

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill requires telephone solicitors to transmit the phone number and name of the company they represent to the caller identification service of the recipient of the telephone solicitation. The bill also provides for the preemption of the regulation of refunds by retail sales establishments to the Department of Agriculture and Consumer Services (department). The bill grants the department authority to inspect facilities selling alternative fuels. The bill deletes a requirement for other agencies to report back to the department regarding the disposition of complaints.

Maintain public security: The bill requires private security officers to complete the total 40 hours of professional training.

B. EFFECT OF PROPOSED CHANGES:

Division of Licensing

When the Cabinet was reorganized in 2003, the Division of Licensing (division) was transferred from the Department of State to the Department of Agriculture and Consumer Services (department). There are still some statutes that reference the division operating within the Department of State. This legislation corrects those references to reflect the transfer of the division to the department.

Security Officers (Class "D") Licensure

Currently, an applicant for a Class "D" license is required to complete a minimum of 40 hours of professional training at a school or training facility licensed by the department.¹ By rule, the department 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.² This exemption enables a person, licensed prior to October 1, 1994, to allow his/her license to expire, then re-apply using the same 24-hours of training, thus avoiding ever completing the remaining 16 hours of training.

The bill requires the initial 24 hours of training to be taken for licensure, with the remaining 16 hours of training to be completed within 180 days after the submission of the application. The bill provides for an individual's license to be suspended in the event documentation of the training is not submitted within the specified timeframe.

Telephone Solicitation

The Division of Consumer Services (division), within the department, regulates telephone solicitation. Current law requires telephone solicitors, making unsolicited telephonic sales calls to a residential, mobile, or telephonic paging device telephone number, to identify himself or herself by his or her true first and last names and the business on whose behalf he or she is soliciting immediately upon making contact with the person who is the subject of the solicitation telephone call.³ The law makes no mention regarding information transmitted by the solicitation call to the caller identification service.

The bill requires persons making telephonic sales call to transmit the telephone number and, when made available by the telephone solicitor's carrier, the name of the telephone solicitor to any caller identification service in use by a recipient of a telephonic sales call. The bill provides that the name and telephone number used in or billed for making the call, the name of the seller on behalf of which a

¹ Section 493.6303(4)(a), F.S.

² Individual 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.)

³ Section 501.059(2), F.S.

telephonic sales call is placed and the seller's customer service telephone number, which is answered during regular business hours, may be substituted.

"Caller identification service" is defined as a service that allows a telephone subscriber to have the telephone number and, where available, the name of the calling party transmitted contemporaneously with the telephone call and displayed on a device in or connected to the subscriber's telephone.

The bill prohibits a telephone solicitor from intentionally disguising his/her voice or concealing his/her identity to confuse or defraud the person receiving the solicitation call.

Retail Sales Establishments

Existing law provides that every retail sales establishment offering goods for sale to the general public that offers no cash refund, credit refund, or exchange of merchandise must post a sign so stating at the point of sale. Failure to exhibit a "no refund" sign under such circumstances at the point of sale means that a refund or exchange policy exists, and the policy shall be presented in writing to the consumer upon request. Any retail establishment failing to comply with the provisions of this section shall grant to the consumer, upon request and proof of purchase, a refund on the merchandise, within 7 days of the date of purchase, provided that the merchandise is unused and in the original carton, if one was furnished.⁴

The bill expressly preempts the regulation of refunds in retail sales establishments to the department and authorizes the department to adopt rules to enforce the provisions s. 501.142, F.S. The bill also authorizes a local government to impose penalties. The bill provides means to the department for addressing violations. Monies recovered by the department may be deposited into the General Inspection Trust Fund. Monies recovered by a local government may be deposited into the appropriate local account.

Shopping Carts

Current law provides that no fee, fine, or costs may be assessed against the owner of a shopping cart found on public property, unless the shopping cart was removed from the premises or parking area of a retail establishment by the owner of the shopping cart, or an employee acting on the owner's behalf, and such fee, fine, or cost has been approved by the department.⁵

The bill specifies that no fee, fine, or costs may be assessed against the owner of a shopping cart unless the cart is found on public property **and** it was removed from the premises or parking area of a retail establishment by the cart's owner or an employee acting on the owner's behalf. Additionally, the bill provides a "grandfather clause" for ordinances adopted prior to June 2002 which require a business to install an electronic retention system to retain shopping carts within the real property of a business location.

Alternative Fuel

Chapter 525, F.S., addresses gasoline and oil inspection but does not specifically include alternative fuels, such as alcohol-blended and biodiesel fuels. In light of the recent interest and advancements in the use of alternative fuels and their increasing presence in the marketplace, the department sees a need to define and establish quality standards for such fuels.

The bill provides a definition for alternative fuel. In doing so, the department is granted the authority to inspect facilities selling alternative fuels to the general public. The department is also authorized to adopt relevant fuel quality standards for alternative fuels into department rule.

⁴ Section 501.142(1), F.S.

⁵ Section 506.5131(2), F.S.

Liquefied Petroleum Gas

Section 527.11, F.S., provides for minimum storage requirements relating to liquefied petroleum gas (LPG). The intent of minimum storage requirements is to ensure there is an adequate supply of product during peak periods such as winter months or hurricane season, when there is the potential for product shortage. Current law⁶ provides an exemption from minimum storage requirements for companies operating cylinder exchange units or a single dispenser serving liquid product directly to the public. These companies are not providing product for essential services, such as home heating, but rather providing product for non-essential services, such as grills, mosquito control, etc. The current language prohibits these companies from delivering small cylinders of LPG to their customers or from conducting the periodic testing required by law to ensure cylinder suitability for continued safe use, without first obtaining either a storage container of 18,000 gallons or acquiring multiple licenses.

The bill allows a licensee who has a single dispensing unit to deliver small cylinders of LPG to residential customers without the requirement of building or leasing 18,000 gallons worth of storage.

Consumer Complaint Reports

Current law⁷ requires the Division of Consumer Services to forward consumer complaints, which fall under the jurisdiction of another agency, to that agency. The receiving agency has 30 days to acknowledge receipt of the complaint and report on the disposition of the complaint. If the 30 day deadline is not met, the agency must file additional reports with the department concerning the status of the complaint.

The bill deletes the requirement for other agencies to report back to the department regarding the disposition of the complaint. Additionally, the bill removes a cross-reference to the report from statute.

Fair Rides

Current statute requires amusement ride operators to have in effect, at all times, an insurance policy or surety bond in the amount of \$1 million per occurrence and \$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. This requirement is not appropriate for governmental entities who have limited liability pursuant to s. 768.28(16), F.S.

The bill creates an exemption for amusement rides operated by governmental entities that are covered under the limited liability statutes.

Other

The bill corrects a cross-reference that was inadvertently omitted, which clarifies that liquid petroleum inspections fall under the Division of Standards within the department.

C. SECTION DIRECTORY:

Section 1: Amends s. 493.6106, F.S.; corrects reference to state agency.

Section 2: Amends s. 493.6121, F.S.; corrects reference to state agency.

Section 3: Amends s. 493.6303, F.S.; directs the Department of Agriculture and Consumer Services (department) to establish training hours required for Class "D" private security licensure; provides timeframe for completing training; provides for suspension of license in certain circumstances; and, provides exemption from training requirements.

Section 4: Amends s. 501.059, F.S.; prohibits telephone solicitor from blocking certain information from a recipient's caller identification service; provides an exception; and provides a definition.

⁶ Section 527.11(3), F.S.

⁷ Section 570.544, F.S.

Section 5: Amends s. 501.142, F.S.; preempts the regulation of refunds to the department; allows for the adoption of rules for enforcement; provides for enforcement by local government; provides penalties for violations; provides for moneys recovered to be deposited into designated trust fund; authorizes a local government to impose penalties; and, provides for moneys recovered by local governments to be deposited into designated accounts.

Section 6: Amends s. 506.5131, F.S.; revises provisions relating to shopping carts.

Section 7: Amends s. 525.01, F.S.; provides a definition for alternative fuel.

Section 8: Amends s. 527.11, F.S.; exempts the delivery of certain amounts of propane gas for use with outdoor equipment or appliances from provisions relating to the delivery of liquefied petroleum gas; and, requires a person delivering liquefied petroleum gas in bulk to comply with certain storage requirements.

Section 9: Amends s. 570.46, F.S.; revises the duties of the Division of Standards.

Section 10: Amends s. 570.47, F.S.; revises a cross reference.

Section 11: Amends s. 570.544, F.S.; deletes provisions requiring agencies receiving a complaint to file a progress report with the Division of Consumer Services.

Section 12: Repeals s. 526.3135, F.S.; relating to reports filed with the Division of Consumer Services.

Section 13: Amends s. 616.242, F.S.; exempts certain governmental entities from insurance requirements.

Section 14: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

Division of Standards: The department states that there is no fiscal impact currently associated with the alternative fuels. However, as these fuels capture a significant market share in future years, there will be additional costs to the department associated with regulation.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to the department, the exemption of bulk storage in order to deliver 40 pounds or less of propane capacity will have a positive impact on certain LP gas licensees. This exemption results in considerable, indeterminate cost savings for the licensee, many of whom are small business operators.

The department reports that exempting governmental entities from insurance requirements for amusement rides will have a positive affect on counties and municipalities that operate amusement rides (i.e. water slides, carousels, trains). Insurance requirements imposed currently by s. 616.242(9), F.S., will not apply if the municipalities are covered by the provisions of s. 768.28(16), F.S., of the state's self insurance program.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenues in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The bill gives the Department of Agriculture and Consumer Services rule-making authority to enforce provisions relating to regulation of refunds from retail sales establishments.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None