

**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 498

INTRODUCER: Committee on Commerce and Tourism and Senator Young

SUBJECT: Department of Agriculture and Consumer Services

DATE: March 8, 2017

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

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

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

SB 498 modifies provisions in several areas regulated by the Department of Agriculture and Consumer Services (DACS), including:

- Allowing private investigative agency managers to manage multiple agencies or branches;
- Making substantial changes to regulations of surveyors and mappers;
- Clarifying fingerprint retention policies for specific partners and corporate officers of ch. 493, F.S., licensees;
- Removing inconsistent language regarding the terms of renewals for licensure under ch. 493, F.S.;
- Permitting the Florida Department of Law Enforcement to share mental health and substance abuse data from its MECOM database with the Department for the purposes of determining eligibility of Class “G” and “K” applicants and licensees;
- Requiring ch. 493, F.S., licensees to reveal if they have been arrested to their employer within 3 days of the arrest, and granting the DACS authority to discipline licensees who fail to do so;
- Mandating that statewide firearm licensees complete training for each type of firearm carried in the course of his or her licensed duties;
- Creating a temporary suspension process for class “G” or “K” licensees who are arrested for or formally charged with a firearms-related crime; and for ch. 493, F.S., licensees who are arrested for or formally charged with a forcible felony;

- Updating the Florida Do Not Call Program to make subscriptions indefinite, rather than for 5 years;
- Creating penalties against intrastate household movers for failure to maintain motor vehicle and liability insurance consistent;
- Exempting company gyms from registration as a health studio with the Department;
- Removing taximeters and digital networks from the definition of a weight and measure, thereby reducing the Department's regulatory authority of taximeters;
- Deleting fees for the registration of a livestock mark or brand, and increasing the term of registration for such marks or brands from 5 to 10 years;
- Repealing a requirement that individuals re-mark or rebrand recently purchased cattle;
- Providing an exemption from registration for agricultural dealers who pay for their purchase with a credit card;
- Allowing the Department to grant concealed weapon or firearm licenses to persons who have been granted relief from firearms disabilities;
- Reducing the concealed weapon or firearm license and renewal fees by five-dollars; and
- Making technical changes and deleting out-of-date language.

## II. Present Situation:

The Department of Agriculture and Consumer Services (DACCS or Department) has broad duties, including safeguarding the public from unsafe or defective products and deceptive business practices, providing environmental protection, and supporting Florida's agricultural economy. Twelve divisions and six offices within the Department support these missions.<sup>1</sup>

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

## III. Effect of Proposed Changes:

### Agriculture Education and Promotion Facility Grant

An agriculture education and promotion facility is an exhibition hall, arena, civic center, exposition center, or other capital project or facility that can be used for agricultural education, exhibitions, civic, and other events.<sup>2</sup> In 2002, the Legislature gave the Department authority to evaluate applications for grants for the construction or renovation of such facilities.<sup>3</sup> Funding of the grants occurs through the General Appropriations Act, which is passed each legislative session.<sup>4</sup>

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<sup>1</sup> Florida Department of Agriculture and Consumer Services, *Divisions and Offices*. <http://www.freshfromflorida.com/Divisions-Offices/> (last visited Mar. 7, 2017).

<sup>2</sup> Section 288.1175(3), F.S.

<sup>3</sup> Ch. 2002-301, Laws of Fla.

<sup>4</sup> Section 288.1175(8), F.S.

**Section 1** amends s. 288.1175, F.S., to require that applications for an agriculture education and promotion facility grant be *postmarked or electronically submitted* by October 1 of each year; this further defines and clarifies what qualifies as a timely submitted application for the program.

### **Division of Agricultural Environmental Services**

The Division of Agricultural Environmental Services supports state and federal regulatory programs regarding pesticide registration, testing, and regulation, and other related environmental and consumer protection issues.<sup>5</sup> The U.S. Environmental Protection Agency's (E.P.A.) labeling requirement for pesticides and devices<sup>6</sup> and its Worker Protection Standard<sup>7</sup> provide a floor from which the Division must base certain regulations.<sup>8</sup>

**Section 11** deletes an out-of-date reference to the Department's adoption "during the 1995-1996 fiscal year..." of rules to reflect the E.P.A's labeling requirement for pesticides and devices and worker protection standard. This amendment to s. 487.2041, F.S., does not alter the Department's duties or authority.

### **Division of Licensing**

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. As of January 2017, the Department issued 176,687 pursuant to ch. 493, F.S., and 1,721,862 concealed weapon or firearm licenses.<sup>9</sup>

### ***Licensure and Discipline of Private Investigators, Security Officers, Recovery Agents, and Related Licenses***

**Section 12** amends s. 493.6101, F.S., to permit a manager of a private investigative agency licensed under ch. 493, F.S., to manage multiple agencies and branch offices. Currently, a class 'M' (manager) licensee is limited to oversight of only one agency or branch at a time.<sup>10</sup>

The DACS requires applicants for licensure under ch. 493, F.S., to submit a full set of fingerprints, a fingerprint-processing fee, and a fingerprint retention fee with their initial application.<sup>11</sup> With this information, the Department conducts an initial background check through the Federal Bureau of Investigation (FBI) and the Florida Department of Law Enforcement (FDLE). The Department also retains the applicants' fingerprints in the statewide-

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<sup>5</sup> Florida Department of Agriculture and Consumer Services, *Division of Agricultural Environmental Services*, <http://www.freshfromflorida.com/Divisions-Offices/Agricultural-Environmental-Services> (last visited Mar. 7, 2017).

<sup>6</sup> 40 C.F.R., Pt. 156

<sup>7</sup> 40 C.F.R., Pt. 170

<sup>8</sup> See Rule 5E-2.041, F.A.C., *Pesticides: Materials Incorporated by Reference*; Rule 5E-2.011, F.A.C., *Pesticides: General Labeling Requirements for Pesticides*.

<sup>9</sup> Florida Department of Agriculture and Consumer Services, *Division of Licensing, Number of Licensees by Type* (Jan. 31, 2017), [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 Mar. 7, 2017).

<sup>10</sup> Section 493.6101, F.S.

<sup>11</sup> Section 493.6105(3)(j), F.S.

automated biometric identification system<sup>12</sup> and in the national retained print arrest notification program for ongoing updates on arrests of its licensees.<sup>13</sup> The Department may discipline a licensee based on his or her plea to, or conviction of certain crimes.<sup>14</sup>

**Section 13** clarifies that partners and corporate officers who do not also possess a ch. 493, F.S., license subject to renewal under s. 493.6113, F.S.,<sup>15</sup> are exempt from participation in the DACS fingerprint retention requirements otherwise imposed on ch. 493, F.S., licensees.

#### Notifications

**Section 15** amends s. 493.6108(5), F.S., to require that ch. 493, F.S., licensees notify their employer within three calendar days if they are arrested for any offense.

**Section 19** amends s. 493.6118, F.S., to allow the Department to take administrative action against its ch. 493, F.S., licensees for their failure to notify their employer within three calendar days if they are arrested for any offense.

**Section 16** deletes a requirement in s. 493.6112, F.S., that Security Officer and Recovery Agent Schools licensed by the Department under ch. 493, F.S., notify the Department of any hiring, termination, withdrawal, removal, replacement, or addition of the School's partners, officers, or employees. These schools are currently required to provide the DACS with information on their instructors, school facilities, and curricula elsewhere in statute.<sup>16</sup>

This section also clarifies that ch. 493, F.S., agency licensees are required to notify the Department of a change in their employment rolls *within 15 calendar days* by a form submitted electronically to the Department. Section 493.6112, F.S., currently requires that licensees notify the Department "immediately" of such changes; according to the Department, this requirement proves vague in practice and results in varying compliance.<sup>17</sup>

#### Mental History

The Department has a duty to investigate whether any ch. 493, F.S., applicant has been adjudicated incompetent under ch. 744, F.S.,<sup>18</sup> or has been committed to a mental institution

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<sup>12</sup> See, s. 943.05(2)(b), F.S.

<sup>13</sup> See, s. 493.6108, F.S.

<sup>14</sup> Section 493.6118, F.S.

<sup>15</sup> Section 493.6113, F.S., subjects all licenses granted under ch. 493, F.S., to renewal. Although a corporate officer or partner of, e.g., a Private Investigative Agency, is required to file a complete initial application, the corporate officer or partner is not granted a license as a result of his or her application (but his or her agency is). Therefore, corporate officers and partners are not required to renew a license that does not exist under ch. 493, F.S.

<sup>16</sup> See, ss. 493.6304 and 493.6406, F.S.

<sup>17</sup> Florida Department of Agriculture and Consumer Services, *SB 498 Agency Analysis*, p. 5 (Feb. 8, 2017) (On file with the Senate Committee on Commerce and Tourism).

<sup>18</sup> A court may grant a petition to determine incapacity based on a petition to determine incapacity that is filed by an adult; the petition must include allegations of the individual's incapacity and facts in support thereof. See s. 744.3201(1), F.S.

under ch. 394, F.S.<sup>19, 20</sup> The Department may deny an application for licensure based on an applicant's:<sup>21</sup>

- Adjudication of incapacitation under s. 744.331, F.S., or similar law in another state, unless the applicant's capacity has been judicially restored;
- Placement in a treatment facility for the mentally ill under ch. 394, F.S., or similar law in another state, unless the applicant's competency has been judicially restored;
- Diagnosis of an incapacitating mental illness, unless a Florida-licensed psychologist or psychiatrist certifies that the applicant does not currently suffer from mental illness;
- Chronic and habitual use of alcoholic beverages to the extent that his or her normal faculties are impaired;
- Commitment to a treatment facility for substance abuse under ch. 397, F.S., or similar law in another state;
- Being subject to a finding by a court that she or he is a habitual offender of disorderly intoxication under s. 856.011, F.S., or similar law in another state;
- Convictions of driving under the influence or similar law in another state, within the 3-year period immediately preceding the application, unless the applicant can prove that she or he is not currently impaired and has successfully completed a rehabilitation course; or
- Having been found guilty of a controlled substance-related crime under ch. 893, F.S., or similar law in another state, unless the applicant establishes that she or he is not currently abusing any controlled substance and has successfully completed a rehabilitation course.

The Department must further investigate the general mental history and current mental and emotional fitness, including drug or alcohol abuse, of any class "G" or "K" licensee.<sup>22</sup> The Department may deny an application for licensure to a Class "G" or "K" applicant based on a history of mental illness or drug or alcohol abuse.

These investigations into mental health and substance abuse are largely limited to an inquiry by the Department on the application for licensure; records of commitment under ch. 394, F.S., are confidential and exempt unless the applicant authorizes the release of the documentation.<sup>23</sup>

Currently, the Department can access FDLE and clerks of courts records of individuals who are or were committed under chs. 394, 397, or 744, F.S., for the purpose of reviewing the fitness of applicants for concealed weapons licenses under ch. 790, F.S.<sup>24</sup> The FDLE maintains the Mental Competency Database (MECOM), which lists the names and related data of persons who are prohibited from purchasing a firearm based on adjudication of mental defectiveness (total mental

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<sup>19</sup> Section 493.6108(1)(b), F.S.

<sup>20</sup> A commitment to an institution under ch. 394, F.S., may be voluntary or involuntary based on mental illness. A voluntary commitment requires the patient's consent, and an involuntary commitment requires a finding that the patient is likely to suffer harm to himself or herself, or that he or she poses a real and present threat of substantial harm to his or her well-being, or the well-being of others. Sections 394.462-.463, F.S.

<sup>21</sup> Section 493.6106, F.S.

<sup>22</sup> Section 493.6108(3), F.S.

<sup>23</sup> Section 394.4615, F.S.

<sup>24</sup> Sections 790.065(2)(a)4.c.(1), F.S. and 790.065(2)(a)4.f., F.S.

incapacity) or commitment to mental institutions because of mental illness or substance abuse.<sup>25</sup> An individual may be removed from MECOM if he or she receives a relief from firearm disabilities under s. 790.065(2)(a)4.d., F.S.

**Section 15** grants the FDLE authority to share data from the MECOM database with the DACS for the limited purpose of determining eligibility of class “G” and “K” applicants and licensees.

#### Actions Against Licensees

**Section 18** requires the DACS to review mental health and substance abuse data provided by the FDLE as part of its case-by-case determination whether a temporary Class “G” applicant is prohibited from licensure.

The Department may pursue disciplinary administrative action against a current ch. 493, F.S., licensee based on a finding that he or she committed any of the acts prohibited in s. 493.6118, F.S., including:

- Being found guilty of, or entering a plea of guilty or nolo contendere to, or being convicted of, a crime that directly relates to the business for which the license is held;
- Failure to maintain required commercial general liability coverage;
- Commission of an act of violence, or use of force on any person except in the lawful protection of one’s self or another from physical harm;
- Failure to cooperate with a Department investigation; or
- Violation of any other provision of ch. 493, F.S.

Administrative disciplinary action is reviewable under ss. 120.569-.57, F.S. These types of administrative hearings generally permit the licensee to dispute the allegations made against him or her. An impartial hearing officer then makes findings of fact and findings of law, which result in a final determination of whether the Department’s case against the licensee is supported by clear and convincing evidence.

The Department may also pursue an emergency suspension order (ESO) under s. 120.60(6), F.S., if the Department finds that the licensee poses a serious danger to the public health, safety, or welfare.<sup>26</sup> The ESO allows the Department to require the licensee to cease and desist from continuing to act under his or her license, but the Department is obligated to “promptly” institute a formal suspension or revocation proceeding pursuant to ss. 120.569-.57, F.S. The cease and desist language of the ESO remains in effect until a final order reviewing the allegations against the licensee has been issued pursuant to the hearing under either s. 120.569 or 120.57, F.S.

**Section 19** allows the Department to temporarily suspend a class “G” or “K” licensee who is arrested for or formally charged with a firearms-related crime that would disqualify him or her from licensure under s. 493.6118, F.S. This section also grants the Department authority to

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<sup>25</sup> Section 790.065, F.S.; Florida Department of Law Enforcement, *Mental Competency (MECOM) Database: Frequently Asked Questions* p. 5 (June 2, 2014), [https://www.fdle.state.fl.us/cms/FPP/Documents/MECOMFAQs\\_Final\\_06022014.aspx](https://www.fdle.state.fl.us/cms/FPP/Documents/MECOMFAQs_Final_06022014.aspx) (last visited Mar. 7, 2017).

<sup>26</sup> See also *Allied Edu. Corp v. State, Dep’t of Edu.*, 573 Sp. 2d 959, 1991 (Fla. 1<sup>st</sup> DCA 1991).

temporarily suspend any ch. 493, F.S., licensee who has been arrested for or formally charged with a forcible felony.<sup>27</sup>

The proposed temporary suspension would grant the licensee a right to hearing under ch. 120, F.S., but the scope of that hearing would be limited only to a determination of whether the licensee has been arrested for or charged with a disqualifying crime. When a licensee is ultimately cleared of the allegations made in his or her underlying criminal case, the Department is required to lift the temporary suspension. When, however, the criminal case results in a disqualifying disposition, the temporary suspension will remain in effect and the Department is required to bring an administrative case under ch. 120, F.S., against the licensee to attempt to revoke his or her license.

### ***Training and Certification for Ch. 493, F.S., Licensees***

Applicants for licensure as a firearms instructor (“Class K”) must undergo training and receive certification from either:

- The National Rifle Association (NRA) Private Security Firearm Instructor Certificate Program,<sup>28</sup> or
- A federal law enforcement agency’s firearms instructor certificate program, e.g., through the U.S. Department of Homeland Security’s Federal Law Enforcement Training Center (FLETC).<sup>29</sup>

The NRA’s firearm instructor certificate expires after 3 years, unless the instructor successfully completes recertification with the NRA, which requires proof of 24 hours of continuing education.<sup>30</sup> The FLETC firearm instructor certificate does not expire, but the instructor may be required to obtain recertification by the agency (such as a local police department or sheriff’s office) that sponsored the original certification of the trainee by FLETC.<sup>31</sup>

**Section 13** amends s. 493.6105(6)(a), F.S., to require that firearms instructor applicants submit evidence of both valid and recent (within the last 3 years) certification. This amendment reflects industry terminology and practices.

**Sections 21 and 23** delete the requirement that private investigator interns and security officer licensees receive training in two parts and deletes out-of-date references. According to the

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<sup>27</sup> Section 776.08, F.S., defines a “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, 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.

<sup>28</sup> National Rifle Association, *Instructor Development Schools*, <http://le.nra.org/training/instructor-development-schools.aspx#schedule> (last visited Mar. 7, 2017); National Rifle Association, *Recertification*, <http://le.nra.org/training/recertification.aspx> (last visited Mar. 7, 2017).

<sup>29</sup> U.S. Department of Homeland Security, Federal Law Enforcement Training Centers, *Firearms Instructor Training Program*, <https://www.fletc.gov/training-program/firearms-instructor-training-program> (last visited Mar. 7, 2017).

<sup>30</sup> National Rifle Association, *Recertification*, <http://le.nra.org/training/recertification.aspx> (last visited Mar. 7, 2017).

<sup>31</sup> Committee staff conversation with Federal Law Enforcement Training Center (“FLETC”) representative (Mar. 1, 2017).

Department, the requirement that training be provided in two-parts proved cumbersome to both training schools and trainees.<sup>32</sup>

Section 493.6113(3)(b), F.S., currently requires holders of a Class “G”<sup>33</sup> statewide firearms licensee to annually complete four hours of firearms recertification training.<sup>34</sup> The licensee must submit proof of his or her annual recertification training to the Department. If the licensee fails to provide documentation of the training by the end of the first year of the license’s two-year term, the license is automatically suspended until the licensee provides proof of the training. If the licensee fails to provide such documentation by the end of his or her license’s term, the Department may not renew the license until the applicant completes the initial licensing requirements, including at least 28 hours of range and classroom training.<sup>35</sup>

Class “G” licensees are currently permitted to carry up to two of the following types of firearms during the course of their licensed duties: a .38 caliber revolver, a .380 caliber or 9 millimeter semiautomatic pistol; a .357 caliber revolver with .38 caliber ammunition; a .40 caliber handgun; or a .45 ACP handgun.<sup>36</sup> Security officer licensees who also have a class “G” license may only carry their firearm in a concealed manner if they are performing limited, special assignment duties, or are performing bodyguard services.<sup>37</sup>

**Section 17** amends s. 493.6113, F.S., to require statewide firearm licensees, Class “G” licensees,<sup>38</sup> to perform and successfully complete training for *each type and caliber* of firearm that they will carry in the course of their duties.

**Section 18** updates an out-of-date cross-reference in s. 493.6115, F.S., to clarify under what circumstances security officer licensees who also have a class “G” license may carry their authorized firearm in a concealed manner.

Recovery agents and interns (also known as class “E” or “EE” licensees, or repossession service agents) are required to meet the basic licensure requirements in ch. 493, F.S., in addition to completing a minimum of 40 hours of professional training at an accredited recovery agent school.<sup>39</sup>

**Section 26** requires recovery agent and recovery agent intern licensees to *successfully complete* professional training, and submit proof thereof to the Department. This section also deletes an outdated reference in s. 493.6403, F.S.

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<sup>32</sup> Florida Department of Agriculture and Consumer Services *SB 498 Agency Analysis*, p. 7 (Feb. 8, 2017) (On file with the Senate Committee on Commerce and Tourism).

<sup>33</sup> A Class “G” licensee permits Class “C,” “CC,” “D,” “M,” “MA,” or “MB” licensees to bear a firearm in the course of their licensed duties. Section 493.6115(2), F.S.

<sup>34</sup> The DACS may waive the annual firearms recertification training for certain applicants, such as state and federal law enforcement officers and correctional officers. Section 493.6113(3)(b)1.-3., F.S.

<sup>35</sup> The initial training criteria for Class “G” licensees are found in s. 493.6105(5), F.S.

<sup>36</sup> Section 493.6115(6), F.S.

<sup>37</sup> Section 493.6305, F.S.

<sup>38</sup> Class “G” licenses are supplemental licenses that require as a prerequisite that the applicant is currently licensed with the Department as either a Class “C,” “CC,” “D,” “M,” “MA,” or “MB” licensee. *See* s. 493.6115, F.S.

<sup>39</sup> Section 493.6403(2), F.S.

### ***Concealed Weapon or Firearm Licenses***

**Section 40** amends the qualifications for concealed weapon or firearm licensure under ch. 790, F.S., to allow the Department to grant a concealed weapon license to applicants who have been committed for a mental health issue or abuse of a controlled substance; or adjudicated incapacitated, but have subsequently been granted relief from firearms disabilities pursuant to s. 790.065(2)(a)4.d., F.S., or similar law. This brings the Department’s practices into line with the FDLE’s regulations on the sale of guns.<sup>40</sup>

This section also implements a five-dollar fee reduction for concealed weapon or firearm license and renewal fees.<sup>41</sup>

### ***Technical Changes***

**Section 24** makes technical changes to s. 493.6304(1), F.S.

**Sections 14, 20, 22, and 25** delete erroneous references to “biennial” license fees. License renewals occur on either biennial or triennial cycles, depending on the type of license.<sup>42</sup> These amendments clarify inconsistent language throughout the chapter and related rules.

### ***Division of Consumer Services***

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.

### ***Board of Professional Surveyors and Mappers***

The Board of Professional Surveyors and Mappers (board) is constituted under the Department with the purpose of regulating professional surveyors and mappers and businesses that offer surveying and mapping services.<sup>43</sup> The Board’s regulatory duties include:<sup>44</sup>

- Adopting rules detailing the review and approval of courses of study in surveying and mapping;
- Determining the moral character of applicants for licensure;
- Instituting by rule the criteria and course content for continuing education courses;
- Approving and discipline providers of continuing education;
- Holding probable cause panel hearings to determine whether to move forward with disciplinary proceedings against a licensee; and
- Issuing final orders in disciplinary cases.

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<sup>40</sup> See, s. 790.065, F.S.

<sup>41</sup> A concealed weapon or firearm license fee is currently \$60; a renewal fee is \$50. Section 790.06(5)(b), F.S.

<sup>42</sup> See s. 493.6113, F.S.

<sup>43</sup> Florida Department of Agriculture and Consumer Services, Board of Professional Surveyors and Mappers, *Frequently Asked Questions* (Jun. 2011), <http://www.freshfromflorida.com/content/download/21271/398679/boardFAQ.pdf> (last visited Mar. 7, 2017).

<sup>44</sup> See, ch. 472, F.S.

The practice of surveying and mapping, generally, is the determination of the facts of size, shape, topography, tidal datum planes, legal or geodetic location or relation, and orientation of improved or unimproved real property through the direct measurement or from certifiable measurement through photogrammetric procedures.<sup>45</sup>

Surveyors and mappers must meet the following qualifications to be licensed by the Department:<sup>46</sup>

- Be of good moral character;
- Pass a licensure examination; and
- Meet specific education and experience requirements.

**Section 2** exempts subcontractors of registered surveyors and mappers or their businesses from registration under ch. 472, F.S. The subcontractor must be subordinate to, and under the direct control and personal supervision of, a registered surveyor and mapper in order to qualify for this exemption.

**Section 3** amends definitions in s. 472.005, F.S., to clarify that the practice of surveying and mapping includes the determination of the volume of bodies of water, and of the orientation of personal property that is attached to any improved or unimproved real property.

**Section 4** broadens the prerequisite course of education for surveyor and mapper licensees to include a bachelor's degree in surveying and mapping *or any similarly titled program*. This section also permits applicants for licensure as a surveyor and mapper intern to qualify by completing 2 years of college education in surveying, mapping, mathematics, photogrammetry, forestry, civil engineering, or land law and the physical sciences, in addition to accruing at least 2 years in work as a subordinate to a registered surveyor and mapper.

**Section 5** deletes out-of-date language and removes the requirement that a surveyor and mapper prominently post a sign giving notice that she or he does not carry professional liability insurance. The surveyor and mapper is still required to give notice of their lack of insurance to their consumers by a written statement.<sup>47</sup>

**Section 6** grants the Board the power to establish the criteria for continuing education (CE) providers, and other CE requirements, including the method of CE delivery and the carry over for each license renewal. This also requires the DACS to establish a system for the administration of those CE requirements that are adopted by the Board.

**Section 7** requires registered surveyors and mappers to receive and use a seal that is approved by the Board, but deletes the requirement that the seal be an impression-type metal seal.

**Section 8** specifically grants the Department authority to investigate the unlicensed practice of surveying and mapping.

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<sup>45</sup> Section 472.005(3), F.S.

<sup>46</sup> Sections 472.013 and 472.015, F.S.

<sup>47</sup> Section 472.015(12), F.S.

**Section 9** grants the Board authority to administratively penalize individuals found to be engaged in the unlicensed practice of surveying and mapping.

Surveyors and mappers are required to submit to the DACS a copy of each elevation certificate that she or he completes.<sup>48</sup> **Section 10** clarifies that a surveyor and mapper may submit a copy of an elevation certificate to the DACS, and said copy need not be signed and sealed. However, the surveyor and mapper must maintain the original signed and sealed copy in their own records.

### ***Do Not Call List***

The Department administers the Florida Do Not Call Program, which prohibits unsolicited phone calls to consumers by telephone solicitors. A consumer must request to be placed on the Department's directory of those who do not wish to be contacted, and such request lasts for five years.<sup>49</sup> The consumer can re-subscribe every five years. Under s. 501.059(5), F.S., a telephone solicitor is also prohibited from calling a consumer who has previously communicated to the solicitor that he or she does not wish to receive a telephone call that is:

- Made by or on behalf of the seller whose goods or services are offered; or
- Made on behalf of a charity for which a charitable contribution is solicited.

**Section 28** deletes the five-year subscription duration from the Do Not Call Program, thereby making each a lifetime subscription. Subscribers may request to be removed from the program at any time, however.

### ***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. The act requires studios to:

- Register with the DACS;
- Include specific provisions in every contract with a consumer, such as the consumer's total payment obligations, and cancellation provisions;
- Provide a security bond, generally ranging from \$10,000 to \$25,000, depending on the value of outstanding contracts with the studio; and
- Refrain from prohibited practices, such as committing an intentional fraud.

The following health studios or health-related businesses are exempt from registration with the DACS:<sup>50</sup>

- Nonprofit organizations that have tax-exempt status with the Internal Revenue Service;
- Gymnastics schools that engage in instruction and training only;
- Golf, tennis, or racquetball clubs that do not offer physical exercise equipment;
- Country clubs that primarily provide social or recreational amenities to its members; and
- Personal trainers who do not have an established place of business and who do not accept payment for their services more than 30 days in advance.

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<sup>48</sup> Section 472.0366(2), F.S.

<sup>49</sup> Section 501.059(3)-(4), F.S.

<sup>50</sup> Sections 501.0125-.013, F.S.

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 27** of the bill exempts from registration as a health studio with the DACS any program or facility offered by an organization for the exclusive use of its employees and their family members.

### ***Intrastate Household Movers***

Chapter 507, F.S., governs the loading, transportation, shipment, unloading, and affiliated storage of household goods as part of intrastate household moves. The chapter applies to any mover engaged in intrastate transportation or shipment of household goods that originate and terminate in the state.<sup>51</sup>

Section 507.04, F.S., requires movers to maintain liability and motor vehicle insurance. A mover who operates more than two vehicles is required to maintain liability insurance of at least \$10,000 per shipment, and not less than 60 cents per pound, per article.<sup>52</sup> Movers who operate fewer than two vehicles are required only to carry either a performance bond or a \$25,000 certificate of deposit in lieu of liability insurance.<sup>53</sup> A mover who fails to maintain the required liability insurance is subject to:

- Immediate suspension of the license by the Department;
- Immediate injunction prohibiting the mover from operating in the state; and
- Civil liability for any injuries that arise.<sup>54</sup>

However, the Department has no such penalties available to it in the case of a mover who fails to maintain motor vehicle insurance. The Department must wait until the mover files for renewal of his or her license with the Department to be able to take any action.<sup>55</sup> The Department cites this variation of penalties as a burden to their procedures and a possible danger to consumers, who may develop an incorrect impression that a mover who lacks motor vehicle insurance is in good standing with the Department.<sup>56</sup>

**Section 29** grants the Department the same penalty guidelines for a mover's failure to maintain both liability and motor vehicle insurance. This will make the Department's procedures more consistent.

### ***Bureau of Standards***

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

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<sup>51</sup> Section 507.02, F.S.

<sup>52</sup> Section 507.04(4), F.S.

<sup>53</sup> Section 507.04(1)(b), F.S.

<sup>54</sup> Section 507.04(1), F.S.

<sup>55</sup> Section 507.04(2)-(3), F.S.

<sup>56</sup> Florida Department of Agriculture and Consumer Services, *SB 498 Agency Analysis*, p. 9 (Feb. 8, 2017) (On file with the Senate Committee on Commerce and Tourism).

measuring instruments used by any city or county, and inspection of retail scales 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.

A taximeter is a device that automatically calculates and indicates the charge for the hire of a vehicle.<sup>57</sup>

**Sections 30, 31, and 32** delete the Department’s authority to regulate taximeters, and remove related language.

### **Division of Animal Industry**

The Division of Animal Industry safeguards animal and public health, and maintains market access for Florida’s animals and animal products by surveilling the movement of animals into and throughout the state, and monitoring any animal disease that may arise.<sup>58</sup> One estimate concludes that approximately 1.5 million cattle are currently raised in Florida.<sup>59</sup> These cattle must have official identification unless the cattle are:

- Moving directly to slaughter or through one approved livestock market and then directly to slaughter;
- Moving to an approved tagging site; or
- Being moved from one premises to another while remaining under common ownership as part of normal farm operations.<sup>60</sup>

Federal law provides identification requirements for cattle that is transported across interstate lines.<sup>61</sup>

**Section 33** replaces the requirement that an application for livestock mark or brand registration be accompanied by a “facsimile” of the brand or mark, with a requirement that the application include a “detailed drawing” of the brand or mark.

**Section 34** extends the term of a livestock mark or brand registration from five to ten years, and deletes the five-dollar registration renewal fee.

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<sup>57</sup> U.S. Department of Commerce, National Institute of Standards and Technology, *Handbook 44, Section 5.54 Taximeters* (2012), <https://www.nist.gov/sites/default/files/documents/pml/wmd/pubs/2011/10/26/5-54-12-hb44-final.pdf> (last visited Mar. 7, 2017).

<sup>58</sup> Florida Department of Agriculture and Consumer Services, *Division of Animal Industry*, <http://www.freshfromflorida.com/Divisions-Offices/Animal-Industry> (last visited Mar. 7, 2017).

<sup>59</sup> *Id.*

<sup>60</sup> Florida Department of Agriculture and Consumer Services, *Summary of Cattle Traceability Requirements* (Aug. 21, 2014), <http://www.freshfromflorida.com/content/download/38829/857923/SummaryRequirements.pdf> (last visited Mar. 7, 2017).

*See also*, Rule 5C-31, Fla. Admin. Code.

<sup>61</sup> *Id.* *See also*, Ch. 9, C.F.R., pt. 86.

**Section 35** deletes s. 534.061, F.S., which requires a person who purchases cattle to re-mark or rebrand the cattle within 10 days. The Department states that the Division of Animal Industry does not currently regulate such transfers.<sup>62</sup>

### **Division of Fruit and Vegetables**

The Division of Fruit and Vegetables (Division) inspects and certifies all state and federal marketing orders—the program that collectivizes agriculture producers for the purpose of marketing and selling their products.<sup>63</sup> As part of the marketing order program, the Department enters into contracts to promote the agriculture producers' products; these contracts are not subject to the competitive bidding process under s. 287.057, F.S. However, in each instance that the Division enters into a contract without competitive bidding, the director of the Division must file a report to justify the contract process with the Department's internal auditor.<sup>64</sup>

The Division of Marketing and Development supervised the marketing order process, until a recent reorganization of the Division's duties.<sup>65</sup>

**Section 36** amends s. 573.118, F.S., to require the director of the Division of Fruit and Vegetables, rather than the Division of Marketing and Development, to file each report justifying a contract or agreement entered into without competitive bidding in the marketing order process. This reflects the Division reorganization.

### **Florida Forest Service**

The Florida Forest Service (FFS) is dedicated to management of state forests and Florida's forest resources.<sup>66</sup> The FFS constructs structures on forest land to support its duties thereon, including wildfire, educational, camping and recreational, and law enforcement facilities. Currently, s. 590.02, F.S., grants the FFS exclusive authority to enforce the Florida Building Code relating to the wildfire and law enforcement structures the FFS builds.

**Section 37** expands the grant of authority under s. 590.02, F.S., to the Department to enforce the Florida Building Code as it relates to all FFS facilities, in addition to the FFS' law enforcement and wildfire facilities.

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<sup>62</sup> Florida Department of Agriculture and Consumer Services, *SB 498 Agency Analysis* (Feb. 8, 2017) (On file with the Senate Committee on Commerce and Tourism).

<sup>63</sup> Florida Department of Agriculture and Consumer Services, *Division of Fruits and Vegetables*, <http://www.freshfromflorida.com/Divisions-Offices/Fruit-and-Vegetables> (last visited Mar. 7, 2017).

<sup>64</sup> Section 573.118, F.S.

<sup>65</sup> Florida Department of Agriculture and Consumer Services, *SB 498 Agency Analysis* (Feb. 8, 2017) (on file with the Senate Committee on Commerce and Tourism).

<sup>66</sup> Florida Department of Agriculture and Consumer Services, *Florida Forest Service*, <http://www.freshfromflorida.com/Divisions-Offices/Florida-Forest-Service> (last visited Mar. 7, 2017). *See also*, s. 590.01, F.S.

## Division of Aquaculture

Pursuant to ch. 597, F.S., the Division of Aquaculture coordinates and assists with the development of aquaculture in Florida, and regulates aquafarms to protect and conserve Florida's aquatic organisms.<sup>67</sup>

The Department issues certificates of registration under s. 597.004, F.S., to aquaculture producers who must agree to submit to the Department's best management practices.<sup>68</sup> These certificates permit the aquaculture producer to sell all aquaculture products except those otherwise prohibited by law, and those for which the origin of the product is unknown.<sup>69</sup>

**Section 38** clarifies that dealers licensed pursuant to part VII of ch. 379, F.S., ("Nonrecreational Licenses") including downline sellers of aquaculture products, such as wholesale and retail saltwater products dealers and freshwater fish dealers (excepting the initial aquaculture producer sellers), are not required to be certified aquaculture producers under s. 597.004, F.S. According to the Department, this clarification is being made at the request of the Florida Fish and Wildlife Commission.<sup>70</sup>

## Office of Agricultural Law Enforcement

The Division of Agricultural Law Enforcement (AgLaw) is the law enforcement arm of the Department. As part of its duties, AgLaw operates 23 agricultural inspection stations; investigates crimes involving agriculture and unfair and deceptive trade practices; and partners with federal, state, and local law enforcement agencies to coordinate the Domestic Marijuana Eradication Task Force.<sup>71</sup>

A dealer in agricultural products (dealer) is any person, partnership, corporation, or other business entity that is engaged in the purchase, receipt, or solicitation of agricultural products from the initial producer, for the purpose of resale or processing for sale.<sup>72</sup> The AgLaw regulates dealers in order to protect sellers of agricultural products (farmers). The Legislature created this duty because the recovery of agricultural products from a dealer who is ultimately unable to pay the producer for his or her products is impractical because of the quick decay or consumption of agricultural products.<sup>73</sup>

Section 640.16, F.S. exempts certain dealers from registration as a dealer, if the dealer:

- Pays for the products in cash at the time of the purchase;
- Is a bonded licensee under the federal Packers and Stockyards Act; or
- Purchases less than \$1,000 of agricultural products during a one-month period.

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<sup>67</sup> Florida Department of Agriculture and Consumer Services, *Division of Aquaculture*, <http://www.freshfromflorida.com/Divisions-Offices/Aquaculture> (last visited Mar. 7, 2017).

<sup>68</sup> Section 597.004, F.S.

<sup>69</sup> Section 597.004(5), F.S.

<sup>70</sup> Florida Department of Agriculture and Consumer Services, *SB 498 Agency Analysis*, p. 10 (Feb. 8, 2017) (on file with the Senate Committee on Commerce and Tourism).

<sup>71</sup> Florida Department of Agriculture and Consumer Services, Office of Agricultural Law Enforcement, <http://www.freshfromflorida.com/Divisions-Offices/Agricultural-Law-Enforcement> (last visited Mar. 7, 2017).

<sup>72</sup> Section 604.15(2), F.S.

<sup>73</sup> See, s. 604.151, F.S.

**Section 39** amends s. 640.16, F.S., to provide an additional exemption from registration for those dealers who pay for the products with a credit card at the time of the agricultural purchase.

**Section 41** provides an effective date of July 1, 2017.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Private investigator class “M” licensees under ch. 493, F.S., may be able to take on additional employment to supplement their income since they may act as a manager at multiple private investigative agencies or branches.

Those who register a livestock brand or mark will see a reduction in associated fees. Agricultural Dealers who pay for their purchases with a credit card are no longer required to pay a registration fee to the Department.

Concealed weapon licensees will see a five-dollar reduction in licensure and renewal fees.

Those who operate taximeters will no longer incur registration fees and related regulations under the Department.

C. Government Sector Impact:

CS/SB 498 has a slightly negative impact on state revenues. The elimination of certain fees relating to licensure requirements under chs. 534 and 604, F.S., is estimated to

reduce the Department's revenues in the total amount of \$318,939 beginning in Fiscal Year 2017-2018.<sup>74</sup>

The Department expects a decrease in expenditures of \$252,363 beginning in Fiscal Year 2017-2018. This reduction is the result of the elimination of four Departmental positions related to the licensure of agriculture products dealers, and of reduced background check expenditures for ch. 493, F.S., agency manager licensees, who are no longer required to file multiple applications for licensure to be able to manage multiple branches or agencies.<sup>75</sup>

#### **VI. Technical Deficiencies:**

None.

#### **VII. Related Issues:**

None.

#### **VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 288.1175, 472.003, 472.005, 472.013, 472.015, 472.018, 472.025, 472.033, 472.0351, 472.0366, 487.2041, 493.6101, 493.6105, 493.6107, 493.6108, 493.6112, 493.6113, 493.6115, 493.6118, 493.6202, 493.6203, 493.6302, 493.6303, 493.6304, 493.6402, 493.6403, 501.013, 501.059, 507.04, 531.37, 531.61, 531.63, 534.021, 534.041, 573.118, 590.02, 597.004, 604.16, and 790.06. This bill repeals section 534.061, F.S.

#### **IX. Additional Information:**

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

##### **CS by Commerce and Tourism on March 6, 2017:**

- Makes substantial changes to regulations and qualifications of surveyors and mappers on ch. 472, F.S;
- Permits the use of FDLE's MECOM database for only class "G" and "K" applicants and licensees;
- Provides for the temporary suspension of class "G" or "K" licensees who are arrested for or charged with a firearms-related crime, and for ch. 493, F.S. licensees who are arrested for or charged with a forcible felony;
- Exempts company gyms that are used only by employees and their families from registration as a health studio with the DACS;
- Deletes the regulation of taximeters from the DACS' duties, and clarifies that digital networks are not regulated by the DACS;

<sup>74</sup> Florida Department of Agriculture and Consumer Services, *SB 498 Agency Analysis* (Feb. 8, 2017) (on file with the Senate Committee on Commerce and Tourism).

<sup>75</sup> *Id.*

- Allows the DACS to provide a concealed weapon or firearm license to applicants who have had their firearms disabilities restored pursuant to s. 790.065(2)(a)4.d., F.S.; and
- Reduces the concealed weapon or firearm license and renewal fees by five-dollars.

B. Amendments:

None.