

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 Appropriations

BILL: CS/CS/SB 1040

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); Commerce and Tourism Committee; and Senator Stargel

SUBJECT: Department of Agriculture and Consumer Services

DATE: April 22, 2013

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Malcolm</u>	<u>Hrdlicka</u>	<u>CM</u>	<b>Fav/CS</b>
2.	<u>Blizzard</u>	<u>DeLoach</u>	<u>AGG</u>	<b>Fav/CS</b>
3.	<u>Blizzard</u>	<u>Hansen</u>	<u>AP</u>	<b>Fav/CS</b>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

- A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes
- B. AMENDMENTS.....  Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

**I. Summary:**

CS/CS/SB 1040 modifies several regulatory activities under the jurisdiction of the Florida Department of Agriculture and Consumer Services (DACs).

The modifications to the regulatory activities provided in this bill have an insignificant impact on state revenues and expenditures. The operational impact of transferring the collection of taxes and fees on petroleum products from the DACs to the Department of Revenue (DOR) is insignificant. (See Section V).

The Criminal Justice Impact Conference reviewed a similar bill on February 27, 2013, and determined that there will be an insignificant impact on prison beds as a result of a person convicted of submitting a fraudulent training certificate for licensure under chapter 493, F.S.

Specifically, the bill makes the following changes to the DACs regulatory activities:

- Revises the definition of repossession to specify when a recovery agent has active possession and command of a recovered vehicle or other equipment, i.e., when the repossession is complete.
- Clarifies that proof of annual firearms training for class “G” and “K” licensees be submitted to the DACS upon completion, provides suspension or non-renewal for non-compliance, and creates a third-degree felony for issuing a fraudulent training certificate as part of an application for licensure.
- Removes the 50-mile radius limitation on private investigator and recovery agent internships.
- Transfers petroleum inspection fee collections from the DACS to the (DOR), exempts certain measuring devices from permitting fees, and exempts devices used for measuring aviation fuel from permitting requirements.
- Updates the requirements for filing financial reports for charitable organizations, provides that charitable organization and sponsor renewal statements must be issued by the DACS 30 days prior to expiration and may be sent via electronic mail. In addition, removes notary requirements for registration packages, increases the application/renewal processing time from 10 to 15 days, and clarifies criminal reporting requirements for charitable organizations and sponsors.
- Updates the annual registration requirement for professional solicitors and fundraising consultants so that registration renewal is based on the date of issuance.
- Exempts charities that have total revenue of less than \$25,000, have no employees or members compensated to do fundraising, and that do not use a professional solicitor from the \$10 annual registration fee.
- Reduces the time for professional solicitors to file financial documentation for campaigns lasting less than one year and extends the due date for financial reporting on campaigns lasting more than one year.
- Eliminates the requirement that charitable organizations and sponsors place a statement on all printed material stating the percentage of each contribution retained by a professional solicitor and the percentage of each contribution received by the organization or sponsor.
- Makes it unlawful for solicitors of contributions to provide false, misleading, or inaccurate information and authorizes the issuance of cease and desist orders for certain prohibited acts committed by charitable organizations.
- Reduces the required security for certain health studios from \$50,000 to \$25,000.
- Amends the Florida Do Not Call statute to prohibit telephone solicitors seeking donations on behalf of charities from contacting individuals who have previously communicated to the solicitor that he or she does not wish to receive telephone solicitations from that charitable organization.
- Eliminates the requirement that telemarketing salespersons provide a three-year work history, and requires a telemarketing business to keep its bond or other security in force as long as the business is open and operating. Authorizes onsite inspection by investigators and provides notice to telemarketers engaged in timeshare sales that they must comply with the DACS and the Department of Business and Professional Regulation licensing requirements.
- Requires moving brokers to supply a list of affiliated movers, and requires moving brokers only contract with properly registered movers.
- Amends the definition of alternative fuel to provide for adopting fuel quality standards that cover new blended fuels.

- Requires entities that sell or distribute petroleum or alternative fuels to meet fuel standards adopted by the DACS.
- Provides that terminal suppliers, wholesalers, or blenders licensed under ch. 206, F.S., are not liable for injuries or damage resulting from the subsequent blending of petroleum or alternative fuels if the petroleum or alternative fuels met the standards adopted by the DACS while under ownership of the terminal suppliers, wholesale or blender.
- Provides that terminal suppliers, wholesalers, or retailers are not liable for damages caused by the incompatible use of motor fuels under certain circumstances.
- Staggers the license expiration dates for Liquefied Petroleum (LP) gas licensees, requires applicants taking the license examination pass each area of the examination with a score of at least 75 percent, and increases the minimum number of hours of continuing education from twelve to sixteen hours.
- Extends the sunset repeal provision from July 1, 2014, to July 1, 2020, relating to permitting fees for weighing and measuring devices.
- Allows pawnshop owners to have their fingerprints taken at a fingerprinting service provider authorized by the Florida Department of Law Enforcement.
- Authorizes the DACS to create a form allowing franchises to file a notice of exemption from the business opportunity regulation statute and eliminates the required disclosure statements and mandatory filing requirements applicable to the seller of a business opportunity. In addition, eliminates the required \$300 annual fee and the \$50 filing update fee due from the seller of a business opportunity, and eliminates the DACS enforcement authority on unlawful acts committed by a seller of a business opportunity.
- Decreases the size of the Motor Vehicle Repair Council from eleven to nine members.
- Eliminates the option of obtaining a bond for operators of amusement rides.

This bill contains a severability clause.

This bill substantially amends the following sections of the Florida Statutes: 206.45, 493.6101, 493.6113, 493.6116, 493.6118, 493.6120, 493.6121, 496.405, 496.406, 496.407, 496.409, 496.410, 496.411, 496.415, 496.419, 501.016, 501.059, 501.603, 501.604, 501.608, 501.611, 501.615, 501.617, 507.03, 507.07, 525.01, 525.10, 525.16, 526.141, 527.01, 527.0201, 527.03, 531.415, 531.61, 539.001, 559.802, 559.803, 559.813, 559.815, 559.9221, 616.242, 721.20.

The bill amends section 40, chapter 2009-66, Laws of Florida.

The bill transfers, redesignates, and amends section 525.09(1), Florida Statutes, as section 206.41(1)(h), Florida Statutes.

The bill repeals sections 502.607(1)(b), 525.09(2)-(4), and 559.805, 559.807(2), Florida Statutes.

## **II. Present Situation:**

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

Service and Licensing.<sup>1</sup> In the 2012 legislative session, the Division of Standards was eliminated and merged into the Division of Consumer Services.<sup>2</sup>

The Division of Consumer Services is tasked with receiving the state's consumer complaints. It is responsible for overseeing and regulating the following activities and entities: business opportunities, motor vehicle repair shops, charitable organizations, Florida Do Not Call, dance studios, pawnshops, health studios, sellers of travel, intrastate movers, game promotions, telemarketing, and professional surveyors and mappers. In addition, this division is also responsible for protecting 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. 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

*Recovery Agents, ch. 493, F.S.*

Persons engaged in the repossession of vehicles and other equipment are licensed under ch. 493, F.S. Currently, s. 493.6101(22), F.S., defines the term "repossession" to include the following statement:

A repossession is complete when a licensed recovery agent is in control, custody, and possession of such repossessed property.

"Control, custody, and possession" of a vehicle or other equipment is a legal concept with respect to the act of repossession because it identifies that moment at which the person conducting the repossession has taken active possession and command of the property being repossessed.<sup>3</sup> However, the meaning of that phrase is not defined in statute.

**Section 3** amends s. 493.6101, F.S., by revising the definition of repossession to specify when a recovery agent actually has active possession and command of a recovered vehicle or other equipment; i.e., when the repossession is complete. This section specifies that property is considered to be in the control, custody, and possession of a recovery agent if the vehicle or equipment has been secured in preparation for transport from the site of the recovery by means of having been attached to or placed on the towing transport vehicle or if the vehicle or equipment being recovered is being operated or about to be operated by an employee of the recovery agency.

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<sup>1</sup> Section 20.14, F.S. (2011)

<sup>2</sup> Chapter 2012-67, L.O.F. (2012)

<sup>3</sup> DACS 2013 Legislative Proposal, Division of Licensing, Short Title - Defining "Control, Custody, and Possession" as that Phrase Relates To Property Recovery, 12-18-2012, page 4, copy available in committee files. DACS commentary notes that "by including a technical definition of control, custody, and possession in the statute, we have provided a standard and a benchmark that can be applied both by the recovery industry as well as by law enforcement agents when they are called to get involved with a repossession."

*Security Officers and Private Investigators, ch. 493, F.S.*

Currently, holders of a Class “G”<sup>4</sup> firearm license must complete 4 hours of recertification training annually and must submit proof of such training at the time of renewal of the license.

**Section 4** amends s. 493.6113, F.S., requiring proof of completion of annual recertification training to be submitted to the DACS upon completion of that training. If documentation of the recertification training is not submitted by the end of the first year of the two-year period 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 two-year period 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.<sup>5</sup>

**Section 6** amends s. 493.6118, F.S., granting the DACS the authority to commence disciplinary action against Class “G” licensees for failing to complete recertification training. The bill specifies that failure of Class “K” licensees to maintain certification as a professional firearms instructor is also grounds for disciplinary action. Lastly, this section makes it a third-degree felony<sup>6</sup> to knowingly possess, issue, cause to be issued, sell, or submit a fraudulent training certificate to a person applying for licensure or to the division as part of an application for licensure.

**Sections 7 and 8** amend ss. 492.6120 and 493.6121, F.S., to correct cross-references due to the amendments in s. 493.6118, F.S., by Section 6.

*Private Investigators & Recovery Agents: Internships, ch. 493, F.S.*

Currently, individuals who do not have the requisite experience for licensure as a private investigator or recovery agent must serve an internship with a licensed private investigator or recovery agent to gain that experience. The law requires that the distance between a sponsor's place of business and the intern's assigned place of business be within a 50-mile radius.

**Section 5** amends s. 493.6116, F.S., eliminating the 50-mile-radius requirement and instead provides that an intern's duties must be performed within the state of Florida.

**Division of Consumer Services***Petroleum Inspection Fees, ch. 531, F.S., Weights and Measures Act of 1971*

Currently, the DACS and the Department of Revenue (DOR) collect taxes and fees on petroleum products. Regulated entities must remit motor fuel taxes to the DOR and petroleum inspection fees to the DACS.

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<sup>4</sup> A Class “G” licensee permits Class “C,” “CC,” “D,” “M,” “MA,” or “MB” licensees to bear a firearm. A Class “G” licensee may carry only the following weapons: a .38 caliber revolver; a .380 caliber or .9mm semiautomatic pistol, or a .357 caliber revolver with .38 caliber ammunition. Such licensee may carry no more than two firearms upon his or her person when performing regulated duties. Section 493.6115, F.S.

<sup>5</sup> 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.

<sup>6</sup> A third-degree felony is punishable by a term of imprisonment not exceeding 5 years and a fine not exceeding \$5,000.

### Petroleum inspection fee collection transfer to the DOR from the DACS

Currently, a petroleum inspection fee is assessed by the DACS on gasoline, kerosene (except when used as aviation fuel), and #1 fuel oil (heating oil) sold or used in this state.

**Section 1** transfers and redesignates s. 529.09(1), F.S., to s. 206.41(1)(h), F.S., to transfer the assessment and collection of the 0.125 cent per gallon inspection fee from the DACS to the DOR. The bill assesses the fee based on the DOR's definition of "motor fuel."<sup>7</sup>

**Sections 2 and 31** amend ss. 206.45 and 525.10, F.S., to transfer the assessment and collection of the 0.125 cent per gallon inspection fee from the DACS to the DOR.

**Section 29** repeals s. 525.09(2)-(4), F.S., which are no longer necessary due to the transfer of the inspection fee from the DACS to the DOR.

**Section 36** amends s. 531.415, F.S., to exempt measuring devices used to measure petroleum fuel from permitting fees.

### Aviation fuel permit exemption

Currently, certain petroleum products assessed inspection fees by the DACS pursuant to s. 525.09, F.S., are exempt from the commercial weights and measures instruments permit requirements of ss. 531.60 – 531.66, F.S. Weights and measures instruments or devices may not be used for commercial purposes within this state without a commercial use permit issued by the DACS, unless exempted as provided in s. 531.61, F.S.

**Section 37** amends s. 531.61, F.S., to provide that a device used exclusively for measuring aviation fuel is exempt from the permit requirements pursuant to ss. 531.60 – 531.66, F.S. The bill also removes a cross-reference to s. 525.09, F.S., which is being repealed by this bill.

*Charitable Organizations: Solicitation of Funds, ch. 496, F.S.*

### Financial Report Filing Requirements

Currently, ss. 496.405 and 496.407, F.S., allows charities to submit IRS Form 990 with a Schedule A to meet the financial reporting requirements required at registration and renewal. The IRS has redesigned Form 990 and 990EZ; consequently, Schedule A no longer provides the same information it did when the statutes were enacted.

**Sections 9 and 11** amend ss. 496.405(2)(a) and 496.407, F.S., updating the financial reporting requirements for charitable organizations that intend to solicit contributions. The bill requires submission of the updated IRS forms to comply with statutory reporting requirements.

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<sup>7</sup> "Motor fuel" is defined as all gasoline products or any product blended with gasoline or any fuel placed in the storage supply tank of a gasoline-powered motor vehicle. Section 206.01(9), F.S.

### Processing Timelines

Currently applications and renewals for charitable organizations and sponsors, professional solicitors, and professional fundraising consultants must be processed within 10 days by the DACS or the organization is automatically approved.

**Sections 9, 12, and 13**, amend ss. 496.405(7), 496.490(6), and 496.410(5), F.S., to increase the application and renewal processing time by the DACS from 10 to 15 days for charitable organizations and sponsors, professional solicitors, and professional fundraising consultants.

### Annual Registration

Currently, registrations for professional solicitors and professional fundraising consultants expire on March 31 of each year regardless of the date the license was issued.

**Sections 12 and 13** amend ss. 496.409(3) and 496.410(3), F.S., providing that professional solicitors and professional fundraising consultants have an annual registration requirement based on the date of issuance rather than all registrations expiring on March 31.

### Renewal Statements

Currently, s. 496.405, F.S., requires the DACS to send annual renewal notices by mail 60 days before the expiration date of the charitable organization or sponsor. Because the notices are sent so far in advance of expiration, many organizations ignore the notice making a second reminder necessary.

**Section 9** amends s. 496.405(1)(b), F.S., giving the DACS the option to send a renewal statement by electronic mail. The bill also reduces from 60 days to 30 days the time before renewal in which the renewal notice must be sent to the charitable organization.

### Felony Reporting

Currently, s. 496.405, F.S., specifies the contents of registration statements that are required to be submitted by charitable organizations and sponsors. The DACS states the current language related to past criminal activities seems to confuse applicants.<sup>8</sup>

**Section 9** amends s. 496.405(2)(d), F.S., to clarify past criminal activities that must be reported by charitable organizations and sponsors. The bill provides for reporting the same information but is clearer and easier to understand.

### Small Charity Fee Exemption

Currently, charities who solicit funds from the public must register with the DACS. Charities who receive less than \$25,000 in contributions must pay a \$10 filing fee and file similar financial records as larger charities.

**Section 10** amends s. 496.406, F.S., by allowing charities with less than \$25,000 in total revenue, that have no employees or members who are compensated, and that do not use a professional solicitor, to file an affidavit of exemption that contains basic information and

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<sup>8</sup> DACS 2013 Legislative Proposal, Division of Consumer Services, Short Title – SOC – Felony Reporting Requirements, 12-18-2012, page 1, copy available in committee files.

limited financial information about the charity. These charities will also be exempt from paying the \$10 filing fee. However, if a charity exceeds \$25,000 in contributions, it must register within 30 days after the date the revenue reaches \$25,000.

#### Remove Notary Requirement

Currently, charitable organizations and sponsors, professional solicitors, and professional fundraisers must all sign their applications under oath. The DACS intends to move to an online application process for all registrations. The notarization requirement is a barrier to having this registration process move online because the online filing cannot be notarized.<sup>9</sup>

**Sections 9, 12, and 13**, amend ss. 496.405(2), 496.409(2), and 496.410(2), F.S., removing the notarization requirement for charitable organizations and sponsors, professional solicitors, and professional fundraisers applications. The bill allows the DACS to add a statement to each registration package that certifies the filing is true and correct and that the person signing the registration is authorized to do so.

#### Financial Reporting

Currently, professional solicitors are required to file a financial report of campaign (FROC) detailing the gross revenue received and an itemization of expenses incurred within 90 days of the end of a solicitation campaign or on the anniversary date of a campaign lasting more than one year. The financial information requested for campaigns lasting longer than one year must contain data for the previous year. The DACS allows professional solicitor's to file FROCs within 30 days of the anniversary date for campaigns lasting more than one year. The current statute allows 90 days to file the FROC for campaigns that last less than one year.

**Section 13** amends s. 496.410(8), F.S., reducing the time for professional solicitors to file necessary financial documentation for campaigns lasting less than one year from 90 days to 45 days. The bill delays the due date for financial reporting on campaigns lasting more than one year from on the anniversary date to 45 days after the anniversary.

#### Financial Disclosure

Currently, s. 496.411, F.S., requires charitable organizations and sponsors to place a statement on printed solicitations, receipts, and contribution reminders stating the percentage of contributions that go to the charity and the percentage that go to a professional solicitor. The DACS notes the State of North Carolina has a similar provision which was deemed unconstitutional in a Supreme Court decision in 1988, *Riley v. National Federation of the Blind*, 487 U.S. 781 (1988). Based on this decision, the DACS does not enforce this statute.<sup>10</sup>

**Section 14** amends s. 496.411(6), F.S., removing the requirement that charitable organizations and sponsors place a statement on printed material indicating the percentage of each contribution retained by a professional solicitor and the percentage of each contribution received by the organization or sponsor.

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<sup>9</sup> DACS 2013 Legislative Proposal, Division of Consumer Services, Short Title – SOC – Remove Notary Requirements, 12-18-2012, page 39, copy available in committee files.

<sup>10</sup> DACS 2013 Legislative Proposal, Division of Consumer Services, Short Title – SOC – Eliminate Certain Campaign Disclosures, 12-18-2012, page 37, copy available in committee files.



### Cease And Desist Orders

Charitable organization registrations have continued to increase over the last several years along with the number of organizations receiving increased media scrutiny for inappropriate use of solicited funds. Several organizations based in Florida have been the subject of high profile investigations for filing false documents and for failing to use proceeds as intended.

**Section 15** amends s. 496.415, F.S., to include submitting false, misleading, or inaccurate information to the public by a charitable organization or sponsor as a prohibited act.

**Section 16** amends s. 496.419, F.S., authorizing the DACS to issue an immediate cease and desist order for certain prohibited acts. The bill also requires the DACS to report any substantiated criminal violations to the proper prosecuting authority.

### *Bond Reduction for Health Studios, ss. 501.012-.019, F.S., Health Studios*

Currently, health studios that sell contracts for services are required to obtain a bond, certificate of deposit, or letter of credit in the amount of \$50,000 for each business location. The security is then available to compensate consumers in the event that the health studio violates any of the provisions of the Health Studio Act. A health studio that is in business for 5 years under the same ownership and control with no unresolved consumer complaints is allowed to waive the security requirement.

**Section 17** amends s. 501.016, F.S., reducing the required security for health studios from \$50,000 per location to \$25,000 per location. The DACS reports that over the last 2 years, only one payout exceeded \$25,000 and most were significantly less.<sup>11</sup>

### *Do Not Call Program (DNC), s. 501.059, F.S., Telephone Solicitation*

Under the Florida Do Not Call (DNC) program, if a person notifies the DACS of his or her desire to be placed on a list (the “Do Not Call” list) indicating that he or she does not wish to receive unsolicited telephonic sales calls, the DACS places the person on the list for 5 years. Telephone solicitors are prohibited from calling phone numbers on the Do Not Call list. However, some unsolicited phone calls do not meet the definition of a “telephonic sales call” as defined by statute, typically because the entity is not selling a product or service. This includes charitable organizations seeking donations. The DACS receives frequent complaints from individuals who are frustrated because they have subscribed to the DNC program and continue to receive calls, primarily from professional solicitors calling on behalf of charitable organizations.<sup>12</sup>

**Section 18** amends s. 501.059, F.S., to expand the state DNC program to prohibit telephone solicitors seeking donations on behalf of charities from contacting individuals who have previously communicated to the solicitor that he or she does not wish to receive telephone solicitations from that charitable organization. The bill authorizes the DACS to enforce this

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<sup>11</sup> DACS 2013 Legislative Proposal, Division of Consumer Services, Short Title – Health Studio Bond Reduction, 12-18-2012, page 7, copy available in committee files.

<sup>12</sup> DACS 2013 Legislative Proposal, Division of Consumer Services, Short Title – DNC Requirements of Charities, 12-18-2012, page 5, copy available in committee files.

provision against charities and professional solicitors working on behalf of charities. The bill is intended to align Florida's DNC program with the federal DNC program.

*Consumer Services – Telemarketing, ss. 501.601-501.626, F.S., Florida Telemarketing Act*

Definition

The current definitions of “commercial telephone solicitation” contain three separate definitions that delineate what types of activities fall under the statute.<sup>13</sup> Two of the definitions reference consumer goods or services but one does not. Some interpretations expand the definition to non-consumer goods and services. The DACS has stated the discrepancy has caused confusion for the DACS and individuals seeking licensure.<sup>14</sup>

**Section 19** amends s. 501.603(1), F.S., adding a reference to consumer goods or services so that all three definitions of “commercial telephone solicitation” include references to consumer goods or services.

**Section 20** amends s. 501.604, F.S., updating the reference to entities exempt from the Telemarketing Act by removing the outdated reference to “National Association of Securities Dealers” and updates the reference to “Financial Industry Regulatory Authority.” The amendment further clarifies the application of the exemption to a supervised financial institution or parent, subsidiary, or affiliate operating within the scope of the supervised activity.

Exemption Status

Currently, the definition of a commercial telephone seller does not include a broad range of entities exempted by statute. Entities seeking an exemption are required to provide a notarized affidavit of exemption to the DACS. The current language does not provide a way for the DACS to verify the information provided in the affidavit of exemption.

**Section 19** amends s. 501.603(2), F.S., clarifying that an entity exempt from the definition of “commercial telephone seller” is only exempt when a valid affidavit of exemption has been filed.

**Section 22** amends s. 501.608, F.S., to authorize the DACS to review and request additional information before approving affidavits of exemption. The exempt entity must display its either its license or receipt of filing of an affidavit of exemption.

Work History

Currently, the Telemarketing Act requires telemarketing salespersons provide a 3-year work history on their application. The DACS indicates it does not have a way to verify the accuracy of the data reported.<sup>15</sup>

**Section 21** amends s. 501.607, F.S., removing the requirement for telemarketing salespersons to provide a 3-year work history as a part of his or her application.

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<sup>13</sup> Section 501.603(1)(a), (b), and (c), F.S.

<sup>14</sup> DACS 2013 Legislative Proposal, Division of Consumer Services, Short Title – Telemarketing – Clarifying Definition of a Commercial Telephone Solicitation, 12-18-2012, page 50, copy available in committee files.

<sup>15</sup> DACS 2013 Legislative Proposal, Division of Consumer Services, Short Title – Telemarketing – Eliminate Salesperson Work History Requirement, 12-18-2012, page 45, copy available in committee files.

### Bond

The Telemarketing Act requires commercial telephone sellers obtain a bond, certificate of deposit, or letter of credit when they register or renew their license. If the bond expires before the renewal date, the statute does not require the commercial telephone seller to provide a valid security prior to its next renewal period.

**Section 23** amends s. 501.611, F.S., stating that the required bond for telemarketers must remain in force throughout the licensure period.

### Timeshare Advertising

Telemarketers who engage in timeshare advertising are regulated by the DACS. Activities related to timeshare advertising are regulated by the Department of Business and Professional Regulation (DBPR) under ch. 721, F.S. In 2012, the Legislature enacted provisions to regulate timeshare resale service providers.<sup>16</sup>

**Section 24** amends s. 501.615, F.S., to reconcile the new DBPR timeshare reseller language in ch. 721, F.S., with the DACS telemarketing statute. The bill requires telemarketers who advertise timeshares to comply with the contract requirements in s. 721.205, F.S.

**Section 48** amends s. 721.20 F.S., to highlight the requirement that telemarketers who advertise timeshares must also comply with the licensing requirements in part IV of ch. 501, F.S.

### Inspections

The DACS has regulatory authority over telemarketing businesses and regularly conducts onsite investigations looking for unlicensed or unlawful activity. Businesses may refuse entry to or refuse to provide required materials, such as scripts, to investigators. Currently, the DACS has subpoena power to gain access to these materials.

**Section 25** amends s. 501.617, F.S., expanding the DACS' investigative authority to allow onsite investigators to conduct regulatory inspections of telemarketing businesses and thereby view business records.

### *Moving Services, ch. 507, F.S.*

Currently, the DACS does not interpret the definition of a moving broker to include online brokering services. The DACS has stated that the increase in online brokering services in recent years has made it easy for unregistered movers to advertise and get referrals from moving brokers. Additionally, moving brokers are required to obtain a \$25,000 bond. The DACS states it has never had to use the bond.<sup>17</sup>

**Section 26** amends s. 507.03, F.S., to require moving brokers to report affiliated movers upon request by the DACS.

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<sup>16</sup> DACS 2013 Legislative Proposal, Division of Consumer Services, Short Title – Telemarketing – Eliminate Salesperson Work History Requirement, 12-18-2012, page 45, copy available in committee files.

<sup>17</sup> DACS 2013 Legislative Proposal, Division of Consumer Services, Short Title – Moving Broker Registration Requirement, 12-18-2012, page 9, copy available in committee files.

**Section 27** amends s. 507.07, F.S., to create two new violations of ch. 507, F.S. The bill makes it unlawful for a moving broker to subcontract for services with an unregistered mover. Similarly, the bill makes it unlawful for a mover to subcontract for services with an unregistered moving broker.

*Alternative Fuels, ch. 525, F.S.*

Currently, fuel products are being developed that are not covered under the definition of alternative fuels found in s. 525.01, F.S. Specifically, the standard for E85 has been amended by ASTM International. ASTM provides a forum for the development and publication of voluntary consensus standards for materials, products, and services. Current ASTM standards have altered the definition of E85 to allow for a gasoline-ethanol blend containing 51 percent to 83 percent ethanol.

**Section 28** amends s. 525.01, F.S., to broaden the definition of alternative fuels. The change is designed to allow the DACS the flexibility to adjust to changing fuel quality standards and new blended fuels.

**Section 31** amends s. 525.16, F.S., requiring entities that sell or distribute petroleum or alternative fuels to meet the standards established by the DACS. Provides that terminal suppliers, wholesalers, or blenders licensed under ch. 206, F.S., are not liable for injuries or damage resulting from the subsequent blending of petroleum or alternative fuels if the petroleum or alternative fuels met the standards adopted by the DACS while under ownership of the terminal suppliers, wholesale or blender.

**Section 32** amends s. 525.141, F.S., to provide that refiners, terminal suppliers, wholesalers, and retailers are not liable for damages caused by the incompatible use of motor fuel dispensed at a retail site if the fuel meets the standards adopted by the DACS, the fuel is selected by the purchaser, and, the retail dispenser from which the fuel is dispensed is properly labeled.

*Liquefied Petroleum Gas Licensees, ch. 527, F.S.*

License year

Currently, LP gas licenses expire on August 31st of each year.

**Sections 33 and 35** amend ss. 527.01 and 527.03, F.S., to allow for staggered license expiration dates. The bill amends the renewal sequence of licenses to include the period from either September 1 through the following August 31, or April 1 through the following March 31, depending upon the type of license.

Examinations

Section 527.0201, F.S., authorizes the DACS to issue competency examinations to licensees based on licensure category. This section currently states that the applicant for licensure must “prove competency by passing a written examination administered by the department or its agent with a grade of 75 percent or above.” This language appears to require that an overall score of 75 percent must be achieved, not a score of 75 percent on each area tested on the examination.

**Section 34** amends s. 527.0201, F.S., to require that applicants taking the license examinations must pass each area tested with a score of at least 75 percent.

Continuing education

Currently, a minimum of 12 hours of continuing education is required in order to maintain certification as a qualifier or master qualifier. The industry recommends a minimum of 16 hours.

**Section 34** amends s. 527.0201(5)(c), F.S., to increase the minimum number of hours of continuing education required to maintain certain licenses from 12 to 16.

*Weights and Measures Fees, ch. 531, F.S., Weights and Measures Act of 1971.*

Currently, ch. 531, F.S., sets the maximum fees for commercial weighing and measuring devices. Actual fees are established by rule. The permits are issued on a per device basis, but businesses with multiple devices in one location are assessed less per device since certain economies of scale are realized by the regulatory program when conducting multiple inspections at one location.

When the permitting fees were enacted in 2009, the fees were to sunset on July 1, 2014. Prior to 2009, the weights and measures program was funded by general revenue.

**Section 38** amends s. 40 of ch. 2009-66, L.O.F., extending the sunset provision relating to permitting fees for weighing and measuring devices from July 1, 2014, to July 1, 2020.

*Pawn Broker Fingerprinting, ch. 539, F.S.*

Currently, pawn shop owners must submit fingerprints taken by a law enforcement agency as part of the registration requirements.

**Section 39** amends s. 539.001, F.S., allowing pawn shop owners to have their fingerprints taken at a fingerprinting service provider authorized by the Florida Department of Law Enforcement.

*Sale of Business Opportunities Act, ss. 559.80-559.815, F.S.*

Currently, businesses file an annual disclosure statement with the DACS if selling or leasing business opportunities in Florida. The Federal Trade Commission regulates business opportunities and the DACS has limited regulatory authority. Franchises are exempt from the requirements of the business opportunity statute as long as they meet the Federal Trade Commission's definition of a franchise.

**Sections 40, 41, 42, 43, 44, and 45** deregulate sellers of business opportunities as follows:

**Section 40** amends s. 559.802, F.S., authorizing the DACS to create a form for a franchise to file its notice of exemption.

**Section 41** amends s. 559.803, F.S., eliminating the provision that allows the seller of a business opportunity file a disclosure statement or any other document required to be filed by the seller under federal regulations in lieu of the documents required by s. 559.803. Elimination of this provision now requires the seller of a business opportunity to comply with the disclosure requirements of s. 559.803.

**Section 42** repeals s. 559.805, F.S., which eliminates the requirement that a seller of a business opportunity annually file a copy of its disclosure statement before placing an advertisement or making any other offer to sell, or solicit an offer to buy, a business opportunity to a prospective purchaser in this state. In addition, the seller of a business opportunity is no longer required to file a list of the seller's officers, directors, trustees, general partners, general managers, principal executives, or any other person charged with the responsibility for the seller's business activities. The department will no longer be required to issue an advertisement identification number to a seller of a business opportunity. In addition, the department will no longer collect an annual fee of \$300 from sellers of a business opportunity or a \$50 fee to update any filing.

**Section 43** repeals s. 559.807(2), F.S., which eliminates the requirement that a bond, certificate of deposit, or guaranteed letter of credit be held in favor of the department for the use and benefit of any person who is injured by the fraud, misrepresentation, breach of contract, financial failure, or violation of any statute regulating the acts of a seller of a business opportunity. However, the bill retains the requirement that a seller of a business opportunity obtain a surety bond, establish a certificate of deposit, or a guaranteed letter of credit for the minimum amount of \$50,000 if the seller makes certain representations to prospective buyers.

**Section 44** amends s. 559.813, F.S., eliminating the enforcement authority of the DACS with respect to unlawful acts committed by a seller of a business opportunity. However, the bill retains a private cause of action for an individual injured by the unlawful acts of a seller of a business opportunity. Similarly, the Attorney General or state attorney may also bring an action against the seller.

**Section 45** amends s. 559.815, F.S., eliminating a reference to mandatory filing requirements required of a seller of a business opportunity by the department.

The bill retains the consumer protection provisions of ch. 559, F.S., such as the requirement that the seller of a business opportunity provide a written disclosure to prospective buyers, the requirement that certain sellers obtain \$50,000 in security, a private cause of action against a seller, and other civil sanctions.

*Motor Vehicle Repair Advisory Council, ss. 559.901-559.9221, F.S., Florida Motor Vehicle Repair Act.*

Currently, the 11 member Motor Vehicle Repair Advisory Council exists to advise and assist the DACS in carrying out the provisions of the Motor Vehicle Repair Act.

**Section 46** amends s. 559.9221, F.S., decreasing the size of the Motor Vehicle Repair Council from 11 to 9 members. The bill merges the position of "independent automotive collision shops"

with “franchise or company owned automotive collision shops” and merges the position of “independent tire dealer” with “franchise or company owned tire dealer.”

*Public Fairs & Expositions, ch. 616, F.S.*

Currently, an owner of an amusement ride may not operate a ride without meeting the insurance requirements, which may be satisfied with an insurance policy or a bond.

**Section 47** amends s. 616.242, F.S., eliminating the option of obtaining a bond. Although the bill removes a bond option, the DACS reports that no entity has utilized the bond option.<sup>18</sup>

### **Severability**

**Section 49** includes a severability clause within the act.

### **Effective Date**

**Section 50** provides an effective date of July 1, 2013.

## **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 portions of sections 31 and 32 of the bill that provide for limitations of liability for refiners, terminal suppliers, wholesalers, and blenders under certain circumstances may cause the bill to violate the single-subject requirement in article III, section 6 of the Florida Constitution.<sup>19</sup> A legislative act violates the single-subject requirement when the provisions in the bill are not logically connected to one another, are not necessary to achieve the purpose of the legislation or “are designed to accomplish dissociated objects of legislative effort.”<sup>20</sup>

<sup>18</sup> DACS 2013 Legislative Proposal, Division of Consumer Services, Short Title – Eliminate Fair Rides Bond, 12-18-2012, page 6, copy available in committee files.

<sup>19</sup> Article III, section 6 states “Every law shall embrace but one subject and matter properly connected therewith . . . .”

<sup>20</sup> See *Heggs v. State*, 759 So. 2d 620, 626 (Fla. 2000); *State v. Petruzzelli*, 374 So. 2d 13, 15 (Fla. 1979), *State ex rel-Landis v. Thompson*, 120 Fla. 860,892-3, 16350.270, 283 (1935).

The purpose of CS/CS/SB 1040 is to modify regulatory activities under the jurisdiction of the DACS. A court may find that the bill violates the single-subject requirement because the limitations of liability for refiners, terminal suppliers, wholesalers, and blenders in sections 31 and 32 are not logically connected to the regulatory responsibilities of the DACS.

## V. Fiscal Impact Statement:

### A. Tax/Fee Issues:

Because the repeal of the business opportunity registration requirement includes elimination of an annual fee of \$300 and a \$50 fee to update any filing, the DACS calculated an estimated revenue loss of \$11,000 annually.<sup>21</sup> Similarly, the elimination of the \$10 filing fee for charitable organizations that make less than \$25,000 in total revenue will result in an estimated revenue loss of \$53,520 annually.<sup>22</sup>

CS/CS/SB 1040 extends the sunset date on permitting fees for commercial weighing and measuring devices from July 1, 2014 to July 1, 2020.

### B. Private Sector Impact:

The removal of the \$300 annual fee for sellers of a business opportunity and the \$10 filing for charitable organizations making less than \$25,000 will reduce administrative costs for these industries.<sup>23</sup>

Reducing the bond security amount from \$50,000 to \$25,000 for health studios will produce savings for this industry.<sup>24</sup>

The centralized collection of motor fuel taxes and inspection fees within DOR may decrease administrative costs to the regulated entities.

The requirement for increased number of hours of continuing education courses will increase costs for LP gas licensees.

Additionally, the enforcement of DNC violations against charities may subject such charities to fines or other civil sanctions.<sup>25</sup>

### C. Government Sector Impact:

The DACS estimates a reduction in revenues and expenditures with the elimination of fees for sellers of business opportunities and charitable organizations.

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<sup>21</sup> DACS Analysis, SB 1040, February 18, 2013, copy available in committee files.

<sup>22</sup> DACS Analysis, *supra* note 19.

<sup>23</sup> DACS 2013 Legislative Proposal, Division of Consumer Services, Short Title – Business Opportunity Repeal, 12-18-2012, page 1, copy available in committee files; DACS 2013 Legislative Proposal, Division of Consumer Services, Short Title – SOC – Small Charity Exemption, 12-18-2012, page 33, copy available in committee files.

<sup>24</sup> DACS 2013 Legislative Proposal, *supra* note 11; DACS 2013 Legislative Proposal, *supra* note 17.

<sup>25</sup> See DACS 2013 Legislative Proposal, *supra* note 12.



<b>REVENUES</b>	<b>FY</b>	<b>FY</b>
	<b>2013-14</b>	<b>2014-15</b>
General Inspection Trust Fund:		
Small Charities Registration Exemption	(\$53,520)	0
Sellers of Business Opportunities	<u>(\$11,000)</u>	0
Total	(\$64,520)	0
<b>EXPENDITURES</b>		
General Inspection Trust Fund:		
Small Charities Registration Costs	(\$8,028)	0
Sellers of Business Opportunities	<u>(\$56)</u>	0
Total	(\$8,084)	0

According to the DACS and the DOR, the operational impact of transferring collection of taxes and fees on petroleum products will be insignificant.<sup>26</sup>

The Criminal Justice Impact Conference reviewed a similar bill on February 27, 2013, and determined there will be an insignificant impact on prison beds as a result of a person convicted of submitting a fraudulent training certificate for licensure under chapter 493, F.S.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
 (Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS/CS by Appropriations Committee on April 18, 2013:**

The committee substitute:

- Requires entities that sell or distribute petroleum or alternative fuels to meet fuel standards adopted by the DACS.
- Provides that terminal suppliers, wholesalers, or blenders licensed under ch. 206, F.S., are not liable for injuries or damage resulting from the subsequent blending of petroleum or alternative fuels if the petroleum or alternative fuels met the standards adopted by the DACS while under ownership of the terminal suppliers, wholesaler or blender.

<sup>26</sup> DOR 2013 Bill Analysis, SB 1040, March 6, 2013, copy available in committee files.

- Provides that terminal suppliers, wholesalers, or retailers are not liable for damages caused by the incompatible use of motor fuels under certain circumstances.
- Retains the bond requirement for moving brokers.
- Provides a severability clause to the bill.

**CS by Commerce and Tourism on March 11, 2013:**

The committee substitute does the following:

- Removes the word “applicant” from the provisions allowing for disciplinary proceedings against a Class “G” licensee for failing to complete required recertification training or against a Class “K” licensee for failing to maintain active certification as a professional firearms trainer.
- Reduces the number of days, from 20 to 15, the department has to process applications and renewals for charitable organizations, professional solicitors, and professional fundraising consultants before the application is automatically approved.
- Provides a commercial telephone salesperson the option to display either a license or a receipt of filing of an affidavit of exemption at the place of business. Failure to do so may result in the salesperson being ordered by the department to leave the business until he or she can produce one of the two required documents.

**B. Amendments:**

None.