, no new~~
 549 ~~violation does not occur has occurred~~ at the same location while
 550 the business is under the same during the proprietorship within
 551 3 years after the date of issuance of the last previous stop-

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552 ~~sale order of the same person~~, all previous fines shall be
 553 disregarded when administering a fine for a new ~~the next~~
 554 violation.

555 Section 15. Section 526.015, Florida Statutes, is created
 556 to read:

557 526.015 Lubricating oil standards; labeling requirements.—
 558 (1) A person may not sell or distribute, or offer for sale
 559 or distribution, a lubricating oil that fails to meet a standard
 560 or labeling requirement adopted by rule of the department.

561 (2) A product that fails to meet a standard or labeling
 562 requirement adopted by rule of the department shall be placed
 563 under a stop-sale order by the department, and the lot number of
 564 the product shall be identified and tagged by the department to
 565 prevent its sale.

566 (3) A person may not sell or distribute, or offer for sale
 567 or distribution, a product that has been placed under a stop-
 568 sale order.

569 (4) If a product is made to conform to standards and
 570 labeling requirements or is removed from the premises in a
 571 manner approved by the department, the department shall issue a
 572 release order.

573 Section 16. Subsection (6) of section 526.50, Florida
 574 Statutes, is repealed.

575 Section 17. Subsection (1) of section 526.51, Florida
 576 Statutes, is amended to read:

577 526.51 Registration; renewal and fees; departmental
 578 expenses; cancellation or refusal to issue or renew.—

579 (1) (a) Application for registration of each brand of brake
 580 fluid shall be made on forms supplied by the department. The

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581 applicant shall ~~provide~~ give his or her name and address, ~~and~~
 582 the brand name of the brake fluid, the state in which ~~that~~ he or
 583 she owns the brand name and has complete control over the
 584 product sold thereunder in this state, and ~~provide~~ the name and
 585 address of the resident agent in this state. If the applicant
 586 does not own the brand name but wishes to register the product
 587 with the department, a notarized affidavit that gives the
 588 applicant full authorization to register the brand name, which
 589 ~~must be and that is~~ signed by the owner of the brand name, must
 590 accompany the application for registration. The affidavit must
 591 include all affected brand names, the owner's company or
 592 corporate name and address, the applicant's company or corporate
 593 name and address, and a statement from the owner authorizing the
 594 applicant to register the product with the department. The owner
 595 of the brand name shall maintain complete control over each
 596 product sold under that brand name in this state. All first-time
 597 applications for a brand and formula combination must be
 598 accompanied by a certified report from an independent testing
 599 laboratory, setting forth the analysis of the brake fluid which
 600 shows its quality meets to be not less than the minimum
 601 specifications established by the department for brake fluids. A
 602 sample of at least not less than 24 fluid ounces of brake fluid
 603 shall be submitted, in a container labeled in the same manner
 604 ~~that it or containers, with labels representing exactly how the~~
 605 ~~containers of brake fluid~~ will be labeled when sold, and the
 606 sample and container shall be analyzed and inspected by the
 607 department in order to verify that compliance with the
 608 department's specifications and labeling requirements ~~may be~~
 609 ~~verified~~. Upon approval of the application, the department shall

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610 register the brand name of the brake fluid and issue to the
 611 applicant a permit, valid for 1 year from the date of issue,
 612 authorizing the registrant to sell the brake fluid in this state
 613 ~~during the permit year specified in the permit.~~
 614 (b) ~~An~~ Each applicant shall pay a fee of \$100 with each
 615 application. A permit may be renewed by application to the
 616 department, accompanied by a renewal fee of \$50, on or before
 617 the expiration of the previously issued last day of the permit
 618 ~~year immediately preceding the permit year for which application~~
 619 ~~is made for renewal of registration.~~ To reregister a previously
 620 registered brand and formula combination, an applicant must
 621 submit a completed application and all materials as required in
 622 this section to the department before the expiration of the
 623 previously issued first day of the permit year. A brand and
 624 formula combination for which a completed application and all
 625 materials required in this section are not received before the
 626 expiration of the previously issued first day of the permit year
 627 may not be registered with the department until a completed
 628 application and all materials required in this section have been
 629 received and approved. If the brand and formula combination was
 630 previously registered with the department and a fee,
 631 application, or materials required in this section are received
 632 after the expiration of the previously issued first day of the
 633 permit year, a penalty of \$25 ~~accrues, which~~ shall be added to
 634 the fee. Renewals shall be accepted only on brake fluids that do
 635 not have a ~~no~~ change in formula, composition, or brand name. A
 636 ~~Any~~ change in formula, composition, or brand name of a ~~any~~ brake
 637 fluid constitutes a new product that must be registered in
 638 accordance with this part.

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639 (c) If a registered brand and formula combination is no
 640 longer in production for distribution in this state, in order to
 641 ensure that any remaining product still available for sale in
 642 this state is properly registered, ~~if a registered brand and~~
 643 ~~formula combination is no longer in production for distribution~~
 644 ~~in this state,~~ the registrant must submit a notarized affidavit
 645 on company letterhead to the department certifying that:

646 1. The stated brand and formula combination is no longer in
 647 production;

648 2. The stated brand and formula combination will not be
 649 distributed in this state; and

650 3. Either all existing product of the stated brand and
 651 formula combination will be removed by the registrant from the
 652 state within 30 days after the expiration of the registration or
 653 that the registrant will reregister the brand and formula
 654 combination for 2 two subsequent years ~~registration periods~~.

655 If production resumes, the brand and formula combination must be
 656 reregistered before it is again distributed in this state.

658 Section 18. Paragraph (a) of subsection (4), paragraphs (b)
 659 and (d) of subsection (7), and paragraph (b) of subsection (8)
 660 of section 539.001, Florida Statutes, are amended to read:

661 539.001 The Florida Pawnbroking Act.—

662 (4) ELIGIBILITY FOR LICENSE.—

663 (a) To be eligible for a pawnbroker's license, an applicant
 664 must:

665 1. Be of good moral character;

666 2. Have a net worth of at least \$50,000 or file with the
 667 agency a bond, issued by a surety company qualified to do

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668 business in this state, in the amount of \$10,000 for each
 669 license. In lieu of the bond required in this section, the
 670 applicant may establish a certificate of deposit or an
 671 irrevocable letter of credit in a Florida banking institution in
 672 the amount of the bond. The original bond, certificate of
 673 deposit, or letter of credit shall be filed with the agency on a
 674 form adopted by agency rule, and the agency shall be the
 675 beneficiary to said document. The bond, certificate of deposit,
 676 or letter of credit must ~~shall~~ be in favor of the agency for the
 677 use and benefit of any consumer who is injured by the fraud,
 678 misrepresentation, breach of contract, financial failure, or
 679 violation of ~~any provision of~~ this section by the pawnbroker.
 680 Such liability may be enforced either by proceeding in an
 681 administrative action or by filing a judicial suit at law ~~in a~~
 682 ~~court of competent jurisdiction~~. However, in such court suit,
 683 the bond, certificate of deposit, or letter of credit posted
 684 with the agency may ~~shall~~ not be amenable or subject to any
 685 judgment or other legal process issuing out of or from such
 686 court in connection with such lawsuit, but such bond,
 687 certificate of deposit, or letter of credit shall be amenable to
 688 and enforceable only by and through administrative proceedings
 689 before the agency. It is the intent of the Legislature that such
 690 bond, certificate of deposit, or letter of credit ~~shall~~ be
 691 applicable and liable only for the payment of claims duly
 692 adjudicated by order of the agency. The bond, certificate of
 693 deposit, or letter of credit shall be payable on a pro rata
 694 basis as determined by the agency, but the aggregate amount may
 695 not exceed the amount of the bond, certificate of deposit, or
 696 letter of credit. A consumer may file a claim against the bond,

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697 certificate of deposit, or letter of credit. Such claim must be
 698 submitted in writing to the agency on a form affidavit approved
 699 by agency rule within 120 days after an alleged injury has
 700 occurred or is discovered to have occurred or a judgment has
 701 been entered. The proceedings shall be conducted in accordance
 702 with chapter 120. For proceedings conducted under ss. 120.569
 703 and 120.57, the agency may act only as a nominal party. The
 704 pawnbroker shall pay to the agency for distribution to the
 705 consumer any indebtedness determined by final order of the
 706 agency within 30 days after the order is entered. If the
 707 pawnbroker fails to make timely payment, the agency shall make
 708 demand upon the surety, which includes an institution issuing a
 709 letter of credit or depository on a certificate of deposit. If a
 710 surety fails to comply with a demand for payment pursuant to a
 711 final order, the agency may file an action pursuant to s. 120.69
 712 in circuit court to recover payment, up to the amount of the
 713 bond or other form of security. If the agency is successful and
 714 the court affirms the agency's demand for payment from the
 715 surety, the agency shall be awarded all court costs and
 716 reasonable attorney fees;

717 3. Not have been convicted of, or found guilty of, or pled
 718 guilty or nolo contendere to, or not have been incarcerated
 719 within the last 10 years as a result of having previously been
 720 convicted of, or found guilty of, or pled guilty or nolo
 721 contendere to, regardless of adjudication, a felony within the
 722 last 10 years and not be acting as a beneficial owner for
 723 someone who has been convicted of, or found guilty of, or pled
 724 guilty or nolo contendere to, regardless of adjudication, a
 725 felony within the last 10 years; and

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726 4. Not have been convicted of, or found guilty of, or pled
 727 guilty or nolo contendere to, or not have been incarcerated
 728 within the last 10 years as a result of having previously been
 729 convicted of, or found guilty of, or pled guilty or nolo
 730 contendere to, regardless of adjudication, a crime that involves
 731 theft, larceny, dealing in stolen property, receiving stolen
 732 property, burglary, embezzlement, obtaining property by false
 733 pretenses, possession of altered property, or any other
 734 fraudulent or dishonest dealing within the last 10 years, and
 735 not be acting as a beneficial owner for someone who has been
 736 convicted, of, or found guilty of, or pled guilty or nolo
 737 contendere to, or has been incarcerated within the last 10 years
 738 as a result of having previously been convicted of, or found
 739 guilty of, or pled guilty or nolo contendere to, regardless of
 740 adjudication, a crime that involves theft, larceny, dealing in
 741 stolen property, receiving stolen property, burglary,
 742 embezzlement, obtaining property by false pretenses, possession
 743 of altered property, or any other fraudulent or dishonest
 744 dealing within the last 10 years.

745 (7) ORDERS IMPOSING PENALTIES.—

746 (b) Upon a finding as set forth in paragraph (a), the
 747 agency may enter an order doing one or more of the following:

748 1. Issuing a notice of noncompliance pursuant to s.
 749 120.695.

750 2. Imposing an administrative fine of up to ~~not to exceed~~
 751 \$5,000 for each act that ~~which~~ constitutes a violation of this
 752 section, ~~or~~ a rule, or an order.

753 3. Directing that the pawnbroker cease and desist specified
 754 activities.

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- 755 4. Refusing to license or revoking or suspending a license.
- 756 5. Placing the licensee on probation for a period of time,
- 757 subject to such conditions as the agency may specify.
- 758 (d)1. ~~When the agency,~~ If a violation of this section
- 759 occurs and the agency has reasonable cause to believe that a
- 760 person is operating in violation of this section, ~~has reasonable~~
- 761 ~~cause to believe that a person is operating in violation of this~~
- 762 ~~section,~~ the agency may bring a civil action in the appropriate
- 763 court for temporary or permanent injunctive relief and may seek
- 764 other appropriate civil relief, including a civil penalty of up
- 765 to not to exceed \$5,000 for each violation, restitution and
- 766 damages for injured customers, court costs, and reasonable
- 767 attorney's fees.
- 768 2. The agency may terminate an ~~any~~ investigation or action
- 769 upon agreement by the offender to pay a stipulated civil
- 770 penalty, to make restitution or pay damages to customers, or to
- 771 satisfy any other relief authorized in this section ~~herein~~ and
- 772 requested by the agency.
- 773 (8) PAWNBROKER TRANSACTION FORM.—
- 774 (b) The front of the pawnbroker transaction form must
- 775 include:
- 776 1. The name and address of the pawnshop.
- 777 2. A complete and accurate description of the pledged goods
- 778 or purchased goods, including the following information, if
- 779 applicable:
- 780 a. Brand name.
- 781 b. Model number.
- 782 c. Manufacturer's serial number.
- 783 d. Size.

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- 784 e. Color, as apparent to the untrained eye.
- 785 f. Precious metal type, weight, and content, if known.
- 786 Weight shall be obtained from a device properly approved by the
- 787 agency and in compliance with ss. 531.39 and 531.40, and any
- 788 other provision of chapter 531.
- 789 g. Gemstone description, including the number of stones.
- 790 h. In the case of firearms, the type of action, caliber or
- 791 gauge, number of barrels, barrel length, and finish.
- 792 i. Any other unique identifying marks, numbers, names, or
- 793 letters.
- 794
- 795 Notwithstanding sub-subparagraphs a.-i., in the case of multiple
- 796 items of a similar nature delivered together in one transaction
- 797 which do not bear serial or model numbers and which do not
- 798 include precious metal or gemstones, such as musical or video
- 799 recordings, books, and hand tools, the description of the items
- 800 is adequate if it contains the quantity of items and a
- 801 description of the type of items delivered.
- 802 3. The name, address, home telephone number, place of
- 803 employment, date of birth, physical description, and right
- 804 thumbprint of the pledgor or seller.
- 805 4. The date and time of the transaction.
- 806 5. The type of identification accepted from the pledgor or
- 807 seller, including the issuing agency and the identification
- 808 number.
- 809 6. In the case of a pawn:
- 810 a. The amount of money advanced, which must be designated
- 811 as the amount financed;
- 812 b. The maturity date of the pawn, which must be 30 days

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813 after the date of the pawn;

814 c. The default date of the pawn and the amount due on the

815 default date;

816 d. The total pawn service charge payable on the maturity

817 date, which must be designated as the finance charge;

818 e. The amount financed plus the finance charge that must be

819 paid to redeem the pledged goods on the maturity date, which

820 must be designated as the total of payments;

821 f. The annual percentage rate, computed according to ~~the~~

822 regulations adopted by the Federal Reserve Board under the

823 federal Truth in Lending Act; and

824 g. The front or back of the pawnbroker transaction form

825 must include a statement that:

826 (I) Any personal property pledged to a pawnbroker within

827 this state which is not redeemed within 30 days after ~~following~~

828 the maturity date of the pawn, or if the 30th day is not a

829 business day, ~~then~~ the following business day, is automatically

830 forfeited to the pawnbroker, and absolute right, title, and

831 interest in and to the property vests in and is deemed conveyed

832 to the pawnbroker by operation of law, and ~~no~~ further notice is

833 not necessary;

834 (II) The pledgor is not obligated to redeem the pledged

835 goods; and

836 (III) If the pawnbroker transaction form is lost,

837 destroyed, or stolen, the pledgor must immediately advise the

838 issuing pawnbroker in writing by certified or registered mail,

839 return receipt requested, or in person evidenced by a signed

840 receipt.

841 (IV) A pawn may be extended upon mutual agreement of the

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842 parties.

843 7. In the case of a purchase, the amount of money paid for

844 the goods or the monetary value assigned to the goods in

845 connection with the transaction.

846 8. A statement that the pledgor or seller of the item

847 represents and warrants that it is not stolen, that it has no

848 liens or encumbrances against it, and that the pledgor or seller

849 is the rightful owner of the goods and has the right to enter

850 into the transaction.

851

852 A ~~Any~~ person who knowingly gives false verification of ownership

853 or gives a false or altered identification and who receives

854 money from a pawnbroker for goods sold or pledged commits:

855 a. If the value of the money received is less than \$300, a

856 felony of the third degree, punishable as provided in s.

857 775.082, s. 775.083, or s. 775.084.

858 b. If the value of the money received is \$300 or more, a

859 felony of the second degree, punishable as provided in s.

860 775.082, s. 775.083, or s. 775.084.

861 Section 19. Section 559.929, Florida Statutes, is amended

862 to read:

863 559.929 Security requirements.—

864 (1) An application must be accompanied by a performance

865 bond in an amount set by the department under paragraph (a),

866 paragraph (b), or paragraph (c). The surety on such bond must

867 ~~shall~~ be a surety company authorized to do business in the

868 state.

869 (a) Each seller of travel which ~~that~~ certifies its business

870 activities under s. 559.9285(1)(a) shall provide a performance

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871 bond in an amount up to ~~not to exceed~~ \$25,000, or in the amount
 872 of \$50,000 if the seller of travel is offering vacation
 873 certificates.

874 (b) Each seller of travel which ~~that~~ certifies its business
 875 activities under s. 559.9285(1)(b) shall provide a performance
 876 bond in an amount up to ~~not to exceed~~ \$100,000, or in the amount
 877 of \$150,000 if the seller of travel is offering vacation
 878 certificates.

879 (c) Each seller of travel which ~~that~~ certifies its business
 880 activities under s. 559.9285(1)(c) shall provide a performance
 881 bond in an amount up to ~~not to exceed~~ \$250,000, or in the amount
 882 of \$300,000 if the seller of travel is offering vacation
 883 certificates.

884 (2) The bond must ~~shall~~ be in favor of the department on a
 885 form adopted by rule of the department for the use and benefit
 886 of a ~~any~~ traveler who is injured by the fraud,
 887 misrepresentation, breach of contract, financial failure, or
 888 violation ~~of any provision~~ of this part by the seller of travel.
 889 Such liability may be enforced either by proceeding in an
 890 administrative action as specified in subsection (3) or by
 891 filing a judicial suit at law ~~in a court of competent~~
 892 ~~jurisdiction~~. However, in such court suit the bond posted with
 893 the department shall not be amenable or subject to any judgment
 894 or other legal process issuing out of or from such court in
 895 connection with such lawsuit, but such bond shall be amenable to
 896 and enforceable only by and through administrative proceedings
 897 before the department. It is the intent of the Legislature that
 898 such bond is ~~shall be~~ applicable and liable only for the payment
 899 of claims duly adjudicated by order of the department. The bond

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900 must ~~shall~~ be open to successive claims, but the aggregate
 901 amount awarded may not exceed the amount of the bond. In
 902 addition to the foregoing, a bond provided by a registrant or
 903 applicant for registration which certifies its business
 904 activities under s. 559.9285(1)(b) or (c) must ~~shall~~ be in favor
 905 of the department, with payment in the following order of
 906 priority:

907 (a) All expenses for prosecuting the registrant or
 908 applicant in an ~~any~~ administrative or civil action under this
 909 part, including attorney fees ~~for attorneys~~ and fees for other
 910 professionals, court costs or other costs of the proceedings,
 911 and all other expenses incidental to the action.

912 (b) The ~~All~~ costs and expenses of investigation before
 913 prior to the commencement of an administrative or civil action
 914 under this part.

915 (c) An ~~Any~~ unpaid administrative fine imposed by final
 916 order or an ~~any~~ unpaid civil penalty imposed by final judgment
 917 under this part.

918 (d) Damages or compensation for a ~~any~~ traveler injured as
 919 provided in this subsection.

920 (3) A ~~Any~~ traveler may file a claim against the bond. Such
 921 claim must ~~which shall~~ be submitted to the department ~~made~~ in
 922 writing on a form affidavit approved by department rule ~~to the~~
 923 ~~department~~ within 120 days after an alleged injury has occurred
 924 or is discovered to have occurred or a judgment has been
 925 entered. The proceedings shall be conducted ~~held~~ in accordance
 926 with chapter 120. The department may act only as a nominal party
 927 in proceedings conducted under ss. 120.569 and 120.57.

928 (4) Any indebtedness determined by final order of the

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department must be paid by the seller of travel to the department within 30 days after the order is entered, for distribution to the traveler. If the seller of travel fails to make payment within the 30 days, the department shall make demand upon the surety, which includes an institution issuing a letter of credit or depository on a certificate of deposit. Upon failure of a surety to comply with a demand for payment pursuant to a final order, the department may file an action in circuit court to recover payment, up to the amount of the bond or other form of security pursuant to s. 120.69. If the department is successful and the court affirms the department's demand for payment from the surety, the department shall be allowed all court costs incurred and reasonable attorney fees to be fixed and collected as a part of the costs of the suit.

~~(5)(4)~~ If in any situation in which the seller of travel is currently the subject of an administrative, civil, or criminal action by the department, the Department of Legal Affairs, or the state attorney relating to ~~concerning~~ compliance with this part, the right to proceed against the bond as provided in subsection (3) ~~is shall be~~ suspended until after any enforcement action becomes final.

~~(6)(5)~~ The department may waive the bond requirement on an annual basis if the seller of travel has had 5 or more consecutive years of experience as a seller of travel in this state ~~Florida~~ in compliance with this part, has not had a ~~any~~ civil, criminal, or administrative action instituted against the seller of travel in the vacation and travel business by a ~~any~~ governmental agency or an ~~any~~ action involving fraud, theft, misappropriation of property, violation of a ~~any~~ statute

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pertaining to business or commerce with a ~~any~~ terrorist state, or moral turpitude, and has a satisfactory consumer complaint history with the department, and certifies its business activities under s. 559.9285. Such waiver may be revoked if the seller of travel violates ~~any provision of~~ this part. A seller of travel ~~which that~~ certifies its business activities under s. 559.9285(1)(b) or (c) is not entitled to the waiver provided in this subsection.

Section 20. Subsection (43) is added to section 570.07, Florida Statutes, to read:

570.07 Department of Agriculture and Consumer Services; functions, powers, and duties.—The department shall have and exercise the following functions, powers, and duties:

(43)(a) Notwithstanding any other law, when an administrative complaint is served on a licensee of the Division of Licensing pursuant to s. 790.06, the division shall provide service by regular mail to the licensee's last known address of record, by certified mail to the last known address of record, and, if possible, by e-mail.

(b) If service as provided in paragraph (a) does not provide the division with proof of service and the individual has an address on file with the division in a state other than this state or in a foreign territory or country, the division shall call, if available, the licensee's last known telephone number of record, shall publish notice in a newspaper of general circulation in Leon County, and shall cause a short, plain notice to the licensee to be posted on the front page of the department's website.

Section 21. Paragraph (a) of subsection (4) of section

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943.059, Florida Statutes, is amended to read:

943.059 Court-ordered sealing of criminal history records.—

The courts of this state shall continue to have jurisdiction over their own procedures, including the maintenance, sealing, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to seal the criminal history record of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice agency to seal a criminal history record until the person seeking to seal a criminal history record has applied for and received a certificate of eligibility for sealing pursuant to subsection

(2). A criminal history record that relates to a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in s. 907.041, or any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, without regard to whether that offense alone is sufficient to require such registration, or for registration as a sexual offender pursuant to s. 943.0435, may not be sealed, without regard to whether adjudication was withheld, if the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed or pled guilty or nolo contendere to committing the offense as a delinquent act. The court may only order sealing of a criminal history record pertaining to one

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arrest or one incident of alleged criminal activity, except as provided in this section. The court may, at its sole discretion, order the sealing of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the sealing of records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not seal any record pertaining to such additional arrests if the order to seal does not articulate the intention of the court to seal records pertaining to more than one arrest. This section does not prevent the court from ordering the sealing of only a portion of a criminal history record pertaining to one arrest or one incident of alleged criminal activity. Notwithstanding any law to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to sealing, correction, or confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the sealing of any criminal history record, and any request for sealing a criminal history record may be denied at the sole discretion of the court.

(4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal history record of a minor or an adult which is ordered sealed by a court of competent jurisdiction pursuant to this section is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and is available only to the person who is the subject of the record, to the subject's attorney, to criminal justice agencies for their respective criminal justice purposes, which include conducting a criminal history background check for approval of firearms purchases or

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transfers as authorized by state or federal law, to judges in the state courts system for the purpose of assisting them in their case-related decisionmaking responsibilities, as set forth in s. 943.053(5), or to those entities set forth in subparagraphs (a)1., 4., 5., 6., and 8. for their respective licensing, access authorization, and employment purposes.

(a) The subject of a criminal history record sealed under this section or ~~under other provisions of~~ law, including former s. 893.14, former s. 901.33, and former s. 943.058, may lawfully deny or fail to acknowledge the arrests covered by the sealed record, unless ~~except when~~ the subject of the record:

1. Is a candidate for employment with a criminal justice agency;

2. Is a defendant in a criminal prosecution;

3. Concurrently or subsequently petitions for relief under this section, s. 943.0583, or s. 943.0585;

4. Is a candidate for admission to The Florida Bar;

5. Is seeking to be employed or licensed by or to contract with the Department of Children and Families, the Division of Vocational Rehabilitation within the Department of Education, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the disabled, or the elderly;

6. Is seeking to be employed or licensed by the Department of Education, a ~~any~~ district school board, a ~~any~~ university laboratory school, a ~~any~~ charter school, a ~~any~~ private or

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parochial school, or a ~~any~~ local governmental entity that licenses child care facilities; ~~or~~

7. Is attempting to purchase a firearm from a licensed importer, licensed manufacturer, or licensed dealer and is subject to a criminal history check under state or federal law; ~~or-~~

8. Is seeking to be licensed by the Bureau of License Issuance of the Division of Licensing within the Department of Agriculture and Consumer Services to carry a concealed weapon or concealed firearm. This exception applies only to the determination of an applicant's eligibility in accordance with s. 790.06.

Section 22. Section 205.1969, Florida Statutes, is amended to read:

205.1969 Health studios; consumer protection.—A county or municipality may not issue or renew a business tax receipt for the operation of a health studio pursuant to ss. 501.012-501.019 ~~or ballroom dance studio pursuant to s. 501.143,~~ unless such business exhibits a current license, registration, or letter of exemption from the Department of Agriculture and Consumer Services.

Section 23. Subsection (6) of section 501.015, Florida Statutes, is amended to read:

501.015 Health studios; registration requirements and fees.—Each health studio shall:

(6) Be considered a new health studio and is ~~shall be~~ subject to the requirements of s. 501.016 each time the health studio changes ownership or, in the case of corporate ownership, each time the stock ownership is changed so as to effectively

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1103 put the health studio under new management or control,
1104 notwithstanding s. 501.016(8) ~~the provisions of s. 501.016(6)~~. A
1105 change of ownership does not occur within the meaning of this
1106 subsection if:

1107 (a) Substantially the same stockholders form a new
1108 corporate entity;

1109 (b) In the opinion of the department, the change does not
1110 effectively place the health studio under new management and
1111 control; and

1112 (c) The health studio has a satisfactory complaint history
1113 with the department.

1114 Section 24. This act shall take effect July 1, 2014.



The Florida Senate

Committee Agenda Request

To: Senator Nancy Detert, Chair
Committee on Commerce and Tourism

Subject: Committee Agenda Request

Date: March 4, 2014

I respectfully request that **1018**, relating to Department of Agriculture and Consumer Services ,
be placed on the:

- ☐ committee agenda at your earliest possible convenience.
- ☒ next committee agenda.

A handwritten signature in black ink, reading "Nancy Detert", is written over a light blue rectangular background.

Senator Nancy C. Detert
Florida Senate, District 28