

**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 Appropriations

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BILL: SB 524

INTRODUCER: Senators Steube and Simpson

SUBJECT: Sales and Use Tax on Investigation and Detective Services

DATE: April 24, 2017

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gross	Diez-Arguelles	AFT	<b>Recommend: Favorable</b>
2.	Gross	Hansen	AP	<b>Favorable</b>

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## I. Summary:

SB 524 expressly exempts from the sales and use tax those fingerprint services that are part of the application to obtain a concealed weapons and concealed firearms license.

The Revenue Estimating Conference estimates this bill will not have a fiscal impact on state or local government revenues.

Under current law, fingerprint services performed by a law enforcement agency, the Department of Agriculture and Consumer Services, or an approved tax collector to obtain a concealed weapons or concealed firearms license are not taxable transactions.<sup>1</sup>

The bill takes effect July 1, 2017.

## II. Present Situation:

### Florida Sales and Use Tax

Section 212.05(1)(i)1., F.S., levies a tax on detective, burglar, and other protection services. The law provides that these services are performed by industries classified under the 2007 North American Industry Classification System (NAICS) codes 561611, 561612, 561613, and 561621. A business establishment is classified under one NAICS code based on the establishment's primary economic activity. Fingerprint services are classified under code 561611 along with detective agencies, private investigation services, lie detection services, and other like services.<sup>2</sup>

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<sup>1</sup> See Florida Dep't of Revenue, *Technical Assistance Advisement No. 94(A)-035, Sales Tax – Whether FDLE Criminal History Check Fee of \$8 is Subject to Sales Tax*, (Jun. 17, 1994), available at [https://revenue.floridarevenue.com/LawLibraryDocuments/1994/06/TAA-104246\\_c12bcdeb-4dc3-4000-96a3-078c66658e83.pdf](https://revenue.floridarevenue.com/LawLibraryDocuments/1994/06/TAA-104246_c12bcdeb-4dc3-4000-96a3-078c66658e83.pdf) (last visited Feb. 21, 2017).

<sup>2</sup> The United States Census Bureau, *North American Industry Classification System, 2007 NAICS Definition, 561611 Investigative Services*, available at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=561611&search=2007%20NAICS%20Search> (last visited Feb. 14, 2017).

Concealed weapon and concealed firearm applicants are required by s. 790.06(5), F.S., to submit a full set of fingerprints administered by a law enforcement agency, the Division of Licensing of the Department of Agriculture and Consumer Services, or an approved tax collector, along with other personal identifying information required by federal law to process fingerprints.

Section 790.062, F.S., provides military members and veterans of the United States Armed Forces additional options to obtain fingerprint services; either by military provost or other military unit charged with law enforcement duties.

In 1994, the Department of Revenue issued a Technical Assistance Advisement (TAA) in response to a taxpayer requesting guidance on whether criminal history background check services provided by the Florida Department of Law Enforcement and required by state law are subject to sales tax. The department's answer was no, basing its decision on the fact that the background check, and the associated fee or charge, was mandated by the state.<sup>3</sup>

Further, fingerprint services provided by a law enforcement officer who is performing approved duties in his capacity as a law enforcement officer are not subject to sales tax.<sup>4</sup>

The Revenue Estimating Conference's impact analysis for this bill states that, "where the fingerprinting is performed by staff in the Tax Collector's office or by staff of the Department of Agriculture and Consumer Services, the fee is not a part of the sales price as it is a required governmental fee."<sup>5</sup>

### **License and Fingerprint Processing Fees**

The table below displays the license fees for new and renewal applications, fingerprint processing fees, and additional statutorily defined fees a law enforcement agency or an approved tax collector may require if they perform these services.

Section 790.06, F.S., requires an applicant for a license to carry a concealed weapon to submit a full set of fingerprints administered by a law enforcement agency, the Division of Licensing of the Department of Agriculture and Consumer Services or an approved tax collector. If the applicant is a member or veteran of the United States Armed Forces, the fingerprinting may have been administered by a military provost or other military unit charged with law enforcement duties.<sup>6</sup>

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<sup>3</sup> See *supra* note 1.

<sup>4</sup> Section 212.05(1)(i), F.S.

<sup>5</sup> Office of Economic and Demographic Research, Florida Legislature, *Revenue Estimating Impact Conference*, (Feb, 2017), available at [http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2017/\\_pdf/page161-163.pdf](http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2017/_pdf/page161-163.pdf) (last visited Mar 16, 2017).

<sup>6</sup> Section 790.062(2), F.S.

\$60/\$50	License fee: new applicant/renewal <sup>7</sup>
\$42	Fingerprint processing fee through DACS or an approved tax collector. Distribution: <sup>8</sup>
	\$15 Florida Department of Law Enforcement
	\$12 Federal Bureau of Investigation
	\$15 Licensing Trust Fund
\$35 <sup>9</sup>	Fingerprint processing fee through a sheriff's office. <sup>10</sup>
	Distribution:
	\$15 Florida Department of Law Enforcement
	\$12 Federal Bureau of Investigation
	Remainder received by sheriff's office. <sup>11</sup>
\$5	Sheriff's offices may charge a convenience fee of up to \$5. <sup>12</sup>
\$22/\$12	Tax collector convenience fee: new applicant/renewal. <sup>13</sup>

**III. Effect of Proposed Changes:**

This bill expressly exempts from the sales and use tax fingerprint services as part of the application to obtain a concealed weapons and concealed firearms license.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

<sup>7</sup> Section 790.06(5)(b), F.S.

<sup>8</sup> Email from Grace Lovett, Director, Office of Legislative Affairs, Florida Department of Agriculture and Consumer Services, (Feb. 13, 2017) (on file with the Senate Appropriations Subcommittee on Finance and Tax).

<sup>9</sup> Florida Department of Agriculture and Consumer Services, *Florida Concealed Weapon or Firearm License, Application Instructions and Chapter 790, Florida Statutes*, 8, (July, 2016), available at <http://www.freshfromflorida.com/content/download/26365/504278/ConcealedWeaponLicenseApplicationInstructions.pdf> (last visited Feb. 15, 2017).

<sup>10</sup> If an applicant chooses to have their fingerprint service provided at a sheriff's office, the applicant does not need to submit the \$42 fingerprint service fee to DACS.

<sup>11</sup> Section 790.06(14), F.S., states that “[a]ll funds received by the sheriff pursuant to the provisions of [section 790.06, F.S.,] shall be deposited into the general revenue fund of the county and shall be budgeted to the sheriff.”

<sup>12</sup> Section 790.06(6)(a), F.S.

<sup>13</sup> Section 790.0625, F.S.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

The Revenue Estimating Conference estimates this bill will have no impact on state or local government revenues.

**B. Private Sector Impact:**

The exemption may clarify the exempt nature of fingerprint services as part of a license to carry a concealed weapon or concealed firearm.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill amends the following sections of the Florida Statutes: 212.05(1)(i), 790.06, and 790.062.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

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

None.

**B. Amendments:**

None.