

**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 Commerce and Tourism

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BILL: SB 1018

INTRODUCER: Senator Detert

SUBJECT: Department of Agriculture and Consumer Services

DATE: March 7, 2014

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

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION             |
|----|---------|----------------|-----------|--------------------|
| 1. | Malcolm | Hrdlicka       | CM        | <b>Pre-meeting</b> |
| 2. |         |                | AP        |                    |

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**I. Summary:**

SB 1018 modifies or repeals several regulatory activities under the jurisdiction of the Florida Department of Agriculture and Consumer Services (DACS). 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 stating there is a physical condition that prevents obtaining legible fingerprints before the DACS can determine the applicant's eligibility for licensure based on a name-based background check.
- Requires a Class "G" statewide firearms licensee that fails to timely complete 4 hours of annual firearms training to complete the 28 hours training required for initial licensure.
- Permits a Class "G" licensee to carry a .40 caliber handgun or a .45 ACP handgun.
- Permits a Class "D" private security guard who holds a Class "G" license and who is performing bodyguard services to carry a concealed firearm while in plainclothes.
- Requires the DACS to serve an administrative complaint on a concealed weapons licensee by e-mail, regular mail, and certified mail. If service is ineffective and the licensee has an address in another state or in a foreign country, then the DACS must call the licensee's last known telephone number, publish notice in a Leon County newspaper, and post a notice on the DACS' website.
- Prohibits a person seeking to be licensed by the DACS to carry a concealed weapon from denying or failing to acknowledge an arrest contained in a sealed record.
- 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 Commercial Weight-Loss Practices Act.
- 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.
- Repeals the Dance Studio Act.
- 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 1 year from the date of issuance.
- Clarifies inconsistent language regarding administrative fines for non-compliant petroleum products.
- Permits the DACS to adopt quality standards and labeling requirements for lubricating oils and to issue stop-use orders for non-compliant products.
- Requires a pawnbroker to use a scale that has been approved and certified by the DACS when it includes the weight of an object on a transaction form.

## II. Present Situation:

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

The Division of Consumer Services is tasked with receiving the state's consumer complaints. It is also responsible for overseeing and regulating a broad range of business and non-profit activities and entities, including: commercial weight loss practices, telephone solicitations, dance studios, pawnshops, health studios, sellers of travel, and telemarketers. In addition, this division is also 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 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

#### *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, the DACS may bypass a fingerprint background check and determine the applicant's eligibility for licensure by doing a criminal history background check based on the applicant's name. This bypass is only permitted if the fingerprints were taken by a law enforcement agency or the DACS and the applicant submits a written statement signed by the fingerprint technician or a licensed physician stating that the prints were the best that could be taken or that a physical condition precluded submittal of a legible set of prints.

**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

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

two illegible fingerprints before the DACS may determine eligibility for licensure using a name-based criminal history background check. According to the DACS, “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 4 hours of firearms recertification training.<sup>5</sup> Upon completion of annual training, the licensee must submit proof of such training to the DACS. If documentation of the training is not submitted by the end of the first year of the 2-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 2-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 require a Class “G” licensee that fails to complete 4 hours of annual firearms recertification training by the end of the *first or second year* of the 2-year term license to complete the minimum number of hours of range and classroom training required at the time of initial licensure.

#### *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 DACS, 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 DACS. “In 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

<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.

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

DACS 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 DACS, “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.

*Service of Process Requirements on Out-of-State Florida Concealed Weapon Licensees*

Currently, ch. 120, F.S., the Administrative Procedures Act (APA), requires either personal service or service by certified mail of an administrative complaint when an agency seeks to revoke or suspend a license.<sup>13</sup> If the agency cannot personally serve the licensee and service by certified mail is returned undeliverable, the agency must publish notice of the pending revocation or suspension for 4 consecutive weeks in a newspaper published in the county of the licensee’s last known address.<sup>14</sup> If no newspaper is published in the county, the notice may be published in a newspaper of general circulation in that county.<sup>15</sup> Prior to a 2012 amendment to the APA, an agency was also permitted to publish notice of pending revocation or suspension of a license in Leon County if a licensee had an out-of-state address.<sup>16</sup> The 2012 amendment repealed this provision.

According to the DACS, the requirement that it publish notice to licensees with an out-of-state address in the county of their last known residence has created delays in serving administrative actions to out-of state licensees and caused a significant cost increase for the DACS.<sup>17</sup> As of June 30, 2013, the DACS had more than 140,000 concealed weapon licensees with an out-of-state address. In Fiscal Year 2011-12, prior to the 2012 amendment, the DACS had expenditures of

<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.*

<sup>13</sup> Section 120.60(5), F.S.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Chapter 2012-212, s. 10, L.O.F.

<sup>17</sup> DACS, *Agency Analysis* at 7.

\$38,000 in publication costs. In Fiscal Year 2012-13, after the 2012 amendment, the DACS had expenditures of \$223,000 in publication costs, an increase of \$185,000. The DACS stated that it has expended considerable effort in locating cost-efficient publication options in newspapers across the United States after the 2012 amendment.<sup>18</sup>

**Section 20** amends s. 570.07, F.S., to require the DACS to serve an administrative complaint on a concealed weapons licensee by regular mail and certified mail to the licensee's last known address and, if possible, by e-mail. If service under these methods is ineffective and the licensee has an address in another state or in a foreign territory or country, then the DACS must call the licensee's last known telephone number, if available, must publish notice within a Leon County newspaper, and must post a short, plain notice to the licensee on the DACS' website.

#### *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, such as when the person is a candidate for employment with a criminal justice agency; is a candidate for admission to The Florida Bar; is seeking to be employed or used by a contractor or licensee in a sensitive position having direct contact with children, the disabled, or the elderly; is seeking to be employed or licensed by an education agency or facility; or is attempting to purchase a firearm from a licensed importer, manufacturer, or dealer. Section 943.059(4), F.S., also specifies what agencies or entities, such as The Florida Bar and the Department of Children and Families, have access to sealed records "for their respective licensing, access authorization, and employment purposes." The DACS is not included.

**Section 21** amends s. 943.059, F.S., to prohibit a person seeking a concealed weapon license from the DACS 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 DACS 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.

#### **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>19</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>20</sup> According to the DACS, 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>21</sup>

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<sup>18</sup> *Id.*

<sup>19</sup> Sections 501.016, 501.611, 539.001(4), and 559.929, F.S.

<sup>20</sup> Sections 501.016(1), 501.611(4), 501.001(4)2., and 559.929(2), F.S.

<sup>21</sup> DACS, *Agency Analysis* at 3.

**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 DACS 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 DACS 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 DACS 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 DACS within 30 days of a final order being entered. If the business fails to pay within 30 days, the DACS must make demand upon the surety. If a surety fails to comply with a demand for payment, the DACS 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 DACS 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 DACS. Lastly, it requires that a bond or other security provided by a telemarketer be in favor of the DACS 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>22</sup> by the telemarketer.

According to the DACS, these changes will allow it to administer these bond programs more efficiently.<sup>23</sup>

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

Sections 501.057-.0581, F.S., the Commercial Weight-Loss Practices Act, regulate weight-loss providers<sup>24</sup> in Florida. Under the act, weight-loss providers must:

- Provide consumers an itemized statement of the cost of weight-loss programs;<sup>25</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>26</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>27</sup>

<sup>22</sup> Part IV of ch. 501, F.S.

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

<sup>24</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>25</sup> Section 501.0573, F.S.

<sup>26</sup> *Id.*

<sup>27</sup> Section 501.0575, F.S.

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 DACS 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>28</sup>

**Section 6** repeals ss. 501.057-.0581, F.S., the Commercial Weight-Loss Practices Act. In recent years, the DACS has not received any complaints related to the act. Additionally, the DACS “has no nexus with this industry, which primarily includes medical staff and weight loss centers that are staffed by dietitians and nutritionists.”<sup>29</sup> According to the DACS, “these professions are regulated by the Agency for Healthcare Administration, which has much greater experience and expertise related to the weight loss industry.”<sup>30</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.

#### *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>31</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.

<sup>28</sup> Section 501.0581, F.S.

<sup>29</sup> DACS, *Agency Analysis* at 3-4.

<sup>30</sup> *Id.*; see part X of ch. 468, F.S.

<sup>31</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.

*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 DACS;<sup>32</sup>
- Requirements that every contract with a customer include certain provisions, such as the customer's total payment obligations and cancellation provisions,<sup>33</sup>
- Bond or other similar security requirements,<sup>34</sup> and
- Prohibited practices, such as coercive or misleading sales practices.

The DACS 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>35</sup>

Ballroom dance studios are the only dance studios currently regulated by the DACS. According to the DACS, during the last 3 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 DACS notes that there has not been a bond payout under this program in the last 3 fiscal years.<sup>36</sup>

**Section 9** repeals s. 501.143, F.S., the Dance Studio Act thus deregulating the industry in Florida. According to the DACS, complaints related to dance studios would be handled through its non-regulated complaints section.<sup>37</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>38</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>39</sup>

Novelty payment methods refers to four types of noncash payments—remotely created checks, remotely created payment orders, cash-to-cash money transfers (such as Western Union and Moneygram), and cash reload mechanisms (such as MoneyPak or ReloadIt).<sup>40</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

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<sup>32</sup> Section 501.143(3), F.S.

<sup>33</sup> *Id.* at (4).

<sup>34</sup> *Id.* at (5).

<sup>35</sup> *Id.* at (7), (8), and (10).

<sup>36</sup> DACS, *Agency Analysis* at 4.

<sup>37</sup> *Id.*

<sup>38</sup> Telemarketing Sales Rule, 78 Fed. Reg. 41200, 41201 (proposed July 9, 2013) (to be codified at 16 C.F.R. 310).

<sup>39</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>40</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.



fraud.”<sup>41</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>42</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>43</sup> Currently, the Florida Telemarketing Act,<sup>44</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>45</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. “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 person in a different location that is sent by a money transfer provider<sup>46</sup> and received in the form of cash.
- A cash reload mechanism,<sup>47</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 general-use prepaid card or an online account with a payment intermediary.<sup>48</sup>

The DACS 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>49</sup>

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<sup>41</sup> *Id.* at 41201-41202.

<sup>42</sup> *Id.* at 41207-41208, 41212-41213.

<sup>43</sup> *See id.* at 41223-41225.

<sup>44</sup> Part IV of ch. 501, F.S.

<sup>45</sup> Section 501.616(1), F.S.

<sup>46</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>47</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>48</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>49</sup> DACS, *Agency Analysis* at 5.

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, antifreeze and brake fluid distributed in Florida must be registered with the DACS. 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>50</sup>

According to the DACS, since Fiscal Year 2010-11, 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>51</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 1 year from the date of issuance. The DACS believes that by distributing application cycles throughout the year, current staffing levels will be sufficient to process the workload and prevent large backlogs of registrations. The reduced processing time will allow applicants to bring products to market without delays due to registration bottlenecks and applicants will benefit from having a full year's registration before having to renew.<sup>52</sup>

#### *Petroleum Product Inspections*

Under ch. 525, F.S., the DACS regularly conducts inspections on the petroleum distribution system and analyzes samples of petroleum products to ensure the quality and fairness of those products.<sup>53</sup> If a petroleum product fails to meet any standard adopted by the DACS under ch. 525, F.S., the DACS may impose a number of penalties, including levying fines and placing a stop-sale order on the product.<sup>54</sup> For second violations or repeat offenders, the DACS may impose greater fines, taking into consideration the violator's compliance records. If a new violation of ch. 525, F.S., occurs more than 3 years after the last-stop order was issued and during that 3-year period no other violation has occurred at the same location while the location was owned by the same person, then all previous fines must be disregarded by the DACS when levying a fine for the new violation.

**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 DACS, this change makes the language in s. 525.16(1)(a) and (b), F.S., consistent.<sup>55</sup>

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<sup>50</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>51</sup> DACS, *Agency Analysis* at 5-6.

<sup>52</sup> *Id.*

<sup>53</sup> Section 525.01(2), F.S.

<sup>54</sup> Sections 525.16(1)(a); 525.037(2), F.S.

<sup>55</sup> DACS, *Agency Analysis* at 6.

*Lubricating Oil Standards and Labeling*

Under part I of ch. 526, F.S., the DACS regulates liquid fuels, lubricating oils, greases, and other similar products. The majority of the requirements under part I of ch. 526, F.S., involve requirements designed to prevent deceptive labeling that may mislead consumers as to the nature, quality, or quantity of the product for sale.<sup>56</sup> If a product violates the labeling requirements, it is placed under an administrative stop-sale order that prevents the product from being sold until it is properly labeled.<sup>57</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 DACS to regulate labeling of lubricating oils, it does not permit the DACS to establish quality standards for lubricating oils, such as those established by the Society of Automotive Engineers (SAE).<sup>58</sup>

**Section 15** creates s. 526.015, F.S., to permit the DACS to adopt quality standards and labeling requirements specifically for lubricating oils. The bill prohibits a person from selling or distributing, or offering for sale or distribution, a lubricating oil that fails to meet standard or labeling requirements adopted by the DACS. 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 DACS 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. Once a product conforms to standard and labeling requirements or is removed from the premises in a manner approved by the DACS, the DACS must issue a release order.

*Pawnbrokers*

Under the Florida Pawnbroking Act, s. 539.001, F.S., when a pawnbroker completes a pawn or purchase transaction, he or she must complete a transaction form that must be signed by the pledgor or seller.<sup>59</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>60</sup> According to the DACS, law enforcement uses these descriptive elements on the transaction form to identify goods.<sup>61</sup> The DACS also 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; however, several pawn shops have recently resisted using a permitted scale by claiming that they are not buying or selling metals by weight but are merely including the weight on the pawn transaction form as a descriptor.<sup>62</sup>

**Section 18** amends s. 539.001, F.S., to require a pawnbroker to use a scale that has been approved by the DACS and that complies with ch. 531, F.S.,<sup>63</sup> when it includes the weight of the object on transaction form.

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<sup>56</sup> See s. 526.01, F.S.

<sup>57</sup> *Id.* at (3).

<sup>58</sup> DACS, *Agency Analysis* at 6-7.

<sup>59</sup> Section 539.001(8)(a), F.S.

<sup>60</sup> *Id.* at (8)(b).

<sup>61</sup> DACS, *Agency Analysis* at 7.

<sup>62</sup> *Id.*

<sup>63</sup> Chapter 531, F.S., regulates weighing and measuring devices.

**Sections 22 and 23** amend ss. 205.1969 and 501.015, F.S., respectively, to conform cross-references and delete obsolete cross-references.

**Section 24** provides and effective date of July 1, 2014.

#### **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 Florida Supreme Court recently reiterated that “statutes granting power to an administrative agency ‘must clearly announce adequate standards to guide . . . in the execution of the powers delegated.’”<sup>64</sup> Accordingly, a statute that delegates rule-making authority “must so clearly define the power delegated that the administrative agency is precluded from acting through whim, showing favoritism, or exercising unbridled discretion.”<sup>65</sup> The bill permits the DACS to adopt by rule standards and labeling requirements for lubricating oils (Section 15). However, the bill does not provide limitations or standards to guide the DACS in its discretion to adopt such standards and requirements. As such, the bill may be an unconstitutional delegation of legislative authority.

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

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Repealing the requirement that a written statement from certain applicants, signed by the fingerprint technician or licensed physician, be provided before the DACS may determine eligibility for licensure using a name-based criminal history background check will likely save those applicants time and money as they will no longer have to consult a physician.

<sup>64</sup> *S. Alliance for Clean Energy v. Graham*, 113 So. 3d 742, 748 (Fla. 2013)(quoting *Lewis v. Bank of Pasco Cnty.*, 346 So.2d 53, 55–56 (Fla.1976)).

<sup>65</sup> *Id.*

Repealing this requirement will also speed up the application process for those applicants.<sup>66</sup>

Requiring a Class “G” statewide firearms licensee that fail to complete the annual 4-hour recertification training in the first year of the 2-year term license to re-complete the 28 hours of training required at the time of initial licensure will likely lead to increased costs for the licensee.

Permitting a Class “D” private security officer holding a Class “G” license to carry a concealed firearm while in plainclothes will provide such individuals additional employment options without having to additionally obtain a private investigative license, which may not be desired or obtainable due to experience requirements or additional costs.<sup>67</sup>

Due to the repeal of the Dance Studio Act, dance studios will no longer have to pay a \$300 registration fee nor will they have to incur costs associated with complying with the security requirements of the act.

Pawnbrokers may incur additional costs associated with purchasing scales that comply with the requirements of ch. 531, F.S.

#### C. Government Sector Impact:

The DACS estimates the following fiscal impacts, beginning in Fiscal Year 2014-15:

- Related to the repeal of the Dance Studio Act, a reduction in revenues from registration fees of \$58,200 (194 registrations, \$300 annual fee) and a corresponding reduction in expenditures of \$17,455 in the General Inspection Trust Fund;
- Related to standardizing the bond requirements for health studios, telemarketers, pawnbrokers, and sellers of travel, an undetermined reduction in revenues due to the infrequency of litigation; and
- Related to the revisions to the service of process notice requirements for out-of-state licensees holding concealed weapons permits, a reduction in expenditures of \$185,000 in the Division of Licensing Trust Fund to publish notice in out-of-state publications. The DACS has not yet provided estimated fiscal information related to the revisions to the service of process notice requirements for out-of-state licensees related to the requirements to send notice by regular mail, certified mail, publishing in a Leon County publication, and making notice on its website.<sup>68</sup>

The FDLE estimates it will need to hire a mainframe contract programmer to update computer coding to permit the DACS to access sealed records. The project is estimated to take 397 hours at a cost of \$33,745 plus \$2,000 for hardware for a total cost to the FDLE of \$35,745 in Fiscal Year 2014-15. The FDLE states the DACS has agreed to fund the programming thru the DACS Division of Licensing Trust Fund. Accordingly, the FDLE

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<sup>66</sup> DACS, *Agency Analysis* at 2.

<sup>67</sup> *Id.* at 3.

<sup>68</sup> *Id.*

will require a non-recurring increase in the Operating Trust Fund authority of \$33,745 in the Contracted Services category and \$2,000 in the Operating Capital Outlay category, to be supported by a corresponding cash transfer from the DACS Division of Licensing Trust Fund.<sup>69</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill authorizes the DACS to adopt by rule standards and labeling requirements for lubricating oils. The DACS is also authorized to adopt rules that further define a novelty payment whose use is prohibited by telemarketers for payments.

**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, 570.07, 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 Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>69</sup> FDLE, *Agency Analysis of SB 1018* (Mar. 5, 2014) (on file with the Committee on Commerce and Tourism).