

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/CS/SB 1444

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

SUBJECT: Department of Agriculture and Consumer Services

DATE: April 20, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
2.	<u>Blizzard</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	<u>Blizzard</u>	<u>Kynoch</u>	<u>AP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1444 modifies several areas regulated by the Department of Agriculture and Consumer Services (DACS), including:

- Implementing license fee waivers for veterans, veterans' spouses, and veterans' businesses;
- Updating the criminal background check processes for applicants and licensees under ch. 493, F.S., relating to private investigation, private security, and repossession services;
- Allowing amusement ride operators to provide their own inspection form, and exempting specific rides from inspection requirements;
- Implementing a live-fire requirement for concealed weapon licensure;
- Streamlining renewal of concealed weapons licenses;
- Allowing notice of service to firearm or concealed weapon license holders by mail or e-mail when personal service or certified mail is ineffective;
- Allowing qualified tax collectors to print and deliver renewal firearm or concealed weapons licenses;
- Reducing application fees for firearm and concealed weapon licenses;
- Creating the Florida veteran identification card to be issued and administered by the DACS; and
- Provides criminal penalties for the discharge of a firearm in an outdoor area that is primarily residential in nature as a first degree misdemeanor.

The bill has a significant impact on state revenues (see Section V, Government Sector Impact). The bill also authorizes one position and appropriates a total of \$254,300 from the Division of Licensing Trust Fund within the DACS to implement the Florida veteran identification card provision.

The bill provides an effective date of July 1, 2015.

II. Present Situation:

The Department of Agriculture and Consumer Services (DACCS) safeguards the public from unsafe or defective products and deceptive business practices. The Division of Consumer Services within the DACCS regulates specific business activities, including commercial weight loss practices, telephone solicitations, pawnshops, health studios, sellers of travel, and telemarketing.¹ The Division of Licensing within the DACCS is responsible for investigating and issuing licenses to conduct private security, private investigative, and recovery services pursuant to ch. 493, F.S. The Division of Licensing also issues concealed weapon or firearm licenses pursuant to s. 790.06, F.S.²

A veteran is a person who served in the active, military, naval, or air service and who was discharged or released under honorable conditions, or who later received an upgraded discharge under honorable conditions, notwithstanding any action by the United States Department of Veterans Affairs on individuals discharged or released with other than honorable discharges. Florida has more than 1.6 million veteran residents³ and 176,727 veteran-owned businesses.⁴ The Department of Management Services has issued 384 service disabled veteran-owned business certifications.⁵ As of July 1, 2014, both the Department of Business and Professional Regulation and the Department of Health implemented initial licensing fee waivers for veterans and their spouses.⁶

III. Effect of Proposed Changes:

Licensing Fee Waivers

The bill waives first-time licensing application fees for an honorably discharged veteran of the United States Armed Forces, his or her spouse, or a business entity in which he or she has a majority ownership stake on the following classes of licenses:

¹ See <http://www.freshfromflorida.com/Divisions-Offices/Consumer-Services>, last accessed March 11, 2015.

² See <http://www.freshfromflorida.com/Divisions-Offices/Licensing>, last accessed March 11, 2015.

³ Florida Department of Veterans' Affairs, *Fast Facts*, http://floridavets.org/?page_id=50 (last accessed March 12, 2015).

⁴ Small Business Administration, *Office of Advocacy, Veteran-owned Businesses and their Owners—Data from the Census Bureau's Survey of Business Owners*, (March 2012). Available at <https://www.sba.gov/sites/default/files/393tot.pdf> (last accessed March 12, 2015).

⁵ As of March 12, 2015. Florida Department of Management Services, *Certified Vendor Directory*, available at https://osd.dms.myflorida.com/directories/results?directory%5Bcommodity_code%5D=&directory%5Bcommodity_description%5D=&directory%5Bcounty%5D=&directory%5Bdesignation%5D=Service+Disabled+Veteran&directory%5Bvendor_name%5D= (last accessed March 12, 2015).

⁶ Florida Department of Business and Professional Regulation, *Military and Veteran Spouses*, available at <http://www.myfloridalicense.com/dbpr/MilitarySpouse.html> (last accessed March 12, 2015); see also, Florida Department of Health, *Veterans*, available at <http://www.floridahealth.gov/licensing-and-regulation/armed-forces/veterans/index.html> (last accessed March 12, 2015).

License	Current Initial Licensing Fee
Land Surveyor & Mapper	\$180 - \$255
Health Studio	\$300
Commercial Telephone Seller	\$1,500
Telemarketing Salesperson	\$50
Movers & Moving Broker	\$300
Liquefied Petroleum Gas Related License	\$100 - \$525
Pawnbroker	\$300
Motor Vehicle Repair Shop	\$50 - \$300
Sellers of Travel	\$300-\$2,500

In addition, to qualify for the fee waiver, the veteran, his or her spouse, or business must submit an application for licensure within 60 months after the date of the veteran's discharge from the United States Armed Forces and provide a copy of his or her discharge paperwork; a valid marriage license where applicable; and proof of ownership interest where applicable.

Section 1 amends s. 472.015, F.S. (surveyors and mappers), **Section 8** amends s. 501.015, F.S. (health studios), **Sections 9 and 10** amend ss. 501.605 and 501.607, F.S. (telemarketing), **Section 11** amends s. 507.03, F.S. (intrastate movers), **Section 12** amends s. 527.02, F.S. (liquefied petroleum gasoline), **Section 13** amends s. 539.001, F.S. (pawnbrokers), **Section 14** amends s. 559.904, F.S. (motor vehicle repair), and **Section 15** amends s. 559.928, F.S. (sellers of travel). The above mentioned sections waive first-time licensing application fees for an honorably discharged veteran of the United States Armed Forces, his or her spouse, or a business entity in which he or she has majority ownership.

Fingerprint Retention and Processing

Private investigators, private security officers, and repossession services officers are regulated by the DACS pursuant to ch. 493, F.S. The DACS has 156,266 currently valid licenses issued pursuant to ch. 493, F.S.⁷ Currently, applicants for licensure under ch. 493, F.S., must submit a full set of fingerprints for a background check conducted by the Florida Department of Law Enforcement (FDLE).⁸ Once the initial background check has been performed by the FDLE, the licensees' fingerprints are discarded. This makes the DACS' duty to conduct ongoing investigations into its licensees' criminal activity⁹ more difficult. The agency must perform a name-based search of arrest records and then perform further checks to ensure accurate identification.¹⁰

⁷ Florida Department of Agriculture and Consumer Services, Division of Licensing, *Number of Licensees by Type*, (February 28, 2015). Available at http://www.freshfromflorida.com/content/download/7471/118627/Number_of_Licensees_By_Type.pdf (last accessed March 12, 2015).

⁸ Section 493.6105(3)(j), F.S.

⁹ Section 493.6118(1), F.S.

¹⁰ Florida Department of Agriculture and Consumer Services, *Legislative Bill Analysis for HB 997* (March 3, 2015).

Section 5 updates the background check processes by requiring the DACS to enroll applicants' fingerprints in the FDLE's Applicant Fingerprint Retention and Notification Program (AFRNP),¹¹ and in the Federal Bureau of Investigation's (FBI) Next Generation Identification (NGI) project, when the program is fully active.¹² This enables the FDLE to conduct ongoing, fingerprint-based, state and national background checks on ch. 493, F.S., licensees. The bill also requires the FDLE to report any arrest record it discovers to the DACS. In turn, the DACS must notify the licensee's employing agency of the arrest record.

In accordance with the changes made by section 3, **Section 2** requires initial applicants for licensure under ch. 493, F.S., to submit:

- A full set of fingerprints;
- A one-time fingerprint processing fee;
- An annual fingerprint retention fee to cover the cost of the FDLE's AFRNP;¹³ and
- A one-time enrollment fee for enrollment of the fingerprints in the FBI's NGI project.

In addition, applicants for renewal of ch. 493, F.S., license are required by **Section 6** of the bill to submit:

- A full set of fingerprints, if the applicant held a valid license issued under ch. 493, F.S., before January 1, 2016;
- A one-time fingerprint processing fee;
- A renewal fee; and
- An annual fingerprint retention fee to cover the cost of the FDLE'S AFRNP.

Participation at the statewide level requires payment of an annual fee of \$6.00 for each year the license is valid. Participation in the fingerprint retention program at the national level requires payment of a \$13.00 fee at the time of initial application to cover costs of fingerprint retention for as long as the license is valid.

In 2012, the U.S. Department of Justice removed the requirement that a permanent legal resident alien prove his or her residence in the state for 90 days to be able to purchase or own a firearm.¹⁴ **Section 4** conforms s. 493.6106, F.S., specific to applicants for licensure under ch. 493, F.S., to this change.

Sections 6 and 7 correct statutory cross-references.

¹¹ Section 943.05, F.S. See also Florida Department of Law Enforcement, *Criminal History Record Checks/ Background Checks Fact Sheet* (February 1, 2015). Available at <http://www.fdle.state.fl.us/Content/Criminal-History/FAQ.aspx> (last accessed March 11, 2015).

¹² The FBI's NGI project is in development, but has not yet been implemented. The program will allow applicant's fingerprints to be retained by the FBI and searched against incoming arrest fingerprints nationwide in a manner similar to the AFRNP in Florida. Florida Department of Agriculture and Consumer Services, *Legislative Bill Analysis for HB 997* (March 3, 2015).

¹³ Under the bill, the DACS must set the retention and enrollment fees by rule. The DACS states the annual retention fee will be \$6.00, and that the FBI enrollment fee will be \$13.00. Florida Department of Agriculture and Consumer Services, *Legislative Bill Analysis for HB 997* (March 3, 2015).

¹⁴ See U.S. Department of Justice, *Questions and Answers – Revised ATF F4473*, (April, 2012), available at <http://www.atf.gov/files/regulations-rulings/rulings/atf-rulings/atf-ruling-2010-6.pdf> (last accessed March 11, 2015).

Section 9 requires the owner, operator, officer, director, partner, or manager of a telephone solicitor business (commercial telephone seller) to provide a physical location of its telephone solicitor business on its application for licensure with the DACS, where previously a mail drop address could be provided.

Section 16 creates s. 570.695, F.S., to authorize the DACS to issue a Florida veteran identification card, beginning January 1, 2016. Any balance of funds remaining after expenditures for the veteran identification card program will be distributed to Friends of Florida State Forests to support Operation Outdoor Freedom.

Section 17 appropriates \$254,300 from the Division of Licensing Trust Fund and authorizes one position for the DACS in Fiscal Year 2015-2016, to administer the veteran identification card program.

Amusement Ride Safety Standards

Florida has approximately 245 amusement parks and 190 traveling amusement companies that are subject to inspection by the DACS.¹⁵ These parks include carnivals, water parks, go-kart courses, and bungee-jumping parks.¹⁶ A temporary amusement ride must be inspected by the DACS each time it is moved or set up in a new location. Permanent rides are inspected semi-annually.¹⁷ Additionally, parks subject to the regulations of the DACS must show proof of sufficient employee training and insurance.

Section 18 exempts the following venues from s. 616.242, F.S, for amusement rides permitting, inspection, and insurance requirements:

- A water-related amusement ride operated as an incidental amenity to the core business of a lodging and food service establishment or membership campground that does not offer a day rate.
- An amusement ride operated as an incidental amenity to the primary business of a membership-only facility that does not offer a day rate.
- A permanent facility that is not open to the general public, and that is operated by a nonprofit corporation registered under ch. 496, F.S.

These exemptions are targeted at generally smaller water attractions or rides at hotels or campsites, private country clubs or playgrounds, and facilities run by, e.g. the YMCA (two non-profit facilities currently qualify for this exemption).¹⁸

¹⁵ Florida Department of Agriculture and Consumer Services, *Fair Rides Inspection*. Available at <http://www.freshfromflorida.com/Divisions-Offices/Consumer-Services/Business-Services/Fair-Rides> (last accessed March 12, 2015).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Conversation with staff of the Department of Agriculture and Consumer Services, on March 6, 2015.

²¹ Florida Department of Agriculture and Consumer Services, Division of Licensing, *Number of Licensees by Type*, (February 28, 2015). Available at http://www.freshfromflorida.com/content/download/7471/118627/Number_of_Licensees_By_Type.pdf (last accessed March 12, 2015).

The bill also allows owners or managers of amusement rides to request to use alternate inspections and employee training forms than those prescribed by departmental rules. This is allowed if the alternate form includes at least the information required by the prescribed form.

Concealed Weapon and Firearm Licensing

Under current law, certain concealed weapons or firearms pre-licensing course instructors must maintain records certifying that they observed their student safely handle and discharge a firearm. **Section 19** of this bill clarifies s. 790.06, F.S., to require that the instructor maintain records certifying that *while he or she was physically present*, the instructor observed the student safely handle and *actually* discharge (“live fire”) a firearm *using a firearm and ammunition as defined in s. 790.001, F.S.* This ensures that the instruction occurs in person rather than by video conference.

Subject to this section, application fees for concealed weapon and firearm licensure will be reduced from \$70 to \$60 for initial applicants, and from \$60 to \$50 for renewal applicants.

The bill also provides for notice of the suspension or revocation of a concealed weapon or firearm license by either the first-class mailing to the licensee’s last known mailing address furnished to the DACS, or by e-mail, if personal service or certified mail is ineffective. For purposes of this section, the notice is considered complete at the time the e-mail is sent, or after 20 days from the deposit of the letter providing notice through the mail.

Currently, s. 790.06(11), F.S., requires a licensee who seeks to renew his or her firearm or concealed weapon license to submit a *notarized* affidavit stating that the licensee remains qualified for the license. **Section 19** of the bill amends s. 790.06(11), F.S., to require an affidavit *submitted under oath and under penalty of perjury* instead.

As of July 1, 2014, tax collectors who entered into a memorandum of understanding with the DACS may collect initial and renewal applications for firearms and concealed weapons permits. **Section 20** expands the qualified tax collectors’ capabilities to include the printing and delivery of a concealed weapon or firearm license to an individual who renews his or her license at the tax collector’s office. Tax collectors may collect fees for such services.

Section 21 amends s.790.15, F.S., relating to the discharge of firearms in public or on residential property. The bill prohibits the discharge of firearms on property with a residential density of one or more dwelling units per acre. This limitation would not apply to:

- A person lawfully defending life or property;
- A person lawfully performing official duties requiring the discharge of a firearm; or
- If, under certain circumstances, the discharge does not pose a reasonably foreseeable risk to life, safety, or property.

The bill creates a first degree misdemeanor, punishable as provided in ss. 775.082 or 775.083, F.S.

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:**Procedural Due Process and Notice Requirements, Generally**

The Due Process Clauses of the Fifth and Fourteenth Amendments contemplate fair process. “An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objection.”¹⁹ Three factors must be weighed to determine the degree to which due process protections apply:

- The private interest that will be affected;
- The risk of erroneous deprivation of such interest through the procedures used; and
- The government’s interest, including fiscal and administrative burdens of additional process.²⁰

The DACS seeks to preserve the public records exemption of personal identifying information of an individual who applied for or received a firearm or concealed weapon license by substituting direct mail or e-mail for the publication of such information in general circulation newspapers as a method of notice.²¹ Courts have not ruled directly on whether replacing notice by publication with notice by first class mail without proof of knowledge of receipt is sufficient procedural due process.²²

Single Subject Requirement

The Florida Constitution requires that every law must address one subject and address only issues and matters logically connected to that single subject.²³ The single subject clause specifically requires that:

- Each provision of the law is naturally germane to the subject expressed in the title;

¹⁹ *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

²⁰ *Mathews v. Eldridge*, 424 U.S. 319 (1976); *Hadley v. Dept. of Admin.*, 411 So.2d 184 (Fla. 1982).

²¹ See s. 790.0601, F.S.; Florida Department of Agriculture and Consumer Services, *Legislative Bill Analysis for HB 997* (March 3, 2015).

²² *Anderson v. State*, 87 So. 3d 774, 776 (Fla. 2012).

²³ Article III, s., Fla. Const.; *Burch v. State*, 558 So. 2d 1, 59 Ed. Law Rep. 932 (Fla. 1990).

- The several provisions are all necessary to achieve the purpose of the legislation; and
- All provisions are properly, naturally, and logically connected to each other.²⁴

The standard of review applied by courts to a single subject question is highly deferential to the Legislature;²⁵ Courts presume that an act meets the single subject requirement of Article III, section 6 of the Florida Constitution,²⁶ and any single subject violation must occur beyond a reasonable doubt.²⁷

The DACS regulates licensure of concealed weapons and firearm licenses. While the title likely gives proper notice of the criminal penalty provided for in section 21 of the bill, it is unclear whether a criminal penalty for discharging a gun is related to the subject or purpose of the bill, especially because an offender is not required to hold a license granted by the DACS or otherwise be connected to the DACS in any way to be subject to the criminal penalty under that section.

A section of the bill or law is considered to be related if (1) the connection is natural or logical, and (2) there is a reasonable explanation for how the provision is necessary to the subject or tends to make effective or promote the objects and purposes of legislation included in the subject.²⁸ Sections of a bill are permitted to stray from the purpose provided in the short title, but must still relate to the object of, or purpose to be accomplished by, the bill.²⁹

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

See Private Sector Impact section below.

B. Private Sector Impact:

Under CS/CS/SB 1444, veterans, spouses of veterans, and majority-owned veteran businesses will qualify for initial specific license fee waivers. Specific businesses will be exempt from amusement ride inspections and the costs associated therewith.

Private investigators, private security guards, and recovery agents will be subject to additional fees due to fingerprint retention submission requirements.

Individuals seeking a first-time concealed weapon or firearm license will be subject to a \$60 application fee, reduced from \$70; renewal license fees will be \$50, reduced from \$60.

²⁴ *State v. Petruzzelli*, 374 So. 2d 13 (Fla. 1979); *Franklin v. State*, 887 So. 2d 1063 (2004).

²⁵ *State ex. rel Flink v. Canova*, 94 So. 2d at 184 (Fla. 1957).

²⁶ *Id.* at 184-85.

²⁷ *Ex parte Knight*, 52 Fla. 144, 41 So. 786, 788 (1906).

²⁸ *Franklin v. State*, 887 So. 2d 1063, 1078 (2004).

²⁹ *Id.*, citing *Nichols v. Yandre*, 151 Fla. 87, 9 So. 2d 157, 158 (1942).

Veterans applying for the Florida veteran identification card will be subject to a \$15 application fee.

C. Government Sector Impact:

Military Veterans

The DACS estimates a reduction in revenue in the General Inspection Trust Fund generated from fee waivers related to military veterans and spouses in the following amounts:

	FY 2015-16	FY 2016-17	FY 2017-18
Military Veteran Fee Waiver	(\$49,350)	(\$49,350)	(\$49,350)

Florida Veteran Identification Card

The DACS estimates the following additional revenue will be deposited into the Division of Licensing Trust Fund due to the creation of the Florida veteran identification card. This amount reflects processing card applications beginning January 1, 2016; Fiscal Year 2015-2016 revenues are for six months only.

	FY 2015-2016	FY 2016-2017	FY 2017-2018
Veteran ID Card	\$546,729	\$820,094	\$820,094

For Fiscal Year 2015-2016, the bill appropriates \$114,018 in recurring funds and \$140,282 in nonrecurring funds from the Division of Licensing Trust Fund and authorizes one position for the DACS to administer the veteran identification card program. Any balance of funds after expenditures will be distributed to Friends of Florida State Forests to support Operation Outdoor Freedom.

Amusement Rides

The department estimates the following reduced revenue from fees that will no longer be collected from organizations made exempt from regulation under this bill.

	FY 2015-16	FY 2016-17	FY 2017-18
Amusement Ride Fee Exemptions	(\$2,280)	(\$2,280)	(\$2,280)

Fingerprint Retention

The department estimates the following revenue increases from new fees related to fingerprint retention programs for private investigators, private security guards and recovery agents:

	FY 2015-16	FY 2016-17	FY 2017-18
Federal Fingerprint Retention Fees	\$1,543,406	\$1,543,406	\$471,423

State Fingerprint Retention Fees	\$1,037,166	\$1,037,166	\$689,496
Total	\$2,580,572	\$2,580,572	\$1,160,919

The fingerprint retention program at the state level requires applicants to pay an annual fee of \$6.00 for each year the license is valid. Participation in the fingerprint retention program at the federal level requires applicants to pay a \$13.00 fee at the time of initial application. These fees will be collected by the DACS and deposited into Division of Licensing Trust Fund where they will be disbursed to the FBI and the FDLE for the administration of fingerprint retention programs.

Concealed Weapon Licenses

The DACS estimates the following revenue reduction in the Division of Licensing Trust Fund due to the reduction in concealed weapon license (CWL) fees by \$10 each. The Division of Licensing within the DACS indicates that the reduced fee revenue is sufficient to continue to fund the program.

	FY 2015-16	FY 2016-17	FY 2017-18
New CWL Fee Reduction	(\$1,280,000)	(\$1,280,000)	(\$1,280,000)
Renewal CWL Fee Reduction	(\$1,103,050)	(\$1,743,740)	(\$1,397,430)
Total:	(\$2,383,050)	(\$3,023,740)	(\$2,677,430)

Concealed Weapons License Notice of Service of Process

The department estimates the following reduced expenditures in the Division of Licensing Trust Fund relating to publishing costs associated with notification of revocation or suspension of concealed weapon licenses:

	FY 2015-16	FY 2016-17	FY 2017-18
CWL Notice of Service of Process	(\$158,948)	(\$158,948)	(\$158,948)

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 472.015, 493.6105, 493.6106, 493.6108, 493.6113, 493.6115, 493.6118, 501.015, 501.605, 501.607, 507.03, 527.02, 539.001, 559.904, 559.928, 616.242, 790.06, 790.0625, and 790.15.

The bill creates section 570.695 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Appropriations on April 16, 2015:

The committee substitute:

- Eliminates the transfer of the enforcement of the Commercial Weight Loss Practices Act from the DACS to the Department of Health;
- Allows notice of service to firearm or concealed weapon license holders by mail or e-mail when certified mail is ineffective;
- Authorizes the DACS to issue a Florida veteran identification card;
- Provides an appropriation to the DACS for Fiscal Year 2015-2016 of \$114,018 in recurring funds and \$140,282 in nonrecurring funds from the Division of Licensing Trust Fund and authorizes one position to administer the veteran identification card program; and
- Prohibits the recreational discharge of a firearm in certain residential areas.

CS by Commerce and Tourism on March 16, 2015:

Reduces initial application fees for concealed weapon and firearm licenses from \$70 to \$60, and renewal fees from \$60 to \$50.

- B. **Amendments:**

None.