

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 7051 PCB BPRS 14-01 Department of Agriculture and Consumer Services
SPONSOR(S): Regulatory Affairs Committee; Agriculture & Natural Resources Appropriations Subcommittee;
Business & Professional Regulation Subcommittee; La Rosa
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1018

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Business & Professional Regulation Subcommittee	8 Y, 5 N	Butler	Luczynski
1) Agriculture & Natural Resources Appropriations Subcommittee	10 Y, 3 N, As CS	Lolley	Massengale
2) Regulatory Affairs Committee	15 Y, 0 N, As CS	Butler	Hamon

SUMMARY ANALYSIS

The bill contains modifications to several licensing and consumer services activities under the jurisdiction of the Florida Department of Agriculture and Consumer Services (Department).

Within the Division of Licensing, the bill:

- Removes the requirement of a written note when a legible set of fingerprints cannot be obtained after two unsuccessful attempts;
- Clarifies existing requirements for licensing and recertification of Class "G" statewide firearms licensees;
- Allows a licensee who has been issued a Class "G" license to carry .40 caliber or .45 caliber automatic colt pistol (ACP) handguns while on duty;
- Allows security officers performing bodyguard or executive protection services in plainclothes to carry their firearm concealed while on-duty;
- Grants the Bureau of License Issuance within the Division of Licensing access to sealed criminal histories for applicants of a concealed weapon license to determine eligibility.

Within the Division of Consumer Services, the bill:

- Deletes rulemaking authority of "minimum technical standards" for the Board of Professional Surveyors and Mappers, and replaces it with mandatory rulemaking authority to establish "standards of practice;"
- Provides uniform security bond requirements for health studios, telemarketers, pawnbrokers, and sellers of travel for more efficient administration of bond programs, and authorizes the Department to recover legal fees if a surety refuses a lawful demand for payment;
- Repeals the Department's regulations on dance studios;
- Redefines "telephone solicitor" to include solicitors making outbound calls to solicit charitable donations;
- Defines "novelty payment methods," which are payment methods that do not provide systematic monitoring and fraud protections for consumers, and forbids telemarketers from accepting "novelty payment methods" as a form of payment to protect consumers;
- Amends brake fluid and antifreeze registrations to expire one year after registration;
- Requires the Department to enact quality and labeling standards by rule for motor oils;
- Clarifies inconsistencies relating to gasoline and oil inspections;
- Specifies that scales approved by the Department be used in all pawnbroker transactions involving the weighing of precious metals.

The bill has a minimal positive fiscal impact for the state, no impact on local government, and an insignificant fiscal for pawnbrokers. The bill provides a \$35,745 appropriation to Florida Department of Law Enforcement, supported by a transfer of funds from the Department of Agriculture and Consumer Services.

The bill has an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The mission of the Florida Department of Agriculture and Consumer Services (Department) is to safeguard the public and support Florida's agricultural economy by:

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

The bill includes modifications to several regulatory and consumer activities under the Department's jurisdiction, specifically the Division of Consumer Services and Division of Licensing. Each proposed change is divided by subject and each subject is followed by a listing of the applicable sections of the bill.

B. SECTION DIRECTORY:

The following includes the Current Situation and Effect of the Bill.

Division of Licensing

Private Investigative, Private Security, and Repossession Services, Chapter 493, F.S. Chapter 493, F.S., governs Private Investigators, Private Security, and Repossession Services within Florida. The Department licenses the industry and individuals operating within the state. The Department regulates many facets of the private security industry, and the amendments clarify language related to the Department's regulatory function.

Application for Private Investigation, Private Security, or Repossession License, Section 493.6108, F.S.

Currently, when an applicant applies for any license issued by the Department pursuant to ch. 493, F.S., the applicant must submit a legible set of fingerprints used as part of the applicant's criminal history check. When an applicant cannot supply a legible set of fingerprints after multiple attempts, Florida Department of Law Enforcement (FDLE) performs a name-based criminal history check.

In order for the Department to proceed with a name-based check, a written statement from a fingerprint technician or a licensed physician affirming that the fingerprints are the best that could be provided or that a physical condition prevents submission of a legible set of prints must be supplied by the applicant.

The bill removes the requirement that an applicant submit a written statement signed by a fingerprint technician or a licensed physician, if an applicant is unsuccessful in providing legible fingerprints. The written statement did not provide the Department with any additional pertinent information toward issuing a license and delayed the approval process.¹

The bill authorizes the Department to determine eligibility based upon a criminal history record check, performed by the Federal Bureau of Investigation (FBI), under the applicant's name after two unsuccessful attempts to obtain legible fingerprints.

¹ Florida Department of Agriculture and Consumer Services, Agency Analysis of Proposed 2014 Department Bill, p. 2 (Oct. 18, 2013) (on file with the Business & Professional Regulation Subcommittee).

Section 2 amends s. 493.6108, F.S.

Security Officers Firearm Recertification, Section 493.6113, F.S.

Chapter 2013-251, Laws of Florida, amended the statutory provisions providing for submission of proof of firearms recertification training. After implementation, members of the security industry informed the Department that the language as written is confusing.² Security officers are unsure when firearms recertification training must take place and when it must be delivered to the Department.

The bill amends s. 493.6113, F.S., and clarifies that a Class “G” licensee must complete 28 hours of training before they are initially licensed by the Department. After initial licensure, if a licensee fails to complete and submit 4 hours of firearm recertification before the end of each year of the license, the license will be suspended. Before a suspended license may be reinstated, the licensee must re-complete 28 hours of training, similar to the amount required before licensure.

The bill clarifies the original changes of last year’s bill to better inform the security industry and Class “G” licensees of their responsibilities.

Section 3 amends s. 493.6113, F.S.

Security Officers, Caliber of Firearms, Section 493.6115, F.S.

Class “G” statewide firearm licensees are currently authorized to carry a .38 caliber revolver, .38 or 9mm semiautomatic pistol, or a .357 caliber revolver with .38 caliber ammunition while performing their duties.³

A number of security agencies have requested and been granted waivers to allow them to carry a .40 caliber handgun or a .45 caliber automatic colt pistol (ACP) handgun. The Department has granted 74 such waivers for security agencies guarding critical infrastructure, such as deep-water ports and power plants.⁴ In at least one case, the primary reason for the waiver request was because all law enforcement in the area carried .40 caliber semi-automatic pistols, and interchangeability of ammunition could be crucial in an emergency situation.⁵

This bill increases the caliber of handguns that security officers licensed under ch. 493, F.S., may use while performing their duties to include .40 caliber and .45 caliber ACP handguns. The currently authorized caliber pistols were the standard among law enforcement agencies, but in the past 10-15 years many agencies have moved to either .40 caliber or .45 caliber ACP handguns.⁶

The bill brings the caliber of firearms used by security officers into alignment with the type and caliber of firearms currently considered standard and generally carried by law enforcement agencies statewide.

Section 4 amends s. 493.6115, F.S.

Security Officer Uniforms, Section 493.6305, F.S.

Section 493.6305, F.S., governs uniforms worn by security officers. Security officers currently may carry their firearm concealed while wearing plainclothes only when performing limited or temporary, special assignment duties. In practice, security officers may be required to be unidentified during certain assignments, such as when performing bodyguard or executive protection services. Current law does not allow a security officer to carry their firearm concealed, while wearing plainclothes, during these assignments.

² *Id.* at 3.

³ Section 493.6115(6), F.S.

⁴ Florida Department of Agriculture and Consumer Services, Agency Analysis of Proposed 2014 Department Bill, p. 3 (Oct. 18, 2013) (on file with the Business & Professional Regulation Subcommittee).

⁵ *Id.*

⁶ *Id.*

To perform bodyguard and executive protection services in plainclothes currently, either a security officer must not carry their firearm concealed, or he or she must obtain a separate private investigator license in order to carry a concealed weapon while on duty. This additional license may not be desirable or obtainable by all current security officers due to experience requirements, and decreases employment opportunities for Class "D" security officers with a Class "G" statewide firearm license.

The bill will allow Class "D" security officers who also hold a Class "G" statewide firearms license to carry a concealed firearm while performing bodyguard or executive protection duties. The amendments will alleviate the requirement to obtain a separate private investigative license for security officers who only seek to provide bodyguard services.

Section 5 amends s. 493.6305, F.S.

Concealed Weapon License, Chapter 943, F.S.

Access to Sealed Court Records for Concealed Weapon License Applications, Section 943.059, F.S.

To purchase a firearm in Florida, a person must be at least 18 years of age, not be a convicted felon, have no history of mental illness, and no history of drug or alcohol abuse. When visiting a licensed firearms dealer to purchase a gun, a person is required to fill out a form prepared by the FDLE and submit to a criminal background check, as per s. 790.065, F.S. In addition to submitting to a criminal history check, when purchasing a handgun, a person must wait 72 hours before taking possession of the handgun, unless the purchaser is trading in a handgun he or she currently owns.

If a person holds a concealed weapon license, issued by the Division of Licensing, pursuant to s. 790.06, F.S., when purchasing a firearm from a licensed dealer, the dealer is not required to perform the FDLE criminal history check, and when purchasing a handgun there is no 72-hour waiting period before a purchaser may take possession.

When the Division of Licensing is examining an applicant for a concealed weapon license, the division may reject an application if the applicant has a disqualifying criminal record. Commission of a felony pursuant to ss. 790.23 and 790.065(2)(a)(1), F.S., disqualifies a person from purchasing a firearm, regardless of whether that felony is sealed or unsealed.

Section 943.059(4)(a)(7), F.S., allows FDLE to open a sealed criminal history to determine the purchaser's eligibility during his or her criminal history check. Currently, the Division of Licensing may not open a sealed criminal history during the criminal history check to determine the eligibility of a person to obtain a concealed weapon license.

The language of s. 943.059(4), F.S., currently does not include an exemption for the Division of Licensing allowing it to consider sealed criminal history information during the criminal history check pursuant to s. 709.06, F.S., when determining a purchaser's eligibility to obtain a concealed weapon license. This has created a situation where a person may be able to obtain a concealed weapon license, despite having a disqualifying criminal record because the Division of Licensing cannot consider the contents of a sealed criminal history. Thus, this inconsistency could allow a person with a disqualifying criminal record in a sealed criminal history to obtain a concealed weapon license and to purchase a firearm from a licensed dealer.

This bill corrects the inconsistency that exists when a person is purchasing a firearm from a licensed dealer and his or her criminal records may be unsealed for FDLE, and when a person is applying for a concealed weapon license and his or her criminal records may not be unsealed for the Division of Licensing.

This bill revises s. 943.059, F.S., to include the Bureau of License Issuance within the Division of Licensing in the list of agencies that may open a sealed criminal history for the purposes of determining eligibility of an applicant for a concealed weapon license, under s. 709.06, F.S.

The effective date of this section is January 1, 2015, to provide FDLE time to make system upgrades necessary for the implementation of this section.

Section 19 amends s. 943.059, F.S.

Division of Consumer Services

Board of Professional Surveyors and Mappers Rulemaking Authority, Chapter 472, F.S.

The Board of Professional Surveyors and Mappers (Board) consists of nine total members, seven surveyors and mappers, of whom one is a photogrammetric mapper and two consumer members. Each member is appointed by the Commissioner of Agriculture, subject to confirmation by the Senate, and each serves 4 year terms.⁷ The practice of surveying and mapping is governed by ch. 472, F.S. The Board has authority to adopt rules to implement ch. 472, F.S.⁸

A licensed surveyor and mapper makes exact measurements and determines property boundaries. They provide data relevant to the shape, contour, gravitation, location, elevation, or dimension of land or land features on or near the earth's surface for engineering, mapmaking, mining, land evaluation, construction and other purposes.⁹

The Board by rule shall adopt and periodically review the disciplinary guidelines applicable to each ground for disciplinary action which may be imposed by the Board pursuant to ch. 472, F.S., and any rule of the Board or Department.¹⁰ Grounds for disciplinary action are provided for in s. 472.0351, F.S.

Section 472.027, F.S., provides that the Board shall adopt rules relating “to the practice of surveying and mapping which establish minimum technical standards to ensure the achievement of no less than minimum degrees of accuracy, completeness, and quality in order to assure adequate and defensible real property boundary locations and other pertinent information provided by surveyors and mappers under the authority of” ch. 472, F.S.

The Board currently has three rules that implement s. 472.027, F.S., Minimum Technical Standards: Definitions,¹¹ Minimum Technical Standards: General Survey, Map, and Report Content Requirements,¹² and Minimum Technical Standards: Specific Survey, Map, and Report Requirements.¹³

The bill deletes rulemaking authority for “minimum technical standards” and replaces it with a requirement to adopt rules establishing “standards of practice” for surveying and mapping. Specifically:

The board shall adopt rules establishing standards of practice for the profession of surveying and mapping to:

- (1) Assure competence in the practice of the profession;
- (2) Assure accuracy, completeness, and quality in the products provided;
- (3) Assure adequate and defensible real property boundary locations; and
- (4) Govern the following professional matters:
 - (a) Conflicts of interest;
 - (b) Client confidentiality;
 - (c) Misuse, reuse, or unauthorized use or alteration of another professional's product;
 - (d) Fair dealing in all professional relationships and private and public sector contracts;

⁷ Section 472.007, F.S.

⁸ Section 472.008, F.S.

⁹ Florida Department of Agriculture and Consumer Services, *Professional Surveyors and Mappers*, <http://www.freshfromflorida.com/Divisions-Offices/Consumer-Services/Business-Services/Surveyors-and-Mappers>.

¹⁰ Section 472.0355, F.S.

¹¹ 5J-17.050, F.A.C.

¹² 5J-17.051, F.A.C.

¹³ 5J-17.052, F.A.C.

- (e) Retention of work products in hard copy or electronic or digital formats;
- (f) Transfer and storage of files and file materials upon discontinuance of the practice of surveying and mapping.

With the deletion of the rulemaking authority for “minimum technical standards” there may be insufficient statutory authority for the current rules related to minimum technical standards, which may nullify those rules.¹⁴ The bill imposes mandatory rulemaking upon the Board that requires the Board to draft and formally propose rules to establish “standards of practice” for surveying and mapping within 180 days of the effective date of the bill.¹⁵

Section 1 amends s. 472.027, F.S. **Section 21, 23, and 24**, makes conforming cross-references to ss. 472.025, 627.7842, and 718.104, F.S.

Bond Security Requirements of Health Studios, Telemarketers, Pawnbrokers and Sellers of Travel, Chapters 501, 539 and 559, F.S.

The Division of Consumer Services regulates several industries that have a security bond requirement. The businesses are required to keep a bond, or other form of security, on file with the Department as a form of security to satisfy possible consumer complaints.

The bill contains several revisions to the existing bond security requirements of health studios, telemarketers, pawnbrokers, and sellers of travel. The revisions are mostly technical in nature, with a few substantive changes, to unify the requirements of the Department and each industry to be similar. Each section was initially enacted separately and created inconsistencies in the administration of the bond programs.

The bill amends the language in several sections to:

- Require bond maintenance in accordance with the Department’s regulations;
- Clarify that liability for injuries may be determined either by administrative proceeding by the Department or through a civil action in a court of competent jurisdiction;
- Clarify that claims against the bond may only be paid by order of the Department in an administrative proceeding;
- Clarify the timing of when a claim for an injury must be made; and
- Allow the Department to recover legal fees should the surety fail to comply with a lawful demand of the Department for payment.

The amendments will permit the Department to administer its several bond security programs more efficiently and reliably.

Section 6 amends s. 501.016, F.S., (relating to health studios), **Section 10** amends s. 501.611, F.S., (relating to telemarketers), **Section 17** amends s. 539.001, F.S., (relating to pawnbrokers), **Section 18** amends s. 559.929, F.S., (relating to sellers of travel), and **Section 22** amends s. 501.015, F.S., (conforming cross-references).

Repeal of the Dance Studio Act, Section 501.143, F.S.

The Dance Studio Act, s. 501.143, F.S., requires each ballroom dance studio owner to register with the Department and post a security bond with the Department if the studio requires installment contracts or advance payment greater than \$250. The Department has the authority to collect registration fees and impose penalties for non-compliance.

Ballroom dance studios are currently the only studios regulated by the Department. During the last three fiscal years, the Department has received 23 complaints and resolved them to recover \$23,025

¹⁴ 5J-17.050 – 17.052, F.A.C.; see also s. 120.536(2), F.S., (stating “[u]nless otherwise expressly provided by law. . . [t]he repeal of one or more provisions of law implemented by a rule that on its face implements only the provision or provisions repealed and no other provision of law nullifies the rule”).

¹⁵ Section 120.54(1)(b), F.S., (stating “[w]henver an act of the Legislature is enacted which requires implementation of the act by rules of an agency within the executive branch of state government, such rules shall be drafted and formally proposed as provided in this section within 180 days after the effective date of the act, unless the act provides otherwise”).

for consumers.¹⁶ This recovery was made under the Department's authority to conduct informal mediation, and not through the bond security program. There has not been a bond payout during the last three years.

The bill repeals s. 501.143, F.S., removing the requirement for ballroom dance studios to register with the Department. This repeal completely deregulates the industry in Florida. The Department will continue to handle complaints through its non-regulated complaint and mediation section.

Section 8 repeals s. 501.143, F.S., and **Section 20** amends s. 205.1969, F.S., (conforming cross-references).

Telephone Solicitors and Telemarketers, Chapter 501, F.S.

Telephone Solicitors, Section 501.059, F.S.

Section 501.059, F.S., was amended last year to require telephone solicitors not initiate an outbound call to a consumer who has previously communicated he or she did not want to be called for charitable donations. However, the term "telephone solicitor," which is the party that is restricted from making outbound calls including those calls for charitable solicitations, is currently not defined to include a solicitor who makes only outbound calls for the purpose of charitable solicitations.

The bill amends the definition of "telephone solicitor" to clarify that a "telephone solicitor" includes those persons seeking charitable contributions on behalf of a charitable organization. This change should help to prevent these charitable organizations from evading Florida's Do Not Call requirements.

Section 7 amends s. 501.059, F.S.

Prohibiting the Use of Novelty Payment Methods in Telemarketing, Section 501.603, F.S.

Traditionally, consumers have used several types of payment methods when purchasing items either over the phone from telemarketers, or online. The conventional payment methods include credit and debit cards, or other electronic fund transfer methods that use banks or other networks that systematically monitor transactions to detect fraud.

Novelty payment methods are payment methods that do not have these types of systematic monitoring and includes methods such as remotely created checks, remotely created payment orders, cash-to-cash money transfers (such as Western Union) and cash reload mechanisms (such as MoneyPak or ReloadIt). Novelty payment methods are not systematically monitored, have little to no consumer protection in the case of fraud or theft, and are used frequently in scams and other fraudulent activity.

The Federal Trade Commission (FTC) has found that "unscrupulous telemarketers rely on these payment methods because they are largely unmonitored and provide consumers with fewer protections against fraud."¹⁷ The FTC's notice of proposed rulemaking cites that these changes are required to strengthen the FTC's Telemarketing Sales Rule protections, and prevent deceptive telemarketing from harming unaware consumers.¹⁸

The bill bans such novelty payment methods as they are used today in telemarketing. Additionally, the bill gives the Department rulemaking authority to define new and developing novelty payment methods and to proactively limit or ban them to protect consumers. These changes will reinforce and compliment the FTC's proposed protections, and further protect consumers in Florida.

Section 9 amends s. 501.603, F.S., and **Section 11** amends s. 501.616, F.S.

¹⁶ *Id.* at 5.

¹⁷ Press Release, Federal Trade Commission, FTC Seeks Public Comment on Proposal to Ban Payment Methods Favored in Fraudulent Telemarketing Transactions (May 21, 2013) (*available at* <http://www.ftc.gov/news-events/press-releases/2013/05/ftc-seeks-public-comment-proposal-ban-payment-methods-favored>) (last visited Jan. 24, 2014).

¹⁸ *Id.*

Labeling and Registration Requirements for Motor Vehicle Products, Chapters 501, 525 and 526, F.S.

Registration Requirements for Antifreeze and Brake Fluid, Chapters 501 and 526, F.S.

Currently the Division of Consumer Services requires several products that are distributed within Florida to be registered with the division before they may be sold to the public. This registration must meet guidelines established by statute and conform to the requirements of the Division of Consumer Services. Two such products that are regulated by the division are antifreeze under s. 501.913, F.S., and brake fluid under ss. 526.50 and 526.51, F.S.

Under s. 501.913, F.S., each brand of antifreeze that is distributed within Florida must be registered with the Department no later than July 1 of each year. The registration expires each year on June 30. Section 120.60, F.S., requires an application for registration to be approved or denied within 90 days after receipt of a complete application. According to the Department's analysis, during Fiscal Year 2010-2011, applications increased 15 percent, and the Bureau of Standards who handles these applications has had their staff reduced.¹⁹

Brake fluid registrations, pursuant to ss. 526.50 and 526.51, F.S., expire each year on June 30. The Department has noticed a similar upward trend in application submissions, with 30 percent more applications filed during Fiscal Year 2010-2011 than during the previous year.²⁰

The requirements of these sections create work flow inefficiency, as the Department must process a large amount of applications during the same time of year, instead of distributing applications throughout the year.

Distributing the application cycles throughout the year would address the increasing workload of these two registrations making efficient use of existing staff. New applicants would further have the benefit of a full year of registration before having to renew as the Department does not have a provision for pro-rating the registration fee for new applicants.

The bill amends ss. 501.913, 526.50, and 526.51, F.S., to specify that antifreeze and brake fluid registrations expire one year from the date the registration is issued.

Section 12 amends s. 501.913, F.S., (relating to antifreeze), and **Sections 15 and 16** amend ss. 526.50 and 526.51, F.S., (relating to brake fluid).

Labeling Requirements for Liquid Fuel, Lubricating Oil, and Greases, Section 526.015, F.S.

Under Chapter 526, F.S., a person is precluded from storing, selling, offering, or exposing for sale any liquid fuels, lubricating oils, greases, or other similar products in any manner whatsoever which may deceive the purchaser as to the nature, quality, or quantity of the products offered for sale. A previously used product that has been reclaimed, recleaned, or reconditioned is required to be clearly labeled as such. Any product that does not meet these labeling requirements as provided in ch. 526, F.S., is declared illegal, and shall be placed under a written stop-sale order.

The Society of Automotive Engineers (SAE) establishes national labeling and quality standards for liquid fuel, lubricating oil, and grease. Currently, the Department lacks statutory authority to implement rules to include these or other standards necessary to protect the public.

This bill requires motor oil products to meet labeling and quality standards, such as those established by the SAE or other similar standard, or a labeling requirement designed to prevent deceptive or misleading practices as adopted by rule of the Department before being sold in this state.

Section 14 creates s. 526.015, F.S.

¹⁹ Florida Department of Agriculture and Consumer Services, Agency Analysis of Proposed 2014 Department Bill p. 6 (Oct. 18, 2013) (on file with the Business & Professional Regulation Subcommittee).

²⁰ *Id.* at 6-7.

The Department regularly conducts inspections of petroleum distribution systems and analyzes samples to protect consumers. When a violation is found, the Department will issue a stop-sale order to prevent substandard petroleum from effecting consumers. The Department issued 516 stop-sale orders during the 2010-2011 fiscal year.²¹

The Department also regularly conducts inspections of the 9,025 retail facilities in Florida. In Fiscal Year 2010-2011, the Department issued citations for 4,946 improper calibration violations and 66,321 poorly maintained pump violations.²² The Department also investigated 3,306 petroleum and price-related consumer complaints received through their consumer hotline phone number from the Department's inspection decal on petroleum dispensers.²³

Section 525.16(1)(a), F.S., uses the terms "violation" and "offender" when determining penalties for first and successive violations by offenders. Section 525.16(1)(b), F.S., uses the term "stop-sale order" in conjunction with "violation" for determining when three years have elapsed, with no new violation, for purposes of considering a person a first-time offender for imposition of penalties.

The bill amends s. 525.16(1)(b), F.S., removing the words "stop-sale order" to clarify that persons who commit a violation after a three year period with no new violations are treated as a first-time offender for imposition of penalties.

Section 13 amends s. 525.16, F.S.

Weights and Measures Used by Pawnbrokers, Section 539.001, F.S.

Pawnbrokers must be licensed by the Department annually and must maintain a net worth of at least \$50,000 or file security with the Department. This security may be filed in the form of a bond, a letter of credit, or a certificate of deposit in an amount of \$10,000 with the Department. The Department is authorized to collect licensing fees and impose penalties for non-compliance with the law.

When buying and selling precious metals by weight a pawnbroker must use a properly permitted scale, as defined in s. 531.60, F.S. When a precious metal is only being pawned though, several pawnbrokers have interpreted the current requirement as only a "descriptor," and because there is no buying or selling of the precious metal, the weight is not being recorded for "commercial purposes."

This ambiguity, and no explicit requirement that pawnbrokers use such a scale in s. 539.001, F.S., for all transactions that involve the weighing of a precious metal, has prevented Department enforcement when a minority of pawnbrokers use unpermitted scales for transactions involving the weight of a precious metal.

The bill amends s. 539.001, F.S., to clarify that all pawnbrokers must use a Department-permitted scale, which complies with ss. 531.39, 531.40, and 531.60, F.S., in every transaction that involves the weighing of a precious metal.

Section 17 amends s. 539.001, F.S.

Section 25 provides an appropriation.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

²¹ *Id.* at 7.

²² *Id.*

²³ *Id.*

General Inspection Trust Fund

Recurring	FY 14-15	FY 15-16
Repeal of Dance Studio Act (194 registrations @ \$300 annually)	(\$58,200)	(\$58,200)
Pawnbroker Weighing Device Permit	<u>480</u>	<u>480</u>
Total Change in Revenue for General Inspection Trust Fund	(\$57,720)	(\$57,720)

2. Expenditures:

Recurring

General Inspection Trust Fund Dance Studio Act	(\$17,455)	(\$17,455)
Total Department Reduction in Expenditures	<u>(\$17,455)</u>	<u>(\$17,455)</u>
Department's Net Revenue Decrease	<u>\$40,265</u>	<u>\$40,265</u>

Pawnbroker: Weights and Measures, s. 539.001, F.S.: The Department estimates there are less than a dozen pawnbrokers who are currently not using permitted scales. These pawnbrokers will incur an annual permit fee. The annual permit fee for one to five retail scales, with 0 to 100 pounds capacity, at one location is \$40.²⁴

The FDLE reports that implementing the changes to their criminal history mainframe system required by **Section 19** of this bill will require a nonrecurring appropriation of \$35,745 for Fiscal Year 2014–2015.²⁵ The appropriation is needed to hire a mainframe contract programmer and the additional hardware required by this bill. The Department agreed that this could be funded from the Department's Division of Licensing Trust Fund.

The bill provides for an appropriation of \$35,735 to FDLE from the Operating Trust Fund of FDLE, and that funds in this amount shall be transferred from the Division of Licensing Trust Fund of the Department to the Operating Trust Fund of FDLE.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The Department estimates there are less than a dozen pawnbrokers who are currently not using permitted scales. These pawnbrokers will incur an annual permit fee. The annual permit fee for one to five retail scales, with 0 to 100 pounds capacity, at one location is \$40.²⁶

D. FISCAL COMMENTS:

²⁴ Section 531.62, F.S.; Rule 5F-5.002, F.A.C.

²⁵ Florida Department of Law Enforcement, 2014 FDLE Legislative Bill Analysis for BPRS 14-1, (Feb. 12, 2014) (on file with the Business & Professional Regulation Subcommittee).

²⁶ Section 531.62, F.S.; Rule 5F-5.002, F.A.C.

The Department and Board will be required to implement rulemaking to adopt rules establishing “standards of practice” for the profession of surveying and mapping. The cost for this is currently undetermined, but the Department has indicated it can be absorbed with existing resources.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Board of Professional Surveyors and Mappers Rulemaking Authority – The bill removes the Board’s authority to adopt rules related to establishing minimal technical standards, and requires the Board to adopt rules to establish “standards of practice” for the profession of surveying and mapping. This language may nullify existing rules related to “minimum technical standards,”²⁷ and require the Board to initiate rulemaking to adopt rules establishing “standards of practice.”²⁸

Novelty Payment Method Rulemaking Authority – The bill provides rulemaking authority to further define novelty payment methods should new types emerge following the restrictions placed on the currently defined methods.

Motor Oil Guidance – The bill requires the Department to establish by rule guidelines and standards required in the labeling of motor oil offered for sale in the State.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 18, 2014, the Agriculture & Natural Resources Appropriations Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment appropriates \$35,745 in nonrecurring funds to the Department of Law Enforcement for contracted services and operating capital outlay related to sealed criminal history records. The funds will be transferred from the Division of Licensing Trust Fund of the Department of Agriculture and Consumer Services to the Operating Trust Fund of the Department of Law Enforcement.

On April 3, 2014, the Regulatory Affairs Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Removes language that would have eliminated the Commercial Weight Loss Practices Act.
- Removes language that would have modified the service of process requirements for serving an administrative complaint on an out-of-state concealed weapons licensee.
- Replaces “minimum technical standards” with “standards of practice” and requires the Board of Professional Surveying and Mapping to adopt rules establishing standards of practice for surveying and mapping.
- Provides that when FDLE and the FBI are unable to perform a criminal history check for applicants because of illegible fingerprints that a name-based background check is to be conducted by the FBI.
- Provides additional clarification of the definition of “novelty payment.”

²⁷ 5J-17.050 – 17.052, F.A.C.; see also s. 120.536(2), F.S., (stating “[u]nless otherwise expressly provided by law. . . [t]he repeal of one or more provisions of law implemented by a rule that on its face implements only the provision or provisions repealed and no other provision of law nullifies the rule”).

²⁸ See Above, *Section Directory: Board of Professional Surveyors and Mappers* for discussion.

- Provides additional guidelines for rulemaking on quality and labeling standards for lubricating oils.
- Amends the statutory provisions governing certificates of scales, used by a pawnbroker for transactions involving precious metals.
- Delays the implementation of the section providing the Division of Licensing access to sealed records for concealed weapon permit applications to January 1, 2015, to provide FDLE time to implement updates to its computer system.
- Makes several technical adjustments to align the bill with its Senate Companion CS/SB 1018.

The staff analysis is drafted to reflect the committee substitute.