

**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.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/SB 1018

INTRODUCER: Commerce and Tourism Committee and Senator Detert

SUBJECT: Department of Agriculture and Consumer Services

DATE: April 21, 2014

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Malcolm</u>	<u>Hrdlicka</u>	<u>CM</u>	<u>Fav/CS</u>
2.	<u>Blizzard</u>	<u>Kynoch</u>	<u>AP</u>	<u>Pre-meeting</u>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1018 modifies several regulatory programs and activities under the jurisdiction of the Florida Department of Agriculture and Consumer Services (DACS or department). Specifically, the bill:

- Eliminates the requirement that a private investigative, private security, or recovery service applicant obtain a letter from a fingerprinting technician or physician when a legible set of fingerprints cannot be obtained after two attempts.
- Revises recertification training requirements for Class “G” firearms licensees.
- Permits a Class “G” licensee to carry a .40 caliber handgun or a .45 caliber automatic colt pistol (ACP) handgun while on duty.
- Permits a Class “D” private security guard holding a Class “G” license to carry a concealed weapon while in plain clothes under certain circumstances.
- Permits the Division of Licensing within DACS to access sealed criminal histories for applicants of a concealed weapon license to determine eligibility.
- Standardizes regulations and procedures by which a consumer can pursue a claim against the bond or other security of a health studio, telemarketer, pawnbroker, or seller of travel.
- Repeals the department’s regulations on commercial weight-loss practices and dance studios.
- Repeals the ban on the sale of weight-loss pills to a person under 18 years of age.
- Prohibits a person soliciting contributions on behalf of a charity from calling donors who have previously communicated to them that they do not wish to receive any more calls.
- Prohibits a telemarketer from accepting novelty payments, such as remotely created checks or payment orders, cash-to-cash money transfers, and cash reload mechanisms.

- Provides that antifreeze and brake fluid registrations expire one year from the date of issuance.
- Clarifies inconsistent language regarding administrative fines for noncompliant petroleum products.
- Requires the department to adopt quality standards and labeling requirements for motor oils.
- Requires a pawnbroker to use a scale that has been approved and certified by the department when it includes the weight of an object on a transaction form.

The modifications to the department's regulatory activities provided in this bill have a minimal impact on state revenues and expenditures (see Section V).

## II. Present Situation:

The mission of the department is to safeguard the public and support Florida's agricultural economy. The Division of Consumer Services in the Department of Agriculture and Consumer Services (department) is responsible for protecting consumers from unsafe or defective products and deceptive business practices and is tasked with receiving the consumer complaints. This division is also responsible for overseeing and regulating a broad range of business and non-profit activities and entities. These include commercial weight loss practices, telephone solicitations, dance studios, pawnshops, health studios, sellers of travel, and telemarketers. In addition, the division is responsible for protecting consumers from unfair and unsafe business practices across a wide range of products, including petroleum products, brake fluid, antifreeze, lubricating oil, and weighing and measuring devices.

The Division of Licensing in the department regulates and licenses private security, private investigative, and recovery services, as well as issuing concealed weapon and firearm licenses.

The present situation for the relevant provisions of the bill is discussed in the Effect of Proposed Changes section of this bill analysis.

## III. Effect of Proposed Changes:

### Division of Licensing

#### *Fingerprint Requirements*

Currently, any person who applies for a private investigative, private security, or recovery service license must undergo a background check, which includes an examination of fingerprint records and criminal records.<sup>1</sup> Section 493.6108(1)(a)2., F.S., provides that after a second unsuccessful attempt for legible fingerprints, as determined by the Florida Department of Law Enforcement (FDLE) or the Federal Bureau of Investigation (FBI), the Department of Agriculture and Consumer Services (department) may bypass a fingerprint background check and determine eligibility for licensure by doing a criminal history background check based on the applicant's name. This bypass is only permitted if a written statement signed by a fingerprint technician or a licensed physician affirming that the fingerprints are the best that could be

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<sup>1</sup> Section 493.6108(1), F.S.

provided, or that a physical condition precluded submittal of a legible set of prints, must be supplied by the applicant.

**Section 1** amends s. 493.6108, F.S., to repeal the requirement that a written statement from the applicant, signed by the fingerprint technician or licensed physician, be provided in the event of two illegible fingerprints before the department may determine eligibility for licensure using a name-based criminal history background check conducted by the FBI. According to the department, “removing this requirement saves the applicant time by removing the requirement to consult a physician, thereby speeding up the application process.”<sup>2</sup> Additionally, “[t]he written statement did not provide the department with any additional information pertinent to issuing a license.”<sup>3</sup>

### ***Annual Firearms Recertification Training***

Currently, s. 493.6113(3)(b), F.S., requires holders of a Class “G”<sup>4</sup> statewide firearms license to annually complete four hours of firearms recertification training.<sup>5</sup> Upon completion of annual training, the licensee must submit proof of such training to the department. If documentation of the training is not submitted by the end of the first year of the two-year term 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 term 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>6</sup>

**Section 2** amends s. 493.6113, F.S., to clarify that a Class “G” licensee must complete 28 hours of training before they are initially licensed by the department. After initial licensure, a licensee must complete four hours of firearm recertification training by the end of the *first or second* year of the two-year license.

### ***Permitted Firearms***

Currently, s. 493.6115(6), F.S., allows a Class “G” licensee to carry a .38 caliber revolver, a .38 caliber or 9 millimeter semi-automatic pistol, or a .357 caliber revolver with .38 caliber ammunition while performing his or her duties authorized under ch. 493, F.S.

According to the department, over the past 10 to 15 years, a significant number of law enforcement agencies have transitioned away from the standard .38 caliber revolver and the 9 millimeter semi-automatic pistol in favor of the .40 caliber or .45 caliber ACP round. Since 2001, a limited number of security agencies guarding critical infrastructure, such as deep-water ports and power plants, have requested and received waivers to carry these calibers. Currently, there are 74 firearms waivers on file with the department. According to a department analysis, in

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<sup>2</sup> DACS, *Agency Analysis of SB 1018*, 2 (Feb. 25, 2014) (on file with the Committee on Commerce and Tourism).

<sup>3</sup> *Id.*

<sup>4</sup> A Class “G” licensee permits Class “C,” “CC,” “D,” “M,” “MA,” or “MB” licensees to bear a firearm. Section 493.6115(2), F.S.

<sup>5</sup> The DACS may waive the annual firearms recertification training for certain applicants, such as state and federal law enforcement officers and correctional officers. Section 6113(3)(b)1.-3., F.S.

<sup>6</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.

at least one of the granted waivers, the primary reason for the request was that all of the law enforcement agencies in the area carried .40 caliber semi-automatic pistols and that if a situation developed, the ability to interchange ammunition could prove crucial.<sup>7</sup>

**Section 3** amends s. 493.6115, F.S., to allow a Class “G” licensee to carry a .40 caliber handgun or a .45 ACP handgun while performing his or her duties authorized under ch. 493, F.S. The department states that “[t]his change brings the authorized firearm caliber to a caliber level more consistent with what law enforcement agencies have been using for many years.”<sup>8</sup> Additionally, “[t]his would be beneficial in the event of an emergency situation where licensees need to work with law enforcement.”<sup>9</sup>

### ***Security Officer Uniforms and Clothing***

Under s. 493.6305, F.S., which governs uniform requirements for private security officers, a private security officer that has a Class “G” statewide firearms license is only allowed to carry a concealed firearm in plainclothes while performing limited, special assignment duties. Because private security officers regulated under ch. 493, F.S., also includes bodyguards<sup>10</sup> who generally perform their duties while armed and in plain clothes rather than in uniform, the current limitation on carrying a concealed weapon while in plainclothes for limited, special assignment duties is impractical.<sup>11</sup> According to the department, “this restricts the ability of security officers to work as bodyguards because most people needing bodyguards want those bodyguards to be armed and in plain clothes.”<sup>12</sup>

**Section 4** amends s. 493.6305, F.S., to permit a Class “D” private security officer who holds a Class “G” statewide firearms license and who is performing bodyguard or executive protection services to carry a concealed firearm in plainclothes as needed to provided contracted services to the client.

### ***Sealed Criminal History Records***

Currently, under s. 943.059(4), F.S., a person who has had his or her criminal history record sealed may deny or fail to acknowledge the arrests covered in the sealed record unless specific conditions apply. Section 943.059(4), F.S., also specifies what agencies or entities have access to sealed records “for their respective licensing, access authorization, and employment purposes.” Currently, the department is not included in the list of agencies or entities.

**Section 20** amends s. 943.059, F.S., to prohibit a person seeking a concealed weapon license from the department pursuant to s. 790.06, F.S., from denying or failing to acknowledge any arrest covered in a sealed record. The bill also allows the department to access a sealed record for the purpose of determining an applicant’s eligibility for licensure to carry a concealed weapon pursuant to s. 790.06, F.S. Section 20 takes effect January 1, 2015.

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<sup>7</sup> DACS, *Agency Analysis* at 2.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Section 493.6101(19), F.S.

<sup>11</sup> DACS, *Agency Analysis* at 3.

<sup>12</sup> *Id.*

## Division of Consumer Services

### *Bond Requirements*

Currently, health studios, telemarketers, pawnbrokers, and sellers of travel are generally required to obtain a bond, certificate of deposit, or letter of credit in amounts ranging from \$25,000 to \$300,000.<sup>13</sup> The security is intended to compensate consumers for future violations of the provisions of the respective regulating statutes or other consumer complaints, such as fraud, misrepresentation, or breach of contract.<sup>14</sup> According to the department, ss. 501.016, 501.611, 539.001(4), and 559.929, F.S., were enacted separately and thus inconsistencies exist regarding how the respective bond programs are administered, especially with regard to how a consumer pursues a claim against the bond or other security.<sup>15</sup>

**Sections 5, 11, 18, and 19** amend ss. 501.016, 501.611, 539.001, and 559.929, F.S., respectively, to provide standardized regulations and procedures by which a consumer can pursue a claim against the bond or other security of a health studio, telemarketer, pawnbroker, or seller of travel. Although liability for an injury to a consumer may be determined by an administrative proceeding or through a civil action, claims against the bond or other security may only be paid by order of the department in an administrative proceeding pursuant to ch. 120, F.S.

In order for a consumer to file a claim against the bond or other security, he or she must do so through the department on an approved affidavit within 120 days of the injury or discovery of the injury, or a judgment being entered. Proceedings on the claim must be conducted in accordance with ch. 120, F.S., with the department acting only as a nominal party.

The health studio, telemarketer, pawnbroker, or seller of travel must pay any indebtedness due the consumer as determined by the department within 30 days of a final order being entered. If the business fails to pay within 30 days, the department must make demand upon the surety. If a surety fails to comply with a demand for payment, the department may file an action in circuit court to recover payment up to the amount of the bond or other security. If the court affirms the demand for payment from the surety, the department will be awarded court costs and reasonable attorney fees.

The bill also requires that a bond or other permitted security be filed on a form adopted by the department. Lastly, it requires that a bond or other security provided by a telemarketer be in favor of the department for the use and benefit of any consumer injured by the fraud, misrepresentation, breach of contract, financial failure, or violation of the Florida Telemarketing Act<sup>16</sup> by the telemarketer.

According to the department, these changes will allow more efficient administration of these bond programs.<sup>17</sup>

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<sup>13</sup> Sections 501.016, 501.611, 539.001(4), and 559.929, F.S.

<sup>14</sup> Sections 501.016(1), 501.611(4), 501.001(4)2., and 559.929(2), F.S.

<sup>15</sup> DACS, *Agency Analysis* at 3.

<sup>16</sup> Part IV of ch. 501, F.S.

<sup>17</sup> DACS, *Agency Analysis* at 3.

### ***Commercial Weight-Loss Practices Act***

Sections 501.057-.0581, F.S., the Commercial Weight-Loss Practices Act, regulate weight-loss providers<sup>18</sup> in Florida. Under the act, weight-loss providers must:

- Provide consumers an itemized statement of the cost of weight-loss programs;<sup>19</sup>
- Disclose information about the provider and program, such as the duration of the program and information about the education and experience of the staff;<sup>20</sup> and
- Provide consumers with a Weight-Loss Consumer Bill of Rights, which warns against the dangers of rapid weight loss, advises the consumer to seek the advice of a physician, and informs the consumer of his or her right to certain information under the act.<sup>21</sup>

A violation of the act is an unfair and deceptive trade practice under part II of ch. 501, F.S., and, in addition to any other remedy provided by law, the department may bring a civil action in circuit court to enforce the act and may seek additional civil relief, including a civil penalty up to \$5,000 for each violation.<sup>22</sup>

**Section 6** repeals ss. 501.057-.0581, F.S., the Commercial Weight-Loss Practices Act. In recent years, the department has not received any complaints related to the act. Additionally, the department “has no nexus with this industry, which primarily includes medical staff and weight loss centers that are staffed by dietitians and nutritionists.”<sup>23</sup> According to the department, “these professions are regulated by the Agency for Healthcare Administration, which has much greater experience and expertise related to the weight loss industry.”<sup>24</sup>

### ***Sale of Weight-Loss Pills to Minors***

Currently, s. 501.0583, F.S., prohibits the sale, delivery, or provision of a weight-loss pill to a person under 18 years of age. A weight-loss pill is defined as a “pill that is available without a prescription, the marketing, advertising, or packaging of which indicates that its primary purpose is for facilitating or causing weight loss.” A first violation of this section is punishable by a fine of \$100; a second violation is punishable by a fine of \$250; a third violation is punishable by a fine of \$500; and a fourth or subsequent violation is punishable by a fine up to \$1,000.

**Section 7** repeals s. 501.0583, F.S., to repeal the prohibition on the sale, delivery, or provision, either directly or indirectly, of a weight-loss pill to a person under 18 years of age.

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<sup>18</sup> “Weight-loss provider” is defined as “any person engaged in the business of offering services to consumers to assist them in losing weight and making oral or written statements, visual descriptions, advertisements, or other representations that have the capacity, tendency, or effect of leading consumers to believe that participation in a weight-loss program will result in weight loss.” Section 501.0571(5), F.S. Physicians, chiropractors, podiatrists, naturopathists, optometrists, pharmacists, and physical therapists licensed in Florida and who give weight-loss advice or service that is incidental to their practice are excluded from the act. Section 501.0577, F.S.

<sup>19</sup> Section 501.0573, F.S.

<sup>20</sup> *Id.*

<sup>21</sup> Section 501.0575, F.S.

<sup>22</sup> Section 501.0581, F.S.

<sup>23</sup> DACS, *Agency Analysis* at 3-4.

<sup>24</sup> *Id.*; see part X of ch. 468, F.S.

### ***Do Not Call Program/Telephone Solicitations***

Under s. 501.059(5), F.S., of the Florida Do Not Call program, a telephone solicitor is prohibited from calling a consumer who has previously communicated to the solicitor that he or she does not wish to receive a telephone call:

- Made by or on behalf of the seller whose goods or services are being offered; or
- Made on behalf of a charity for which a charitable contribution is being solicited.

Because the definition of a “telephone solicitor” does not include a person soliciting charitable contributions, there is nothing in current law to prohibit people soliciting contributions on behalf of a charity via telephone from calling donors who have previously communicated to them that they do not wish to receive any more solicitation calls.<sup>25</sup>

**Section 8** amends s. 501.059, F.S., to prohibit any person soliciting contributions on behalf of a charity via telephone from calling donors who have previously communicated to them that they do not wish to receive any more charitable contribution solicitation calls.

### ***Dance Studio Act***

The Dance Studio Act, s. 501.143, F.S., regulates ball room dance studios that provide dance lessons or services in Florida. Regulations under the act include:

- Registration with the department;<sup>26</sup>
- Requirements that every contract with a customer include certain provisions, such as the customer’s total payment obligations and cancellation provisions;<sup>27</sup>
- Bond or other similar security requirements;<sup>28</sup> and
- Prohibited practices, such as coercive or misleading sales practices.

The department can seek an injunction or civil penalties for any violation of the act, and violations are generally misdemeanors. The act also permits a consumer to bring an action for treble damages for fraudulent violations of the act.<sup>29</sup>

Ballroom dance studios are the only dance studios currently regulated by the department. According to the department, during the last three fiscal years, it has received 23 complaints related to dance studios and has recovered \$23,025 for consumers under its authority to conduct informal mediation processes. Additionally, the department notes that there has not been a bond payout under this program in the last three fiscal years.<sup>30</sup>

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<sup>25</sup> DACS, *Agency Analysis* at 4. “Telephone solicitor” is defined as “any natural person, firm, organization, partnership, association, or corporation, or a subsidiary or affiliate thereof, doing business in this state, who makes or causes to be made a telephonic sales call, including, but not limited to, calls made by use of automated dialing or recorded message devices.” Section 501.059(1)(d), F.S.

<sup>26</sup> Section 501.143(3), F.S.

<sup>27</sup> *Id.* at (4).

<sup>28</sup> *Id.* at (5).

<sup>29</sup> *Id.* at (7), (8), and (10).

<sup>30</sup> DACS, *Agency Analysis* at 4.

**Section 9** repeals s. 501.143, F.S., the Dance Studio Act, thus deregulating the industry in Florida. According to the department, complaints related to dance studios would be handled through its non-regulated complaints section.<sup>31</sup>

### ***Telemarketing Payment Methods***

There are two major categories of noncash retail payment methods used in telemarketing: conventional payment methods and novelty payment methods.<sup>32</sup> Conventional payment methods include credit cards, debit cards, and other types of electronic fund transfers processed electronically through networks that are monitored for fraud. These payment methods are subject to federal laws that require error resolution procedures and limit a consumer's liability for certain disputed transactions.<sup>33</sup>

Novelty payment methods refers to four types of noncash payments. These methods are remotely created checks and payment orders, cash-to-cash money transfers (such as Western Union and Moneygram), and cash reload mechanisms (such as MoneyPak or ReloadIt).<sup>34</sup> Unlike conventional payment methods, novelty payment methods "are cleared via check clearing and money transfer networks that provide little or no systematic monitoring to detect or deter fraud."<sup>35</sup> Additionally, novelty payment methods do not provide consumers with sufficient recourse when unauthorized transactions or telemarketing fraud occurs.

Due to the lack of adequate consumer protections for novelty payment methods, the Federal Trade Commission (FTC) has found that unscrupulous telemarketers exploit these payment methods to defraud consumers. Schemes employed by fraudulent telemarketers to exploit the weaknesses in novelty payment methods include phony offers such as fake medical discount plans, soliciting for bogus charities, mystery shopper scams, and work at home opportunities.<sup>36</sup> Due to the significant fraudulent activity associated with novelty payment methods, the FTC has proposed an amendment to its Telemarketing Sales Rule that will prohibit telemarketers from accepting novelty payment methods.<sup>37</sup> Currently, the Florida Telemarketing Act,<sup>38</sup> contains no restrictions on payment methods for telemarketers. However, the act prohibits a telephone salesperson from requiring that a customer pay by credit card or expressing a preference of such method of payment.<sup>39</sup>

**Sections 10 and 12** amend ss. 501.603 and 501.616, F.S., respectively, to prohibit a telemarketer from accepting novelty payments either directly or indirectly as payment for goods or services.

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<sup>31</sup> *Id.*

<sup>32</sup> Telemarketing Sales Rule, 78 Fed. Reg. 41200, 41201 (proposed July 9, 2013) (to be codified at 16 C.F.R. 310).

<sup>33</sup> *Id.* Federal laws regulating conventional payment methods include the Truth-in-Lending Act, 15 U.S.C. 1601 et seq., Regulation Z, 12 CFR part 1026, the Electronic Fund Transfer Act, 15 U.S.C. 1693 et seq., and Regulation E, 12 CFR 1005. *Id.* at n24.

<sup>34</sup> For a more thorough explanation of the different types of novelty payments and their respective susceptibility to telemarketer fraud see *id.* at 41202-41215.

<sup>35</sup> *Id.* at 41201-41202.

<sup>36</sup> *Id.* at 41207-41208, 41212-41213.

<sup>37</sup> *See id.* at 41223-41225.

<sup>38</sup> Part IV of ch. 501, F.S.

<sup>39</sup> Section 501.616(1), F.S.



“Novelty payment” is defined in the bill as a payment method that does not provide a means of systematic monitoring to detect and deter fraud, and it includes the following payment devices:

- A remotely created check, which is a check that is not created by the paying bank and that does not bear the signature of the person on whose account the check is drawn.
- A remotely created payment order, which is a payment instruction or order drawn on a person’s account which is initiated or created by the payee and does not bear the signature of the person on whose account the order is drawn and is cleared through the check clearing system.
- A cash-to-cash money transfer, which is the electronic transfer of the value of cash received from one person to another, in a different location, that is sent by a money transfer provider<sup>40</sup> and received in the form of cash.
- A cash reload mechanism,<sup>41</sup> which is a system that makes it possible to convert cash into an electronic form that a person can use to add money to a prepaid card or an online account with a payment intermediary.<sup>42</sup>

The department will also have the discretion to further define novelty payment in rule to identify the ever-changing forms of unsystematic, fraud-prone payment methods.<sup>43</sup> Additionally, the bill repeals the prohibition against a telephone salesperson requiring a customer to pay by credit card or expressing a preference for such method of payment.

### ***Antifreeze and Brake Fluid Registration***

Currently, the Division of Consumer Services requires antifreeze and brake fluid distributed in Florida to be registered with the department. Section 501.913(1), F.S., requires each brand of antifreeze to be registered no later than July 1 of each year. Pursuant to s. 526.51, F.S., each brand of brake fluid must be re-registered by June 30 of each year.<sup>44</sup> According to the department, since Fiscal Year 2010-2011, the number of antifreeze applications has increased more than 15 percent and the number of brake fluid applications has increased more than 30 percent.<sup>45</sup>

**Sections 13 and 17** amend ss. 501.913 and 526.51, F.S., and **Section 16** repeals s. 526.50, F.S., to provide that antifreeze and brake fluid registrations expire one year from the date of issuance. According to the department, distributing application cycles throughout the year will prevent large backlogs of registrations. The reduced processing time will allow applicants to bring

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<sup>40</sup> The term “money transfer provider” is defined in the bill to mean “a person or financial institution that provides cash-to-cash money transfers for a person in the normal course of business, regardless of whether the person holds an account with such person or financial institution.”

<sup>41</sup> The term “mechanism” is defined in the bill to mean “a system that is purchased by a person on a prepaid basis, that enables access to the funds via an authorization code or other security measure, and that is not directly used as a general-use prepaid card.”

<sup>42</sup> The definitions in the bill are nearly identical to those proposed by the FTC in its proposed rule. 78 Fed. Reg. at 41223-41224.

<sup>43</sup> DACS, *Agency Analysis* at 5.

<sup>44</sup> Section 526.51, F.S., requires brake fluid to be re-registered no later than the last day of the “permit year,” which is defined in s. 526.50(6), F.S. as “a period of 12 months commencing July 1 and ending on the next succeeding June 30.” Consequently, brake fluid must be re-registered by June 30 of each year.

<sup>45</sup> DACS, *Agency Analysis* at 5-6.

products to market without delays and will benefit from having a full year's registration before having to renew.<sup>46</sup>

### ***Petroleum Product Inspections***

Pursuant to ch. 525, F.S., the department regularly conducts inspections on the petroleum distribution system and analyzes samples of petroleum products to ensure the quality and fairness of those products.<sup>47</sup> If a petroleum product fails to meet any standard adopted pursuant to ch. 525, F.S., the department may impose a number of penalties, including levying fines and placing a stop-sale order on the product.<sup>48</sup> For second violations or repeat offenders, the department may impose greater fines, taking into consideration the violator's compliance records. If a new violation of ch. 525, F.S., occurs more than three years after the last-stop order was issued, and during that three-year period no other violation has occurred at the same location, then all previous fines must be disregarded by the department.

**Section 14** amends s. 525.16, F.S., to clarify inconsistent language regarding when a previous fine for violating ch. 525, F.S., may be disregarded when administering a fine for a new violation. According to the department, this change makes the language in s. 525.16(1)(a) and (b), F.S., consistent.<sup>49</sup>

### ***Lubricating Oil Standards and Labeling***

Pursuant to part I of ch. 526, F.S., the department regulates liquid fuels, lubricating oils, and other similar products. The majority of the requirements of ch. 526, F.S., are designed to prevent deceptive labeling that may mislead consumers as to the nature, quality, or quantity of the product for sale.<sup>50</sup> If labeling requirements are violated, the product is placed under an administrative stop-sale order until it is properly labeled.<sup>51</sup> If the product is not properly labeled within 30 days of the stop-sale order being issued, it must be disposed. Although part I of ch. 526, F.S., permits the department to regulate labeling of lubricating oils, it does not permit the department to establish quality standards for lubricating oils, such as those established by the Society of Automotive Engineers (SAE).<sup>52</sup>

**Section 15** creates s. 526.015, F.S., to permit the department to adopt quality standards and labeling requirements specifically for lubricating oils. Quality standards adopted by the department must be comparable to those established by the Society of Automotive Engineers or other similar standard, and labeling requirements must be designed to prevent deceptive or misleading practices. The bill prohibits a person from selling or distributing a lubricating oil that fails to meet standard or labeling requirements adopted by the department. A product that fails to meet such requirements must be placed under a stop-sale order and the lot number of the product must be identified and tagged by the department to prevent its sale. A product that has been placed under a stop-sale order may not be sold or distributed or offered for sale or distribution.

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<sup>46</sup> *Id.*

<sup>47</sup> Section 525.01(2), F.S.

<sup>48</sup> Sections 525.16(1)(a); 525.037(2), F.S.

<sup>49</sup> DACS, *Agency Analysis* at 6.

<sup>50</sup> See s. 526.01, F.S.

<sup>51</sup> *Id.* at (3).

<sup>52</sup> DACS, *Agency Analysis* at 6-7.

Once a product conforms to standard and labeling requirements or is removed from the premises in a manner approved by the department, a release order is issued.

### ***Pawnbrokers***

Pursuant to the Florida Pawnbroking Act, s. 539.001, F.S., a pawnbroker must complete a transaction form signed by the pledger or seller.<sup>53</sup> The form must include specific information such as a description of the pledged or purchased goods, including brand name, serial number, and, if known, precious metal type, weight, and content.<sup>54</sup> According to the department, law enforcement uses these descriptive elements on the transaction form to identify goods.<sup>55</sup> The department states that pawnbrokers must use a properly permitted scale when buying and selling precious metals by weight or when using weight as a descriptor on a pawn transaction form. Several pawn shops have recently resisted using a permitted scale. The pawn shops claim they are not buying or selling metals by weight, but are merely including the weight on the pawn transaction form as a descriptor.<sup>56</sup>

**Section 18** amends s. 539.001, F.S., to require a pawnbroker to use a scale that has been approved by the department and complies with ss. 531.39 and 531.40, F.S.<sup>57</sup>

**Sections 21 and 22** amend ss. 205.1969 and 501.015, F.S., to conform cross-references and delete obsolete cross-references.

**Section 23** provides an effective date of July 1, 2014, except as otherwise provided in the act.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

### **B. Public Records/Open Meetings Issues:**

None.

### **C. Trust Funds Restrictions:**

None.

## **V. Fiscal Impact Statement:**

### **A. Tax/Fee Issues:**

None.

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<sup>53</sup> Section 539.001(8)(a), F.S.

<sup>54</sup> *Id.* at (8)(b).

<sup>55</sup> DACS, *Agency Analysis* at 7.

<sup>56</sup> *Id.*

<sup>57</sup> Sections 531.39 and 531.40, F.S., regulate commercial weighing and measuring devices.

**B. Private Sector Impact:**

CS/SB 1018 repeals s. 501.143, F.S., removing the requirement for dance studios to register with the Department of Agriculture and Consumer Services (department). Dance studios will no longer be required to pay a \$300 registration fee.

Pawnbrokers may incur additional costs associated with purchasing scales that comply with ss. 531.39 and 531.40, F.S.

**C. Government Sector Impact:**

The modifications to the department's regulatory activities provided in the bill have a minimal fiscal impact on state revenues and expenditures. The department estimates the repeal of the Dance Studio Act will reduce recurring revenues by \$58,200 and expenditures by \$17,455 in the General Inspection Trust Fund. Additionally, there will be an indeterminate reduction in revenues due to the infrequency of litigation relating to standardizing the bond requirements for health studios, telemarketers, pawnbrokers, and sellers of travel.

The FDLE estimates the modifications to the criminal history mainframe system to permit the department to access sealed records will require \$35,745 in non-recurring funds in Fiscal Year 2014-2015.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

The bill substantially amends the following sections of the Florida Statutes: 493.6108, 493.6113, 493.6115, 493.6305, 501.016, 501.059, 501.603, 501.611, 501.616, 501.913, 525.16, 526.51, 539.001, 559.929, 943.059, 205.1969, and 501.015.

The bill creates section 526.015 of the Florida Statutes.

The bill repeals the following sections of the Florida Statutes: 501.057, 501.0571, 501.0573, 501.0575, 501.0577, 501.0579, 501.0581, 501.0583, 501.143, and 526.50.

**IX. Additional Information:**

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

**CS by Commerce and Tourism on March 10, 2014:**

The committee substitute:

- Provides that a name-based background check is to be conducted by the FBI;
- Clarifies the definition of “novelty payment”;
- Provides standards to guide the department in developing rules for quality and labeling standards for lubricating oils;
- Specifies what provisions of ch. 531, F.S., a scale must be certified under if used by a pawnbroker;
- Removes the updated service of process requirements for out-of-state concealed weapons licensees; and
- Changes the effective date for the department’s access to sealed records to January 1, 2015, so that the FDLE has time to update its computer system.

**B. Amendments:**

None.