

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 Commerce and Tourism

BILL: SB 1444

INTRODUCER: Senator Richter

SUBJECT: Consumer Licensing

DATE: March 13, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	Pre-meeting
2.			AGG	
3.			AP	

I. Summary:

SB 1444 modifies several areas regulated by the Department of Agriculture and Consumer Services, including:

- Implementing license fee waivers for veterans, their spouses, and their businesses;
- Updating the criminal background check processes for applicants and licensees under ch. 493, F.S., regulating private investigation, private security, and repossession services;
- Transferring the enforcement of Commercial Weight-Loss Practices Act to the Department of Health;
- 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 for notice of service to firearm or concealed weapon license holders by mail or e-mail; and
- Allowing qualified tax collectors to print and deliver renewal firearm or concealed weapons licenses.

II. Present Situation:

The Department of Agriculture and Consumer Services (“department” or “DACS”) safeguards the public from unsafe or defective products and deceptive business practices. The Division of Consumer Services within the DACS 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 DACS is responsible for investigating and issuing licenses to conduct private security, private investigative, and recovery services pursuant

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

to ch. 493, F.S. The Division of Licensing also issues concealed weapon or firearm licenses pursuant to s. 790.06, F.S.²

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:

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 his or her 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.

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_descripti on%5D=&directory%5Bcounty%5D=&directory%5Bdesignation%5D=Service+Disabled+Veteran&directory%5Bvendor_n ame%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).

Section 1 amends s. 472.015, F.S. (surveyors and mappers), **Section 8** amends s. 501.015, F.S. (health studios), **Sections 11 and 12** amend ss. 501.605 and 501.607, F.S. (telemarketing), **Section 13** amends s. 507.03, F.S. (intrastate movers), **Section 14** amends s. 527.02, F.S. (liquefied petroleum gasoline), **Section 15** amends s. 539.001, F.S. (pawnbrokers), **Section 16** amends s. 559.904, F.S. (motor vehicle repair), and **Section 17** amends s. 559.928, F.S. (sellers of travel).

Fingerprint Retention and Processing

Private investigators, private security officers, and repossession services officers are regulated by the department 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 their 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 now-licensees' fingerprints are discarded. This makes the department's duty to conduct ongoing investigations into its licensees' criminal activity⁹ more difficult because it must perform a name-based search of arrest records and then perform further checks to ensure accurate identification.¹⁰

Section 4 updates the department's background check processes by requiring the department 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 the department's ch. 493, F.S., licensees. The bill additionally requires the FDLE to report any arrest record it discovers to the department. In turn, the department must notify the licensee's employing agency of the arrest record.

In accordance with the changes made by section 4, **Section 2** requires initial applicants for licensure under ch. 493, F.S., to submit:

- A full set of their fingerprints;
- A one-time fingerprint processing fee;

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).

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).

- 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.

Additionally, applicants for renewal of their ch. 493, F.S., license are required by **Section 5** of the bill to submit:

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

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 3** 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.

Commercial Weight-Loss Clinics

Currently, the department enforces the “Commercial Weight-Loss Practices Act (act).”¹⁵ This act requires weight-loss providers to give consumers a Weight Loss Consumer Bill of Rights, disclose information about the provider and program, and provide itemized statements. However, dietetics, nutrition practices, and other weight-loss professions are regulated by the Department of Health.¹⁶ **Sections 9 and 10** transfer enforcement of the Commercial Weight-Loss Practices Act to the Department of Health.

Amusement Ride Safety Standards

Florida has approximately 245 amusement parks and 190 traveling amusement companies that are subject to inspection by the department.¹⁷ These parks include carnivals, water parks, go-kart courses, and bungy-jumping parks.¹⁸ A temporary amusement ride must be inspected by the department each time it is moved or set up in a new location; permanent rides are inspected semi-annually.¹⁹ Additionally, parks subject to the department’s regulations must show proof of sufficient employee training and insurance.

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-ruling-2010-6.pdf> (last accessed March 11, 2015).

¹⁵ Sections 501.057 – 501.0583, F.S.

¹⁶ See chapter 468, part X, F.S.

¹⁷ 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).

¹⁸ *Id.*

¹⁹ *Id.*

Section 18 exempts the following venues from s. 616.242, F.S.'s, 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).²⁰

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, 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.

Additionally, the bill 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 department, or by e-mail, if an e-mail address was furnished to the department. For purposes of this section, the notice is considered complete at the time the e-mail is sent, or after 20 days from the department’s deposit of the letter providing notice into the mail.

Currently, section 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 department, 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.

²⁰ Conversation with staff of the Department of Agriculture and Consumer Services, on March 6, 2015.

Section 11 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.

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.”²¹ 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.²²

The department 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.²³ 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.²⁴

²¹ *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

²² *Mathews v. Eldridge*, 424 U.S. 319 (1976); *Hadley v. Dept. of Admin.*, 411 So.2d 184 (Fla. 1982).

²³ See s. 790.0601, F.S.; Florida Department of Agriculture and Consumer Services, *Legislative Bill Analysis for HB 997* (March 3, 2015).

²⁴ *Anderson v. State*, 87 So. 3d 774, 776 (Fla. 2012).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Veterans, their spouses, and majority-owned veteran businesses will qualify for initial specific license fee waivers.

C. Government Sector Impact:

The department expects a reduction in revenue generated from military veterans and their spouses who take advantage of the fee waiver provisions of this bill in the following amounts:

	(FY 15-16)	(FY 16-17)	(FY 17-18)
	Amount	Amount	Amount
Military Veteran Fee Waiver	(\$49,350)	(\$49,350)	(\$49,350)

Fingerprint Retention

The department expects to generate the following from new fees related to Fingerprint Retention programs:

	(FY 15-16)	(FY 16-17)	(FY 17-18)
	Amount	Amount	Amount
Federal Bureau of Investigation (FBI) Funds	\$1,552,000	\$1,552,000	\$442,000
FDLE Operating Trust Fund	<u>\$1,040,000</u>	<u>\$1,040,000</u>	<u>\$684,000</u>
Subtotal:	<u>\$2,592,000</u>	<u>\$2,592,000</u>	<u>\$1,126,000</u>

These fees will be collected by the department and deposited in the Division of Licensing Trust Fund where they will then be disbursed to the FBI or the FDLE for the administration of their fingerprint retention programs.

Safety Standards for Amusement Rides

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

	(FY 15-16)	(FY 16-17)	(FY 17-18)
	Amount	Amount	Amount
Safety Standards for Amusement Rides	(\$2,280)	(\$2,280)	(\$2,280)

VI. Technical Deficiencies:

None.

VII. Related Issues:

It is unclear whether section 5 of the bill requires licensees who seek to renew a ch. 493, F.S., license held prior to January 1, 2016, to submit an enrollment fee for the FBI's NGI project in addition to the retention fee to cover the cost of retention of the licensee's fingerprints by the FDLE's ARNFS.

For clarification, "surviving spouses" could be added as eligible for the military veteran fee waiver.

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, 501.0581, 501.0583, 501.605, 501.607, 507.03, 527.02, 539.001, 559.904, 559.928, 616.242, 790.06, 790.0625.

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.