

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB BCAS 11-03 Relating to consumer services functions within the Department of Agriculture & Consumer Services

SPONSOR(S): Business & Consumer Affairs Subcommittee

TIED BILLS: **IDEN./SIM. BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|--------|---------------------------------------|--|
| Orig. Comm.: Business & Consumer Affairs Subcommittee | | Morton, Livingston, Whittington | Creamer |

SUMMARY ANALYSIS

The bill makes numerous changes to the private investigations and security services statutes found in chapter 493, F.S.. The effect of the changes is to conform statutory requirements to existing practices within the Department of Agriculture and Consumer Affairs (DACs) and with Federal laws.

The bill removes and revises references to the Department related to Bedding Label Act and to references to "occupational licenses", now referred to in statute as "business tax receipts".

This bill makes terminology used by the Department of Agriculture and Consumer Services consistent with that used by the Florida Department of Revenue. No new business entities are added by this change.

The bill makes clarifying changes related to the mixing, blending, compounding or adulterating liquid fuels.

The bill is anticipated to have an insignificant negative fiscal impact on state trust funds. See fiscal section.

The bill has an effective date of July 1, 2011, unless otherwise noted.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Security Industry

Current Situation

Chapter 493, F.S., establishes the licensure requirements for private investigative services, private security services and repossession industries (security industries). The security industries are regulated by the Department of Agriculture and Consumer Services (DACs). Additionally, DACs manages concealed weapons and firearm licenses. Currently, there are 940,401 licensees or permits in Florida. These licensees are broken down as:

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|----|---|---------|----|---|---------|
| C | Private Investigators | 8,066 | G | Statewide Firearm Licenses | 25,577 |
| CC | Private Investigator Interns | 1,575 | K | Firearms Instructors | 637 |
| A | Private Investigative Agencies | 2,993 | E | Recovery Agents | 999 |
| AA | Private Investigative Agency Branch Offices | 26 | EE | Recovery Agent Interns | 571 |
| MA | Private Investigative Agency Managers | 88 | R | Recovery Agencies | 446 |
| M | Private Investigative/Security Agency Managers | 555 | RR | Recovery Agency Branch Offices | 39 |
| D | Security Officers | 126,232 | M | Recovery Agency Managers | 4 |
| B | Security Agencies | 1,324 | RS | Recovery Agent School | 9 |
| BB | Security Agency Branch Offices | 284 | RI | Recovery Agent School Instructors | 20 |
| MB | Security Agency Managers | 1,524 | W | Concealed Weapons/Firearms | 760,672 |
| AB | Security Agencies/Private Investigative Agency Branch Offices | 23 | WJ | Concealed Weapons/Circuit and County Judges | 505 |
| DS | Security Officer Schools | 316 | WR | Concealed Weapons/Retired Law Enforcement and Corrections | 6,559 |
| DI | Security Officer Schools Instructors | 1,354 | WS | Concealed Weapons/Consular Security Officer | 3 |

Firearm instructors are defined as any licensed instructor who provides classroom or range instruction to applicants for a Statewide Firearms license. Any person who carries a firearm while on duty must have a Statewide Firearm License in addition to his private investigator, security officer or manager's license.

Applicants for a Statewide Firearm license (G) must have 28 hours of range and classroom training taught and administered by a Class K firearm instructor. Applicants for a firearm instructor (K) license must have one of the following certificates:

- The Florida Criminal Justice Standards and Training Commission Firearms Instructor Certificate;
- The National Rifle Association Police Firearm Instructor Certificate;
- The National Rifle Association Security Firearm Instructor Certificate; or
- A Firearm Instructor's Certificate from a federal, state, county or municipal police academy in this state recognized as such by the Criminal Justice Standards and Training Commission or by the department of Education.

Security agencies are defined as any business who, for a fee, furnishes security services, armored car services, or transporting prisoners. This includes businesses who utilize dogs and individuals to provide security services.

Security officers are defined any person who, for a fee, provides or performs bodyguard services or otherwise guards persons or property; attempts to prevent theft or unlawful taking of goods, wares, and merchandise; or attempts to prevent the misappropriation or concealment of goods, wares or merchandise, money, bonds, stocks, choses in action, notes, or other documents, papers, and articles of value or procurement of the return thereof. The term also includes armored car personnel and those personnel engaged in the transportation of prisoners.

There are two types of licenses available to individuals; both licenses are valid for two years. An individual can become licensed as a security officer (D license) or a manager of a security agency (M or MB license). These are defined as:

- Security Officer (D) - An individual who performs security. Must own or be employed by a licensed Class "B" Security Agency or branch office.
- Manager of a Security agency (M or MB) - Any person who directs the activities of licensed security officers at any agency or branch office. Each licensed location must have a designated, properly licensed manager and a licensed manager may only be designated as manger of one location.

Security Agencies' licenses are valid for three years. Three licenses are available for security agencies:

- Security agency (B) – Any business which advertises as, or is engaged in, the business of furnishing security services, armored car services, or transporting prisoners for compensation is a security agency. Class B agencies may enter into subcontractor agreements with other licensed agencies.
- Security Agency Branch Office (BB) – Additional location for an agency where security business is actively conducted.
- Combined Security and Private Investigative Agency Branch office (AB).

For individuals to be licensed, applicants must be at least 18 years of age, be of good moral character, not have a disqualifying criminal history or a disqualifying history of mental illness, drug or alcohol abuse and must be authorized to work in this country. Each applicant must disclose contact and background information and submit to a federal background check. Class D -Security Officer – applicants must have minimum of 40 hours professional training at a school or training facility licensed by DACS. Each Class B -Security Agency - applicant must have at least \$300,000 commercial general liability coverage for death, bodily injury, property damage and personal injury coverage.

Currently, any school, training facility, or instructor who offers the training must submit a signed and notarized application to DACS containing certain information outlined in section 493.6304, F.S.

Private investigation is defined as the investigation by a person or persons for the purpose of obtaining information with reference to any of the following matters:

- Crime or wrongs done or threatened against the United States or any state or territory of the United States, when operating under express written authority of the governmental official responsible for authorizing such investigation.

- The identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation, or character of any society, person, or group of persons.
- The credibility of witnesses or other persons.
- The whereabouts of missing persons, owners of unclaimed property or escheated property, or heirs to estates.
- The location or recovery of lost or stolen property.
- The causes and origin of, or responsibility for, fires, libels, slanders, losses, accidents, damage, or injuries to real or personal property.
- The business of securing evidence to be used before investigating committees or boards of award or arbitration or in the trial of civil or criminal cases and the preparation therefor.

Private investigators are defined as any person who, for a fee, provides or performs private investigation. This does not include an informant who, on a one-time or limited basis, as a result of a unique expertise, ability, vocation, or special access and who, under the direction and control of a Class "C" licensee or a Class "MA" licensee, provides information or services that would otherwise be included in the definition of private investigation. Private investigation agencies engage in the business of furnishing private investigation services.

Individual private investigator licenses are valid for 2 years. Three types of individual licenses are available:

- Private Investigator (C) - An individual, except an in-house investigator, who performs investigative services. Must own or be employed by a licensed Class A Private Investigative Agency or Class AA or AB branch office.
- Private Investigator Intern (CC) - Any individual who performs investigative services as an intern under the direction and control of a designated sponsoring Class C licensee or designated sponsoring Class M or MA Agency Manager licensee.
- Manager of a Private Investigative Agency (M or MA) - Any individual who performs the services of a manager for a Class A Investigative Agency or a Class AA Branch Office. A Class C licensee may be designated as a manager.

Private investigation agency licenses are valid for 3 years. Two types of agency licenses are available:

- Private Investigative Agency (A) - Any company that engages in business as an investigative agency for each location.
- Private Investigative Agency Branch Office (AA) - Each branch office of a Class A agency shall have a Class AA license.

Individual applicants must be at least 18 years of age, be of good moral character, not have a disqualifying criminal history or a disqualifying history of mental illness, drug or alcohol abuse and must be authorized to work in this country. Each applicant must disclose contact and background information and submit to a federal background check.

In addition, Class C -Private Investigator- applicants must have 2 years of verifiable, full-time experience or training in one, or a combination, of:

- Private investigative work or related fields of work that provided equivalent experience or training.
- College course work related to criminal justice, criminology, or law enforcement administration, or successful completion of any law enforcement-related training received from any federal, state, county, or municipal agency, except that no more than one (1) year may be used from this category.
- Work as a licensed Class CC intern.

A Class CC-Private Investigator Intern – applicant must complete at least 24 hours of a 40-hour training course, focusing on general investigative techniques and Florida law, and pass an initial examination. Completion of the course and a second examination are due within 180 days of application. Class M

and MA-Manager of a Private Investigative Agency – applicants must pass an examination that covers the provisions of Florida law.

Each class of license holder must pay at least a license fee and fingerprint fee. Currently, license holders are required to pay all fees by certified check or money order.¹

Section 493.6108, F.S., requires DACS to conduct an investigation of applicants for licensure under chapter 493. The investigation must include an examination of fingerprint records and police records, an inquiry to determine if the applicant has been adjudicated incompetent under chapter 744 or has been committed to a mental institution under chapter 394, and any such other investigation of the individual as the department may deem necessary. In addition, DACS must investigate the general physical fitness of the Class “G” applicant to bear a weapon or firearm, and mental history and current mental and emotional fitness of any Class “G” applicant. DACS may deny a Class “G” license to anyone who has a history of mental illness or drug or alcohol abuse. However, if a legible set of fingerprints, as determined by Florida Department of Law Enforcement (FDLE), cannot be obtained after two attempts, DACS may determine the applicant’s eligibility based on a criminal history record check under the applicant’s name conducted by FDLE and the Federal Bureau of Investigation.

Section 493.6118, F.S., provides the grounds for disciplinary action that may be taken by DACS against any licensee, agency, or applicant.

Section 493.6121, F.S., provides that DACS has the power to enforce the provisions of chapter 493, irrespective of the place or location in which the violation occurred. As one of its enforcement tools, subsection (6) currently provides that DACS must be provided access to the program that is operated by FDLE, pursuant to section 790.065, for providing criminal history record information to licensed gun dealers, manufacturers, and exporters. DACS may make inquiries, and shall receive responses in the same fashion as provided under section 790.065. DACS shall be responsible for payment to FDLE of the same fees as charged to others afforded access to the program.

Proposed Changes

The effect of the bill is to conform statutory requirements to existing practices within DACS.

The bill provides that, initial license applicant are required, as a condition of licensure, to file with DACS an application that has been verified by the applicant under oath, instead of being notarized. Initial applicants will also be required to list all criminal convictions, not simply “convictions” as currently required and must disclose findings of guilt, pleas of guilt or nolo contendere, regardless of adjudication of guilt. Applicants seeking a Class “G” (statewide firearm license) or “K” (firearms instructor) license who are younger than 24 years of age must also provide a statement disclosing previous acts of delinquency in any state, territory, or country which would be a felony if committed by an adult and is punishable by a prison term exceeding a year. The application requirement for various photo requirements is standardized to require that all applicants submit one passport type color photo taken within six months prior to application submission.

The Class “K” license requirements are modified, under the bill DACS will only accept 3 third party issued firearm proficiency certificates. DACS will only accept:

- The Florida Criminal Justice Standards and Training Commission Instructor Certificate and written confirmation by the commission that the applicant possesses active firearm certification.
- The National Rifle Association Private Security Firearm Instructor Certificate.
- A firearms Instructor Certificate issued by a federal law enforcement agency.

Language is also added to disqualify Class “G” or “K” license applicants if they are prohibited from purchasing or possessing a firearm by federal or state law. In addition, grounds for disciplinary action are expanded to establish that Class “G” or Class “K” applicants or licensees are subject to disciplinary action if they are prohibited from purchasing or possessing a firearm pursuant to state or federal law.

¹ See, e.g., Fla. Stat. ss. 493.6107(3), 493.6202(3), 493.6302(3).

The bill allows payment of fees by licensees by regular check instead of only by certified check. Payment by electronic funds transfer is also allowed, but at the discretion of DACS.

The bill deletes the requirement that the Federal Bureau of Investigation (FBI) be included in a criminal history records check using the applicant's name without fingerprints in instances when a legible set of fingerprints cannot be obtained after two attempts. In addition, Class "K" license applicants are included with Class "G" license applicants whose mental history and current mental and emotional fitness must be investigated and whose application may be denied due to a history of mental illness or drug or alcohol abuse.

The bill increases the licensing period for Class "K" Firearm instructor licenses from two years to three years.

The bill requires that only Class "B" private security agencies furnish proof of insurance and deletes the requirement that private investigative agencies and recovery agencies provide certification of insurance. This change is consistent with section. 493.6110, F.S., which requires commercial general liability coverage of only Class "B" licensees.

The bill strikes language granting DACS access to the program operated by FDLE for providing criminal history information to licensed gun dealers, manufacturers, and exporters.

The bill amends the license requirements for private investigative licenses to stipulate that performing bodyguard services is not creditable toward the experience requirements for licensure for a Class "MA" (manager of a private investigative agency) or Class "C" (private investigator) license. In addition, effective January 1, 2012, Class "CC" (private investigator intern) applicants must have completed at least 40 hours of "professional training" prior to submission of an application. The training must be provided in two parts; one 24 hour course and one 16 hour course. DACS shall, by rule, determine the general content of the professional training and the examination criteria. The bill provides a short grandfathering period for applicants for a class "CC" license who submitted their application for a license on or after September 1, 2008 through December 31, 2011, but who have not completed the 16-hour required training course. It provides that the applicant must submit proof of successful completion of the course within 180 days after the date the application is submitted. It further provides that 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 DACS. However, an individual licensed on or before August 31, 2008 is not required to complete the additional training hours in order to renew an active license beyond the required total amount of training, and within the timeframe, in effect at the time he or she was licensed.

The bill provides that effective January 1, 2012, an applicant for a Class "D" license (private security officer) must submit proof of completion of a minimum of 40 hours of professional training, consisting of 2 parts; one 24 hour course and one 16 hour course.

The bill provides a short grandfathering period for individuals who submit an application for a Class "D" license on or after January 1, 2007 through December 31, 2011, but who have not completed the 16-hour required training course. It provides that the applicant must submit proof of successful completion of the course within 180 days after the date the application is submitted. It further provides that 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 DACS. However, an individual licensed before January 1, 2007, is not required to complete the additional training hours in order to renew an active license beyond the required total amount of training within the timeframe prescribed by law at the time he or she was licensed.

The bill amends the requirements for application for licensure by security officer schools and training facilities and requires that the school, training facility or instructor offering the training for Class "D" applicants must, as a condition of licensure, file with DACS, an application that must be verified by the applicant under oath.

Bedding

Current Situation

Currently, section 501.145, F.S., may be cited as the Bedding Label Act. It defines the "Department" to mean DACS, and "Enforcing authority" to mean the DACS or the Department of Legal Affairs. It provides:

All bedding manufactured and sold in the state that contains any previously used materials must bear a conspicuous label notifying the consumer of that fact. The label must be at least 1 inch by 2 inches in dimension, specifically describe the used materials contained in the bedding, and declare the amount present in the bedding. The label must be stitched or otherwise firmly attached to the bedding in such a manner that it may be seen by consumers prior to purchase. Used material does not mean new components that are made from recycled material.

It also provides that the 'enforcing authority' may bring an action for injunctive relief against any person who violates the provisions of section 501.145, F.S.

Proposed Changes

The bill deletes the definition of the department and enforcing authority. It replaces DACS with the Department of Legal Affairs as the entity that may bring an action for injunctive relief against any person who violates the section.

Petroleum Inspection

Current Situation

Section 525.01, F.S., defines petroleum fuel as all gasoline, kerosene (except when used as aviation turbine fuel), diesel fuel, benzine, other like products of petroleum under whatever name designated, or an alternative fuel used for illuminating, heating, cooking, or power purposes, sold, offered, or exposed for sale in this state.

Currently, section 525.01, F.S., requires all manufacturers, wholesalers, and jobbers to file with DACS before selling or offering for sale in Florida any petroleum fuel. Each manufacturer, wholesale and jobbers is required to file 1) an affidavit that they desire to do business in this state, and the name and address of the manufacturer of the petroleum fuel, and 2) an affidavit stating that the petroleum fuel is in conformity with the standards prescribed by DACS rule.

Section 526.06, F.S., makes it unlawful to mix, blend, compound, or adulterate the liquid fuel, lubricating oil, grease, or similar product (product) of a manufacturer or distributor with a product of the same manufacturer or distributor of a character or nature different from the character or nature of the product so mixed, blended, compounded, or adulterated, and expose for sale, offer for sale, or sell the same as the unadulterated product of such manufacturer or distributor or as the unadulterated product of any other manufacturer or distributor. It further provides that ethanol-blended fuels which contain unleaded gasoline and up to 10 percent denatured ethanol by volume may be sold at retail service stations for use in motor vehicles. This bill deletes all redundant provisions to fuel quality specifications that are now incorporated into Department Rule. All gasoline must be blended with nine to ten percent ethanol, by volume, pursuant to section 526.203, F.S. In addition, it provides that if there is no reasonable availability of ethanol or the price of ethanol exceeds the price of gasoline, the T50 and TV/L specifications for gasoline containing between 9 and 10 percent ethanol shall be applicable for gasoline containing between 1 and 10 percent ethanol for up to three deliveries of fuel.

Section 526.11, F.S., states any person who shall violate any of the provisions of this chapter shall, for a first offense, be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and, for a second or subsequent offense, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

In 2008, the Legislature adopted a Renewable Fuel Standard (within HB 7135), requiring that beginning on December 31, 2010, all gasoline sold in Florida contain a mixture of 90 to 91 percent gasoline and 9 to 10 percent fuel ethanol, by volume. The standard also provides for exceptions, waivers, and extensions. Currently, section 526.203, F.S., defines blended gasoline to mean a mixture of 90 to 91 percent gasoline and 9 to 10 percent fuel ethanol, by volume, that means the specifications as adopted by DACS.

Proposed Changes

The bill adds terminal suppliers and importers as defined by s. 206.01, F.S., to the list of entities that must file affidavits with the state before selling or offering for sale any petroleum fuel in the state. This conforms section 525.01, F.S., to Department of Revenue business classification categories for collection of motor fuel inspection fees. This bill makes terminology used by the Department of Agriculture and Consumer Services consistent with that used by the Florida Department of Revenue. No new business entities are added by this change.

The requires that all gasoline must be blended with nine to ten percent ethanol, by volume, pursuant to s. 526.203, F.S. This bill deletes all redundant provisions to fuel quality specifications that are now incorporated into Department Rule.

The bill deletes the ability of retail service stations to sell ethanol blended fuels which contain unleaded gasoline and up to 10 percent denatured ethanol by volume. It further removes the flexibility provided to retail services stations during the transition period for labeling gasoline containing ethanol.

The bill amends the definition of blended gasoline to mean a mixture of 91 percent or less gasoline and 9 percent or more fuel ethanol, by volume, that meets the specifications as adopted by DACS.

B. SECTION DIRECTO RY:

Section 1 amending s. 493.6105, F.S., revising the application requirements and procedures for certain private investigative, private security, recovery agent, firearm, and firearm instructor licenses.

Section 2 amending s. 493.6106, F.S., revising citizenship requirements and documentation for certain private investigative, private security, and recovery agent licenses; prohibiting the licensure of applicants for a statewide firearm license or firearms instructor license who are prohibited from purchasing or possessing firearms; requiring that private investigative, security, and recovery agencies notify the Department of Agriculture and Consumer Services of changes to their branch office locations.

Section 3 amending s. 493.6107, F.S., revising requirements for the method of payment of certain fees.

Section 4 amending s. 493.6108, F.S., revising requirements for criminal history checks of license applicants whose fingerprints are not legible; requiring the investigation of the mental and emotional fitness of applicants for firearms instructor licenses.

Section 5 amending s. 493.6111, F.S., requiring a security officer school or recovery agent school to obtain the department's approval for use of a fictitious name; specifying that a licensee may not conduct business under more than one fictitious name.

Section 6 amending s. 493.6113, F.S., revising application renewal procedures and requirements.

Section 7 amending s. 493.6115, F.S., to conform a cross-reference.

Section 8 amending s. 493.6118, F.S., authorizing disciplinary action against statewide firearm licensees and firearms instructor licensees who are prohibited from purchasing or possessing firearms.

Section 9 amending s. 493.6121, F.S., deleting provisions granting the department access to certain criminal history records provided to licensed gun dealers, manufacturers, and exporters.

Section 10 amending s. 493.6202, F.S., revising requirements for the method of payment of certain fees.

Section 11 amending s. 493.6203, F.S., prohibiting bodyguard services from being credited toward certain license requirements; revising the training requirements for private investigator intern license applicants; requiring the automatic suspension of an intern's license under certain circumstances; providing an exception.

Section 12 amending s. 493.6302, F.S., revising requirements for the method of payment of certain fees.

Section 13 amending s. 493.6303, F.S., revising the training requirements for security officer license applicants.

Section 14 amending s. 493.6304, F.S., revising application requirements and procedures for security officer school licenses.

Section 15 amending s. 501.145, F.S., deleting authority for the department to bring actions for injunctive relief under the Bedding Label Act.

Section 16 amending s. 525.01, F.S., revising requirements for petroleum fuel affidavits.

Section 17 amending s. 526.06, F.S., revising prohibited acts related to certain mixing, blending, compounding, or adulterating of liquid fuels; deleting certain provisions authorizing the sale of ethanol-blended fuels for use in motor vehicles.

Section 18 amending s. 526.203, F.S., revising the definition of "blended gasoline" for purposes of renewable fuel standards.

Section 19 amending s.559.935, F.S., to correct improper reference.

Section 20 providing an effective date of July 1, 2011, unless otherwise noted.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

There is an anticipated negative fiscal impact on state revenues associated with the decreased fees collected under the new three year renewal cycle for the Class "K" firearm instructor license. DACS anticipates this at \$5,200 for FY 2011-12 and 2012-13, and estimates \$3,467 for FY 2013-14.

2. Expenditures:

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Class "K" firearm instructors will experience a slight decrease in expenditures to renew their licenses based on the longer renewal period.

D. FISCAL COMMENTS:

DACS will require adequate time to put the necessary infrastructure in place to process electronic funds transfers (EFT) for payment of license fees. This new process may require additional budget authority which would be supported by industry standard EFT processing fees and/or existing program revenue

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because the bill does not appear to: require the counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties and municipalities

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Expands rule making authority of DACS to determine the general content of professional training required by applicants for Class "CC" and Class "D" licenses.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES