

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/CS/HB 641 Department of Agriculture and Consumer Services

SPONSOR(S): Regulatory Affairs Committee; Agriculture & Natural Resources Appropriations Subcommittee; Business & Professions Subcommittee; Trumbull

TIED BILLS: HB 643 **IDEN./SIM. BILLS:** CS/CS/SB 772

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	12 Y, 1 N, As CS	Butler	Anstead
2) Agriculture & Natural Resources Appropriations Subcommittee	12 Y, 0 N, As CS	Lolley	Massengale
3) Regulatory Affairs Committee	13 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). Specifically, the bill:

- Provides that veterans and their spouses applying for certain licenses and registrations shall have initial fees waived if recently discharged from a branch of the United States Armed Forces;
- Removes the requirement that one of the board members of the Board of Surveying and Mapping be specialized in photogrammetry;
- Clarifies that telemarketers only have to disclose actual physical locations of operations;
- Exempts certain water-related amusement rides from inspection at facilities not open to the general public, if:
 - The ride is an incidental amenity operated by a licensed lodging or food service establishment;
 - The ride is an incidental amenity at a private, membership-only facility; or,
 - The ride is located at a nonprofit charitable permanent facility.
- Clarifies several fees and standards related to weights and measures in chs. 527 & 531, F.S.;
- Removes “personal trainers,” “tour guides,” and “tour guide services” from regulation;
- Requires the Department to participate in FDLE’s Applicant Fingerprint Retention and Notification Program and requires licensees to submit fingerprints and pay retention fees for state and federal fingerprint retention programs;
- Makes several amendments to concealed weapons licensing, including amending the eligibility requirements to clarify what crimes would disqualify an applicant, requiring a live fire demonstration by the trainee in the physical presence of the trainer, and reducing the fee for initial licensure and renewal by \$10;
- Provides that the Department may send notice of a suspension or revocation of a concealed weapons license by first-class mail or e-mail, if notice by certified mail is returned undeliverable; and,
- Allows tax collectors to print and renew concealed weapons licenses on site.

The bill will have a significant fiscal impact on state government and the private sector, in part, due to the veteran fee waiver programs and the concealed weapons license fee reduction. See Fiscal Analysis & Economic Impact Statement for more details.

The bill provides a nonrecurring appropriation of \$1,305,097 from the Division of Licensing Trust Fund for payment of fingerprint processing and retention fees to the Department of Law Enforcement.

Except as otherwise expressly provided in the bill, the effective date of the bill is July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The Department's mission 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 Division of Consumer Services is the state's clearinghouse for consumer complaints, information and protection, including operating Florida's Do Not Call List. Various businesses, such as Pawnbrokers, Health Studios, Sellers of Travel, Professional Surveyors and Mappers, and Telemarketing, are regulated by the Division of Consumer Services. Additionally, the Division of Consumer Services regulates standards for gasoline, brake fluid, antifreeze, liquefied petroleum gas, amusement rides, and weighing and measuring devices.

The Division of Licensing within the Department is responsible for protecting the public from unethical business practices on the part of persons providing private security, private investigative and recovery services to the public through licensure and regulation of those industries pursuant to ch. 493, F.S. Additionally, the Division of Licensing is responsible for the issuance of Concealed Weapon or Firearm Licenses in accordance with s. 790.06, F.S.

Military Veteran Fee Waivers

Current Situation

The Division of Consumer Services regulates and licenses surveyors and mappers, health studios, telemarketing, intrastate movers, sellers of liquefied petroleum gasoline, pawn broking, motor vehicle repair, and sellers of travel. The Division of Licensing regulates and licenses private investigation, recovery, and security industries.

There are more than 231,000 veterans of the Afghanistan and Iraq wars that currently live in Florida.¹ One of the greatest challenges facing returning veterans is finding gainful employment in a profession. Several Legislative initiatives have attempted to bridge this gap in recent years.²

Effect of the Bill

The bill provides that the Department shall waive the initial license or registration fees for certain professions and industries under the Division of Consumer Services for veterans. License or registration applications for veterans and their spouses submitted within **60 months** of the veteran's discharge from any branch of the United States Armed Services, including the initial license or registration fees for business entities where a veteran or their spouse is the majority owner, shall be waived in the following industries and professions:

¹ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2016 House Bill 641, p. 4 (Nov. 17, 2015).

² In recent years, the Department of Business and Professional Regulation and the Department of Health have begun waiving professional license fees for veterans. Specifically, Chapter 2014-1, Laws of Florida, amended s. 455.213, F.S., to allow the Department of Business and Professional Regulation to waive the initial licensing fee, initial application fee, and initial unlicensed activity fee for a military veteran or his or her spouse within 60 months of discharge. This same bill amended s. 456.013, F.S., and s. 468.304, F.S., to waive similar fees for the Department of Health.

- Surveyors and mappers
- Health studios
- Telemarketing
- Intrastate movers
- Sellers of liquefied petroleum gasoline
- Pawn broking
- Motor vehicle repair
- Sellers of travel

The bill further provides the following licenses under the Division of Licensing shall have their fees waived for veterans honorably discharged within the past **24 months**:

- Firearm Instructor (Class K License)
- Private Security Agency Manager (Class MB License)
- Private Security Branch Office Manager (Class AB License)
- Private Security Officer School or Training Facility Instructor (Class DI License)
- Private Investigation Agency Manager (Class MA License)
- Private Investigation Branch Office Manager (Class AB License)
- Private Investigator (Class C License)
- Private Investigator Intern (Class CC License)
- Recovery Agency Manager (Class MR License)
- Recovery Agency School or Training Facility Instructor (Class RI License)
- Recovery Agent (Class E License)
- Recovery Agent Intern (Class EE License)

Security Officers (Class D License) and the Statewide Firearms License (Class G License) are not included in the veteran fee waiver proposal, although Class D Licensees currently do not have a license fee.

Veterans must provide the department with a copy of their DD Form 214, discharge papers, as issued by the United States Department of Defense, or other acceptable form of identification as specified by the Department of Veterans' Affairs to qualify for the waiver.

Board of Professional Surveyors and Mappers

Current Situation

The Board of Professional Surveyors and Mappers 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 a 4 year term.³ 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., subject to approval by the Department.⁴

Licensed surveyor and mappers 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.⁵ The specialization of photogrammetry focuses on measuring a subject using high-quality images.⁶ Recent technological advances in digital cameras, computer processors, and computational techniques

³ s. 472.007, F.S.

⁴ s. 472.008, F.S.

⁵ Florida Department of Agriculture and Consumer Services, *Professional Surveyors and Mappers*, <http://www.freshfromflorida.com/Divisions-Offices/Consumer-Services/Business-Services/Surveyors-and-Mappers>.

⁶ See generally, Cultural Heritage Imaging, *Photogrammetry: What is it?*, <http://culturalheritageimaging.org/Technologies/Photogrammetry/> (last visited Nov. 18, 2015).

have increased access to accurate photogrammetry measurements.⁷ The Department reports that due to the changing shape of the profession, the subprofession of photogrammetry has greatly dwindled, and individuals are no longer taking the photogrammetrist exam.⁸

There are currently only 3 individuals designated as a photogrammetrist licensed in Florida, of which, one is a current second term board member and another is a previous board member.⁹ Due to a lack of interest in this specialization, the Board of Surveyors and Mappers has recommended that the statutory requirement of a photogrammetrist specialized board member be removed.¹⁰

Effect of the Bill

The bill provides that the Board of Surveyors and Mappers is no longer required to have one of the board members obtain the designation of photogrammetrist.

Telemarketing Physical Location

Current Situation

The Department has regulatory authority over telemarketing businesses and regularly conducts onsite investigations looking for unlicensed or unlawful activity. Telemarketing is regulated under Florida's Telemarketing Act, codified in ss. 501.601 – 501.626, F.S.

When applying to become a “commercial telephone seller,” an applicant must provide a complete street address for each location from which an applicant will be “doing business.”¹¹ An applicant is required to provide an address where the actual telemarketing operation is taking place.¹² A “mail drop” cannot be a location where an applicant will be doing business because by its nature a “mail drop” is shorthand for a location where mail is delivered and retrieved, but where no actual business occurs.¹³

Effect of the Bill

The bill revises s. 501.605, F.S., to remove the requirement to disclose whether a location where the applicant will be doing business is a “mail drop.” The removal does not change the prohibition against listing a “mail drop” address as the principal place of business and should have no effect on the industry.

Safety Standards for Amusement Rides

Current Situation

The Bureau of Fair Rides Inspection within the Department (Bureau of Fair Rides) is assigned to inspect, investigate, and enforce the regulations related to amusement rides. The Bureau of Fair Rides has statewide responsibility to inspect all amusement rides in the state, except for certain large parks which have more than 1,000 employees and have full time inspectors on staff.

⁷ *Id.*

⁸ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2016 House Bill 641, p. 3-4 (Nov. 17, 2015).

⁹ *Id.*

¹⁰ *Id.*

¹¹ s. 501.059, F.S., defines “doing business in this state” as a business that conducts telephonic sales calls from a location in Florida or from other states or nations to consumers located in Florida. Although not directly stated, there is a strong implication that a location where an entity is “doing business” is the location where the telephonic sales call originates from.

¹² s. 501.605(2)(j), F.S.

¹³ s. 501.605(2)(j), F.S. *See generally, Hertz Corp. v. Friend, 559 U.S. 77, 97 (2010)* (stating that the “principal place of business” for jurisdictional purposes is a business’s “nerve center,” and that courts should ignore an alleged location that is “nothing more than a mail drop box.”)

The Department has previously removed inspection requirements for private facilities such as residential community centers not open to the general public. The Department currently does not monitor waterslides at hotels that are not open to the public and do not allow day rates.¹⁴

When inspecting their own rides, the owners of fair rides fill out a Department approved form that is generalized and not customized for any specific ride.¹⁵ The Department reports that often owners will fill out the Department form and provide an inspection form provided by the ride's manufacturer.¹⁶

Effect of the Bill

This bill exempts from regulation and inspection any facility operating as a charitable entity licensed under ch. 496, F.S., which is not open to the general public. The Department states that only two companies would currently qualify under this exemption.¹⁷

The bill also expands the current residential inspection exemption to exempt private, membership-only facilities if the amusement ride is an incidental amenity and the facility is not open to the general public, is not primarily engaged in providing amusement, pleasure, thrills, or excitement, and does not offer day rates.

The bill allows the use of manufacturer inspection forms to be submitted to the Department in lieu of the Department's form, if the manufacturer's form is approved by the Department.

Fair ride owners must submit their new forms for approval. At a minimum, any submitted form must have the same information that is required on the Department's forms, which will continue to be used.

Streamlining of Standards Regulations

Current Situation

The Bureau of Standards is responsible for conducting inspections of petroleum distribution systems, analyzing samples of petroleum products, the accuracy of retail price scanners, packaged goods inspections, and ensuring hundreds of other products that are purchased daily by consumers and business meet safety and performance standards required by law.

The Bureau of Standards also contains the Department's metrology laboratory which maintains the state's primary standards of mass, length and volume and provides calibration services to the commercial measurement industry, scientific and law enforcement labs, manufacturers, and the aerospace and technology industries.

Vehicles transporting liquid petroleum gas in bulk must be registered with the Department and are assessed a \$50 fee.¹⁸ Liquid petroleum gas truck meters are also inspected and assessed a \$100 fee.¹⁹

"Weights and measures" is defined as "all weights and measures of every kind, instruments, and devices for weighing and measures, and any appliance and accessories associated with any or all such instruments and devices."²⁰

The Department charges and collects fees for metrological laboratory calibration and testing services, ranging from \$50 to \$250, depending on the test or calibration that is performed.²¹

¹⁴ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2016 House Bill 641, p. 8 (Nov. 17, 2015).

¹⁵ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2016 House Bill 641, p. 9 (Nov. 17, 2015).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ s. 527.021, F.S.

¹⁹ s. 531.63(2)(i), F.S.

²⁰ s. 531.37(1), F.S.

²¹ s. 531.415, F.S.

When a specific weight or measures device is permitted by the Department, the permit is assigned to the person or business, as it may be, that owns or controls the weights and measures instrument or device. When a business transfers ownership of a weights and measures device, or should the ownership of a business be wholly or partially transferred to another person, s. 531.60, F.S., determines the status of a permitted weights and measures devices.

Effect of the Bill

The bill clarifies the intent of s. 531.60, F.S., and other sections within ch. 531, F.S., that a permit is issued to the person or business who owns the weights and measures instrument or device, and not to the device or instrument itself. The bill also requires the businesses to notify the Department within 30 days if there is a change in permit status, or if the permit will not be renewed.

The bill removes s. 531.60(3), F.S., which permits the Department to test instruments or devices that are not used commercially, if the instrument or device is permitted and the appropriate fees are paid. Currently, the Department does not permit non-commercial instruments or devices, thus, and may not test a non-permitted device.²² Additionally, the Department reports that private companies are available to provide testing for non-commercial instruments and devices.²³

The bill simplifies and clarifies the fees for several calibration and testing services, and clarifies that any item that is not in a condition that is ready to be tested may be refused by the Department. The Department reports instances of customers bringing dirty equipment to the lab for testing and being unable to clean these artifacts before testing.²⁴

Currently, all weights and measures permits are renewed annually and a permit expires one year following its date of issue.²⁵ The bill amends the annual renewal cycle to allow either annual or biennial permits, and to permit a person to elect whether their commercial use permit for a weights and measures device expires after one or two years.

Finally, the bill clarifies several of the fees required for certain weights and measures devices in s. 531.63, F.S., combines the two fees for transporting liquid petroleum gas into a single \$150 fee, and removes “grain moisture meters” from the list of devices that are permitted by the Department. The Department reports that “grain moisture meters” are no longer inspected by the Department and should be removed from the list.²⁶

Sellers of Travel

Current Situation

The Department is responsible for registering and regulating sellers of travel, who must register annually with the department and provide performance bonds if offering vacation certificates. A seller of travel offers prearranged travel or tourist-related services through vacation and tour packages, or through vacation certificates. The Department reports that the current statutes regulating sellers of travel, excepting language related to travel to terrorist nations, need updating to meet the changing marketplace.²⁷

Effect of the Bill

²² s. 531.60(1), F.S.

²³ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2016 House Bill 641, p. 7 (Nov. 17, 2015).

²⁴ *Id.*

²⁵ s. 531.62, F.S.

²⁶ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2016 House Bill 641, p. 7 (Nov. 17, 2015).

²⁷ *Id.*

The bill removes regulation of “tour guides.” The Department states that regulation of sellers of travel is focused on high-end vacations, typically bought weeks or months in advance. Tour guides, and same-day travel tours, are not a source of consumer complaints.²⁸

The bill amends the definition of “accommodations” to clarify that regulated accommodations do not include long-term home rentals covered under a lease pursuant to ch. 83, F.S., Florida’s Landlord and Tenant law.

The bill amends the definition of “vacation certificate” to clarify that a vacation certificate refers to an advance travel purchase, and does not include “travel if exact travel dates are selected, guaranteed, and paid for at the time of the purchase.”

The bill amends the definitions of “prearranged travel,” “purchaser,” “satisfactory consumer complaint history,” and “seller of travel” to remove references to tour guide services, sightseeing tours, and making technical changes.

The bill amends the registration requirements of sellers of travel to allow the Department to deny or refuse to renew a registration for a seller of travel based on a crime or civil penalty related to theft or embezzlement, and to revoke the registration should the seller of travel, or any of its directors, officers, owners, or general partners:

- Fail to meet the requirements of registration;
- Are convicted of a crime involving fraud, theft, embezzlement, dishonest dealing, or any other act of moral turpitude or any other act arising out of conduct as a seller of travel;
- Fail to satisfy a civil fine or penalty arising out of enforcement of a civil action involving fraud, theft, embezzlement, dishonest dealing, or any violation of the sellers of travel statutes or rules;
- Has pending any criminal, administrative, or enforcement proceedings based upon conduct involving fraud, theft, embezzlement, dishonest dealing, or any other act of moral turpitude or any other act arising out of conduct as a seller of travel; or,
- Has had a judgment entered against him or her in any action brought by the Department or the Department of Legal Affairs.

The bill removes a requirement that the Department respond to a seller of travel within ten working days about whether the materials submitted meet the statutory requirements of a vacation certificate, subsequent to the initial registration. Sellers of travel will also not be required to identify the number of vacation certificates to be issued or their expiration dates to the Department.

Vacation certificates will be required to include disclosure language in a 10-point font, and the Department will be required to review certificates and contracts for compliance with the disclosure requirements of s. 559.932, F.S.

The cancellation and refund provisions of vacation certificates are clarified to provide that a seller of travel must honor a cancellation request made within 30 days after the date of purchase or receipt, or when the accommodations or facilities are not available. The purchaser may accept comparable alternative accommodations or facilities.

Further, the bill amends and clarifies the intent required for violations made by sellers of travel, including clarifying it is a violation to knowingly make a false statement to the Department or any other governmental agency in response to an inquiry or investigation, or engage in any other fraudulent actions. The bill removes violations for payment-type requirements or any other methods of payment, requirements to state “This is an offer to sell travel” in an advertisement, and disclosure requirements of the seller’s fixed business address in solicitations and contracts.

Health Studios

²⁸ *Id.* at 8.

Current Situation

The financial and business methods of health studios are currently regulated by the Department because certain business practices have caused undue financial hardship on citizens within the state.²⁹ The definition of a “health studio” includes both persons who sell services, such as instruction or training in physical exercise, and the facilities, often referred to as “gyms,” that contain training and workout equipment which may be contracted to be utilized in exchange for a membership fee.

A “personal trainer” is a person who provides services as an instructor or trainer for physical exercise, but does not necessarily associate with a specific gym. The Department reports that entities like personal trainers that are not affiliated with a gym do not pose a significant risk to consumers because they generally “do not issue extensive binding contracts, may or may not provide equipment, and do not collect monies more than 30 days in advance.”³⁰ Despite this, personal trainers who are not affiliated with a gym, and who do not require payment more than 30 days in advance of services are required to register as a “health studio.”

Effect of the Bill

The bill exempts a “personal trainer” from the definition of a “health studio” and defines a “personal trainer” as “an individual: (a) Who does not have an established place of business for the primary purpose of the conducting of physical exercise; (b) Whose provision of exercise equipment is incidental to the instruction provided; and (c) Who does not accept payment for services that are to be rendered more than 30 days after the date of payment.”

Duration of a “K” License

Current Situation

In 2011, s. 493.6111, F.S., was amended to extend the duration of the validity of a “K” license from two to three years. However, s. 493.6113, F.S., still requires that all licenses under ch. 493, F.S., must be renewed biennially except for specific licenses, which must renew every three years.

Effect of the Bill

The bill amends s. 493.6113, F.S., to include Class “K” licenses within the group of specific licenses that do not have to renew biennially and which may be renewed every three years.

Licensee Fingerprint Retention

Current Situation

An individual who wishes to work in the private security, private investigative, or repossession industries that are regulated by the Department under ch. 493, F.S., must provide a set of fingerprints and submit to a criminal history background check. After a person has been licensed, the Department is mandated by s. 493.6118, F.S., to continually monitor weekly criminal arrests and match reports furnished by the FDLE to ensure that licensees remain eligible for licensure during the term of the license. The Department reports that the current process is very time consuming, based only on name-search criteria, and does not guarantee accurate identification.³¹ When a match is found, the Division of Licensing manually reviews the demographic information of the arrested person with the demographic information of the matched licensee.

The Department additionally has difficulty identifying licensees who are arrested outside the State because FDLE is only able to provide reports of arrests that occur in Florida.

²⁹ s. 501.012, F.S.

³⁰ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2016 House Bill 641, p. 6 (Nov. 17, 2015).

³¹ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2016 House Bill 641, p. 5 (Nov. 17, 2015).

Effect of the Bill

The bill requires the Department to participate in both a federal and state background check and fingerprint retention program. The state program is administered by FDLE and is referred to as the Applicant Fingerprint Retention and Notification Program (AFRNP) which allows for retention of applicant fingerprints within FDLE's Biometric Identification System.

The Federal Bureau of Investigation (FBI) administers the federal program as part of its Next Generation Identification project, and retains fingerprints at the national level to provide a nation-wide database that the agency and participating state and local entities may use to identify fingerprints. In order for entities to participate in the federal program, fingerprints must be retained at the state level and subsequently enrolled through the state program into the FBI's program.

Participation in FDLE's Biometric Identification System requires an annual fee of \$6.00 for each year that a license is valid. Participation in the FBI's Next Generation Identification project requires a one-time fee of \$13.00 that covers the cost of fingerprint retention for as long as a license is valid.

These fingerprint retention programs would automate the manual practice of matching arrest records with licensees. Moreover, participation in the FBI's Next Generation Identification project allows the Department to receive information on arrests of licensees in any jurisdiction that also participates in the FBI's Next Generation Identification project.

The bill requires the Department to inform the agency that employs the licensee of any arrest, and the Department may initiate appropriate action against the license.

Starting January 1, 2017, the bill will require renewal licensees to re-submit their fingerprints and pay the processing and retention fees to be enrolled in the federal and statewide fingerprint retention programs if they have not already done so during initial licensure. Licensees will have to submit fingerprints and pay both processing fees upon the first renewal; all subsequent renewals will only require the licensee to pay statewide retention fees.

Appropriation

The bill provides a nonrecurring appropriation of \$1,305,097 from the Division of Licensing Trust Fund for payment of fingerprint processing and retention fees to the Department of Law Enforcement.

Residency Requirements

Current Situation

In 2012, the Department of Justice amended regulations of the Bureau of Alcohol, Tobacco, Firearms, and Explosives removing a 90-day residency requirement for a permanent legal resident alien lawfully present in the United States to purchase or acquire firearms.

Based on the former federal requirement, an applicant for a private security, private investigative, or repossession license in Florida, who is a permanent legal resident alien, must reside for 90 days in the state shown on the application.

The Department reports that the 90-day residency requirement serves no practical purpose, and has caused frustration for new Florida residents who must wait before seeking employment in the private security, private investigative, or repossession industries, even if previously employed in another state in those industries.

Effect of the Bill

The bill amends Florida law to remove the 90-day residency requirement for legal resident aliens seeking licensure in the private security, private investigative or repossession industries.

A person who is not a United States citizen must still submit proof that she or he is deemed a permanent legal resident alien by the United States Citizenship and Immigration Services to receive a private security, private investigative, or repossession license.

Concealed Weapon Licensing Law

Current Situation: Application for Concealed Weapons License

An applicant may be disqualified from receiving a concealed weapons license, pursuant to s. 790.06(2)(k), F.S., if the applicant "...had adjudication of guilt withheld or imposition of sentence suspended on any felony or misdemeanor crime of domestic violence...." The Department reports that this has led to some confusion from applicants and licensees, who read this section to believe that only felonies of domestic violence and misdemeanors of domestic violence are disqualifying crimes, instead of all felonies and separately, misdemeanors of domestic violence.³²

The application for a concealed weapons license requires that applicants list their occupation, per s. 790.06(4)(a), F.S. The Department does not use or collect this information for any purposes related to licensure; an application is considered incomplete if the applicant fails to provide their occupation.³³

Currently an applicant for a concealed weapons license is not required by statute to provide personal identifying information, including height, weight, eye color, hair color, and other demographic information as required by federal law to process fingerprints of applicants.³⁴ However, the Department does request this information on the application.

Effect of the Bill: Application for Concealed Weapon License

The bill clarifies that all felonies are disqualifying crimes for which the Department may deny an applicant from receiving a concealed weapons license. The bill deletes misdemeanors of domestic violence, so that the new section reads, "...had adjudication of guilt withheld or imposition of sentence suspended on any felony..."

The bill creates a new subsection 790.06(2)(l), F.S., to clarify that, in addition to all felonies, misdemeanors of domestic violence shall disqualify an applicant from receiving a concealed weapons license.

The bill removes the requirement that an applicant provide their occupation, and includes a requirement that an applicant supply certain personal identifying information required by federal law to process fingerprints.

Current Situation: Expedited Consideration for Military Applications

Following the domestic terrorism attack on July 16, 2015, resulting in the murder of four United States Marines at a United States Armed Services recruiting center and a Naval Reserve Facility, Governor Scott issued Executive Order No. 15-137 on July 18, 2015. The order directed Florida Adjunct General Michael Calhoun to ensure that all qualified full-time guardsmen were adequately armed and stated that "for those Florida Guardsmen who need a new state concealed weapons permit, the state will support the expedited processing of licenses for those soldiers."³⁵

Following Gov. Scott's executive order, Commissioner Putnam announced on July 27, 2015, that the Department would expedite the applications of all active military and veterans applying for a concealed

³² Florida Department of Agriculture and Consumer Services, Agency Analysis of 2016 House Bill 641, p. 9 (Nov. 17, 2015).

³³ *Id.*

³⁴ *Id.*

³⁵ Office of the Governor, Exec. Order No. 15-137 (2015).

weapons license.³⁶ There is neither a requirement nor prohibition in statute related to expedited consideration of concealed weapons licenses to any member of the general public.

Effect of the Bill: Expedited Consideration for Military Applications

The bill creates s. 790.06(4)(f), s. 790.06(5)(f), F.S., and s. 790.06(6)(f), F.S., to provide that servicemembers and veterans who identify themselves as such to the Department will have their application for a concealed weapons license expedited.

The bill provides that the application for a concealed weapons license shall include directions for an applicant who is a “servicemember, as defined in s. 250.01, or a veteran, as defined in s. 1.01, to request expedited processing of his or her application.”

The bill provides that a servicemember may submit either a “copy of the Common Access Card, United States Uniformed Services Identification Card, or current deployment orders” as proof of their status to receive expedited processing. A veteran may submit “a copy of the DD Form 214,” or another acceptable form of identification as specified by the Department of Veterans’ Affairs to receive expedited processing.

Current Situation: Live Fire Requirements

Firearms instructors who provide the qualifying training for the Florida concealed weapons license, s. 790.06, F.S., “must maintain records certifying that he or she observed the student safely handle and discharge a firearm”; however, the language is unclear as to whether this observation must be made in the actual physical presence of the trainer. The current language is ambiguous as to whether remote viewing or reviewing a prerecording of a firearm discharge would satisfy this requirement, and the current language does not specify if the firearms trainer may use simulated ammunition or firearms to conduct the training.

Effect of the Bill: Live Fire Requirements

The bill requires a student discharge an actual firearm using functional ammunition in the physical presence of a trainer in order to qualify for a concealed weapons license. It also provides that firearm instruction must use a fully functional firearm with live ammunition.

Current Situation: Service Requirements for Notice of Suspension or Revocation

When an agency seeks to revoke or suspend a license, s. 120.60(5), F.S., requires either personal service or service by certified mail of the administrative complaint. When an agency cannot personally serve a licensee and service by certified mail is returned undeliverable, the agency must publish notice of revocation or suspension once each week for 4 consecutive weeks in a newspaper published in the county of the licensee’s last known address.

Approximately 176,000 concealed weapons license holders live outside the state of Florida.³⁷ The Department currently spends approximately \$140,000 annually on publication. The Department notes that newspaper publication of a license holder’s name and license number may violate s. 790.0601, F.S., which makes confidential and exempt the personal identifying information of a concealed weapons license holder.

³⁶ See Kellan Howell, *Florida OKs faster concealed weapons permits for military members, vets*, WASHINGTON TIMES (Aug. 1, 2015), <http://www.washingtontimes.com/news/2015/aug/1/florida-oks-faster-concealed-weapons-permits-for-m/>

³⁷ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2016 House Bill 641, p. 10-11 (Nov. 17, 2015).

Effect of the Bill: Service Requirements for Notice of Suspension or Revocation

The bill provides that the Department may forego the normal methods of providing administrative service or notice in s. 120.60(5), F.S., and provide service of a notice of the suspension or revocation of a concealed weapon or firearm license through certified mail, with return receipt requested, or through personal service.

Should the Department be unable to deliver notice through certified mail, the Department must attempt to provide notice through first-class mail or through e-mail, if the licensee provided an e-mail address to the Department.

The bill provides that mailing notice through regular mail is effective notice by operation of law, regardless of whether the licensee receives any actual or constructive notice. A licensee may request a hearing within 21 days of receiving delivery of the notice, or within 26 days of the date that the Department sent their notice to the licensee.

This provision of the bill may have constitutional concerns. See Comments, Constitutional Issues for discussion.

Current Situation: Renewal Notarization

Concealed weapons license renewal affidavits are required to be notarized pursuant to s. 790.06(11), F.S.

The Department indicated that a total of 1,282,036 concealed weapons licenses will expire over the next six years, and expects a renewal rate between 53 and 78 percent, for approximately 800,000 license renewals. The Department would like to automate its renewal process because the volume of renewals will be overwhelming without an online, automated system.³⁸

Effect of the Bill: Renewal Notarization

The bill removes the notarization requirement for concealed weapons licenses renewals and replaces it with a requirement that the form would be submitted under oath and under penalty of perjury.

This section would be effective upon becoming law.

Current Situation: Tax Collector Renewal Authority

As of July 1, 2014, select tax collectors' offices began accepting Florida Concealed Weapon or Firearm License applications on behalf of the Department. The service was made possible by the implementation of Chapter 2014-205, Laws of Florida. Under this program, the Department can enter into a Memorandum of Understanding (MOU) with any constitutionally elected tax collector in Florida to allow the tax collector to provide concealed weapons license application intake services in his or her county.

The Department reports that this program has been successful and may help alleviate the anticipated workload of increasing new and renewal concealed weapons license applications.

Effect of the Bill: Tax Collector Renewal Authority

The bill provides that a tax collector who is accepting concealed weapons license applications may now also print and furnish a renewal license to a concealed weapons license holder. The Department must still approve the renewal prior to issuance.

Current Situation: Concealed Weapon License Fees

³⁸ *Id.*

Concealed weapons license holders are required to pay an initial license fee of \$70, and a renewal fee of \$60.

Effect of the Bill: Concealed Weapon License Fees

The bill lowers the fees for concealed weapons licenses to \$60 for the initial license, and \$50 for the renewal.

B. SECTION DIRECTORY:

Section 1 amends s. 427.007, F.S., revising the composition of the Board of Professional Surveyors and Mappers.

Section 2 amends s. 472.015, F.S., requiring the Department to waive the initial license fee for certain veterans.

Section 3 amends s. 493.6105, F.S., waiving the initial license fee for certain veterans for certain professions, authorizes certain fees for fingerprint retention programs, and revises Class "K" license certification requirements.

Section 4 amends s. 493.6106, F.S., removing residency requirements for Class "G" and Class "K" license applications.

Section 5 amends s. 493.6107, F.S., waiving the initial license fees for veterans for certain private investigative, private security, and repossession service licenses.

Section 6 amends s. 493.6108, F.S., requiring the Department of Law Enforcement to retain certain applicant's fingerprints, retain them in state and federal programs, and to report any arrest record information to the Department; requiring the department to provide information about an arrest of a licensee for certain crimes within the state to the agency that employs the licensee.

Section 7 amends s. 493.6113, F.S., clarifying the renewal requirements for Class "K" licenses.

Sections 8, 9, and 10 amend ss. 493.6202, 493.6302, & 493.6402, F.S., waiving initial license fees for veterans for certain private investigative, private security, and repossession service licenses.

Section 11 amends s. 501.0125, F.S., revising the definition of the term "health studio" and defining the term "personal trainer."

Section 12 amends s. 501.015, F.S., **Section 14** amends s. 501.607, F.S., **Section 15** amends s. 507.03, F.S., **Section 16** amends s. 527.02, F.S., **Section 25** amends s. 539.001, F.S., **Section 26** amends s. 559.904, F.S., **Section 28** amends s. 559.928, F.S., requiring the Department to waive the initial registration fee of certain professions for certain veterans and their spouses, or certain business entities that have a majority ownership held by such veterans or spouses.

Section 13 amends s. 501.605, F.S., prohibiting the use of a mail drop as a street address for the principal location of a commercial telephone seller and requiring the department to waive the initial commercial telephone seller license fee for certain veterans, the spouses of such veterans, or certain business entities that have a majority ownership held by such veterans or spouses.

Section 17 amends s. 527.021, F.S., deleting a provision requiring a fee for registering transport vehicles.

Section 18 amends s. 531.37, F.S., revising the definition of the term "weights and measures."

Section 19 amends s. 531.415, F.S., revising the fees for actual metrology laboratory calibration and testing services.

Section 20 amends s. 531.60, F.S., clarifying provisions of weights or measures.

Section 21 amends s. 531.61, F.S., clarifying provisions exempting certain instruments or devices from specified requirements.

Section 22 amends s. 531.62, F.S., specifying that the commercial use permit fee is based upon the number and types of instruments or devices permitted; revising the expiration date of the commercial use permit; requiring annual and biennial commercial use permit renewals to meet the same requirements.

Section 23 amends s. 527.63, F.S., revising the commercial use permit fees and fee structures.

Section 24 amends s. 531.65, F.S., clarifying that the department may use one or more of the prescribed penalties for the unauthorized use of a weights and measures instrument or device.

Section 27 amends s. 559.927, F.S., revising several definitions related to sellers of travel, tour guides, and vacation certificates.

Section 28 amends s. 559.928, F.S., revising the registration requirements for sellers of travel.

Section 29 amends s. 559.929, F.S., revising security requirements for vacation certificates.

Section 30 amends s. 559.9295, F.S., revising disclosure requirements and deleting provisions relating to the duties of the Department.

Section 31 amends s. 559.932, F.S., requiring a specified typeface point size for certain disclosures; requiring the Department to review copies of certain certificates and contracts for compliance with disclosure requirements.

Section 32 amends s. 559.933, F.S., making technical changes to requirements for sellers of travel.

Section 33 amends s. 559.9335, F.S., revising violations relating to the sale of travel.

Section 34 amends s. 559.935, F.S., deleting a provision requiring an affidavit of exemption to obtain a seller of travel affiliate exemption; adding embezzlement as a crime for which the department may revoke certain exemptions.

Section 35 amends s. 559.936, F.S., conforming cross-references.

Section 36 amends s. 616.242, F.S., exempting certain water-related amusement rides from inspection under certain situations; authorizing owners or managers of amusement rides to use alternative forms to record ride inspections and employee training.

Sections 37 and 38 amend s. 790.06, F.S., revising the requirements for issuance or revocation of a concealed weapons license; reducing initial and renewal fees; providing a process for expediting applications for servicemembers and veterans.

Section 39 amends s. 790.0625, F.S., authorizing certain tax collector offices, upon approval and confirmation of license issuance by the department, to print and deliver concealed weapons or firearm licenses.

Sections 40 and 41 amend ss. 559.9285 & 559.937, F.S., conforming terminology between the sellers of travel statutes.

Section 42 provides an appropriation.

Section 43 provides that, except as otherwise expressly provided in the bill, the effective date of the bill is July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Recurring

General Inspection Trust Fund

Although the number of veterans and veterans' spouses who will apply for the waivers is unknown, the Department estimates the revenue loss based on the following information. An estimated 231,000 veterans from the Afghanistan and Iraq wars live in Florida, which is 1.5 percent of the total population based on 2010 Census data. To estimate the potential loss, the Department doubled the percentage (3 percent) to account for spouses of military veterans who may be interested in the waivers. Using FY 2013-2014 data, the Department calculated the potential loss for each program and license type by multiplying the total number of applications from each program by 3 percent to determine the total number of applications waived. The number of applications waived was then multiplied by the corresponding fee according to program/license type to determine the loss of revenue.

	(FY 16-17)	(FY 17-18)	(FY 18-19)
Military Veteran Fee Waiver	(\$51,250)	(\$51,250)	(\$51,250)
Safety Standards for Amusement Rides	<u>(\$2,280)</u>	<u>(\$2,280)</u>	<u>(\$2,280)</u>
General Inspection Trust Fund Loss	(\$53,530)	(\$53,530)	(\$53,530)

Division of Licensing Trust Fund

Military Veteran Fee Waiver	(\$164,965)	(\$164,965)	(\$164,965)
Concealed Weapon License Fees			
New CW License Fee Reduction (\$10)	(\$1,650,000)	(\$1,550,000)	(\$1,550,000)
Renewal CW License Fee Reduction (\$10)	<u>(\$1,294,010)</u>	<u>(\$1,240,260)</u>	<u>(\$1,162,230)</u>
Division of Licensing Trust Fund Loss	(\$3,108,975)	(\$2,955,225)	(\$2,877,195)

General Revenue Service Charge

General Revenue Service Charge-Reduction Veteran Fee Waiver, Amusement Rides And Concealed Weapons Fee Reduction	(\$130,641)	(\$122,491)	(\$119,370)
General Revenue Service Charge-Increase Ch. 493 Fingerprint Retention	<u>\$104,408</u>	<u>\$104,408</u>	<u>\$47,137</u>
General Revenue Service Charge Loss	(\$26,233)	(\$18,083)	(\$72,233)

2. Expenditures:

Recurring	(FY 16-17)	(FY 17-18)	(FY 18-19)
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Division of Licensing Trust Fund

<u>Notice of Service of Process for Out of State Licensees</u>	(\$140,186)	(\$140,186)	(\$140,186)
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The Department expects to reduce expenditures related to publishing costs for notifying out-of-state licensees of revocation or suspension of their concealed weapon license.

Nonrecurring

Tax Collectors

30 card printers to print and provide a renewal license for concealed weapons license holders.	\$120,000	\$40,000	\$40,000
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The Department will supply printers for tax collectors with existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill waives the initial application fee for veterans and their spouses for the following industries and professions: surveyors and mappers, health studios, telemarketing, intrastate movers, LP gas, pawn broking, motor vehicle repair, and travel.

The bill eliminates the licensure fee for facilities operating as a charitable entity that have amusement rides that are not open to the general public and do not allow for day rates.

The bill requires individuals who are seeking licensure or renewing a license under ch. 493 (private investigation, recovery, and security industries) to participate in the state and federal fingerprint retention programs. Participation in the fingerprint retention program sponsored by the FBI would require payment of a \$13.00 fee at the time of initial application that would cover the cost of fingerprint retention for as long as a license is valid. Participation at the statewide level would require payment of an annual fee of \$6.00 for each year that a license is valid. Licensees, whose permits were issued prior to January 2017 must submit a fingerprint set at the time of renewal to be included in the new retention program. The national background check is \$14.75 and the state background check is \$15.00. Both are one-time fees.

The bill provides that servicemembers and veterans, who identify themselves as such, will have their application for a concealed weapons license expedited.

The bill lowers the fee for concealed weapons licenses by \$10, from \$70 to \$60 for the initial license and from \$60 to \$50 for the renewal license.

The bill provides that a tax collector who is accepting concealed weapons license applications may print and furnish a renewal license to a concealed weapons license holder.

D. FISCAL COMMENTS:

Fingerprint Retention

New Applicants	(FY 16-17)	(FY17-18)	(FY 18-19)
Federal Bureau of Investigation	\$441,272	\$441,272	\$441,272
Florida Department of Law Enforcement	<u>\$203,664</u>	<u>\$203,664</u>	<u>\$203,664</u>
Subtotal:	\$644,936	\$644,936	\$644,936

The Department estimates that 33,944 new applicants with a two-year license pay FBI's one-time \$13.00 fingerprint retention fee for life of license and FDLE's \$6 annual fingerprint retention fee (no charge for first year of new license).

Renewals	(FY 16-17)	(FY 17-18)	(FY 18-19)
Federal Bureau of Investigation	\$1,118,686	\$1,118,686	\$ 0
Florida Department of Law Enforcement	<u>\$ 846,573</u>	<u>\$ 846,573</u>	<u>\$533,481</u>
Subtotal:	\$1,965,259	\$1,965,259	\$533,481

The Department estimates 40,313 renewal applicants pay FBI's one-time \$13 fingerprint retention fee for as long as the license is valid and the national background check fingerprint fee of \$14.75. Since the fingerprint retention fee and the background check fee are one-time only, there will be no payment to the FBI for renewals of the two-year license after FY 2017-18. The FDLE's fingerprint retention fee is \$6 annually and the state background check fingerprint fee is a one-time only fee of \$15. An estimated 1,020 of the 39,650 have three-year licenses and are captured in FY 2018-19.

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 FDLE for the administration of their fingerprint retention programs.

The bill provides a nonrecurring appropriation of \$1,305,097 from the Division of Licensing Trust Fund for payment of fingerprint processing and retention fees to the Department of Law Enforcement.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Procedural Due Process: Generally

The Due Process Clauses of the Fifth and Fourteenth Amendments intend fair process. "An elementary and fundamental requirement of due process in any proceeding that 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."³⁹ The degree to which due process protections apply varies with the nature of the interests implicated.⁴⁰

The bill provides that the Department must attempt to deliver service of a notice of the suspension or revocation of a concealed weapon or firearm license by first-class mail or e-mail, when notice through certified mail is returned undeliverable. This method of notice may raise procedural due process concerns because it may not, under all the circumstances, apprise an interested party of the action.

The bill does not require return receipt when sending notice through first-class mail or e-mail, nor does it provide for procedures when the mail is returned undeliverable, and the bill eliminates the

³⁹ *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

⁴⁰ *Mathews v. Eldridge*, 424 U.S. 319 (1976); *Hadley v. Dept. of Admin.*, 411 So.2d 184 (Fla. 1982).

Department's responsibility to attempt constructive notice when all other attempts to provide actual notice have failed. Without confirmation of delivery, the Department may be unable to demonstrate that notice was effective, and may have to rely upon the rebuttable presumption that notice sent through regular mail is received by the intended party.⁴¹

B. RULE-MAKING AUTHORITY:

The bill makes several changes to the application for a concealed weapons license (s. 790.06, F.S.), and the Department may be required to perform rulemaking to update any rules or forms that are affected by these changes under their current rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 12, 2016, the Business & Professions Subcommittee adopted three amendments and reported the bill favorably as a committee substitute. The amendments:

- Provided technical changes to conform language for license and registration fee waivers.
- Amended the notice provisions for concealed weapon and firearm permit holders to provide notice of the suspension or revocation of a concealed weapon or firearm license by certified mail, and if the notice by certified mail is returned undeliverable, by first class mail or e-mail.
- Provided that a lienholder with a security interest in a motor vehicle may post a bond with the clerk of the court to have the vehicle released from the possession of a motor vehicle repair shop with a possessory lien on the vehicle.

On January 28, 2016, the Agriculture & Natural Resources Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Provides a nonrecurring appropriation from the Division of Licensing Trust Fund for payment of fingerprint processing and retention fees to the Department of Law Enforcement.

On February 17, 2016, the Regulatory Affairs Committee considered and adopted five amendments and reported the bill favorably as a committee substitute. The amendments:

- Removed provisions that would have permitted the International Association of Law Enforcement Firearms Instructors or the Second Amendment Foundation Training Division to provide the certification requirement for Class "K" licensees
- Removed provisions amending motor vehicle lien law.
- Clarified that the fingerprint retention programs for the FDLE, and the enrollment in the FBI fingerprint retention program, shall begin on January 1, 2017, and that the processing fee covering the cost of both programs and a full set of fingerprints must be submitted to the Department for any licensee who renews their license after January 1, 2017.
- Provided several clarifications and technical adjustments to Sellers of Travel.
- Clarified that the Department may deny an application for a concealed carry permit based on a sealed record of a misdemeanor crime of domestic violence.

The staff analysis has been updated to reflect the committee substitute.

⁴¹ Compare, *Shelley v. State, Dep't of Fin. Servs.*, 846 So. 2d 577, 577 (Fla. 3d DCA 2003).