

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 749 Consumer Services

**SPONSOR(S):** Agriculture & Natural Resources Appropriations Subcommittee, Business & Consumer Affairs Subcommittee and Young

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 888

| REFERENCE  | ACTION           | ANALYST    | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|------------------|------------|---------------------------------------|
| 1) Business & Consumer Affairs Subcommittee                    | 15 Y, 0 N, As CS | Livingston | Creamer                               |
| 2) Agriculture & Natural Resources Appropriations Subcommittee | 13 Y, 0 N, As CS | Lolley     | Massengale                            |
| 3) Economic Affairs Committee                                  | 16 Y, 0 N        | Livingston | Tinker                                |

### SUMMARY ANALYSIS

The mission of the Florida Department of Agriculture and Consumer Services is to “safeguard the public and support Florida’s agricultural economy.” The bill contains modifications to several regulatory and consumer activities under the jurisdiction of the department.

Specifically the bill:

- Removes the Division of Standards from the organizational structure of the department and adds conforming terminology specifying the powers and duties of the Division of Consumer Services.
- Authorizes the department to waive license renewal fees, not to exceed 2 years, if the General Inspection Trust Fund contains funds that exceed the amount required to cover the necessary functions of the Board of Professional Surveyors and Mappers.
- Authorizes the Board of Professional Surveyors and Mappers to include all inactive and delinquent licensees with active licensees should a special assessment fee be collected to eliminate a cash deficit; or if there is not a cash deficit, in an amount sufficient to maintain the financial integrity of the profession.
- Directs the department to work cooperatively with the Department of Revenue relating to an “automated method” for disclosing surveyor and mapper license information relating to family desertion and nonsupport of dependent children.
- Allows waiver of firearm training requirements of private investigative, private security, or repossession services pursuant to documentation that supports competence of skills and education.
- Eliminates the fee required for the placement on the no sale list and provides for administrative penalties.
- Removes reference to the use of a social security number as a form of identification and allows the use of “or other valid form of identification” for an applicant for a license as commercial telephone sellers and salespersons.
- Replaces the outdated term “occupational license” with the term “business tax receipt.”
- Requires a registrant of a brand of antifreeze not in production for distribution in this state to submit a notarized affidavit attesting to the fact that the brand is not in production for distribution.
- Specifies that notification of cancellation of insurance coverage for household moving services be provided at least 10 days prior to cancellation.
- Authorizes the temporary waiver of requirements for maintaining power generators at motor fuel dispensing facilities if the generators are to be used in an emergency or major disaster situation in another state.
- Replaces criminal sanctions with administrative and monetary sanctions for violations of requirements for the sale of brake fluids.

The bill appears to have an insignificant fiscal impact on state funds and no impact on local government.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

The website of the Florida Department of Agriculture and Consumer Services states that the mission of the department is to safeguard the public and support Florida's agricultural economy by:

- Ensuring the safety and wholesomeness of food and other consumer products through inspection and testing programs;
- Protecting consumers from unfair and deceptive business practices and providing consumer information;
- Assisting Florida's farmers and agricultural industries with the production and promotion of agricultural products; and
- Conserving and protecting the state's agricultural and natural resources by reducing wildfires, promoting environmentally safe agricultural practices, and managing public lands.<sup>1</sup>

The bill includes modifications to several regulatory and consumer activities under the jurisdiction of the department.

#### **Division of Standards**

##### Present situation

The website of the Division of Standards states that the division is authorized to protect consumers from unfair and unsafe business practices across a wide range of products, including gasoline, brake fluid, antifreeze, liquefied petroleum gas, amusement rides and weighing and measuring devices.<sup>2</sup>

##### Proposed changes

The bill removes the Division of Standards from the organizational structure of the department. The bill amends sections 20.14, 501.911, 526.51, 526.53, 570.29, 570.46, and 570.47, F.S., to conform.

The bill also amends s. 570.544, F.S., to add conforming terminology specifying the expansion of powers and duties of the Division of Consumer Services.

#### **Business Tax Receipts**

##### Present situation

The term local "occupational license" was removed by the 2006 Legislature in the "Local Business Tax Act" (ch. 2006-152, L.O.F.). This term was replaced with the reference to the term "business tax receipt."

##### Proposed changes

The bill makes replaces the term "occupational license" with the term "business tax receipt." The bill amends sections 501.015, 559.904, 559.928, and 559.935, F.S., to conform references.

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<sup>1</sup> [http://www.freshfromflorida.com/about\\_fdacs.html](http://www.freshfromflorida.com/about_fdacs.html), last visited January 3, 2012

<sup>2</sup> <http://www.freshfromflorida.com/standard/>, last visited January 3, 2012.

## Professional Surveyors and Mappers

### Present situation

Pursuant to chapter 2009-66, Laws of Florida, effective October 1, 2009, the regulation of professional surveyors and mappers by the Board of Professional Surveyors and Mappers was transferred from the Department of Business and Professional Regulation (DBPR) to the Department of Agriculture and Consumer Services. The provisions of chapter 472, F.S., were cross referenced and the rules of the board have been transferred from under the umbrella of DBPR to the umbrella of the department.

Applicants must be approved by the board before taking the examination for state licensure. All applicants take the Florida Jurisdictional Multiple Choice examination.

### Proposed changes

Numerous provisions of chapter 472, F.S., are addressed relating to oversight of the board and the department. These provisions were inadvertently omitted when the Board of Professional Surveyors and Mappers was transferred to the department. The bill:

- Amends s. 472.005, F.S., to redefine the term "license" to mean "a registration, certificate, or license issued by the department pursuant to this chapter and defines "consumer member" and "licensee."
- Amends s. 472.006, F.S., to direct the department to work cooperatively on licensee matters with the Department of Revenue relating to an "automated method" for periodically disclosing information relating to licensees found not to be in compliance with a support order, subpoena, order to show cause, or written agreement, to provide for reinstatement of a denied or suspended license, and to relieve the department of certain liability associated with the denial or suspension of a license.
- Amends s. 472.011, F.S., to authorize the department to waive license renewal fees, not to exceed 2 years, if the General Inspection Trust Fund contains funds that exceed the amount required to cover the necessary functions of the board.
- Further amends s. 472.011, F.S., to allow the board, by rule, to assess and collect a special assessment fee at any time from all inactive and delinquent licensees, along with active licensees, in an amount sufficient to maintain financial resources as determined by the board.
- Amends s. 472.015, F.S., to authorize the department to require that licensure applicants provide social security numbers when applying for initial issuance or renewal of a license.
- Amends s. 472.018, F.S., to require continuing education providers to electronically submit to the department information regarding the completion of continuing education courses. The information must be submitted electronically by the provider to the department within 30 calendar days after completion and before the renewal date. The department is required to establish a system to monitor licensee compliance with continuing education requirements and to determine the continuing education status of each licensee.
- Further amends s. 472.018, F.S., to authorize the department to refuse to renew a license until the licensee has satisfied all applicable continuing education requirements and the department or the board is authorized to impose additional penalties pursuant to the chapter or rules adopted.
- Amends s. 472.0203, F.S., to specify that a licensure renewal notification may be sent by the department to the licensee by electronic means if the licensee has provided an e-mail address.
- Creates s. 472.0337, F.S., to statutorily authorize the department to administer oaths, take depositions, and issue subpoenas for the purpose of an investigation or other proceedings.
- Amends s.472.0351, F.S., to revise what actions constitute actionable licensure violations and the circumstances where a licensee can be disciplined and to clarify the ability of the board to discipline licenses and impose license restrictions as disciplinary penalties.

## **Security Industry**

### Present situation

The security industry is regulated by the Division of Licensing within the department. This industry includes private security, private investigative and recovery services which are offered to the public. Additionally, the division manages concealed weapon and firearm licenses.

Generally, applicants for licensure must be at least 18 years of age, be of good moral character, not have a disqualifying criminal history or a disqualifying history of mental illness, drug or alcohol abuse and must be authorized to work in this country. Each applicant must disclose contact and background information and submit to a federal background check.

### Proposed changes

The bill amends s. 493.6105 and 493.6113, F.S., to authorize the department to waive firearms training requirements for the initial licensure and the renewal licensure of private investigative, private security, or repossession services pursuant to documentation that demonstrates competence of skills and education in relation to the duties authorized under the applicable license. Documentation includes proof that the applicant:

- Is currently 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 preceding 2 years;
- Is currently certified as a federal law enforcement officer and has received law enforcement firearms training administered by a federal law enforcement agency annually during the preceding 2 years; or
- Provides proof of having completed requalification training during the preceding 2 years and the applicant possess a valid firearm certificate among those specified in s. 493.6105(6)(a). This subparagraph references:
  - 1. The Florida Criminal Justice Standards and Training Commission Instructor Certificate and written confirmation by the commission that the applicant possesses an active firearms certification.
  - 2. The National Rifle Association Private Security Firearm Instructor Certificate.
  - 3. A firearms instructor certificate issued by a federal law enforcement agency.

The bill amends ss. 493.6118 and 493.6120, F.S., to expand the authority of the department to take disciplinary action against certain additional license classes and training facility licensees.

## **Telephone Solicitation**

### Present situation

Section 501.059, F.S., specifies, in part, that a user of residential, mobile, or telephonic paging devices desiring to be placed on a "no sales solicitation calls" listing indicating that the consumer does not wish to receive unsolicited telephonic sales calls may notify the department and be placed on the no sales list and pay a fee of \$10 for initial listing. The listing may be renewed annually for each consumer upon payment of a \$5 continuation fee.

A telephone solicitor is prohibited from making an unsolicited telephonic sales call to a consumer if the number for that telephone appears on the no sales solicitation list published by the department.

### Proposed changes

The bill does the following:

- Amends s. 501.059, F.S., to eliminate the fee required for the placement on the no sale list.

- This section is further amended to require the department to include placement on the Florida list if the Federal Trade Commission establishes a national no sales list and includes Florida subscribers who object to receiving solicitations.
- Creates an administrative fine in the amount of \$1,000 for a violation of this section as an alternative to civil penalties.

#### Present situation

Part IV of chapter 501, F.S., is cited as the Florida Telemarketing Act. “Commercial telephone solicitation” means an unsolicited telephone call to a person initiated by a commercial telephone seller or salesperson, or an automated dialing machine for the purpose of inducing the person to purchase or invest in consumer goods or services.

“Commercial telephone seller” means any person who engages in commercial telephone solicitation on his or her own behalf or through salespersons. A commercial telephone seller does not include a salesperson. 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. Commercial telephone sellers must be licensed by the department unless specifically exempted from regulation.

“Salesperson” means any individual employed, appointed, or authorized by a commercial telephone seller and are also licensed by the department.

#### Proposed changes

The bill amends ss. 501.605 and 501.607, F.S., to remove reference to the use of a social security number as a form of identification and allows the use of “or other valid form of identification” for an applicant for a license as commercial telephone sellers and salespersons.

### **Antifreeze Registration**

#### Present situation

Currently sections 501.91-501.923, F.S., are cited as the “Antifreeze Act of 1978.” Each brand of antifreeze distributed in this state must be registered with the department prior to distribution. The department is authorized to have access to places where antifreeze is stored, or distributed, in order to inspect antifreeze products and to take samples for analysis.

#### Proposed changes

The bill requires that a registrant of a brand of antifreeze that is not in production for distribution in this state must submit a notarized affidavit attesting to the fact that the brand is not in production for distribution.

### **Household Moving Services**

#### Present situation

Movers and moving brokers must register with the department annually. The department issues a certificate of registration for registrants to display. The department requires disclosure of contact information and copies of contracts offered to the public.

Movers must maintain liability insurance or post a \$25,000 security. They must also maintain motor vehicle insurance. Moving brokers must post \$25,000 security.

## Proposed changes

The bill amends s. 507.04, F.S., to specify that notification of cancellation of insurance coverage for household moving services be provided to the department at least 10 days prior to cancellation of coverage.

## **Emergency Fuel Generators**

### Present situation

Currently s. 526.143, F.S., provides for the availability of alternate generated power capacity for motor fuel dispensing facilities. This section specifies that each motor fuel terminal facility and each motor fuel wholesaler facility must be capable of operating using an alternate generated power source for a minimum of 72 hours. The facility must have the additional power source available for operation no later than 36 hours after a major disaster.

### Proposed changes

The bill amends s. 526.143, F.S., to authorize the department to temporarily waive requirements for maintaining generators if the generators are to be used in preparation for or response to an emergency or major disaster in another state. The waiver may be modified or terminated by the department if the Governor of Florida declares an emergency in this state.

## **Sale of Brake Fluid**

### Present situation

Currently, part II of chapter 526, F.S., provides for the approval of the sale of brake fluids in the state by the department. Application for registration must be made by a manufacturer, packer, distributor, seller, or other responsible person. Upon approval of the application, the department registers the brand name of the brake fluid and issues to the applicant an annual permit authorizing the sale of the product.

All new product applications must be accompanied by a certified report from an independent testing laboratory setting forth the analysis of the brake fluid which may not be less than the specifications established by the department for brake fluids.

### Proposed changes

The bill:

- Amends s. 526.50, F.S., to define “brand” to mean the product name appearing on the container label and “formula” to mean the chemical mixture or composition of the product.
- Amends s. 526.51, F.S., to provide criteria for re-registering a previously registered brand and formula combination of brake fluid and to provide for a fine for late submission of the application for re-registration and required documentation.
- Amends s. 526.53, F.S., to authorize stop-sale orders for brake fluid to be served by the department on the owner of the brand name, the distributor, or other entity responsible for selling or distributing the brake fluid product.
- Amends s. 526.55, F.S., to replace criminal sanctions with administrative and monetary sanctions for violations of the sale of brake fluids. Violations include:
  - (1) To sell any brake fluid that is adulterated or misbranded, not registered, or on which a permit has not been issued.
  - (2) For anyone to remove any stop-sale order placed on a product by the department, or any product upon which a stop-sale order has been placed.

## Miscellaneous Provision

### Present situation

Section 366.85, F.S., specifies that the Division of Consumer Services is the agency responsible for “consumer conciliatory conferences” if such conferences are required pursuant to federal law. The division is also the agency responsible for preparing lists of sources for energy conservation products or services and of financial institutions offering energy conservation loans, if such lists are required pursuant to federal law.

### Proposed changes

The bill repeals the statutory responsibility for the division to conduct consumer conciliatory conferences and prepare conference reports relating to energy conservation resources.

#### B. SECTION DIRECTORY:

Section 1 amends s. 20.14, F.S., to delete reference to the Division of Standards.

Section 2 repeals s. 366.85, F.S., relating to public utilities energy conservation conferences.

Section 3 amends s. 472.005, F.S., to define terms relating to licensure of surveyors and mappers.

Section 4 amends s., 472.006, F.S., to authorize automated information exchange with the Department of Revenue.

Section 5 amends s. 472.011, F.S., to transfer authority for special fee assessments.

Section 6 amends s. 472.0131, F.S., to clarify timelines for review of examination results.

Section 7 amends s. 472.015, F.S., to clarify several licensure procedures.

Section 8 amends s. 472.018, F.S., to provide for electronic exchange of continuing education information.

Section 9 amends s. 472.0202, F.S., to correct a technical cross reference.

Section 10 amends s. 472.0203, F.S., to provide for electronic exchange of license renewal information.

Section 11 amends s. 472.025, F.S., to make technical references relating to document seals.

Section 12 amends s. 472.0337, F.S., to expand actions which may result in disciplinary action.

Section 13 amends s. 472.0351, F.S., to revise actions that constitute disciplinary violations.

Section 14 amends s. 493.6105, F.S., to allow waivers of firearms training requirements.

Section 15 amends s. 493.6113, F.S., to allow waivers of firearms training requirements.

Section 16 amends s. 493.6118, F.S., to provide for disciplinary action to be taken against certain additional license classes.

Section 17 amends s. 493.6120, F.S., to expand those licensees subject to disciplinary action.

Section 18 amends s. 501.015, F.S., to make statutory changes by replacing the outdated term “occupational license” with the term “business tax receipt.”

Section 19 amends s. 501.017, F.S., to make grammatical changes.

Section 20 amends s. 501.059, F.S., to eliminate the fee charged for the placement on the “no sales solicitation list” and provides for administrative penalties.

Section 21 amends s. 501.605, F.S., to delete the social security number application requirement from commercial telephone solicitors.

Section 22 amends s. 501.607, F.S., to delete the social security number application requirement for commercial telephone salespersons.

Section 23 amends s. 501.911, F.S., to remove reference to the Division of Standards.

Section 24 amends s. 501.913, F.S., to specify who is responsible for registration of a brand of antifreeze.

Section 25 amends s. 507.04, F.S., to require 10 days notice of cancellation of insurance by household movers.

Section 26 amends s. 525.07, F.S., to make grammatical changes to procedures to follow while repairing a petroleum measuring device.

Section 27 amends s. 526.143, F.S., to authorize approval procedures for using power generators in emergency situations in other states.

Section 28 amends s. 526.50, F.S., to create definitions for “brand” and “formula” of brake fluid.

Section 29 amends s. 526.51, F.S., to remove reference to the Division of Standards and to provide criteria for re-registering a previously registered brand and formula combination of brake fluid.

Section 30 amends s. 526.52, F.S., to expand the list of approved quality standards for brake fluid.

Section 31 amends s. 526.53, F.S., to remove reference to the Division of Standards.

Section 32 amends s. 526.55, F.S., to replace criminal sanctions with administrative and monetary sanctions for violations relating to the sale of brake fluid.

Section 33 amends s. 539.001, F.S., to make grammatical changes for notification of the change of address for pawnbroker businesses.

Section 34 amends s. 559.805, F.S., to delete the social security number requirement for business opportunity applications.

Section 35 amends s. 559.904, F.S., to make statutory changes by replacing the outdated term “occupational license” with the term “business tax receipt.”

Section 36 repeals s. 559.922, F.S., to remove language authorizing financial assistance for motor vehicle repair training.

Section 37 amends s. 559.928, F.S., to make statutory changes by replacing the outdated term “occupational license” with the term “business tax receipt.”

Section 38 amends s. 559.9285 F.S., to correct a cross reference.

Section 39 amends s. 559.935, F.S., to make statutory changes by replacing the outdated term “occupational license” with the term “business tax receipt.”



Section 40 amends s. 570.29, F.S., to remove reference to the Division of Standards.

Section 41 repeals s. 570.46, F.S., to remove reference to the Division of Standards.

Section 42 repeals s. 570.47, F.S., to remove reference to the Division of Standards.

Section 43 amends s. 570.544, F.S., to reference chapters of the statutes specifying the powers and duties of the Division of Consumer Services and make grammatical corrections.

Section 44 amends s. 616.242, F.S., to correct a grammatical reference.

Section 45 provides for an effective date of July 1, 2012.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

By amending s.526.55, F.S., the department may receive increased revenues as a result of changing penalties from misdemeanor charges for violations involving the sale of brake fluid to an administrative fine of up to \$5,000. Although the fiscal impact is indeterminate, the department indicates that any revenues collected would be insignificant.

| <b>Telephone Solicitation</b> | <b>FY 2011-12</b> | <b>FY 2012-13</b> | <b>FY 2013-14</b> |
|-------------------------------|-------------------|-------------------|-------------------|
| General Inspection Trust Fund |                   |                   |                   |
| Initial Fees                  | \$85,600          | \$0               | \$0               |
| Renewal Fees                  | \$445,000         | \$0               | \$0               |
| Do Not Call List              | \$85,500          | 85,500            | 85,500            |
| Administrative Fines*         | \$3,700           | \$485,000         | \$485,000         |
| <b>Total GITF Revenue</b>     | <b>\$619,800</b>  | <b>\$570,500</b>  | <b>\$570,500</b>  |
| General Revenue Fund          |                   | (\$3,958)         | (\$3,958)         |

\*As a result of eliminating the fees, an increase in the number of subscribers is expected. The Bureau of Mediation and Enforcement estimates 9,700 complaints annually with 10 percent resulting in an administrative fine.

#### 2. Expenditures:

| <b>Telephone Solicitation</b>  | <b>FY 2011-12</b> | <b>FY 2012-13</b> | <b>FY 2013-14</b> |
|--------------------------------|-------------------|-------------------|-------------------|
| General Inspection Trust Fund  |                   |                   |                   |
| Salaries & Benefits            | \$192,561         | \$192,561         | \$192,561         |
| Expenses                       | \$63,649          | \$38,450          | \$38,450          |
| Contracted Services            | \$10,363          | \$3,309           | \$3,309           |
| Data Processing                | \$29,700          | \$29,700          | \$29,700          |
| GR 8% Service Charge           | \$49,598          | \$45,640          | \$45,640          |
| Indirect Administrative Costs  | \$273,929         | \$260,840         | \$260,840         |
| <b>Total GITF Expenditures</b> | <b>\$619,800</b>  | <b>\$570,500</b>  | <b>\$570,500</b>  |

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

By amending ss. 493.6105 and 493.6113, F.S., a waiver of the firearms training requirement for a first time or renewing applicant of a Class "G" license who is a federal law enforcement officer that has undergone proper firearms training will allow the applicant to qualify and remain eligible for a Class "G" license at a minimum expense and inconvenience.

By amending s. 501.059, F.S., persons desiring to be on the "no sales solicitation calls" listing will no longer be required to pay an initial fee or an annual renewal fee.

D. FISCAL COMMENTS:

The bill amends s. 472.011, F.S., to authorize the department to waive license renewal fees by rule when the General Inspection Trust Fund contains funds that exceed the amount required to cover the necessary functions of the Board of Professional Surveyors and Mappers. According to the Department of Agriculture and Consumer Services, licensing revenue is just adequate to cover the costs of the program, and therefore, it is unlikely that there would be any fee reduction.

Currently, the board is authorized by rule to assess and collect a one-time fee from each active and each voluntary inactive licensee in an amount necessary to eliminate a cash deficit or to maintain financial integrity. The bill amends s. 472.011, F.S., to authorize the board to include all inactive and delinquent licensees should a special assessment be collected, potentially increasing the number of licensees assessed; however, the amount cannot be determined.

The bill amends ss. 472.006 and 472.018, F.S., directing the department to implement an automated method for disclosing information relating to licensees and to establish a system to monitor licensee compliance with continuing education requirements. Both sections codify what is current policy, and thus, would not affect state funds.

The bill amends s. 526.51, F.S. to specify criteria for re-registering a previously registered brand and formula combination of brake fluid and to provide for a penalty of \$25 for late submission of the application for re-registration and required documentation. The department included this to be consistent with the other commodities tested, but does not expect increased revenues.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that the counties or municipalities have to raise revenue in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

Not applicable.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 25, 2012, the Agriculture and Natural Resources Appropriations Subcommittee adopted one amendment to CS/HB 749.

- The amendment removes section 14 of the bill, which would have created s. 472.0357, F.S., to provide a criminal penalty of a third degree felony for giving false information while applying for a license, pending a determination of the fiscal impact by the Criminal Justice Impact Conference.