

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Commerce and Tourism

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**BILL:** CS/SB 772

**INTRODUCER:** Commerce and Tourism Committee and Senator Richter

**SUBJECT:** Department of Agriculture and Consumer Services

**DATE:** January 12, 2016

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	Fav/CS
2.			AGG	
3.			AP	

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 772 modifies provisions in several areas regulated by the Department of Agriculture and Consumer Services, including:

- Eliminating the requirement that the Board of Professional Surveyors and Mappers have at least one member who is a photogrammetrist;
- Implementing license fee waivers for veterans, their spouses, and their businesses;
- De-regulating personal trainers from the Department of Agriculture and Consumer Services' oversight;
- Clarifying requirements for owners of devices used for weights or measurements that are subject to a commercial-use permit under ch. 527, F.S., updating the commercial-use permit's license cycle, and simplifying commercial-use permit fees;
- Modernizing the Florida Sellers of Travel Act and deregulating same-day tour guide or sightseeing services;
- Allowing amusement ride operators to provide their own inspection form, and exempting specific rides from inspection requirements;
- Implementing fingerprint retention in ch. 493, F.S. (Private Security, Private Investigators, and Recovery Specialists), licensing processes;
- Approving two new courses for certification as a Firearm Instructor, class "K," licensee;
- Implementing a live-fire requirement for concealed weapon or firearm licensure;
- Streamlining renewal of concealed weapon or firearm licenses by allowing a sworn statement, rather than a notarized affidavit, of a licensee's continued eligibility for licensure;

- Allowing personal service or notice by certified mail, or in the case of non-delivery, by U.S. mail or e-mail, to constitute effective service of notice of suspension or revocation of an individual's concealed weapon or firearm license;
- Allowing qualified tax collectors to print and deliver renewal concealed weapon or firearm licenses;
- Reducing application fees for concealed weapon or firearm licenses; and
- In actions relating to the enforcement of a lien on a vehicle by a motor vehicle repair shop, allowing parties other than the consumer who authorized repairs to the motor vehicle to assert their right to the vehicle through either a bond process or a hearing in circuit court.

## II. Present Situation:

The Department of Agriculture and Consumer Services (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. The Division of Consumer Services also functions as a clearinghouse for consumer complaints. The Division of Licensing within the DACS 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.

The present situation for the relevant provision of the bill is discussed in the Effect of Proposed Changes section of this bill analysis.

## III. Effect of Proposed Changes:

### Board of Professional Surveyors and Mappers

The Board of Professional Surveyors and Mappers (board) is constituted under the DACS with the purpose of regulating professional surveyors and mappers and businesses that offer surveying and mapping services.<sup>1</sup> The board consists of nine members, of whom one must be designated as a photogrammetric mapper by the American Society for Photogrammetry and Remote Sensing (ASPRS), and two must be consumers.<sup>2</sup> The board's members are appointed for 4-year terms of service by the Commissioner of Agriculture and confirmed by the Senate.<sup>3</sup>

Photogrammetry is the practice of surveying and mapping through the use of aerial or terrestrial photographs and other sources of imagery.<sup>4</sup> Twenty-six Florida resident photogrammetrists are currently certified by the ASPRS.<sup>5</sup>

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<sup>1</sup> Florida Department of Agriculture and Consumer Services, Board of Professional Surveyors and Mappers, *Frequently Asked Questions*,

<sup>2</sup> Section 472.007, F.S.

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

<sup>4</sup> Section 177.27(23), F.S.; American Society for Photogrammetry and Remote Sensing, *What is ASPRS?*, available at: <http://www.asprs.org/About-Us/What-is-ASPRS.html> (last visited Jan. 8, 2016).

<sup>5</sup> American Society for Photogrammetry and Remote Sensing, *Search for Certified Professionals*, <http://www.asprs.org/Certification-Program/Search-for-Certified-Professionals.html> (last visited Jan. 8, 2016).

**Section 1** amends s. 472.007, F.S., to remove the requirement that one member of the Board of Professional Surveyors and Mappers is a designated photogrammetrist. Instead, a seventh registered surveyor and mapper may be appointed. This change reflects the May 5, 2015, board vote to remove the requirement that at least one board member be designated as a photogrammetrist.<sup>6</sup>

**Licensing Fee Waivers**

Florida has more than 1.6 million veteran residents,<sup>7</sup> 165,000 of which are veterans of the Afghanistan and Iraq wars.<sup>8</sup> The Department of Management Services has certified 392 businesses as service disabled veteran-owned businesses, which are afforded vendor preference in specific state procurement processes.<sup>9</sup> As of July 1, 2014, both the Department of Business and Professional Regulation (DBPR) and the Department of Health (DOH) implemented initial licensing fee waivers for veterans and their spouses.<sup>10</sup> Since October 1, 2012, the DBPR has granted 134 veteran fee waivers; the DOH has granted 292.<sup>11</sup>

The bill waives first-time licensing application fees for specific veterans 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

<sup>6</sup> Department of Agriculture and Consumer Services, *Agency Analysis of SB 772*, 3 (Dec. 1, 2015) (on file with the Committee on Commerce and Tourism).

<sup>7</sup> Florida Department of Veterans’ Affairs, *Fast Facts*, available at: [http://floridavets.org/?page\\_id=50](http://floridavets.org/?page_id=50) (last visited Jan. 8, 2016).

<sup>8</sup> <http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=CF>; Conversation with Florida Department of Veteran’s Affairs staff on Jan. 4, 2016.

<sup>9</sup> As of Jan. 8, 2016. 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=](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 visited Jan. 8, 2016).

<sup>10</sup> Florida Department of Business and Professional Regulation, *Military and Veteran Spouses*, available at: <http://www.myfloridalicense.com/dbpr/MilitarySpouse.html> (last accessed Jan. 8, 2016); see also, Florida Department of Health, *Veterans*, available at <http://www.floridahealth.gov/licensing-and-regulation/armed-forces/veterans/index.html> (last accessed Jan. 8, 2016).

<sup>11</sup> Communication with staff of the Department of Health on Jan. 4, 2016; Department of Agriculture and Consumer Services, *Agency Analysis of SB 772*, 12 (Dec. 1., 2015) (on file with the Committee on Commerce and Tourism).

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.

The following sections of the bill implement the first-time license fee waivers for veterans, their spouses, and their businesses:

**Section 2** amends s. 472.015(3), F.S. (surveyors and mappers).

**Section 12** amends s. 501.015(2), F.S. (health studios).

**Sections 13 and 14** amend ss. 501.605(5)(b) and 501.607(2)(b), F.S. (telemarketing).

**Section 15** amends s. 507.03(3), F.S. (intrastate movers).

**Section 16** amends s. 527.02(3), F.S. (liquefied petroleum gasoline).

**Section 25** amends s. 539.001(3), F.S. (pawnbrokers).

**Section 26** amends s. 559.904(3), F.S. (motor vehicle repair).

**Section 28** amends s. 559.928(2), F.S. (sellers of travel).

The following sections of the bill waive application or licensing fees for veterans only who apply for specific licensure within 24 months, rather than 60 months, of their honorable discharge from the armed forces:

<b>License</b>	<b>Current Initial Licensing / Application Fees</b>
Private Investigator	\$75 / \$50
Private Investigator Intern	\$60 / \$50
Private Investigative/Security Agency Manager	\$75 / \$50
Private Investigative Agency Manager	\$75 / \$50
Security Officer Instructor	\$60 / \$50
Security Manager	\$75 / \$50
Recovery Agent	\$75 / \$50
Recovery Agent Intern	\$60 / \$50
Recovery Agency Manager	\$75 / \$50
Recovery Agent Instructor	\$60 / \$50
Firearms Instructor	\$100 / \$50

<sup>12</sup> Florida Department of Agriculture and Consumer Services, *Private Investigation, Security, Recovery: Chapter 493, Florida Statutes Fee Schedule*, available at [http://www.freshfromflorida.com/content/download/33389/815718/FS493\\_License\\_Fees.pdf](http://www.freshfromflorida.com/content/download/33389/815718/FS493_License_Fees.pdf) (last visited Jan. 8, 2015).

**Section 3** amends s. 493.6105(1), F.S., to waive the \$100 *initial application fee* for licensure as a:

- Private Investigator, Private Investigator Intern, Private Investigative/Security Agency Manager, or Private Investigative Agency Manager;
- Security Officer Instructor, or Security Manager;
- Recovery Agent, Recovery Agent Intern, Recovery Agency Manager, or Recovery Agent Instructor; and
- Firearms Instructor.

**Section 5** amends s. 493.6107, F.S., to waive the initial *license fee* for veterans who, within 24 months of their honorable discharge from the armed forces, apply for licensure as either a Private Investigative/Security Agency Manager or a Firearms Instructor.

**Section 8** amends s. 493.6202, F.S., to waive the initial *license fee* for veterans who, within 24 months of their honorable discharge from the armed forces, apply for licensure as a Private Investigator, Private Investigator Intern, or Private Investigative Agency Manager.

**Section 9** amends s. 493.6302, F.S., to waive the initial *license fee* for veterans who, within 24 months of their honorable discharge from the armed forces, apply for licensure as a Security Officer, Security Officer Instructor, or a Security Manager. A Class D license does not require an application fee.

**Section 10** amends s. 493.6402(4), F.S., to waive the initial *license fee* for veterans who, within 24 months of their honorable discharge from the armed forces, apply for licensure as a Recovery Agent, Recovery Agent Intern, Recovery Agent Manager, or Recovery Agent Instructor.

Eligible veteran applicants will still be subject to, e.g., applicable examination fees, fingerprint processing and retention fees, and renewal fees, in addition to applicable licensure fitness and general eligibility requirements.<sup>13</sup>

### **Fingerprint Retention and Processing for Private Investigators, Private Security Officers, and Repossession Services Officers**

The Federal Bureau of Investigation and the Florida Department of Law Enforcement perform criminal history background checks based on the fingerprint identification of specific applicants for licensure upon an agency's request for such an investigation, and of individuals in the criminal justice system.

The DACS currently requires applicants for licensure under ch. 493, F.S., to submit a full set of fingerprints and a fingerprint processing fee for a background check to be conducted by the Florida Department of Law Enforcement (FDLE).<sup>14</sup> The DACS has 156,266 currently valid licenses issued under ch. 493, F.S., to, e.g., private investigators, private security officers, and

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<sup>13</sup> See, e.g., ss. 493.6105, 493.6108, F.S.

<sup>14</sup> Section 493.6105(3)(j), F.S.

repossession services officers.<sup>15</sup> Once the initial background check has been performed by the FDLE, the DACS is required to discard the licensees' fingerprints. As a result, the DACS must perform a name-based search of arrest records to fulfill its duty to conduct ongoing investigations into its licensees' criminal activity, including upon a licensee's renewal of his or her license.<sup>16</sup>

**Section 3** amends s. 493.6105(3), F.S., to require initial applicants for licensure under ch. 493, F.S., to submit a fingerprint processing fee and a fingerprint retention fee. The fees for fingerprint processing and retention must be set by agency rule. Applicants for multiple licenses issued pursuant to ch. 493, F.S., will only be subject to one fingerprint processing and fingerprint retention fee.

**Section 6** creates ss. 493.6108(4) and (5), F.S., to require the FDLE to retain all fingerprints that are submitted to the DACS as part of an application for licensure as a private investigator, security officer, recovery agent, firearms instructor, or related license under ch. 493, F.S., and then enter the retained fingerprints into the statewide automated biometric identification system and the FBI's national retained print arrest notification program (FBI fingerprint check). The FDLE has not yet begun participation in the FBI's fingerprint check program, but expects to begin phasing in its participation in 2 months.<sup>17</sup> In addition, the bill requires the FDLE to search the retained fingerprints against all arrest fingerprints and report any arrest record match to the DACS. This will allow the DACS to receive updated arrest information on its licensees and applicants in a more efficient process.

**Section 7** amends ss. 493.6113(1) and (3), F.S., to require current ch. 493, F.S., licensees to submit the following as part of their renewal application: a copy of their fingerprints, a state fingerprint retention fee, and a license renewal fee. This will allow the FDLE and DACS to subject current licensees to the fingerprint retention and examination processes implemented in section 6 of the bill. Additionally, the bill clarifies that firearm instructors, class "K" licensees, are subject to a 3 year, rather than a 2 year, license cycle. This reflects an update originally made in 2011.<sup>18</sup>

## **Concealed Weapon or Firearm License**

### ***Firearms Instructors***

There are currently three certification courses available to those who wish to become licensed as a Firearms Instructor (Class K) by the DACS:

- The Florida Criminal Justice Standards and Training Commission,
- National Rifle Association (NRA) Private Security Firearm Instructor Certificate, and
- Federal Law Enforcement Agency firearms instructor certificate.

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<sup>15</sup> Florida Department of Agriculture and Consumer Services, Division of Licensing, *Number of Licensees by Type*, (Jan. 8, 2016). Available at [http://www.freshfromflorida.com/content/download/7471/118627/Number\\_of\\_Licensees\\_By\\_Type.pdf](http://www.freshfromflorida.com/content/download/7471/118627/Number_of_Licensees_By_Type.pdf) (last visited January 8, 2016).

<sup>16</sup> Section 493.6118(1), F.S.

<sup>17</sup> Conversation with staff of the FDLE on Dec. 22, 2015.

<sup>18</sup> Ch. 2012-205, s. 6, Laws of Fla.

These certifications require that the applicant for certification be a federal or state law enforcement officer, have a statewide firearm or armed private security officer license for a minimum of 3 years, or be a current member of the U.S. Armed Forces. This prevents a broader population from becoming certified as a firearms instructor.

**Section 3** amends s. 493.6105(6)(a), F.S., to approve two new certification programs for firearm instructor, Class “K” licenses. The first is the International Association of Law Enforcement Firearms Instructors (IALEFI) course, which is open to individuals who have obtained military instructor certification.<sup>19</sup> The second is the Second Amendment Foundation (SAF) Training Division Firearms Instructors certification, which is open to those who complete specific coursework under the SAF curriculum.<sup>20</sup>

### ***Residency Requirement for Concealed Weapon or Firearm License***

In 2012, the U.S. Department of Justice effectuated a rule change<sup>21</sup> to 27 CFR, Pt. 478, to remove the requirement that lawfully present aliens prove that they have resided in a state within the U.S. for 90 days in order to purchase or acquire a firearm.

**Section 4** conforms s. 493.6106(1)(f), F.S., specific to applicants for statewide firearm licenses or firearms instructor licenses under ch. 493, F.S., to the above change by deleting the application requirement that a permanent legal resident alien show proof of his or her residency in Florida for at least 90 consecutive days prior to submission of an application for licensure.

### ***Concealed Weapon or 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 38** of the 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.

The bill also requires the DACS to expedite the application for a concealed weapon or firearm license for an applicant who is a service member or veteran, defined as a person who served in the active military, naval, or air service and who was discharged or released under honorable conditions only or who later received an upgraded discharge under honorable conditions.<sup>22</sup>

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<sup>19</sup> International Association of Law Enforcement Firearms Instructors, *Orientation and Course Overview*, available at <http://www.ialefi.com/IALEFI/InstCert/2015%20Instructor%20Certification.html> (last visited Jan. 8, 2016).

<sup>20</sup> Second Amendment Foundation, *SAF Training Division Instructor Courses*, available at <http://www.saftd.org/instructor-courses/instructor-firearms-courses/saftd-instructor-courses> (last visited Jan. 8, 2016).

<sup>21</sup> U.S. Federal Register, Vol. 77, no. 110 (June 7, 2012), available at <https://www.gpo.gov/fdsys/pkg/FR-2012-06-07/html/2012-13770.htm>. (Last visited Jan. 8, 2016). See also, U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives, *Questions and Answers – Revised ATF F4473 (April 2012 Edition)*, available at: <https://www.atf.gov/file/61841/download>. (Last visited Jan. 8, 2016).

<sup>22</sup> Section 1.01(14), F.S.

Subject to section 38 of the bill, application fees for concealed weapon and firearm licenses will be reduced from \$70 to \$60 for initial applicants, and from \$60 to \$50 for renewal applicants.

Section 38 of the bill clarifies licensing qualifications regarding applicants' criminal history. Previously, an applicant with a felony criminal record was eligible for licensure if his or her criminal record was sealed or expunged by a court. The bill proposes to allow only applicants whose felony criminal record has been expunged to qualify for licensure. Additionally, the bill clarifies that an applicant may not be granted a license if he or she has had adjudication of guilt withheld or has had an imposition of sentence suspended for any misdemeanor crime of domestic violence, unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled, or the criminal record of such offense has been either sealed or expunged.

Lastly, section 38 of the bill provides for notice of the suspension or revocation of a concealed weapon or firearm license by either personal delivery to the licensee or applicant or by certified mail, return receipt requested to the licensee's or applicant's last known mailing address provided to the DACS. If notice by certified mail fails, a second attempt by either first-class mail addressed to the last known mailing address furnished to the DACS by the licensee, or e-mail sent to an e-mail address provided by the licensee shall constitute notice. A request for hearing subsequent to such notice must be made within 21 days if notice was made by personal delivery, or within 26 days after the date the DACS deposited the second attempted notice by first-class mail in the U.S. mail, or sent the e-mail.

#### ***Affidavits Submitted With Concealed Weapon or Firearm Licenses***

Currently, s. 790.06(11), F.S., requires a licensee who seeks to renew his or her concealed weapon or firearm license to submit a *notarized affidavit* stating that the licensee remains qualified for the license. **Section 39** amends s. 790.06(11), F.S., to require an *affidavit submitted under oath and under penalty of perjury*. The DACS states that this will streamline their taxed firearm licensing system.<sup>23</sup>

#### ***Tax Collector Issuance of Concealed Weapon or Firearm Licenses***

As of July 1, 2014, tax collectors who entered into a memorandum of understanding with the DACS may collect initial and renewal applications for concealed weapon or firearm permits.

**Section 40** amends s. 790.0625(8), F.S., to expand 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.

### **Various DACS Licenses and Regulations**

#### ***Health Studios***

The Health Studio Act, ss. 501.012-501.019, F.S., regulates health studios that enter into contracts for health studio services with consumers. Regulations under the act include:

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<sup>23</sup> Department of Agriculture and Consumer Services, *Agency Analysis of SB 772*, 10-11 (Dec. 1, 2015) (on file with the Committee on Commerce and Tourism).



- Registration with the DACS;
- Requirements that every contract with a consumer include certain provisions, such as the consumer's total payment obligations, and cancellation provisions;
- Provision of a security bond, generally ranging from \$10,000 to \$25,000, depending on the value of outstanding contracts with the studio; and
- Prohibited practices, such as committing an intentional fraud.

The DACS can seek an injunction or civil penalties for any violation of the act, and violations are generally misdemeanors. The DACS may also institute administrative prosecution of a health studio in violation of s. 501.015 or s. 501.016, F.S.

**Section 11** amends s. 501.0125(1), F.S., and adds s. 501.0125(6), F.S., to establish that personal trainers are not subject to the DACS' regulation of health studios, thus deregulating personal trainers. The bill defines "personal trainer" as an individual who:

- Does not have an established place of business for the primary purpose of physical exercise;
- Provides exercise equipment in incidental capacity to instruction provided; and
- Does not accept payment for services rendered more than 30 days after the date of payment.

According to the DACS, personal trainers traditionally do not issue binding contracts and do not collect a consumer's payment for services more than 30 days in advance, and therefore do not pose the same dangers to consumer's financial interests as brick and mortar health studios that use financing and long-term contracts.<sup>24</sup>

### *Commercial telephone sellers*

Commercial telephone sellers (telemarketers) must provide the address of each location at which he or she will do business. Current law allows telemarketers to provide a mail drop location as a physical address.

**Section 13** amends s. 501.605(2)(j), F.S., to require telemarketers to disclose the street address of each location from which he or she will be doing business, and no longer permits the use of a mail drop address.

### *Amusement Ride Safety Standards*

Florida has approximately 245 amusement parks and 190 traveling amusement companies that are subject to inspection by the DACS.<sup>25</sup> These parks include carnivals, water parks, go-kart courses, and bungee-jumping parks.<sup>26</sup> 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.<sup>27</sup> Additionally, parks subject to the DACS' regulations must show proof of sufficient employee training and insurance.

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<sup>24</sup> Department of Agriculture and Consumer Services, *Agency Analysis of SB 772*, 6 (Dec. 1, 2015) (on file with the Committee on Commerce and Tourism).

<sup>25</sup> 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 visited Jan. 8, 2016).

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

<sup>27</sup> *Id.*

**Section 36** amends s. 616.242, F.S., to exempt the following venues from the permitting, inspection, and insurance requirements for amusement rides:

- A water-related amusement ride operated as an incidental amenity to the core business of a lodging or 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).<sup>28</sup>

This 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.

### **Weights and Measurements**

The Bureau of Standards within the DACS is generally responsible for the inspection of weights and measures devices or instruments in Florida. This includes, but is not limited to, the prescription of the appropriate unit of weight or measurement to be used, testing of weights and measuring instruments used by any city or county, and inspection of commercial weights and measures that are used to determine the weight, measurement or total count of commodities offered for sale, such as fruit and vegetables at a grocery store. For the purpose of consumer protection, the Bureau of Standards is also empowered under s. 531.42, F.S., to enforce the proper use of weights and measuring instruments or devices and the advertisement of the correct weight or measurement on a good for sale.

**Section 18** amends s. 531.37(1), F.S., to clarify that the DACS does not regulate aviation fuel under ch. 531, F.S. Instruments and devices used to inspect aviation fuel have been exempt from regulation and inspection by the DACS under ch. 531, F.S., since 2013.<sup>29</sup>

**Section 19** amends s. 531.415(1), F.S., to merge and clarify fees for metrology laboratory calibration and testing services performed by the Bureau of Standards. As a result, individuals who submit a subject for linear measure tests that are calibrated to determine actual values will realize a fee reduction from \$100<sup>30</sup> to not more than \$75; all other fees for testing services remain the same. Section 19 also amends s. 531.415(2), F.S., to require that items submitted for

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<sup>28</sup> Department of Agriculture and Consumer Services, *Agency Analysis of SB 772*, 8 (Dec. 1, 2015) (on file with the Committee on Commerce and Tourism).

<sup>29</sup> Ch. 2013-251, s. 35, Laws of Fla.

<sup>30</sup> Metrology Fees, Florida Department of Agriculture and Consumer Services, available at: <http://www.freshfromflorida.com/Divisions-Offices/Consumer-Services/Business-Services/Standards/Metrology>. (Last visited Jan. 8, 2016.); Rule 5F-1.040(6), F.A.C.

testing be in a condition ready for testing, because the DACS cannot clean the subjects before testing.<sup>31</sup>

**Section 20** amends ss. 531.60(1) and (2), F.S., to clarify intent that commercial use permits issued by the DACS for commercially-used weights and measures instruments or devices (“instrument or device”) are granted to the *owner* of such weights and measures device, rather than to the *device* itself. The bill clarifies duties of the owner of permitted instruments and devices to require the owner and permit-holder to notify the DACS within 30 days of a change in permit status, including the expected non-renewal of the permit as a result of the instrument or device’s termination of use, or removal from the business location. Additionally, the bill requires new owners of currently permitted instruments or devices to apply for a new commercial use permit upon transfer of the item to the new owner; current law requires that a new permit “be issued” to the new owner. The DACS indicates that these changes will make their investigations more efficient.

Section 20 further amends s. 531.60(3), F.S., to remove language that allows properly permitted, non-commercial instruments and devices to be tested by the DACS.<sup>32</sup> The DACS no longer tests non-commercial instruments or devices.<sup>33</sup>

**Section 22** amends s. 531.62, F.S., to provide for an optional 2-year commercial-use permit. The DACS believes that this will reduce overall renewal permits, and make the process more efficient.<sup>34</sup>

**Sections 17 and 23** amend ss. 527.021(4) and 531.63(1)(a), F.S., respectively, to update the fee structure for weighing devices that are inspected by the DACS. Current law bases the maximum annual fee of such inspections on the number of devices per retail establishment, but the bill proposes to charge by number of devices in a single category instead. The bill also removes inspection of grain moisture meters from the fee schedule because the DACS no longer performs such inspections.<sup>35</sup> This section also creates a new \$150 fee for inspection of liquefied petroleum gas bulk delivery vehicles with a meter, which reflects the merger of the \$50 fee for registered transport vehicle inspection (currently found in s. 527.021(4), F.S.) and the \$100 fee for mass or volumetric flow meters (currently found in s. 531.63(2)(a) and(b), F.S.).

**Section 24** amends s. 531.65, F.S., to clarify that the DACS is authorized to apply more than one penalty if it is found that a weights or measures instrument or device is used commercially without a valid permit.

**Section 21** amends s. 531.61, F.S., to make conforming, technical changes.

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<sup>31</sup> Department of Agriculture and Consumer Services, *Agency Analysis of SB 772*, 7 (Dec. 1, 2015) (on file with the Committee on Commerce and Tourism).

<sup>32</sup> Department of Agriculture and Consumer Services, *Agency Analysis of SB 772*, 7 (Dec. 1, 2015) (on file with the Committee on Commerce and Tourism).

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

## Sellers of Travel

Part XI of ch. 559, F.S., the “Florida Sellers of Travel Act,” regulates business entities and individuals that sell pre-arranged travel, tourist-related services, or tour guide services.<sup>36</sup> These sellers of travel must annually register with the DACS, and post proof of a performance bond of up to \$50,000. The DACS may exercise its right to the performance bond for use and benefit of a traveler who is injured by a fraud, misrepresentation, breach of contract, financial failure, or violation of law by the seller of travel.<sup>37</sup>

**Section 27** amends s. 559.927, F.S., to clarify definitions used in ch. 559, F.S. Specifically, the bill proposes to:

- Delete tour-guide services and sightseeing tours in order to de-regulate the services;
- Amend the definition of “accommodations” to exclude long-term home rentals covered under a lease pursuant to ch. 83, F.S.; and
- Clarify the definition of “vacation certificates” to evince that a vacation certificate is necessary for any advanced travel for which no specific date for its use is designated, but is not necessary for travel for which dates are selected, guaranteed, and paid for at the time of purchase.

**Section 28** amends s. 559.928, F.S., to update seller of travel registration notice requirements and expand the DACS’ administrative enforcement power. Current law requires sellers of travel to place their registration number and a statement that their firm is “registered with the State of Florida as a Seller of Travel” on each contract and advertisement; this bill requires the same disclosure on certificates or any other travel documents.

The DACS is currently empowered to deny or refuse to renew a licensee’s or applicant’s license based on an applicant or licensee’s involvement in a crime involving fraud, dishonest dealing, or any other act of moral turpitude. The bill proposes to allow the DACS to revoke a license, in addition to its current administrative powers, for not only crimes involving fraud, dishonest dealing, or any other act of moral turpitude, but also any felony crime or pending criminal charges of theft, embezzlement or those that arise out of conduct as a seller of travel.

**Section 29** amends ss. 559.929(2) and (6), F.S., to make technical clarifications to existing statute.

**Sections 30, 31, and 32** amend s. 559.9295, 559.932, and 559.933, F.S., respectively, to update filing requirements placed on the seller of travel. The bill proposes to:

- Delete the requirement that the DACS review the filed vacation certificate disclosure within 10 days of its submission to the DACS. This allows the DACS more time to review the disclosure without it automatically being deemed in compliance as a result of passage of time alone;
- Amend DACS’ duty to review the vacation certificate or contract only for their compliance with legally-required disclosures under s. 595.932, F.S., rather than the contract or certificate

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<sup>36</sup> Sections 559.926-.927, F.S.

<sup>37</sup> Section 559.929(2), F.S.

in its entirety. The DACS indicates that this will still ensure consumer protection, but be more efficient;<sup>38</sup>

- Require at least 10-point font for disclosure language provided on vacation certificates; and
- Make technical, non-substantive changes to clean up required cancellation and refund notices that must be made by the seller of travel on vacation certificates.

**Sections 33 and 35** amend ss. 559.9335 and 559.936, F.S., respectively, to modernize the statute and expand prohibited practices, and to update cross-references. Specifically, section 33 prohibits making false statements in response to any inquiry made by the DACS or any other governmental agency, and knowingly selling vacation certificates in excess of the accommodations available at the time of the sale (where current law makes it a violation to sell in excess of the number of available accommodations that was disclosed to the DACS).

**Section 34** amends s. 559.935, F.S., to delete the requirement that affiliates of sellers of travel file an affidavit of exemption with the DACS in order to obtain an exemption from specific sections of the Sellers of Travel Act. Section 559.935, F.S., still appears to regulate such affiliates, but it is unclear how the DACS will grant or revoke such exemptions when no initial proof of eligibility for the exemption is required.

**Sections 42 and 43** amend ss. 559.9285 (1) and (3)(d), and 559.937(2), F.S., respectively, to make conforming changes to reflect the deregulation of tour-guide services.

### **Enforcement of Lien by Sale of Motor Vehicle**

The Motor Vehicle Advisory Council was created to advise and assist the DACS about issues relating to ss. 559.901-559.9221, F.S., the “Florida Motor Vehicle Repair Act” (act). The act generally requires motor vehicle repair shops to register with the DACS and perform various duties designed to ensure consumer protection.

The act also delineates rights and duties that accrue to the shop and vehicle owner if the owner fails to pay for authorized repairs that were performed. In essence, the shop (lienor) may assert its legal right to the vehicle, subject to the customer’s (lienholder’s) right to request a hearing to dispute the lien, or to file a bond for the value of the vehicle, plus the cost of any repairs, storage, or reasonable fees,

**Section 41** amends s. 559.917, F.S., to define “lienholder” as the person claiming an interest in a lien or on a vehicle, and “lienor” as a person claiming a lien for motor vehicle repair shop work. This expands the right to present a bond to release a possessory lien claimed by a motor vehicle repair shop to include any party with an interest in the vehicle, e.g., the vehicle dealer who holds title to the car, in addition to the customer who authorized the repairs on the vehicle.

**Section 37** amends s. 713.585, F.S., to reduce the number of days that the lienor is required to give notice to the registered owner of the vehicle, the customer who requested the repairs, and to

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<sup>38</sup> Department of Agriculture and Consumer Services, *Agency Analysis of SB 772*, 8 (Dec. 1, 2015) (on file with the Committee on Commerce and Tourism).

all other persons who claim an interest in the vehicle, from 15 to 7 days from the initial assessment of storage charges on the motor vehicle.

In addition, section 37:

- Provides processes by which a lienholder who has posted a bond in favor of the vehicle may take possession of the vehicle, or, in cases in which the owner is not in default under his or her installment sales contract or title loan, must return the vehicle to the owner;
- Requires a court that hears a complaint relating to a vehicle subject to a s. 713.585, F.S., lien, to provide for immediate payment of any proceeds or awards, and the immediate release of the bond to the posting party, if applicable; and
- Makes technical, conforming changes to s. 713.585, F.S.

**Section 44** provides an effective date of July 1, 2016, except as where otherwise stated in the bill.

#### **IV. Constitutional Issues:**

##### A. Municipality/County Mandates Restrictions:

None.

##### B. Public Records/Open Meetings Issues:

None.

##### C. Trust Funds Restrictions:

None.

##### D. Other Constitutional Issues:

The 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.”<sup>39</sup> 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.<sup>40</sup>

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 personal service for the publication of such

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

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

information in general circulation newspapers as a method of notice.<sup>41</sup> 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.<sup>42</sup>

**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 and application fee waivers. Certain personal trainers will not be subject to registration as a health studio any longer, and will not have to pay an annual registration fee. Specific businesses will be exempt from amusement ride inspections and costs associated therewith.

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. A path to certification as a Firearms Instructor will be broadened, thereby allowing qualified individuals to more quickly obtain employment as a Firearms Instructor.

Automobile dealers will have an avenue to better preserve their interests in a lien on a vehicle they sold, but is now subject to a motor vehicle repair shop’s lien under s. 559.917, F.S. Additionally, parties involved in such lien disputes will possibly accrue smaller storage fees since the required term for notice prior to enforcement of the lien is reduced from 15 to 7 days.

**C. Government Sector Impact:**

Military Veteran Fee Waiver

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

	FY 16-17	FY 17-18	FY 18-19
Division of Consumer Services Application Fees <sup>43</sup>	(\$51,250)	(\$51,250)	(\$51,250)

<sup>41</sup> See s. 790.0601, F.S.; Florida Department of Agriculture and Consumer Services, *Agency Bill Analysis for SB 772*, 10 (Dec. 1, 2015) (on file with the Committee on Commerce and Tourism).

<sup>42</sup> *Anderson v. State*, 87 So. 3d 774, 776 (Fla. 2012).

<sup>43</sup> This number is based on an estimated 231,000 veterans from the Afghanistan and Iraq wars who live in Florida, while this Committee’s research estimates that 165,000 veterans from the Afghanistan and Iraq wars live in Florida. Department of Agriculture and Consumer Services, *Agency Analysis of SB 772*, 12 (Dec. 1, 2015) (on file with the Committee on Commerce and Tourism).

Division of Licensing Application & License Fees <sup>44</sup>	(\$164,965)	(\$164,965)	(\$164,965)
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### Chapter 493: Fingerprint Retention and Renewals Revenues

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

	FY 16-17	FY 17-18	FY 18-19
FBI Funds <sup>45</sup>	\$1,559,958	\$1,559,958	\$469,577
FDLE Operating Trust Fund <sup>46</sup>	\$1,050,237	\$1,050,237	\$709,840
Subtotal:	\$2,610,195	\$2,610,195	\$1,178,417

The FY 2018-2019 revenues from fingerprint retention fees decrease significantly because current licensees will have caught up on the one-time FBI fingerprint retention fee and the background check fingerprint fee, leaving only the annual \$6 Florida fingerprint retention fee.

The FDLE states that this bill, in concert with other background screening proposals currently in the Legislature, may necessitate an additional FTE or other resources.<sup>47</sup>

### Chapter 493: Fingerprint Retention and Renewals Expenditures

The DACS expects to spend the following for the processing through of costs and fees collected to the FBI and FDLE for the fingerprint retention and processing services provided:

	FY 16-17	FY 17-18	FY 18-19
Division of Licensing Trust Fund FBI/FDLE Disbursements	\$2,592,000	\$2,592,000	\$1,126,000

### Safety Standards for Amusement Rides

The DACS expects a reduction in revenue due to the use of the ch. 496, F.S. inspection exemption by two non-profit companies:

<sup>44</sup> This number assumes that veterans will constitute 10% of applicants for licensure under ch. 493, F.S. The DACS received 33,199 applications for licensure under ch. 493, F.S., in FY 2014-2015. Department of Agriculture and Consumer Services, *Agency Analysis of SB 772*, 12 (Dec. 1, 2015) (on file with the Committee on Commerce and Tourism).

<sup>45</sup> According to the DACS, this total estimates that 33,944 new applicants, plus 40,313 renewal applicants will pay the one-time FBI fingerprint retention \$13.00 fee that covers the duration of a license; in addition, 39,650 renewal applicants will pay the "standard national background check fingerprint fee of \$14.75." *Id.* at 12-13.

<sup>46</sup> This total estimates that 33,944 new applicants plus 40,313 renewal applicants will be subject to the \$6.00 annual Florida fingerprint retention fee; in addition, 40,313 renewal applicants will also pay the standard FDLE background check fingerprint processing fee of \$15. *Id.*

<sup>47</sup> Florida Department of Law Enforcement, *Agency Analysis of SB 772*, 5 (Dec. 23, 2015) (on file with the Committee on Commerce and Tourism).



FY 16-17	FY 17-18	FY 18-19
(\$2,280)	(\$2,280)	(\$2,280)

Chapter 790 Fee Reductions

The DACS expects a reduction in revenue as a result of the proposed fee reduction for concealed weapon licenses. However, the Department states that “if this proposal is enacted, the division will absorb the additional workload of processing refunds for the substantial volume of new and renewal applications submitted for the previous fee amount, as well as costs for revised application forms, brochures, information materials and information system programming costs.”

	FY 16-17	FY 17-18	FY 18-19
New CW License Fee Reduction	(\$1,650,000)	(\$1,550,000)	(\$1,550,000)
Renewal CW License Fee Reduction	(\$1,294,010)	(\$1,240,260)	(\$1,162,230)
Total-Division of Licensing Trust Fund	(\$2,994,010)	(\$2,790,260)	(\$2,712,230)

Chapter 790: Notice of Service

The DACS expects the following recurring expenditure for provision of service of notice by personal service or U.S. mail. These expenditures represent a reduction in costs from the \$158,948 expended on publication fees for Service of Process during FY 2013-2014.

FY 16-17	FY 17-18	FY 18-19
(\$140,186)	(\$140,186)	(\$140,186)

Court filings may increase as a result of the expanded lienholder rights under s. 559.917, F.S. This may result in additional financial expenditures by circuit courts to accommodate the increase.

**VI. Technical Deficiencies:**

Section 34 should be clarified to evince how the DACS will grant or revoke a seller’s of travel affiliate’s exemptions when no initial proof of eligibility for the exemption is required.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 472.007, 472.015, 493.6105, 493.6106, 493.6107, 493.6108, 493.6113, 493.6202, 493.6302, 493.6402, 501.0125, 501.015, 501.605, 501.607, 507.03, 527.02, 527.021, 531.37, 531.415, 531.60, 531.61, 531.62, 531.63, 531.65, 539.001, 559.904, 559.927, 559.928, 559.929, 559.9295, 559.932, 559.933,

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559.9335, 559.935, 559.936, 616.242, 790.06, 790.0625, 559.9285, 559.937, 713.585, and 559.917.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

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

**CS by Commerce and Tourism on January 11, 2016:**

- Makes a technical change to use consistent language to clarify that, in two specific instances, an applicant's *registration* fee will be waived;
- Amends the Service of Process requirements for licensees and applicants for a concealed weapon or firearm license to require either personal service or certified mail, return receipt requested to the licensee at his or her last known mailing address furnished to the DACS.
- Allows additional parties to assert their financial interest in a motor vehicle that is subject to a s. 713.585, F.S., motor vehicle repair lien. Additionally, the bill make conforming changes and reduces the number of days that a lienor (generally a motor vehicle repair shop) is required to give notice of their intent to enforce their interest in the lien on the car.

**B. Amendments:**

None.