

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 7023      PCB BPRS 13-01      Department of Agriculture and Consumer Services

**SPONSOR(S):** Regulatory Affairs Committee; Agriculture & Natural Resources Appropriations Subcommittee; Business & Professional Regulation Subcommittee; Cummings

**TIED BILLS:**            **IDEN./SIM. BILLS:** CS/SB 1040

| REFERENCE  | ACTION           | ANALYST    | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|------------------|------------|---------------------------------------|
| Orig. Comm.: Business & Professional Regulation Subcommittee   | 11 Y, 0 N        | Livingston | Luczynski                             |
| 1) Agriculture & Natural Resources Appropriations Subcommittee | 13 Y, 0 N, As CS | Lolley     | Massengale                            |
| 2) Regulatory Affairs Committee                                | 16 Y, 0 N, As CS | Livingston | Hamon                                 |

### SUMMARY ANALYSIS

The bill contains modifications to several regulatory and consumer activities under the jurisdiction of the Florida Department of Agriculture and Consumer Services (DACS). Specifically, the bill:

- Revises 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);
- Clarifies that proof of annual firearms training for class "G" and "K" licensees be submitted to DACS upon completion and provides suspension or non-renewal for non-compliance and creates a third-degree felony penalty for anyone to issue a fraudulent training certificate to a person applying for licensure or to the division as part of an application for licensure;
- Updates the requirements for filing of financial reports for charitable organizations, specifies that charitable organizations and sponsors renewal statements must be issued 30 days prior to registration and may be sent via electronic mail, removes notary requirements as a part of solicitation of contributions registration packages, increases the application/renewal processing time from 10 days to 15 days, and clarifies criminal reporting requirements for charitable organizations and sponsors;
- Exempts charities that have a 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;
- Eliminates a requirement that charitable organizations and sponsors place a statement on all printed material stating the percentage of each contribution that is retained by a professional solicitor and the percentage of each contribution that is received by the organization or sponsor;
- Makes it unlawful for solicitors of contributions to provide false, misleading, or inaccurate information;
- Authorizes the issuance of an immediate cease and desist order for certain prohibited acts such as knowingly filing false, misleading or inaccurate information 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, requires that a telemarketing business keep their bond or other security in force as long as the business is open and operating, and authorizes onsite inspection authority for investigators;
- Requires moving brokers to supply a list of affiliated movers, requires that moving brokers only contract with properly registered movers, and eliminates bond requirement for moving brokers;
- Amends the definition of alternative fuel to cover new and emerging blended fuels;
- Transfers motor fuel inspection fees collection to the Department of Revenue;
- Eliminates the option of obtaining a bond for operators of amusement rides;
- Extends the sunset repeal provision from July 1, 2014 to July 1, 2020, relating to permitting fees; and
- Provides a severability clause.

The bill is not anticipated to have a significant fiscal impact on state funds and no impact on local government. The bill provides for an effective date of July 1, 2013.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h7023d.RAC

**DATE:** 4/2/2013

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

The website of the Florida Department of Agriculture and Consumer Services (DACS) states that the mission of the DACS 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 DACS and, specifically, the Division of Consumer Services and the Division of Licensing. See below the section directory portion of this analysis. Each subject is followed by a listing of the applicable sections of the bill.

#### B. SECTION DIRECTORY:

The following includes the Present Situation and Effect of Proposed Changes.

#### **Division of Licensing**

##### **Security Officers & Private Investigators: Firearms, ch. 493, F.S.**

Currently, holders of the Class "G" statewide firearm license must complete four hours of recertification training annually. These licensees are required to submit proof of training completion at the time of renewal of the license.

The bill requires proof of completion of annual recertification training to be submitted to the DACS upon completion of that training. If the documentation of completion of the required training is not submitted by the end of the first year of the two-year valid term of the license, the individual's license is automatically suspended until proof of the required training is submitted. If the documentation is not submitted by the end of the second year of the two-year valid term of the license, the license may not be renewed unless the renewal applicant completes the minimum number of hours of range and classroom training required at the time of initial licensure.

The bill specifies that failure to include re-certification training for Class "G" applicants and licensees is a basis for disciplinary action. The bill specifies that failure of a Class "K" applicant or licensee to maintain active certification as a professional firearms instructor is also grounds for disciplinary action.

Bill sections: Section 3 amends s. 493.6113, F.S.; Section 5 amends 493.6118, F.S.

##### **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.

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<sup>1</sup>[http://www.freshfromflorida.com/about\\_fdacs.html](http://www.freshfromflorida.com/about_fdacs.html), (Last accessed on February 16, 2013)

The bill removes mileage restrictions on internship sponsorships so that an intern may be sponsored by any licensee in the state, but specifies that the intern's duties must be performed within state.

Bill section: Section 4 amends s. 493.6116, F.S.

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

Currently, s. 493.6101(22) defines the term "repossession." The definition includes 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.

Persons engaged in the repossession of vehicles and other equipment are licensed under ch. 493, F.S. Recovery agents have primary responsibility for the repossession of vehicles and equipment as a result of defaulted loans. Repossession is conducted under the provisions and authority of the Uniform Commercial Code. The Code establishes a secured party's right to take possession after default and stipulates that repossession can proceed without judicial process if the party proceeds without breach of the peace. The application of a breach of the peace is removed if a lawful repossession is conducted.<sup>2</sup>

The bill revises the definition of repossession to specify when a recovery agent actually has active possession and command of a recovered vehicle or other equipment, that is, when the repossession is complete. The bill 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.

Bill section: Section 2 amends s. 493.6101, F.S.

### **Firearm Licensure: Fraudulent Training Certificates ch. 493, F.S.**

Recently, the DACS has seen an increase in the number of fraudulent training certificates being submitted as verification/certification of training to obtain individual licenses issued under the authority of ch. 493, F.S., and in particular, the private security industry.

Under the law, an applicant for a Class "D" Security Officer License must complete 40 hours of training at a school licensed by the division. Individuals applying for the Class "G" Statewide Firearm License, the companion license that allows a security officer to perform regulated duties while carrying a firearm, must complete 28 hours of classroom and range training.

The bill makes it a third-degree felony for anyone who knowingly possesses, issues, causes to be issued, sells, or submits a fraudulent training certificate to a person applying for licensure or to the division as part of an application for licensure.

Bill section: Section 6 amends s. 493.6120, F.S.

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<sup>2</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 subcommittee files. DACS commentary notes that "Therefore, 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."

## Division of Consumer Services

### **Business Opportunity Registration Repeal, Sale of Business Opportunities Act**

Currently, businesses offering the sale or lease of business opportunities in the State of Florida file with the DACS. The Federal Trade Commission regulates business opportunities and the DACS has limited regulatory authority and limited resources to continue to register and monitor these entities.

The bill deregulates sellers of business opportunities. The bill:

- Removes mandatory registration requirements and associated fees and DACS oversight;
- Maintains voluntary filing for exempted franchises;
- Maintains disclosure requirements and private cause of action for nonexempt sellers;
- Removes DACS as an enforcing authority, but leaves the Attorney General and State Attorney with jurisdiction; and
- Specifies that business opportunities complainants could still use DACS non-regulated complaint department.

Bill sections: Section 40 amends s. 559.802, F.S.; Section 41 amends s. 559.803, F.S., Section 42, F.S. repeals s. 559.805, F.S.; Section 43 amends s.559.807, F.S.; Section 44 amends s. 559.813, F.S., Section 45 amends s. 559.815, F.S.

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

Under the Florida Do Not Call program, some unsolicited phone calls do not meet the definition of a 'telephonic sales call' as defined by the statute, typically because the entity is not selling a product or service. This includes charitable organizations seeking donations. The department receives frequent complaints from individuals who are frustrated because they have subscribed to the Florida Do Not Call Program and continue to receive calls, primarily from professional solicitors calling on behalf of charitable organizations.

The bill expands the state DNC to include solicitors seeking donations on behalf of charities. The bill provides that a telephone solicitor may not initiate an outbound telephone call to a consumer who has previously communicated to the telephone solicitor that he or she does not wish to receive a call. The bill authorizes the DACS to enforce the DNC provisions against charities and professional solicitors.

Bill section: Section 16 amends s. 501.059, F.S.

### **Repeal Bond For Amusement Ride Entities, ch. 616, F.S., Public Fairs & Expositions.**

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

The bill eliminates the option of obtaining a bond. Although the bill removes a bond option, DACS reports that no entity has used the bond option.

Bill section: Section 47 amends s. 616.242, F.S.

### **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 five years under the same ownership and control with no unresolved consumer complaints is allowed to waive the security requirement.

The bill reduces the required bond for Health Studios from \$50,000 per location to \$25,000 per location.

DACS reports that over last two years only one payout exceeded \$25,000 and most were significantly less.

Bill section: Section 15 amends s. 501.016, F.S.

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

Currently, the DACS does not interpret the definition of a moving broker to include online brokering services. Additionally, the DACS feels the current definition fails to take into account modern corporate structures. The DACS states that proliferation of online brokering services in recent years has made it easy for unregistered movers to advertise and get referrals from moving brokers.

Currently, moving brokers are required to obtain a \$25,000 bond. Since the enactment of the statute, the DACS has never had to use the bond.

The bill requires moving brokers to report affiliated movers upon request for this information by DACS. The bill removes the \$25,000 bond requirement for moving brokers. The bill specifies that it is a violation of this statute for a moving broker to contract for services with a mover who is not registered with the DACS. Similarly, the bill specifies that it is a violation for a mover to contract for services with a moving broker who is not registered with DACS.

Bill sections: Section 24 amends s. 507.03, F.S.; Section 25 amends s. 507.04, F.S.; Section 26 amends s.507.07, F.S.

### **LP Gas Licensees ch. 527, F.S.**

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

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.

Bill sections: section 32 amends s. 527.01, F.S., Section 34 amends s. 527.03, F.S.

Examinations – Section 527.0201, F. S., authorizes the DACS to issue competency examinations to licensees depending upon 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.

The bill specifies that an applicant taking the master qualifier examination must pass each area tested with a score of 75 percent or above.

Bill section: Section 33 amends s. 527.0201, F.S.

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

The bill increases the minimum number of hours of continuing education courses required to maintain qualifier and master qualifier statuses from 12 to 16.

Bill section: Section 33 amends s. 527.0201, F.S.

### **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 DACS in carrying out the provisions of the Motor Vehicle Repair Act.

The bill decreases 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.

Bill section: Section 46 amends s. 559.9221, F.S.

### **Fingerprints for Pawn Brokers, ch. 539, F.S.**

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

The bill allows pawn shop owners to have their fingerprints taken at a fingerprinting service provider authorized by the Florida Department of Law Enforcement (FDLE) in lieu of submitting fingerprints taken by a law enforcement agency directly to the DACS.

Bill section: Section 39 amends s. 539.001, F.S.

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

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

Motor fuel inspection fee collection transfer to DOR from DACS - Currently, a motor fuel inspection fee is assessed by DACS on gasoline, kerosene (except when used as aviation fuel), and #1 fuel oil (heating oil) sold or used in this state. Virtually, the entire fee comes from gasoline assessments and collections. The DACS notes that there is very little kerosene (not used as aviation fuel) and #1 fuel oil used in this state so the collections are negligible.

The bill moves the assessment and collection responsibility to the DOR and assesses the inspection fee based on the DOR definition of "motor fuel." The DOR definition of "motor fuel" states that "motor fuel" or "fuel" means all gasoline products or any product blended (such as ethanol) with gasoline. Thus under DOR, the inspection fee will not be assessed on kerosene or #1 fuel oil, but will be assessed on the ethanol portion of blended gasoline.

The DACS estimates that eliminating these two fuels from the inspection fee collections should have virtually no impact on revenues. Additionally, the DACS states that many petroleum companies are already remitting the inspection fee for the ethanol portion of the fuels they sell although ethanol is not currently subject to the fee. The DACS indicates that the net fee collected on the basis of "motor fuel" is not anticipated to change actual revenues.

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

The bill specifies that if a device is used exclusively for measuring aviation fuel it is exempt from the permit requirements pursuant to ss. 531.60 – 531.66, F.S.

Bill sections: Section 1 amends s. 206.41, F.S.; Section 28 amends s. 525.09, F.S.; Section 29 amends s. 525.10, F.S.; Section 35 amends s. 531.415, F.S.; Section 36, F.S. amends s. 531.61, F.S.

## **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 current 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. The State of Florida adopts ASTM standards on a variety of fuel products. Current ASTM standards have altered the definition of E85 to allow for a gasoline-ethanol blend containing 51 percent to 83 percent ethanol.

The bill amends the definition of alternative fuels to broaden the definition. The change is designed to allow DACS the flexibility to adjust to changing fuel quality standards and to adjust to new and emerging blended fuels.

Bill section: Section 27 amends s. 525.01, F.S.

The bill requires entities that sell or distribute petroleum or alternative fuels to meet the standards established by the DACS. It 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.

Bill section: Section 30 amends s. 525.16, F.S.

The bill provides 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.

Bill section: Section 31 amends s. 525.141, F.S.

## **Charitable Solicitations, ch. 496, F.S., Solicitation of Funds.**

### Financial Report Filing Requirements -

Currently, ss. 496.405 and 496.407, F.S., allows for charities to submit 990s with a Schedule A to meet the financial reporting requirements required at registration and renewal. The IRS Form 990 and 990EZ have been redesigned. As a result of this revision, the Schedule A no longer provides the same information that it did when the statute was enacted.

The bill updates the solicitation of contributions statutes related to the filing of financial reports for charitable organizations. The bill requires submission of updated IRS reports that are required by statute to replace specific outdated IRS reports.

Bill sections: Section 7 amends s. 496.405, F.S.; Section 9 amends s. 496.407, 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.

The bill increases the application/renewal processing time by the DACS from 10 to 15 days for charitable organizations and sponsors.

Bill section: Section 7 amends s. 496.405, F.S.; Section 10 amends s. 496.409, F.S.; Section 11 amends s. 496.410, F.S.

### Annual Registration

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

The bill amends the statute so 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.

Bill section: Section 10 amends s. 496.409, F.S.

### Renewal

Currently, s. 496.405, F.S., requires that the DACS send 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 and then a second reminder is necessary. Additionally, for good cause organizations may avail themselves of a 60-day extension if necessary.

The bill adds the option to send a renewal statement by electronic mail and reduces the time before renewal that the statement be submitted from 60 days to 30 days.

Bill section: Section 7 amends s. 496.405, F.S.

### Cease And Desist

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.

The bill creates authority to allow DACS to issue an immediate cease and desist order for certain specified prohibited acts. The bill amends s. 496.415, F.S., prohibited acts, to include submitting false, misleading, or inaccurate information to the public by a charitable organization or sponsor.

Bill sections: Section 13 amends s. 496.415, F.S.; Section 14 amends s. 496.419, F.S.

### 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. DACS states that the current language seems to confuse applicants.

The bill is designed to clarify past criminal activities that must be reported by charitable organizations and sponsors.

Bill section: Section 7 amends s. 496.405, F.S.

### 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.

The bill allows charities who have less than \$25,000 in total revenue, 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 about the charity with limited financial information. These charities will also be exempted from the current \$10 registration fee.

Bill section: section 8 amends s. 496.406, F.S.

### Financial Reporting

Currently, the statute requires professional solicitors 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 a 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 for 90 days to file the FROC for campaigns that last less than a year.

The bill reduces time for professional solicitors to file necessary financial documentation for campaigns lasting less than a year from 90 days to 45 days. The bill delays the due date for financial reporting on campaigns lasting more than a year from on the anniversary date to within 45 days of the anniversary.

Bill section: Section 11 amends s. 496.410, F.S.

### Financial Disclosure

Currently, charitable organizations and sponsors are required to place a statement on printed solicitations, receipts, and contribution reminders stating the percentage of contributions that goes to the charity and the percentage that will go to a professional solicitor. The DACS notes that the state of North Carolina has a similar provision, which has been deemed unconstitutional in a Supreme Court decision in 1988 Riley v. National Federation of the Blind, 487 U.S. 781 (1988). As a result of this decision, the DACS does not enforce this statute.

The bill removes the requirement that charitable organizations and sponsors place a statement on printed material stating the percentage of each contribution that is retained by a professional solicitor and the percentage of each contribution that is received by the organization or sponsor.

Bill section: Section 12 amends s. 496.411, F.S.

### 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 can't be notarized.

The bill removes notarization requirement for charitable organizations and sponsors, professional solicitors and professional fundraisers applications. The bill allows 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.

Bill sections: Section 7 amends s. 496.405, F.S.; Section 10 amends s. 496.409, F.S.; Section 11 amends s. 496.410, F.S.

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

### 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, DACS has subpoena power under normal judicial procedures.

The bill expands DACS' investigative authority to give onsite investigators authority to view business records during regulatory inspections of telemarketing businesses.

Bill section: Section 23 amends s. 501.617, F.S.

### Bond

The Telemarketing Act requires that commercial telephone sellers obtain a bond, certificate of deposit, or letter of credit when they register or renew their license. If the security expires before the renewal date, an ambiguity in the statute prevents the DACS from requiring the commercial telephone seller to provide a valid security prior to their next renewal period.

The bill specifies that the required bond for telemarketers must remain in force throughout the registration period, not just be in effect for registration and renewal.

Bill section: Section 21 amends 501.611, F.S.

### Timeshares

Currently, the DACS regulates telemarketers who engage in timeshare advertising. The DACS enforces only the provisions of the telemarketing statute (ch. 501, F.S.). Currently, telemarketers are required to be licensed pursuant to ch. 721, F.S., by the Department of Business and Professional Regulation. Telemarketers who sell timeshares may not be aware that they must comply with the requirements of both chapters of the law.

The bill is designed to reconcile the new DBPR timeshare reseller language in ch. 721, F.S., with the DACS telemarketing statute.

Bill sections: Section 22 amends s. 501.615, F.S.; Section 48 amends s. 721.20, F.S.

### Work History

Currently, the Telemarketing Act requires that telemarketing salespersons provide a three-year work history on their application. The DACS does not have a way to verify the accuracy of the data reported and, therefore, the data is of limited value to the DACS in the enforcement of this statute.

The bill removes the requirement for telemarketing salespersons to provide a three-year work history as a part of their application.

Bill section: Section 19 amends s. 501.607, F.S.

### Exemption Status

Currently, the definition of a commercial telephone seller does not include persons exempted by statutory definition. The current language states the DACS must accept such affidavit on its face with no authority to determine whether the exemption is actually appropriate.

The bill authorizes the DACS to review, request additional information, and approve affidavits of exemption by issuing a receipt for the filing. The licensee or the person operating under a valid exemption must display his or her license or the receipt of filing of the affidavit, rather than the affidavit itself.

Bill section: Section 20 amends s. 501.608, F.S.

### Definition

The current activities of a commercial telephone solicitation contain three separate definitions that delineate what types of activities fall under the statute. Two of the definitions reference consumer goods or services, but one does not. A strict interpretation could expand the definition to non-consumer goods and services.

Some interpretations expand the definition to non-consumer goods and services. This has caused confusion by DACS and individuals seeking licensure.

The bill adds a third reference to consumer goods and services and includes all three definitions.

The bill updates reference to entities that are exempt from the Telemarketing Act by removing the outdated reference to "National Association of Securities Dealers" and updates the reference by substituting the exemption for the current "Financial Industry Regulatory Authority."

Bill sections: Section 17 amends s. 501.603, F.S.; Section 18 amends s. 501.604, F.S.

### **Consumer Services - Extend Sunset Provision of Weights and Measures Fees, ch. 531, F.S., Weights and Measures Act of 1971.**

Currently the statutes set maximum fees for commercial weighing and measuring devices that are assessed per device. 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 statute was enacted in 2009, a provision was written in the bill that would allow the permitting fees to sunset (automatic repeal) on July 1, 2014. Prior to 2009, the weights and measures program was funded by General Revenue.

The bill extends the sunset provision relating to permitting fees for weighing and measuring devices from July 1, 2014 to July 1, 2020.

Bill sections: Section 37 creates s. 531.67, F.S.; Section 38 repeals s. 40 of ch. 2009-66, Laws of Florida.

#### **Severability**

The bill includes a severability clause.

Bill section: Section 49.

#### **Effective date**

The bill is effective July 1, 2013.

Bill section: Section 50.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

General Inspection Trust Fund

|   | <b>FY 2013-14</b> | <b>FY 2014-15</b> |
|---|-------------------|-------------------|
| Deregulation of Sellers of Business Opportunities | (\$14,000)        | \$0               |

|                                     |                  |     |
|-------------------------------------|------------------|-----|
| Charities (5,900 x \$10 annual fee) | (\$59,000)       | \$0 |
| Petroleum Inspection Fee penalties  | <u>(\$1,400)</u> | \$0 |
| Total                               | (\$74,400)       | \$0 |

By amending s. 501.059, F.S., the department may receive insignificant increased revenues as a result of fines for Do Not Call violations.

2. Expenditures:

The Criminal Justice Impact Conference met 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.

According to the Department of Revenue, transferring the collection of motor fuel inspection fees from the Department of Agriculture and Consumer Services will have an insignificant operational impact on DOR.

By amending s. 496.405, F.S., the department may reduce mailing costs as a result of sending renewal statements to charitable organizations by electronic mail.

By amending s. 496.406, F.S., the department may process fewer applications as a result of small charities no longer having to register.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill eliminates a \$10 annual fee for small charities that meet certain criteria.

The bill increases the minimum number of hours of continuing education courses required to maintain qualifier and master qualifier status from 12 to 16 hours.

Centralizing petroleum tax and fee collections with the DOR may reduce cost of regulation, reduce duplication and simplify tax payments for licensees.

Businesses will continue to pay permitting fees for weighing and measuring devices.

D. FISCAL COMMENTS:

The bill transfers the petroleum inspection fee collection from DACS to DOR. Currently, DACS collects petroleum inspection fees on gasoline, kerosene (except when used as aviation fuel), and #1 fuel oil sold or used in this state. Moving the fee collection process to DOR and assessing it as "motor fuel" will eliminate the fee on kerosene and #1 fuel oil and add the fee for the ethanol in most motor fuels.

Revenues from kerosene (not used as aviation fuel) and #1 fuel oil have averaged \$2,010 over the past three years. The remaining revenues are from gasoline assessments and collections. The current inspection fee is one-eighth cent per gallon of gasoline. Although ethanol is not currently subject to the fee, many companies already include it as part of the inspection fee.

DACS indicates there will be an insignificant change in revenues as a result of the elimination of the fee on kerosene and #1 fuel oil and the additional fee on ethanol.

The bill extends the sunset repeal provision relating to permitting fees for weighing and measuring devices from July 1, 2014 to July 1, 2020.

### **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:**

None.

#### **B. RULE-MAKING AUTHORITY:**

None.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

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

On March 13, 2013, the Agriculture and Natural Resources Appropriations Subcommittee amended and reported HB 7023 favorably as a committee substitute (CS).

- The CS specifies that a licensed commercial telephone seller or a person operating under a valid exemption must display his or her license or a copy of the receipt of filing of the affidavit, rather than a copy of the affidavit.

On March 22, 2013, the Regulatory Affairs Committee adopted two amendments to the CS and reported the bill favorably with a committee substitute for committee substitute (CS/CS).

The CS/CS makes the following changes to the CS:

- Limits liability for injuries or damages as ownership and custody of fuel is transferred provided that requirements and standards are met.
- Limits liability in the case that a purchaser of fuel chooses a fuel that meets standards but is incompatible with the vehicle.
- Provides a severability clause.

The staff analysis is drafted to reflect the CS/CS.