

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

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Prepared By: Judiciary Committee

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BILL: CS/CS/SB 660

INTRODUCER: Judiciary Committee, Commerce and Consumer Services Committee, and Senator Lynn

SUBJECT: Department of Agriculture and Consumer Services

DATE: March 17, 2006

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Earlywine</u>	<u>Cooper</u>	<u>CM</u>	<u>Fav/CS</u>
2.	<u>Wiehle</u>	<u>Caldwell</u>	<u>CU</u>	<u>Fav/1 amendment</u>
3.	<u>Maclure</u>	<u>Maclure</u>	<u>JU</u>	<u>Fav/CS</u>
4.	_____	_____	<u>GA</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

This bill makes several changes to the statutes relating to the Department of Agriculture and Consumer Services. Specifically, the bill:

- Authorizes the department, rather than the Department of Legal Affairs as a representative of the department, to initiate judicial proceedings in the enforcement of statutes relating to private investigative, private security, and repossession services;
- Revises education requirements for a private security license, to require certain licensees to complete training within 180 days of applying for the license;
- Provides that it is unlawful for a person making telephonic sales calls to fail to transmit accurate telephone numbers and names to those call recipients with a caller-identification service;
- Provides that it is unlawful for a person making telephonic sales calls to disguise the caller's voice in order to defraud or otherwise injure the call recipient or in order to obtain personal information from the recipient for use in an unlawful manner;
- Defines the term "alternative fuel" and includes alternative fuel in the definition of petroleum fuel for purposes of inspection of petroleum fuel quality;
- Exempts persons delivering specified amounts of liquefied petroleum gas to consumers from having to meet minimum storage requirements;
- Eliminates a requirement for an agency receiving a consumer complaint from the department to file progress reports with the department;
- Creates an exemption from insurance requirements for a governmental entity that is operating an amusement ride; and
- Repeals a reporting requirement for the Division of Standards.

The bill substantially amends the following sections of the Florida Statutes: 493.6106, 493.6121, 493.6303, 501.059, 525.01, 527.11, 570.46, 570.47, 570.544, and 616.242. This bill repeals section 526.3135, Florida Statutes.

## **II. Present Situation:**

### **Private Investigative, Private Security, and Repossession Services**

Chapter 493, F.S., governs private investigative, private security, and repossession services. Part I of the chapter prescribes general provisions. Effective January 1, 2003, the Legislature assigned responsibility for enforcing the provisions of this chapter to the Department of Agriculture and Consumer Services (DACS or department) when it transferred the Division of Licensing of the Department of State to DACS.<sup>1</sup> There are lingering references to the Department of State in some provisions of ch. 493, F.S.<sup>2</sup>

Current law provides that the Department of Legal Affairs shall represent DACS in judicial proceedings to enforce the chapter or in actions by a party seeking redress against the department.<sup>3</sup>

### **Private Security Services**

Private security services are licensed under part III of ch. 493, F.S. A “Class D” licensee is a person who owns or is an employee of a licensed security agency. An applicant for a “Class D” private security license must have completed a minimum of 40 hours of professional training at a school or training facility licensed by the department.<sup>4</sup> By rule, DACS establishes the general content of the training. An applicant may satisfy the training requirement either by successfully completing all 40 hours of training before the initial license application or by successfully completing 24 hours of training before the initial license application and completing the remaining 16 hours of training upon the first application for renewal of the license.<sup>5</sup> That authority makes it possible that a person may obtain a license with only the initial 24 hours of training, allow the license to expire, then re-apply using the same 24 hours of training – thus avoiding ever completing the remaining 16 hours of training.

### **Telephone Solicitation**

Current law prohibits certain telephonic sales calls. Under s. 501.059(7), F.S., for example, use of certain automated dialing systems is prohibited, as is the playing of a recorded message when a connection is completed to a number called. The Department of Agriculture and Consumer Services is directed to investigate complaints of violations of this statute, and the department or

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<sup>1</sup> See ss. 1-9, ch. 2002-295, L.O.F.

<sup>2</sup> See, e.g., ss. 493.6106(2)(c) and 493.6121(5), F.S.

<sup>3</sup> Section 493.6121(7), F.S.

<sup>4</sup> Section 493.6303(4)(a), F.S.

<sup>5</sup> Individuals licensed before October 1, 1994, do not have to complete additional training hours in order to renew their licenses (s. 493.6303(4)(b), F.S.).

the Department of Legal Affairs may bring an action to impose a civil penalty and seek other relief. The civil penalty shall not exceed \$10,000 per violation.<sup>6</sup>

“Caller ID spoofing” is a term used to describe an act in which a caller uses Internet telephone equipment to change the number that appears on the recipient’s caller-identification service. According to one press account, there are websites that provide caller ID spoofing services. The services may also include the capability to scramble the caller’s voice to make, for example, the caller sound like someone of the opposite sex.<sup>7</sup>

### **Gasoline and Oil Inspection/Alternative Fuels**

The department inspects petroleum fuel quality and all measuring devices used in selling or distributing petroleum fuel at wholesale and retail, under authority prescribed in ch. 525, F.S. Current Florida law does not specifically include alternative fuels, such as alcohol-blended and biodiesel fuels, within the definition of “petroleum fuel.”<sup>8</sup> The department notes that the state may wish to define and establish quality standards for alternative fuels, in light of advancements in their use and their increasing presence in the marketplace.

### **Sale and Storage of Liquefied Petroleum Gas**

Chapter 527, F.S., governs the sale of liquefied petroleum gas, and designates the department as the enforcing authority. Every person who engages in the distribution of liquefied petroleum gas for resale to domestic, commercial, or industrial consumers must, as a licensure condition, install, own, or lease a bulk storage filling plant of at least 18,000 gallons (water capacity) within the state and located within a 75-mile radius of the licensed company’s business location.<sup>9</sup> There is an exemption from these minimum storage requirements for companies operating cylinder-exchange units or operating a single dispenser offering liquid petroleum directly to the public, since these types of facilities provide a product that is not used for essential services by the end user (e.g., that is not used for home heating).<sup>10</sup> These product sales generally are for grills, recreational vehicles, mosquito control, and other non-essential functions. However, DACS notes that the existing statutory language has the effect of prohibiting these companies from delivering small cylinders to their customers.

### **Department Structure; Division Responsibilities**

Chapter 570, F.S., creates the department and provides for its organizational structure.

#### ***Standards***

Sections 570.46 and 570.47, F.S., provide for the duties of the department’s Division of Standards, which include, for example, inspecting petroleum measuring devices and performing the quality analyses required under the statutory provisions governing gasoline and oil inspection

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<sup>6</sup> Section 501.059(8), F.S.

<sup>7</sup> “Caller ID spoofs ring up trouble,” *Florida Today*, March 2, 2006.

<sup>8</sup> Section 525.01(1)(b), F.S.

<sup>9</sup> Section 527.11(1), F.S.

<sup>10</sup> Section 527.11(3), F.S.

(ch. 525, F.S.) and the sale of liquid fuels (ch. 526, F.S.). The sections of law prescribing the duties of the Division of Standards do not reflect the division's current role in enforcing the provisions of law relating to the sale of liquefied petroleum gas (ch. 527, F.S.). The Bureau of Liquefied Petroleum Gas Inspection was transferred to the department's Division of Standards, from the Department of Insurance, in 1994.<sup>11</sup>

### ***Consumer Services/Complaints***

Section 570.544(3), F.S., provides that the department's Division of Consumer Services is to serve as a clearinghouse for consumer complaints, transmitting the complaints to the agency most directly concerned with the subject of each particular complaint, in order that the complaint or grievance may be expeditiously handled in the best interests of the consumer. If there is not an appropriate agency to which the division may transmit the complaint, the division shall seek a settlement of the complaint using formal or informal methods of mediation and conciliation.

The agency receiving a consumer complaint under this process has 30 days to acknowledge the complaint and to report to the division as to the disposition of the complaint. If the complaint is not disposed of within 30 days, the other agency must file additional reports with the division concerning the status of the complaint.<sup>12</sup>

### **Amusement Ride Safety Standards**

Amusement rides must meet statutory and rule-based permitting, inspection, and other safety-related requirements.<sup>13</sup> An owner may not operate an amusement ride unless the owner has in effect at all times of operation an insurance policy or surety bond in the amount of \$1 million per occurrence, \$1 million in the aggregate, procured from an insurer or surety that is licensed to transact business in Florida or that is approved as a surplus lines insurer.<sup>14</sup>

## **III. Effect of Proposed Changes:**

### **Private Investigative, Private Security, and Repossession Services (Sections 1, 2, and 3)**

Current law provides that an applicant for a "Class D" private security license must have completed 40 hours of professional training at a school or training facility licensed by the department. The bill revises the provisions governing this 40-hour training requirement to authorize the department to prescribe by rule a required number of hours in each subject area to be taught. The bill further provides that a person who obtains a private security license having successfully completed an initial 24 hours of training before initial application must complete the remaining 16 hours of training within 180 days after the date the application is submitted and document completion of the training. If the documentation is not timely submitted, the license is automatically suspended until the documentation is provided. The bill specifies that a person

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<sup>11</sup> Prior to the transfer, there was a Division of Liquefied Petroleum Gas within the Department of Insurance. The Legislature transferred that division to the Department of Agriculture and Consumer Services (DACS) effective March 1, 1994 (s. 8, ch. 93-142, and s. 8, ch. 93-248, L.O.F.) and made DACS responsible for administering the program.

<sup>12</sup> Section 570.544(6)(a), F.S.

<sup>13</sup> Section 616.242(1), F.S.

<sup>14</sup> Section 616.242(9), F.S.

whose license is suspended for failing to document the remaining 16 hours of training must, upon reapplication, submit proof of completion of the entire 40 hours of training before a license will be issued.

As currently drafted, however, the bill appears to make the entire 40-hour training requirement prescribed in s. 493.6303(4)(a), F.S., applicable effective January 1, 2007. (The bill uses the words “[e]ffective January 1, 2007,” as an introductory phrase for the paragraph that sets out the 40-hour training requirement.) Because the bill itself is effective July 1, 2006, it may have the consequence of creating ambiguity about whether a person who applies for a license between July 1, 2006, and January 1, 2007, has to satisfy the training requirements of s. 493.6303(4)(a), F.S., at all.<sup>15</sup> In a later reference, the bill specifies that a person who successfully completed 40 hours of training before January 1, 2007, at a school or training facility licensed by the department, is exempt from the training requirements of s. 493.6303(4)(a), F.S. It is not immediately clear from what specific requirements these persons are exempt. The two provisions may create uncertainty about the training requirements for those who apply for a license between the effective date of the bill and January 1, 2007.

The bill specifically authorizes the Department of Agriculture and Consumer Services to institute judicial proceedings to enforce ch. 493, F.S., relating to private investigative, private security, and repossession services, as well as related rules and orders of the department. The bill further amends s. 493.6121, F.S., to eliminate the requirement that the Department of Legal Affairs represent the department in such judicial proceedings.

The bill replaces references to the Department of State with references to the Department of Agriculture and Consumer Services in a statutory sections (ss. 493.6106(2)(c) and 493.6121(5), F.S.) relating to licensure requirements for private investigative, private security, and repossession services. The bill’s correction of the departmental references reflects the fact that the Legislature transferred the Division of Licensing from the Department of State to DACS effective January 1, 2003.

#### **Telephone Solicitation (Section 4)**

The bill revises the statute governing telephone solicitation to provide that it is unlawful for a person making telephonic sales calls to fail to transmit accurate telephone numbers and names to those call recipients with a caller-identification service. However, in the case of calls being made on behalf of a seller, the caller may substitute the name of the seller on whose behalf the calls are being made, and may transmit the regularly operated customer service telephone number of the seller.

The bill also makes it unlawful for a person making telephonic sales calls to alter the caller’s voice to disguise his or her gender, age, or other characteristics, in order to defraud or otherwise injure the call recipient or in order to obtain personal information from the recipient for use in an unlawful manner.

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<sup>15</sup> An applicant reading the revised statute in December 2006, for example, might argue that the 40-hour training requirement does not apply because it is before January 1, 2007.

### **Gasoline and Oil Inspection/Alternative Fuels (Section 5)**

The bill amends s. 525.01, F.S., to include “alternative fuel” in the definition of “petroleum fuel” for purposes of the statutes that authorize the department to inspect petroleum fuel quality and all measuring devices used in selling or distributing petroleum fuel. The bill defines the term “alternative fuel” to mean:

- Methanol, denatured ethanol, or other alcohols;
- Mixtures containing 85 percent or more by volume of methanol, denatured ethanol, or other alcohols with gasoline or other fuels, or other such percentage, but not less than 70 percent, as determined by the department by rule, to provide for requirements relating to the cold start, safety, or vehicles functions;
- Hydrogen;
- Coal-derived liquid fuels;
- Fuels, other than alcohol, derived from biological materials; and
- Electricity, including electricity from solar energy.

The effect of this change is to authorize the department to inspect facilities selling alternative fuels to the general public and to adopt relevant fuel-quality standards into department rules.

### **Sale and Storage of Liquefied Petroleum Gas (Sections 6, 7, and 8)**

Under the bill, a liquefied petroleum gas licensee who has a single dispensing unit may deliver cylinders of 40 lbs. or less of propane gas capacity to customers without the current requirement of building or leasing 18,000 gallons worth of storage. These types of cylinders are commonly used for grilling, mosquito control, and similar applications. The section also prohibits delivery of liquefied petroleum gas by cargo vehicle without compliance with the minimum storage requirements.

The bill also amends ss. 570.46 and 570.47, F.S., to include enforcement of the statutes on the sale of liquefied petroleum gas within the powers and duties of the department’s Division of Standards and the division director. The Bureau of Liquefied Petroleum Gas Inspection was transferred to the department’s Division of Standards, from the Department of Insurance, effective March 1, 1994.<sup>16</sup>

### **Consumer Services/Complaints (Section 9 and 11)**

The bill deletes the requirements in s. 570.544, F.S., that an agency receiving a consumer complaint forwarded to it by the Division of Consumer Services report back to the division on the status of that complaint. The bill retains the requirement that the agency acknowledge receipt of the complaint within 30 days.

The bill repeals s. 526.3135, F.S., which currently requires the Division of Standards to report on complaints received under the Motor Fuel Marketing Practices Act to the Division of Consumer Services, in a similar fashion to the way other state agencies are currently required to report to

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<sup>16</sup> See note 9, *supra*.

the Division of Consumer Services on complaints that are referred to them. The existing statute requires the Division of Standards to provide the same kind of information that other agencies are required to provide (e.g., whether the complaint is deemed frivolous; what action was taken; whether the complaint was satisfied, etc.). This repeal appears to be designed to conform to the bill's deletion of the reporting requirement for state agencies under s. 570.544, F.S., as described above.

#### **Amusement Ride Safety Standards (Section 10)**

The bill amends s. 616.242(9), F.S., to create an exemption from the insurance requirements that currently apply to owners of amusement rides. Under the bill, a governmental entity that is operating an amusement ride and that is covered by the provisions of s. 768.28(16), F.S., would be exempt from the insurance requirements. Section 768.28(16), F.S., is part of the waiver of sovereign immunity in tort actions and authorizes governmental entities to be self-insured, to enter into risk management programs, or to purchase liability insurance in anticipation of claims, judgments, and claim bills they may be liable for under the waiver of sovereign immunity.

#### **Effective Date (Section 12)**

The bill provides an effective date of July 1, 2006.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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

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## **VIII. Summary of Amendments:**

None.

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

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