

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 467 Department of Agriculture and Consumer Services
SPONSOR(S): Agriculture & Property Rights Subcommittee; Raburn
TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 498

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Property Rights Subcommittee	15 Y, 0 N, As CS	Thompson	Smith
2) Agriculture & Natural Resources Appropriations Subcommittee	11 Y, 0 N	White	Pigott
3) Commerce Committee			

SUMMARY ANALYSIS

The bill contains modifications to several agricultural, consumer service, and licensing activities under the jurisdiction of the Florida Department of Agriculture and Consumer Services (Department). The bill in part:

- Allows agriculture education and promotion facility applications to be submitted electronically;
- Removes an outdated rulemaking reference adopting the Federal Worker Protection standards;
- Revises provisions related to cattle marks and brands;
- Applies marketing order certification filing requirements to the Division of Fruit and Vegetables;
- Authorizes the Department to enforce the Florida Building Code on all Florida Forest Service facilities;
- Clarifies that the sale of aquaculture products is allowed by aquaculture producers and dealers;
- Exempts dealers in agricultural products who pay by credit card from certain regulations;
- Removes the five-year expiration period for the Do Not Call list;
- Strengthens household moving insurance requirements;
- Exempts certain contracted persons from surveying and mapping regulations;
- Deletes an obsolete provision related to photogrammetrists;
- Removes metal impression seals as the exclusive seal used by registered surveyors or mappers;
- Revises requirements of surveyors and mappers when submitting elevation certificates;
- Exempts certain office gyms from state regulation;
- Excludes taximeters and digital networks from weights and measures requirements;
- Aligns the concealed weapon and firearm mental health restoration requirements;
- Reduces the initial and renewal license fees for concealed weapons permits;
- Allows a manager of a private investigative agency to manage multiple locations;
- Exempts certain partners and corporate officers from fingerprint retention requirements;
- Revises certification document requirements for Class "K" licenses;
- Authorizes Department access to Department of Law Enforcement mental competency data;
- Requires a licensee to notify their employer if arrested, and provides grounds for disciplinary action;
- Revises notification requirements of private investigative, security, and recovery agencies;
- Requires Class "G" licensees to successfully complete firearm training;
- Allows for the temporary suspension of certain licensees arrested or formally charged with certain crimes; and
- Revises private investigator and security officer training requirements.

The bill revises and eliminates certain licensing and renewal provisions resulting in a significant but sustainable fiscal impact to the Department, and a reduction in Department expenditures. See Fiscal Analysis & Economic Impact Statement section for discussion.

The effective date of the bill is July 1, 2017.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0467c.ANR

DATE: 3/15/2017

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The mission of the Department is to safeguard the public and support Florida's agricultural economy by:

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

The Division of Consumer Services, within the Department, 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, household moving services, and weighing and measuring devices.¹

The Division of Licensing, within the Department, issues professional licenses to persons providing private security, private investigative, and recovery services to the public pursuant to ch. 493, F.S. In 2017, the Division of Licensing regulated a total of approximately 1.6 million private security, private investigative, and recovery services licenses in the state of Florida.²

The bill includes modifications to several agricultural, consumer services, and licensing activities under the Department's jurisdiction. Each portion of this analysis is divided by subject and followed by a listing of the applicable sections of the bill.

CHAPTER 493, F.S. - PRIVATE INVESTIGATIVE, PRIVATE SECURITY, AND REPOSSESSION SERVICES (Sections 8-22)

Manager of Private Investigative Agency (Section 8)

Present Situation

Current law defines a "manager" as any licensee who directs the activities of licensees at any agency or branch office.³ The law requires the manager to be assigned to, and primarily operate from, the agency or branch office location for which he or she has been designated as manager.⁴

Effect of Proposed Changes

The bill adds that a manager of a private investigative agency may manage multiple private investigative agencies and branch offices. According to the Department, this change considers

¹ The Department of Agriculture and Consumer Services, Division of Consumer Services website available here: <http://www.freshfromflorida.com/Divisions-Offices/Consumer-Services> (last viewed February 7, 2017).

² The Department of Agriculture and Consumer Services, Division of Licensing, *Number of Licensees by Type As of January 31, 2017*, available at: http://www.freshfromflorida.com/content/download/7471/118627/Number_of_Licensees_By_Type.pdf, (last visited February 14, 2017).

³ s. 493.6101(13), F.S.

⁴ Id.

advancements in technology that allow an individual to manage multiple locations, and will eliminate multiple licenses and fees without harm to the public.⁵

Fingerprint Retention Exemption (Section 9)

Present Situation

Current law requires each individual, partner, or principal officer in a corporation seeking licensure under ch. 493, F.S., to file with the Department a complete initial application and submit, among other things, a full set of fingerprints, a fingerprint processing fee, and a fingerprint retention fee.⁶ The fees include the cost of retaining the fingerprints in the statewide automated biometric identification system established in s. 943.05(2)(b), F.S., and the cost of enrolling the fingerprints in the national retained print arrest notification program as required under s. 493.6108, F.S.⁷

While many agency partners and corporate officers carry individual ch. 493, F.S., licenses and, therefore, are already required to submit their fingerprints, participate, and pay the ongoing cost, associated with enrollment in fingerprint retention, some partners and corporate officers do not hold licensure by the Department.

Effect of Proposed Changes

The bill provides that partners and corporate officers who do not possess licenses subject to renewal under s. 493.6113, F.S., are exempt from the fingerprint retention requirements of the statewide automated biometric identification system established in s. 943.05(2)(b), F.S. and the ongoing costs associated with enrolling and retaining their fingerprints in the national retained print arrest notification program required under s. 493.6108, F.S.

Firearms Instructor Documentation (Section 9 continued)

Present Situation

Current law requires that in addition to the application, photograph, requisite fees and a full set of fingerprints, an applicant for a Class “K” license (firearms instructor license)⁸ must provide proof of firearm training. Specifically, the law requires firearms instructors to submit one of the following:

- The Florida Criminal Justice Standards and Training Commission Instructor Certificate⁹ and written confirmation by the commission that the applicant possesses an active firearms certification.
- The National Rifle Association Private Security Firearm (NRA) Instructor Certificate.¹⁰
- A firearms instructor certificate issued by a federal law enforcement agency.¹¹

This existing language does not set forth time parameters for these certifications, which allows potential for an applicant to submit certification documents that are less than recent.

⁵ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2017 House Bill 467, p. 3 (Feb. 8, 2017).

⁶ s. 493.6105(3)(j), F.S.

⁷ Id.

⁸ s. 493.6101(14), F.S., defines “firearm instructor” as any Class “K” licensee who provides classroom or range instruction to applicants for a Class “G” statewide firearm license.

⁹ Information regarding the Criminal Justice Standards & Training Commission Certificate can be found on the Florida Department of Law Enforcement Criminal Justice Standards & Training Commission (CJSTC) webpage, available here:

<http://www.fdle.state.fl.us/cms/CJSTC/Commission/CJSTC-Home.aspx> (last viewed February 8, 2017).

¹⁰ Information regarding the National Rifle Association Instructor Development Schools can be found on the NRA Instructor Development Schools webpage, available here: <http://le.nra.org/training/instructor-development-schools.aspx#schedule> (last viewed February 8, 2017).

¹¹ s. 493.6105(6), F.S.

Effect of Proposed Changes

The bill provides that both the NRA and federal firearm training certificates must be valid and issued not more than three years before the submission of the applicant's firearms instructor application.

Investigation of Applicants - Mental Competency Data Access (Section 11)

Present Situation

Current law requires the Department to investigate an applicant for a ch. 493, F.S., private investigative, private security, and repossession service license before it may issue the license.¹² A component of the investigation requires a mental health inquiry to determine whether the applicant has been adjudicated incompetent under ch. 744, F.S., the Florida Guardianship Law, or has been committed to a mental institution under ch. 394, F.S., the Florida mental health law.¹³

The Department of Law Enforcement maintains the Mental Competency (MECOM) database for the purposes of listing persons who are prohibited from purchasing a firearm.¹⁴ MECOM contains information submitted by county clerks of court, including court records of adjudications of mental defectiveness or commitments to mental institutions.¹⁵

Currently, the Department is able to access this information for the purpose of issuing or retaining a concealed weapon license under ch. 790, F.S.¹⁶ However, the Department does not have the authority to access MECOM to review the mental health or substance abuse records of ch. 493, F.S., private investigative, private security, and repossession service applicants. Consequently, the only method available to confirm the existence of an adjudication of incapacity or a commitment is through an applicant's certification in their license application.¹⁷

Effect of Proposed Changes

The bill allows the Department, notwithstanding s. 790.065(2)(a)4.f., F.S.,¹⁸ to receive MECOM data of individuals who are prohibited from purchasing a firearm, for the purposes of determining eligibility of Class "G" or Class "K" applicants and licensees under ch. 493, F.S. This would help prevent such licensure of individuals who have been adjudicated incompetent under ch. 744, F.S., or committed to a mental institution under ch. 394, F.S., unless competency has been judicially restored.

Arrest Notification (Parts of Sections 11 and 15)

Present Situation

Current law does not require ch. 493, F.S., private investigative, private security, and repossession services licensees to notify their employer if they have been arrested. Conversely, the law requires the Department to provide this information to the employer.¹⁹ Specifically, the law provides that when the

¹² s. 493.6108, F.S.

¹³ s. 493.6108(1)(b), F.S.

¹⁴ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2017 House Bill 467, p. 4 (Feb. 8, 2017).

¹⁵ s. 790.065(2)(a)4.c.(I), F.S., requires clerks of court to provide FDLE with names and identifying information of individuals committed under chapters 394, 397, or 744, F.S.

¹⁶ s. 790.065 (2)(a)4.f., F.S., authorizes FDLE to provide the Department with mental health and substance abuse data of individuals who are prohibited from purchasing a firearm for the purposes of determining eligibility of applicants and licensees under ch. 790, F.S.

¹⁷ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2017 House Bill 467, p. 4 (Feb. 8, 2017).

¹⁸ s. 790.065 (2)(a)4.f., F.S., authorizes FDLE to provide the Department with mental health and substance abuse data of individuals who are prohibited from purchasing a firearm for the purposes of determining eligibility of applicants and licensees under ch. 790, F.S.

¹⁹ s. 493.6108(5), F.S.

Department receives information about an arrest within the state of a person who holds a valid license issued under ch. 493, F.S., for a crime that could potentially disqualify the person from holding such license, the Department must provide the arrest information to the agency that employs the licensee.²⁰

Effect of Proposed Changes

The bill requires a person licensed under ch. 493, F.S., to notify his or her employer within three calendar days if he or she is arrested for any offense. The bill also includes failure of any licensee to notify his or her employer within three calendar days if arrested for any offense as grounds for disciplinary action.²¹

Agency Notification Requirements (Section 12)

Present Situation

Current law provides requirements for private security, investigative, and recovery agencies, or schools to follow when notifying the Department of changes of partners, officers, or employees.²²

Specifically, the law requires the agencies or schools to do the following:

- After filing the application, unless the Department declines to issue the license or revokes it after issuance, an agency or school must, within five working days of the withdrawal, removal, replacement, or addition of any or all partners or officers, notify and file with the Department complete applications for such individuals (the agency's or school's good standing under this chapter are contingent upon the Department's approval of any new partner or officer),²³ and
- Each agency or school must, upon the employment or termination of employment of a licensee, report such employment or termination immediately to the Department and, in the case of a termination, report the reason or reasons (the report must be on a form prescribed by the Department).²⁴

Effect of Proposed Changes

The bill removes the term "schools" from the requirements that must be followed when notifying the Department of changes of partners, officers, or employees; and replaces the requirement that an agency or school report the employment or termination of employment of a licensee *immediately*, to instead be *within 15 calendar days*.

According to the Department, the current law seemingly requires security officer training schools to submit applications for corporate officers. However, the schools do not currently submit applications for officers or add/remove officers. Security officer training school requirements are outlined in s. 493.6304, F.S., separate and apart from agency filing requirements. This change corrects potentially conflicting statutory requirements.²⁵

In addition, the bill revises the requirement that the agency or school report the employment or termination of employment of a licensee in a form prescribed by the Department, to instead be submitted electronically in a manner prescribed by the Department.

²⁰ Id.

²¹ Per s. 493.6118(2), F.S., disciplinary action taken by the Department may include(s): denying an application for the issuance or renewal of a license; issue a reprimand; impose an administrative fine in the Class I category pursuant to s. 570.971, F.S., for every county or separate offense, or place the licensee on probation for a period of time and subject to such conditions as the Department may specify.

²² s. 493.6112, F.S.

²³ s. 493.6112(1), F.S.

²⁴ s. 493.6112(2), F.S.

²⁵ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2017 House Bill 467, p. 5 (Feb. 8, 2017).

Renewal Applications (Section 13)

Present Situation

Current law requires that an applicant for renewal of a Class “G”, statewide firearm license, submit proof that he or she has received, during each year of the license period, a minimum of four hours of firearms recertification training taught by a firearms instructor licensee and has complied with such other health and training requirements that the Department must adopt by rule.²⁶ Proof of completion of firearms recertification training must be submitted to the Department upon completion of the training.²⁷

Presently, the training requirement does not specify a type and caliber of firearm.

Effect of Proposed Changes

The bill requires a Class “G” licensee to successfully complete requalification training for each type and caliber of firearm carried in the course of performing his or her regulated duties.

The bill also replaces the term “recertification” with “requalification.” According to the Department, this nomenclature is used by the industry and is reflected in Department rulemaking.²⁸

Temporary Class “G” Licensure (Section 14)

Present Situation

Current law authorizes the Department to issue a Class “G” temporary firearm license, on a case-by-case basis, if the agency or employer of the applicant has certified that the applicant has been determined to be mentally and emotionally stable. Determinations are made by one of the following methods:

- A validated written psychological test taken within the previous 12-month period;
- An evaluation by a psychiatrist or psychologist licensed in this state or by the Federal Government made within the previous 12-month period; or
- The presentation of a DD form 214, issued within the previous 12-month period, which establishes the absence of emotional or mental instability at the time of discharge from military service.²⁹

The Department of Law Enforcement maintains the MECOM database for the purposes of listing persons who are prohibited from purchasing a firearm.³⁰ MECOM contains information submitted by county clerks of court, including court records of adjudications of mental defectiveness or commitments to mental institutions.³¹

Currently, the Department is able to access this information for the purpose of issuing or retaining a concealed weapon license under ch. 790, F.S.³² However, the Department does not have authority to access MECOM to review the mental health or substance abuse records of ch. 493, F.S., private investigative, private security, and repossession service applicants.

²⁶ s. 493.6113(3)(b), F.S.

²⁷ Id.

²⁸ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2017 House Bill 467, p. 5 (Feb. 8, 2017).

²⁹ s. 493.6115(12), F.S.

³⁰ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2017 House Bill 467, p. 4 (Feb. 8, 2017).

³¹ s. 790.065(2)(a)4.c.(I), F.S., requires clerks of court to provide FDLE with names and identifying information of individuals committed under chapters 394, 397, or 744, F.S.

³² s. 790.065 (2)(a)4.f., F.S., authorizes FDLE to provide the Department with mental health and substance abuse data of individuals who are prohibited from purchasing a firearm for the purposes of determining eligibility of applicants and licensees under ch. 790, F.S.

Effect of Proposed Changes

The bill allows the Department to review MECOM data of individuals applying for a temporary Class “G” license to determine that the applicant is not prohibited from licensure based upon the data.

This section also corrects a cross-reference in s. 493.6115(4), F.S., regarding the conditions under which a Class “G” licensee may carry a concealed weapon.

Grounds for Disciplinary Action - Temporary License Suspension (Part of Section 15)

Present Situation

Current law enumerates the grounds under which a licensee under ch. 493, F.S., may be subject to disciplinary action by the Department.³³ The Administrative Procedure Act (APA) specifies the procedures for such agency actions,³⁴ including requirements for when an agency deems its actions necessary to protect the public, but not of an imminent emergency nature.³⁵ In addition, the APA specifies the procedures to follow if an agency finds that immediate serious danger to the public health, safety, or welfare requires emergency suspension, restriction, or limitation of a license.³⁶

Thus, if the Department determines that the arrest of a ch. 493, F.S., licensee constitutes an immediate danger to the public health, safety, or welfare, the Department follows the emergency suspension procedures established in the APA.³⁷ This requires an agency to proceed to a suspension or revocation hearing pursuant to ss. 120.569 and 120.57, F.S., after the issuance of the emergency suspension order. However, according to the Department, this particular requirement is problematic because to proceed with administrative action based on a licensee’s arrest during the pendency of criminal proceedings can result in an administrative hearing being held before or during a criminal trial.³⁸ The Department indicates that both prosecutors and defense attorneys are extremely reluctant to allow witnesses to be deposed and testify at an administrative hearing before a criminal trial takes place as the same facts will be used to prove both cases.³⁹

Currently, the Department of Financial Services is mandated, upon receipt of information or an indictment, to immediately temporarily suspend the licenses of bail bond agents and insurance agents when the licensees have been charged with certain crimes.⁴⁰ Along with these temporary suspension orders, the licensees are notified of their right to challenge the action by requesting a hearing pursuant to ss. 120.569 and 120.57, F.S.

Effect of Proposed Changes

Similar to the authority provided to the Department of Financial Services, the bill allows the Department to temporarily suspend a Class “G” or “K” license until resolution of the criminal proceeding if the licensee was arrested or charged with a firearms related crime. The bill also allows the Department to temporarily suspend any ch. 493, F.S., license until resolution of the criminal proceeding, if the licensee was arrested for a forcible felony.⁴¹ In each instance, the suspended licensee must be provided with notice of his or her ch. 120, F.S., administrative hearing rights.

³³ s. 493.6118, F.S.

³⁴ s. 120.60(5) and (6), F.S.

³⁵ s. 120.60(5), F.S.

³⁶ s. 120.60(6), F.S.

³⁷ s. 120.60(6), F.S.

³⁸ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2017 House Bill 467, p. 6 (Feb. 8, 2017).

³⁹ Id.

⁴⁰ ss. 648.45(1) and 626.611(2), F.S.

⁴¹ s. 776.08, F.S., defines “forcible felony” as treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing,

Specifically, the bill requires the Department to provide a licensee who is suspended under this section with a notice of hearing rights pursuant to chapter 120, F.S., for the limited purpose of determining whether the licensee has been arrested or charged with a disqualifying firearms related crime or forcible felony.

In circumstances where the criminal case results in a non-disqualifying disposition, the bill requires the Department to issue an order lifting the suspension, upon the licensee's submission to the Department of a certified copy of the final resolution. If the criminal case results in a disqualifying disposition, the suspension must remain in effect and the Department must proceed with revocation proceedings pursuant to chapter 120, F.S.

License Fees (Sections 10, 16, 18 and 21)

Present Situation

General licensing requirements in statute provide that Class "A," Class "B," Class "AB," Class "K," Class "R," and branch agency licenses are valid⁴² and renewable⁴³ for a period of three years. However, the fees for these licenses are currently listed under statutes that contain the term "biennial" in the section heading. This inconsistency was recently pointed out to the Department by the Joint Administrative Procedures Committee (JAPC).⁴⁴

Effect of Proposed Changes

The bill corrects inconsistencies of triennial licenses being listed under a heading of biennial by removing the term *biennial* from the licensing fee statute headings of ss. 493.6107, 493.6202, 493.6302, and 493.6402, F.S.

License/Training Requirements (Sections 17, 19, 20 and 22)

Present Situation

The below sections of statute contain obsolete effective dates and/or provisions requiring training to be provided in two parts:

Section 493.6203(5), F.S.

Effective January 1, 2008, an applicant for a Class "MA," (private investigative agency manager), Class "M," (manager Class "AB" agency), or Class "C" (private investigator) license must pass an examination that covers the provisions of ch. 493, F.S., and is administered by the Department or by a provider approved by the Department.

Section 493.6203(6)(b), F.S.

Effective January 1, 2012, before submission of an application to the Department, the applicant for a Class "CC" (private investigator intern) license must have completed a minimum of 40 hours of professional training pertaining to general investigative techniques and ch. 493, F.S., which course is offered by a state university or by a school, community college, college, or university under the purview of the Department of Education, and the applicant must pass an examination.

The training must be provided in two parts, one 24-hour course and one 16-hour course.

placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.

⁴² s. 493.6111(2), F.S.

⁴³ s. 493.6113(1), F.S.

⁴⁴ Joint Administrative Procedures Committee letter to the Department of Agriculture and Consumer Services Division of Licensing, December 20, 2016.

Section 493.6203(6)(c), F.S.

An individual who submits an application for a private investigator intern license beginning September 1, 2008, through December 31, 2011, who has not completed the 16-hour course to submit proof of successful completion of the course within 180 days after the date the application is submitted. If documentation of completion of the required training is not submitted by that date, the individual's license is automatically suspended until proof of the required training is submitted to the Department.

Section 493.6303(4)(a), F.S.

Effective January 1, 2012, an applicant for a Class "D" (security officer) license must submit proof of successful completion of a minimum of 40 hours of professional training at a school or training facility licensed by the Department.

The training must be provided in two parts, one 24-hour course and one 16-hour course.

Section 493.6303(4)(b), F.S.

An individual who submits an application for a security officer license beginning January 1, 2007 through December 31, 2011, who has not completed the 16-hour course to submit proof of successful completion of the course within 180 days after the date the application is submitted. If documentation of completion of the required training is not submitted by that date, the individual's license is automatically suspended until proof of the required training is submitted to the Department. A person licensed before January 1, 2007 is not required to complete additional training hours in order to renew an active license beyond the total required hours, and the timeframe for completion in effect at the time he or she was licensed applies.

Section 493.6403(2), F.S.

Beginning October 1, 1994, an applicant for a Class "E" (recovery agent) or a Class "EE" (recovery agent intern) license to have completed a minimum of 40 hours of professional training at a school or training facility licensed by the Department.

Effect of Proposed Changes

The bill removes the obsolete effective dates and/or provisions outlined above.

The bill removes the requirements in each respective provision that the training be provided in two parts. According to the Department, whether the courses are taught in two parts or one does not affect the training received by an applicant.⁴⁵

The bill requires applicants for a recovery agent or a recovery agent intern license to submit proof of their *successful completion* of the 40 hour training requirement.

The bill revises the provision that references security officer school and training requirements as "outlined" in s. 493.6303(4), F.S., to instead reference this training as "specified" in s. 493.6303(4), F.S.

CONSUMER SERVICES (Sections 2 – 6, and 23 - 28)**Board of Professional Surveyors and Mappers (Sections 2 – 6)****Present Situation**

The practice of surveying and mapping is governed by ch. 472, F.S. According to the Department, licensed surveyors and mappers make exact measurements and determine property boundaries.⁴⁶

⁴⁵ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2017 House Bill 467, p. 7 (Feb. 8, 2017).

⁴⁶ Florida Department of Agriculture and Consumer Services, Consumer Services A to Z Resource Guide: *Surveyors and Mappers*, <https://csapp.800helpfla.com/CSPublicApp/AZGuide/AZSearchResult.aspx#610731692> (last visited Mar. 8, 2017) .

They provide data relevant to the shape, contour, gravitation, location, elevation, or dimension of land or land features on or near the earth's surface for engineering, mapmaking, mining, land evaluation, construction, and other purposes.⁴⁷

The Board of Professional Surveyors and Mappers (Board) has authority to adopt rules to implement ch. 472, F.S., subject to approval by the Department.⁴⁸ The Board regulates professional surveyors and mappers and businesses that offer surveying and mapping services. The Board also approves continuing education providers and the continuing education courses that are offered to licensees.⁴⁹

Exempted Persons

Current law exempts from ch. 472, F.S., surveying and mapping regulations persons who are employees of any state, county, municipal, or other governmental unit of this state and who are the subordinates of a person in responsible charge registered under this chapter, to the extent that the supervision meets standards adopted by rule of the board, if any.⁵⁰

Orientation of Real Property

Current law defines that the “practice of surveying and mapping” to mean, among other things, any professional service or work, the adequate performance of which involves:

- The application of special knowledge of the principles of mathematics;
- The related physical and applied sciences, and
- The relevant requirements of law for adequate evidence of the act of measuring, locating, establishing, or reestablishing lines, angles, elevations, natural and manmade features in the air, on the surface and immediate subsurface of the earth, within underground workings, and on the beds or surface of bodies of water.⁵¹

The law provides that the purpose of these practices is to determine, establish, describe, display, or interpret the facts of size, shape, topography, tidal datum planes, legal or geodetic location or relocation, and orientation of improved or unimproved real property and appurtenances thereto, including acreage and condominiums.

Photogrammetrists

The practice of surveying and mapping also includes, but is not limited to, photogrammetric control.⁵² The specialization of photogrammetry focuses on measuring a subject using high-quality images.⁵³ Recent technological advances in digital cameras, computer processors, and computational techniques have increased access to accurate photogrammetry measurements.⁵⁴ In 2016, the Department reported 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.⁵⁵

⁴⁷ Id.

⁴⁸ s. 472.008, F.S.

⁴⁹ s. 472.018, F.S.

⁵⁰ s. 472.003(5)(a), F.S.

⁵¹ s. 472.005(4)(a), F.S.

⁵² s. 472.005(4)(b), F.S.

⁵³ See generally, Cultural Heritage Imaging, *Photogrammetry: What is it?*,

<http://culturalheritageimaging.org/Technologies/Photogrammetry/> (last visited Mar. 8, 2017).

⁵⁴ Id.

⁵⁵ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2016 House Bill 641, p. 3-4 (Nov. 17, 2015).

Metal Seals

Current law requires the Board to adopt, by rule, a form of seal to be used by all registrants holding valid certificates of registration.⁵⁶ Each registrant must obtain an impression-type metal seal in that form; and all final drawings, plans, specifications, plats, or reports prepared or issued by the registrant in accordance with the standards of practice established by the board must be signed by the registrant, dated, and stamped with the seal.⁵⁷

Elevation Certificates

Current law defines an “elevation certificate” as the certificate used to demonstrate the elevation of property which has been developed by the Federal Emergency Management Agency pursuant to federal floodplain management regulation and which is completed by a surveyor and mapper.⁵⁸ Beginning January 1, 2017, a surveyor and mapper is required to, within 30 days after completion, submit to the Division of Emergency Management within the Executive Office of the Governor a copy of each elevation certificate that he or she completes.⁵⁹ The copy must be unaltered, except that the surveyor and mapper may redact the name of the property owner.⁶⁰

Effect of Proposed Changes

Exempted Persons

The bill provides an exemption from surveying and mapping regulations for persons who are under contract with an individual registered or legal entity certified under ch. 472, F.S., and who are under the supervision of and subordinate to a person in responsible charge registered under this chapter.

Orientation of Real Property

The bill clarifies that the practice of surveying and mapping includes, but is not limited to, orientation of real property and attached personal property. In addition, the amendment adds volume to the list of measurable facts that are used by surveyors and mappers.

Photogrammetrists

The bill removes photogrammetrists from the list of applicants whom the Board is required to certify as qualified for a license by endorsement.

Metal Seals

The bill removes impression type metal seals as the exclusive seal that registered surveyors or mappers must stamp documents with, and instead simply requires “a seal.” This would allow the Board to adopt, by rule, a form of seal other than metal to be used.

Elevation Certificates

The bill revises the requirements of surveyors and mappers when submitting elevation certificates to the Division of Emergency Management to clarify that the copy submitted to the Division need not be signed and sealed. In addition, the bill requires surveyors and mappers to retain a signed and sealed copy in their records as prescribed by the Board of Professional Surveyors and Mappers.

⁵⁶ s. 472.025(1), F.S.

⁵⁷ Id.

⁵⁸ s. 472.0366(1)(a), F.S.

⁵⁹ s. 472.0366(2), F.S.

⁶⁰ Id.

Health Studios (Section 23)

Present Situation

Currently, the Division of Consumer Services within the Department regulates Health Studios.⁶¹ Requirements under the law include, but are not limited to:

- Registration with the Department,⁶²
- An annual registration fee of \$300 for each health studio location;⁶³
- Contract requirements such as consumer total payment obligations, and cancellation provisions;⁶⁴
- Provision of a security bond, generally ranging from \$10,000 to \$25,000;⁶⁵ and
- Prohibited practices, such as committing an intentional fraud.⁶⁶

Certain businesses are exempt from all of the provisions of the health studio registration law.⁶⁷ The following businesses or activities may be declared exempt upon filing an affidavit with the Department establishing that the business meets one of the following exemption qualifications:

- A bona fide non-profit organization which has been granted tax-exempt status by the United States Internal Revenue Service (IRS);
- A gymnastics school engaged only in instruction and training and in which exercise is only incidental to such instruction and training;
- A golf, tennis or racquetball club in which sports play is the only activity offered by the club. This exemption does not apply if the facility offers the use of physical exercise equipment;
- A program or facility offered and used only for the purpose of dance, aerobic exercise, or martial arts, and which utilizes no physical exercise equipment; and
- A country club that has as its primary function the provision of a social life and recreational amenities to its members, and for which a program of physical exercise is merely incidental to membership.

Effect of Proposed Changes

The bill exempts a program or facility that is offered by an organization for the exclusive use of its employees and their family members from the health studio regulations. This effectively exempts office gyms that are operated by a business for its employees.

Telephone Solicitation (Section 24)

Present Situation

The federal Telephone Consumer Protection Act provides for restrictions on unsolicited advertisement to a telephone.⁶⁸ The state mirrors this provision statutorily⁶⁹ and requires the Department to maintain the state's Do Not Call list,⁷⁰ also known as the “no sales solicitation calls” list.⁷¹ A “telephonic sales

⁶¹ ss. 501.012 – 501.019, F.S.; s. 501.0125(1), defines “health studio” as any person who is engaged in the sale of services for instruction, training, or assistance in a program of physical exercise or in the sale of services for the right or privilege to use equipment or facilities in furtherance of a program of physical exercise. The term does not include an individual acting as a personal trainer.

⁶² s. 501.015, F.S.

⁶³ Id.

⁶⁴ s. 501.017, F.S.

⁶⁵ s. 501.016, F.S.

⁶⁶ s. 501.019, F.S.

⁶⁷ s. 501.013, F.S.

⁶⁸ 47 U.S.C. s. 227.

⁶⁹ s. 501.059, F.S.

⁷⁰ Information regarding the Do Not Call list can be found at the Florida Department of Agriculture and Consumer Services, *Florida DO NOT CALL Program* webpage, available at: <https://www.fldnc.com/About.aspx> (last viewed February 9, 2017).

⁷¹ s. 501.059(3), F.S.

call” is defined as a telephone call or text message to a consumer for the purpose of soliciting a sale of any consumer goods or services, soliciting an extension of credit for consumer goods or services, or obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services or an extension of credit for such purposes.⁷²

Residents who do not wish to receive sales calls may have their residential, mobile, or telephonic paging device telephone number included on this list by the Department for a period of five years.⁷³ After the five years has expired, the person’s subscription expires.

Effect of Proposed Changes

The bill removes the five year subscription expiration period, allowing subscribers to remain on the list until they choose otherwise. This change will mirror the federal Telephone Consumer Protection Act which currently has no expiration.

Household Moving Services (Section 25)

Present Situation

Current law requires any person engaged in intrastate household moving services to register with the Department.⁷⁴ The law governs the loading, unloading, transportation or shipment, and affiliated storage of household goods by movers and applies to the operations of any mover or moving broker engaged in the intrastate transportation or shipment of household goods. The law is intended to secure the satisfaction and confidence of shippers and members of the public when using a mover.⁷⁵

A certificate of liability insurance coverage must be provided by the mover showing proof of proper coverage, issued by a company authorized to transact business in this state. The Department shall be named as a certificate holder and must be notified at least 10 days before cancellation of insurance coverage.⁷⁶ The insurance coverage must at a minimum include:

- Liability insurance coverage for the loss or damage of household goods as a result of the negligence of the mover in an amount of not less than \$10,000 per shipment.
 - In lieu of the required liability insurance coverage, a mover operating two or fewer trucks is authorized, and a moving broker is required, to file a performance bond or certificate of deposit in the amount of \$25,000 with the Department designating the Department as the sole beneficiary.⁷⁷
- Motor vehicle coverage, including bodily injury and property damage liability coverage in the following minimum amounts:
 - \$50,000 per occurrence for a commercial motor vehicle with a gross weight of less than 35,000 pounds;
 - \$100,000 per occurrence for a commercial motor vehicle with a gross weight of more than 35,000 pounds, but less than 44,000 pounds; and
 - \$300,000 per occurrence for a commercial motor vehicle with a gross weight of 44,000 pounds or more.⁷⁸

A mover’s failure to maintain liability insurance coverage constitutes an immediate threat to the public health, safety, and welfare.⁷⁹ If a mover fails to maintain insurance coverage, the Department is authorized to impose the following penalties:

⁷² s. 501.059(1)(g), F.S.

⁷³ s. 501.059(3), F.S.

⁷⁴ ch. 507, F.S.

⁷⁵ s. 507.02, F.S.

⁷⁶ s. 507.04, F.S.

⁷⁷ s. 507.04(1), F.S.

⁷⁸ s. 507.04(2), F.S.

⁷⁹ s. 507.04(1)(a)2., F.S.

- Immediately suspend the mover's registration or eligibility for registration, and the mover must immediately cease operating as a mover in this state,⁸⁰ and
- Notwithstanding the availability of any administrative relief pursuant to ch. 120, F.S., seek from the appropriate circuit court an immediate injunction prohibiting the mover from operating in this state until the mover complies, a civil penalty not to exceed \$5,000, and court costs.⁸¹

This provision only applies to liability insurance coverage requirements. As a result, the Department does not appear to have the authority to impose these penalties if a mover fails to maintain motor vehicle coverage.

Effect of Proposed Changes

The bill authorizes the Department to impose the penalties that are currently authorized for failure to maintain liability insurance, on household movers who fail to maintain the required motor vehicle insurance.

Weights and Measurements (Sections 26, 27 and 28)

Present Situation

Currently, the Bureau of Standards within the Department is responsible for the inspection of weights and measures devices or instruments in Florida.⁸² The law defines "weights and measures" as all weights and measures of every kind, instruments, and devices for weighing and measuring, and any appliance and accessories associated with any or all such instruments and devices, excluding those weights and measures used for the purpose of inspecting the accuracy of devices used in conjunction with aviation fuel.⁸³

The following commercial weights or measures instruments or devices are exempt from the requirements governing weights and measures if the device is:

- A taximeter that is licensed, permitted, or registered by a municipality, county, or other local government and is tested for accuracy and compliance with state standards by the local government in cooperation with the state as authorized in s. 531.421, F.S.
- Used exclusively for weighing railroad cars and is tested for accuracy and compliance with state standards by a private testing agency.
- Used exclusively for measuring aviation fuel or petroleum products inspected under chapter 525, F.S.⁸⁴

Proposed Changes

The bill excludes taximeters and digital networks from the definition of "weights and measures." In addition, the bill removes taximeters from the exemptions from weights and measures permit requirement, and from the list of maximum use permit fees established for weights or measures instruments or devices.

⁸⁰ Id.

⁸¹ Id.

⁸² ch. 531, F.S., "Weights and Measures Act of 1971."

⁸³ s. 531.37(1), F.S.

⁸⁴ s. 531.61, F.S.

AGRICULTURE (Sections 1, 7, 29, 30, 31, 32, 33, 34, and 35)

Agriculture Education and Promotion Facilities (Section 1)

Present Situation

The Department is required to serve as the state agency for screening and certifying applicants as a qualified agriculture education and promotion facility.⁸⁵ An “agriculture education and promotion facility” is defined as an exhibition hall, arena, civic center, exposition center, or other capital project or facility which can be used for exhibitions, demonstrations, trade shows, classrooms, civic events, and other purposes that promote agriculture, horticulture, livestock, equestrian, and other resources of the state and educate the residents as to these resources.⁸⁶ The Department is required to adopt rules pursuant to ss. 120.536(1), and 120.54, F.S., for the receipt and processing of applications for funding of projects pursuant to this section.

Applications must be submitted by October 1 of each year.⁸⁷ Current law does not prescribe a method for the applications to be submitted.

Effect of Proposed Changes

The bill requires agriculture education and promotion facility applications to be *postmarked or electronically* submitted by October 1 of each year.

Enforcement of Federal Worker Protection Regulations (Section 7)

Present Situation

The Environmental Protection Agency (EPA) Agricultural Worker Protection Standard (WPS) is a federal regulation aimed at reducing the risk of pesticide poisoning and injury among agricultural workers and pesticide handlers.⁸⁸ The EPA Labeling Requirements for Pesticides and Devices reviews pesticide product labels as part of the licensing and registration process for pesticides.⁸⁹ The label on a pesticide package or container and the accompanying instructions are a key part of pesticide regulation.⁹⁰ The label provides information about how to handle and safely use the pesticide product and avoid harm to human health and the environment.⁹¹

Chapter 487, F.S., is the Florida law that governs pesticide regulation and safety. This chapter is made up of the Florida Pesticide Law, which regulates the distribution, sale, and use of pesticides and the Florida Agricultural Worker Safety Act, which ensures that agricultural workers employed in the state receive protection from agricultural pesticides. The Department is the primary agency responsible for administering these laws and the Federal Worker Protection Standard, which was adopted by the Department in rule during the 1995-1996 fiscal year.⁹²

Effect of Proposed Changes

The bill removes the outdated reference to the 1995-1996 fiscal year in which the Department adopted the EPA regulations.

⁸⁵ s. 288.1175, F.S.

⁸⁶ s. 288.1175(3), F.S.

⁸⁷ s. 288.1175(8), F.S.

⁸⁸ 40 C.F.R. Part 140.

⁸⁹ 40 C.F.R. s. 156.10.

⁹⁰ United States Environmental Protection Agency, Pesticide Registration, Labeling Requirements webpage, available at: <https://www.epa.gov/pesticide-registration/labeling-requirements> (last viewed February 7, 2017).

⁹¹ Id.

⁹² s. 487.2041, F.S.

Livestock Marks and Brands (Sections 29, 30, and 31)

Present Situation

Current law requires any livestock owner who uses a mark or brand to identify their livestock to register the mark or brand by applying to the Department and paying a \$10 fee for each mark or brand.⁹³ Among other application requirements, the application must be made on a form prescribed by the Department and must be accompanied by a facsimile of the brand applied for.⁹⁴

Registration of a mark or brand entitles the registrant to exclusive ownership and use of the mark or brand for a five year period.⁹⁵ Marks or brands may be renewed for successive five year periods upon application and payment of a \$5 renewal fee.⁹⁶

Relating to the transfer of ownership of cattle, current law requires all purchasers of cattle, except for immediate slaughter, to remark or rebrand the same within 10 days or have on request a bill of sale from the rightful owner of marks and brands on cattle.⁹⁷ This requirement does not apply where an entire stock of cattle with the mark and brand or marks and brands carried by them is to be sold and conveyed.⁹⁸ The Department currently does not regulate transfer of ownership of cattle, and very few cattle owners rebrand purchased cattle.⁹⁹

Effect of Proposed Changes

Recording of Marks and Brands (Section 29)

The bill revises the requirement that an application be accompanied by a *facsimile* of the brand applied for, and instead allows a *detailed drawing* of the brand. According to the Department, this revision would update the statute to allow alternative methods to be offered to receive brand applications, such as e-mail of the application.¹⁰⁰

Renewal of Certificate of Mark or Brand (Section 30)

The bill extends the current mark and brand renewal period of five years to every ten years, and removes the required \$5 renewal fee.

Transfer of Ownership of Cattle (Section 31)

The bill repeals this entire section of law.

Assessment; funds; review of accounts; loans (Section 32)

Present Situation

Marketing Orders

Regarding the Department's responsibility to administer agricultural commodity marketing orders for every person engaged in the production, distributing, or handling of agricultural commodities within this state, current law requires the director of the Division of Marketing and Development to file with the

⁹³ s. 534.021, F.S.

⁹⁴ Id.

⁹⁵ s. 534.041, F.S.

⁹⁶ Id.

⁹⁷ s. 534.061, F.S.

⁹⁸ Id.

⁹⁹ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2017 House Bill 467, p. 9 (Feb. 8, 2017).

¹⁰⁰ Id.

internal auditor of the Department a certification of conditions and circumstances justifying each contract or agreement entered into without competitive bidding.¹⁰¹

Effect of Proposed Changes

The bill specifies that the Division of Fruit and Vegetables, rather than the Division of Marketing and Development, must file with the internal auditor a certification of conditions and circumstances justifying a contract or agreement that was entered into without competitive bidding.

This modification to statute will reflect the actual division that oversees this function due to recent Department restructuring.

Florida Forest Service Building Structures (Section 33)

Present Situation

The primary responsibility of the Florida Forest Service (FFS) is the prevention, detection, and suppression of wildfires wherever they may occur.¹⁰² In carrying out these responsibilities, the FFS is authorized to build structures¹⁰³ not to exceed a cost of \$50,000 per structure from existing resources on the following properties:

- Forest lands;
- Federal excess property; and
- Unneeded existing structures.¹⁰⁴

These structures must meet all applicable building codes.¹⁰⁵ In 2011, the Department was granted the exclusive authority to enforce the Florida Building Code as it relates to Department wildfire and law enforcement facilities.¹⁰⁶

Effect of Proposed Changes

The bill extends authority to enforce the Florida Building Code as it relates to Department wildfire and law enforcement facilities to also include *other* Florida Forest Service facilities.

According to the Department, this will allow the use of one building permit authority for all Florida Forest Service facilities allowing for more consistency and efficiency during the building permit process while still maintaining the assurance that all construction is designed and constructed in compliance with the Florida Building Code.¹⁰⁷

Aquaculture Certificate of Registration (Section 34)

Present Situation

The Florida Aquaculture Policy Act¹⁰⁸ defines “aquaculture” as the cultivation of aquatic organisms.¹⁰⁹ The act provides that “aquaculture products” are aquatic organisms and any product derived from

¹⁰¹ s. 573.118, F.S.

¹⁰² s. 590.01, F.S.

¹⁰³ Notwithstanding ch. 216, F.S., relating to the state agency planning and budgeting process, and ch. 255, F.S., relating to public property and publicly owned buildings.

¹⁰⁴ s. 590.02(4), F.S.

¹⁰⁵ Id.

¹⁰⁶ ch. 2011-206, Laws of Fla.; codified in s. 590.02(4)(b), F.S.

¹⁰⁷ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2017 House Bill 467, p. 10 (Feb. 8, 2017).

¹⁰⁸ ch. 597, F.S.

¹⁰⁹ s. 597.0015(1), F.S.

aquatic organisms that are owned and propagated, grown, or produced under controlled conditions.¹¹⁰ Such products do not include organisms harvested from the wild for depuration, wet storage, or relay for purification.¹¹¹

Current law requires that any person engaging in aquaculture be certified by the Department.¹¹² An aquaculture producer certified under this law is authorized to sell aquaculture products (except shellfish, snook, fish of the genus *Micropterus*, and prohibited and restricted freshwater and marine species identified by rules of the Fish and Wildlife Conservation Commission) without restriction so long as the product origin can be identified.¹¹³

There appears to be confusion as to whether wholesale and/or retail dealers are required to hold an aquaculture certificate of registration in order to sell aquaculture products. It is the Department's position that an aquaculture certificate of registration is only issued to those who produce (grow) aquaculture products, therefore wholesale and retail dealers would not be required to hold that specific certificate of registration.¹¹⁴

Effect of Proposed Change

The bill provides that aquaculture products (except shellfish, snook, fish of the genus *Micropterus*, and prohibited and restricted freshwater and marine species identified by rules of the Fish and Wildlife Conservation Commission) may be sold without restriction "*by an aquaculture producer certified pursuant to this section or by a dealer licensed pursuant to part VII of chapter 379.*"

According to the Department, this language would remedy the issue surrounding the interpretation of the statute, as this section is solely about the unrestricted sale of identified aquaculture products, not about who can sell these products at wholesale or retail.¹¹⁵

Dealers in Agricultural Products (Section 35)

Present Situation

Current law governing agricultural products dealers defines a "dealer in agricultural products" as "any person, partnership, corporation, or other business entity, whether itinerant or domiciled within this state, engaged within this state in the business of purchasing, receiving, or soliciting agricultural products from the producer or the producer's agent or representative for resale or processing for sale; acting as an agent for such producer in the sale of agricultural products for the account of the producer on a net return basis; or acting as a negotiating broker between the producer or the producer's agent or representative and the buyer."¹¹⁶

The law finds that producers are subject to the possibility of serious economic harm in the event an agricultural products dealer defaults.¹¹⁷ Therefore, it is necessary in the interest of the public welfare to regulate agricultural products dealers in this state.¹¹⁸ The regulations include, but are not limited to, licensing,¹¹⁹ bonding,¹²⁰ and penalties for violations of these requirements.¹²¹ These provisions do not

¹¹⁰ s. 597.0015(3), F.S.

¹¹¹ Id.

¹¹² s. 597.004(1), F.S.

¹¹³ s. 597.004(5)(a), F.S.

¹¹⁴ Id.

¹¹⁵ Id.

¹¹⁶ s. 604.15(2), F.S.

¹¹⁷ s. 604.151, F.S.

¹¹⁸ Id.

¹¹⁹ s. 604.17, F.S.

¹²⁰ s. 604.19, F.S.

¹²¹ s. 604.30, F.S.

apply to dealers who pay at the time of purchase with United States cash currency or a cash equivalent, such as a money order, cashier's check, wire transfer, electronic funds transfer, or PIN-based debit transaction.¹²²

Effect of Proposed Changes

The bill exempts dealers in agricultural products who pay at the time of purchase with a credit card from certain dealer regulations of the Department.

Concealed Carry Licensure (Section 36)

Present Situation

Restoration of Firearms Eligibility

Pursuant to the federal National Instant Criminal Background Check System Improvement Amendments Act of 2007,¹²³ current Florida law provides a process by which firearm disabilities may be removed for individuals who are prohibited under state and federal law¹²⁴ from purchasing a firearm due to a mental health or substance abuse commitment.¹²⁵ A person who has been adjudicated mentally defective or committed to a mental institution may petition the circuit court that made the adjudication or commitment for relief from the firearm prohibition.¹²⁶ A copy of the petition must be served on the state attorney for the county in which the person was adjudicated or committed.¹²⁷ The state attorney may object.¹²⁸ The court is required to grant relief if it finds, based on evidence presented regarding the petitioner's reputation, mental health record and criminal history record, the circumstances surrounding the firearm disability, and any other evidence, that the petitioner is not likely to act in a manner dangerous to public safety and that granting the relief would not be contrary to the public interest.¹²⁹ This will delete disqualifying substance abuse or mental health commitment orders from the MECOM database. If the final order denies relief, the petitioner may not petition again for one year.¹³⁰

However, current law also requires the Department to issue a license to carry a concealed weapon or firearm if the applicant:

- Has not been committed for the abuse of a controlled substance or been found guilty of a crime under the provisions of ch. 893, F.S., or similar laws of any other state relating to controlled substances within a three-year period immediately preceding the date on which the application is submitted;¹³¹
- Has not been adjudicated an incapacitated person under s. 744.331, F.S., or similar laws of any other state, unless five years have elapsed since the applicant's restoration to capacity by court order;¹³² or

¹²² s. 604.16(2), F.S.

¹²³ The NICS Improvement Amendments Act of 2007 (NIAA), Pub. L. No. 110-180, H.R. 2640, 110th Cong. (Jan. 8, 2008) seeks to address the gap in information available to the National Instant Criminal Background Check System (NICS) administered by the Federal Bureau of Investigation (FBI) about such prohibiting mental health adjudications and commitments and other prohibiting backgrounds in order to keep guns out of the hands of persons prohibited by federal or state law from receiving or possessing firearms. Since state submission of records to NICS is voluntary, the NIAA strives to increase the availability of state records through a series of financial incentives.

¹²⁴ 18 U.S.C. § 922(d)(4), prohibits possession of a firearm or ammunition by any person who has been "adjudicated as a mental defective" or involuntarily "committed to any mental institution.

¹²⁵ s. 790.065(2)(a)(4)(d), F.S.

¹²⁶ Id.

¹²⁷ Id.

¹²⁸ Id.

¹²⁹ Id.

¹³⁰ Id.

¹³¹ s. 790.06(2)(e), F.S.

¹³² s. 790.06(2)(i), F.S.

- Has not been committed to a mental institution under ch. 394, F.S., or similar laws of any other state, unless the applicant produces a certificate from a licensed psychiatrist that he or she has not suffered from disability for at least five years prior to the date of submission of the application.¹³³

As a result, current law governing concealed weapon and firearm eligibility provides conflicting mental health restoration processes. According to the Department, the federal restoration process in s. 790.065(2)(a)4.d., F.S., makes the three and five year waiting periods in current law obsolete.¹³⁴

Application Statement

Current law requires the application for concealed weapon or firearm licensure to be completed, under oath, on a form adopted by the Department.¹³⁵ The Department is required to provide in its concealed weapon or firearm license application a statement that the applicant has been furnished a copy of the chapter of law governing concealed weapon and firearm licensure, in addition to the current requirement to provide a copy of this chapter.¹³⁶

License Fee

Current law requires concealed weapon and firearm applicants to submit to the Department or an approved tax collector a nonrefundable license fee of up to \$60 if he or she has not previously been issued a statewide license, or a nonrefundable license fee of up to \$50 for renewal of a statewide license.¹³⁷

Effect of Proposed Changes

Restoration of Firearms Eligibility

The bill aligns the three and five year restoration processes in current law with the federal restoration process in s. 790.065(2)(a)4.d., F.S. According to the Department, this will remove the conflicts between the two statutes and better inform the public of the restoration requirements.¹³⁸

Specifically, the bill requires the Department to issue a license to carry a concealed weapon or firearm if the applicant has not been committed for the abuse of a controlled substance under ch. 397, F.S., or under the provisions of former ch. 396, F.S., or similar laws of any other state. An applicant who has been granted relief from firearms disabilities pursuant to s. 790.065(2)(a)4.d., F.S., or pursuant to the law of the state in which the commitment occurred is deemed not to be committed for the abuse of a controlled substance under this subparagraph.

For those who have been adjudicated an incapacitated person, instead of the five-year waiting period, the bill provides that an applicant who has been granted relief from firearms disabilities pursuant to s. 790.065(2)(a)4.d., F.S., or pursuant to the law of the state in which the adjudication occurred is deemed not to have been adjudicated an incapacitated person under this paragraph.

For those who have been committed to a mental institution under ch. 394, F.S., the bill provides that instead of the five-year waiting period, an applicant who has been granted relief from firearms disabilities pursuant to s. 790.065(2)(a)4.d., F.S., or pursuant to the law of the state in which the

¹³³ s. 790.06(2)(j), F.S.

¹³⁴ Email from Grace Lovett, Legislative Affairs Director, Florida Department of Agriculture & Consumer Services, *790 changes*, (Feb. 21, 2017).

¹³⁵ s. 790.06(4)(c), F.S.

¹³⁶ Id.

¹³⁷ s. 790.06(5)(b), F.S.

¹³⁸ Id.

commitment occurred is deemed not to have been committed in a mental institution under this paragraph.

Application Statement

The bill authorizes the Department to provide in its concealed weapon or firearm license application statement that the applicant has been furnished a website link to the chapter of law governing concealed weapon and firearm licensure, in addition to the current requirement to provide a copy of this chapter.

License Fee

The bill reduces the \$60 nonrefundable license fee for first time licenses from \$60 to \$55, and reduces the \$50 nonrefundable license fee for renewal licenses to \$45.

B. SECTION DIRECTORY:

- Section 1** amends s. 288.1175, F.S., related to agriculture education and promotion facilities.
- Section 2** amends s. 472.003, F.S., related to persons exempt from surveying and mapping regulations.
- Section 3** amends s. 472.005, F.S., related to definitions.
- Section 4** amends s. 472.015, F.S., related to licensure.
- Section 5** amends s. 472.025, F.S., related to seals.
- Section 6** amends s. 472.0366, F.S., related to elevation certificates; requirements for surveyors and mappers.
- Section 7** amends s. 487.2041, F.S., related to enforcement of federal worker protection regulations.
- Section 8** amends s. 493.6101, F.S., related to definitions.
- Section 9** amends s. 493.6105, F.S., related to initial application for licensure.
- Section 10** amends s. 493.6107, F.S., related to fees
- Section 11** amends s. 493.6108, F.S., related to investigation of applicants by Department of Agriculture and Consumer Services.
- Section 12** amends s. 493.6112, F.S., related to notification to Department of Agriculture and Consumer Services of changes of partner of officer or employees.
- Section 13** amends s. 493.6113, F.S., related to renewal application for licensure.
- Section 14** amends s. 493.6115, F.S., related to weapons and firearms.
- Section 15** amends s. 493.118, F.S., related to grounds for disciplinary action.
- Section 16** amends s. 493.6202, F.S., related to fees.
- Section 17** amends s. 493.6203, F.S., related to license requirements.

- Section 18** amends s. 493.6302, F.S., related to fees.
- Section 19** amends s. 493.6303, F.S., related to license requirements.
- Section 20** amends s. 493.6304, F.S., related to security officer school or training facility.
- Section 21** amends s. 493.6402, F.S., related to fees.
- Section 22** amends s. 493.6403, F.S., related to license requirements.
- Section 23** amends s. 501.013, F.S., related to health studios.
- Section 24** amends s. 501.059, F.S., related to telephone solicitation.
- Section 25** amends s. 507.04, F.S., related to required insurance coverage.
- Section 26** amends s. 531.37, F.S., related to definitions.
- Section 27** amends s. 531.61, F.S., related to exemptions from permit requirement.
- Section 28** amends s. 531.61, F.S., related to maximum permit fees.
- Section 29** amends s. 534.021, F.S., related to recording of marks and brands.
- Section 30** amends s. 534.041, F.S., related to renewal of certificate of mark or brand.
- Section 31** repeals s. 534.061, F.S., relating to transfer of ownership of cattle.
- Section 32** amends s. 573.118, F.S., related to agricultural commodities assessment; funds; review of accounts.
- Section 33** amends s. 590.02, F.S., related to Florida Forest Service; powers; authority, and duties; building structures.
- Section 34** amends s. 597.004, F.S., related to aquaculture certificate of registration.
- Section 35** amends s. 604.16, F.S., related to agriculture products dealer exceptions.
- Section 36** amends s. 790.06, F.S., related to license to carry concealed weapon or firearm.
- Section 37** provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

As a result of the bill, the Department estimates the following total average loss in recurring revenues:

	<u>(FY 17-18)</u>	<u>(FY 18-19)</u>	<u>(FY 19-20)</u>
Elimination of Multiple Licenses for Private Investigative Agency Managers	(\$6,562)	(\$6,748)	(\$6,748)
Elimination of Cattle Brand Registration	(\$7,647)	(\$7,647)	(\$7,647)
Exemption for Agriculture Dealer's Licenses			
\$170 license fee (bonds \$5,000-\$9,999)			
185 exemptions x \$170	(\$31,450)	(\$31,450)	(\$31,450)
\$230 license fee (bonds \$10,000-\$14,999)			
106 exemptions x \$230	(\$24,380)	(\$24,380)	(\$24,380)
\$300 license fee (bonds \$15,000-\$100,000)			
763 exemptions x \$300	(\$228,900)	(\$228,900)	(\$228,900)
Administrative Fines	(\$20,000)	(\$20,000)	(\$20,000)
Total	(\$304,730)	(\$304,730)	(\$304,730)
Elimination of Taximeters			
\$35 permit fee x 3,700 permits	(\$129,500)	(\$129,500)	(\$129,000)¹³⁹
Concealed Weapon License Fee Reduction	(\$1,795,130)	(\$1,706,115)	(\$1,652,295)¹⁴⁰
Total Revenue	(\$2,243,569)	(\$2,154,740)	(\$2,100,420)¹⁴¹

2. Expenditures:

The Department anticipates a reduction in agency expenditures as a result of the bill. These anticipated reductions include:

	<u>(FY 17-18)</u>	<u>(FY 18-19)</u>	<u>(FY 19-20)</u>
Elimination of Multiple Licenses for Private Investigative Agency Managers			
Background Check Expenditures	(\$1,419)	(\$1,605)	(\$1,605)
Exemption for Agriculture Dealer's Licenses			
Salaries and Benefits	(\$191,624)	(\$191,624)	(\$191,624)
Expenses (standard package x 4 FTEs)	(\$24,700)	(\$24,700)	(\$24,700)
HR Services (\$339 x 4 FTEs)	(\$1,356)	(\$1,356)	(\$1,356)
Non-Operating	(\$33,264)	(\$33,279)	(\$33,279)
Total	(\$250,944)	(\$250,959)	(250,959)
Total Expenditures	(\$252,363)	(\$252,564)	(\$252,564)¹⁴²
Net Fiscal Impact to Department	(\$1,991,206)	(\$1,902,176)	(\$1,847,856)

¹³⁹ Email from Grace Lovett, Legislative Affairs Director, Florida Department of Agriculture & Consumer Services, *Good news! --fee reduction*, (Mar. 8, 2017).

¹⁴⁰ Id.

¹⁴¹ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2017 House Bill 467, p. 12 (Feb. 8, 2017).

¹⁴² Florida Department of Agriculture and Consumer Services, Agency Analysis of 2017 House Bill 467, p. 12-13 (Feb. 8, 2017).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill has no fiscal impact on local government revenues.

2. Expenditures:

The bill has no fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill eliminates the requirement that managers have separate licenses to manage multiple branch offices of private investigative agencies. Each license fee is \$450.

The bill provides that partners and corporate officers who do not possess licenses subject to renewal under s. 493.6113, F.S., are exempt from the fingerprint retention requirements of the statewide automated biometric identification system established in s. 943.05(2)(b), F.S., and the ongoing costs associated with enrolling and retaining their fingerprints in the national retained print arrest notification program required under s. 493.6108, F.S.

The bill removes the \$5 cattle marks and brands renewal fee.

The bill exempts dealers in agricultural products who pay at the time of purchase with a credit card from certain dealer regulations of the Department and associated fees.

The bill reduces concealed weapon licensure and renewal fees by \$5.

D. FISCAL COMMENTS:

According to the Department, its assessment of the trust fund balance for the concealed weapon program over a number of years has found that the program can sustain a license fee reduction.¹⁴³ The Department has also assessed the General Inspection Trust Fund, which is impacted by the other reductions in revenue, and found that the trust fund can sustain the reductions.

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:

None.

B. RULE-MAKING AUTHORITY:

None.

¹⁴³ Email from Grace Lovett, Legislative Affairs Director, Florida Department of Agriculture & Consumer Services, *Good news! --fee reduction*, (Mar. 1, 2017).

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 7, 2017, the Agriculture & Property Rights Subcommittee adopted nine amendments and reported the bill favorably as a committee substitute. The committee substitute:

- Provides an exemption from surveying and mapping regulations for certain contracted persons;
- Clarifies that the practice of surveying and mapping includes, but is not limited to, orientation of real property and attached personal property, and adds volume to the list of measurable facts used by surveyors and mappers;
- Deletes an obsolete provision related to photogrammetrists;
- Removes metal impression seals as the exclusive seal that registered surveyors or mappers must stamp documents with;
- Revises the requirements of surveyors and mappers when submitting elevation certificates to the Division of Emergency Management;
- Restricts access to the Florida Department of Law Enforcement's Mental Competency (MECOM) database by the Department when determining eligibility of Class "G" and Class "K" applicants;
- Revises the Department's administrative suspension requirement in the bill to be a temporary suspension with administrative hearing rights;
- Exempts a program or facility that is offered by an organization for the exclusive use of its employees and their family members from health studio regulations;
- Excludes taximeters and digital networks from the weights and measures requirements;
- Clarifies that the sale of aquaculture products is allowed by aquaculture producers and dealers;
- Aligns mental health restoration requirements; and
- Reduces license fees for concealed weapons permits.