



Business & Professions Subcommittee

**Tuesday, January 12, 2016
1:30 PM
12 HOB**

MEETING PACKET

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Business & Professions Subcommittee

Start Date and Time: Tuesday, January 12, 2016 01:30 pm
End Date and Time: Tuesday, January 12, 2016 03:30 pm
Location: 12 HOB
Duration: 2.00 hrs

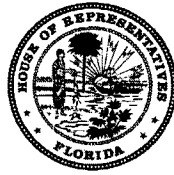
Consideration of the following bill(s):

HB 295 Calder Sloan Swimming Pool Electrical-Safety Task Force by Fresen
HB 637 Public Lodging Establishments by Porter
HB 641 Department of Agriculture and Consumer Services by Trumbull
HB 643 Pub. Rec./Department of Agriculture and Consumer Services by Trumbull
HB 655 City of Jacksonville, Duval County by Fullwood
HB 691 Retail Sale of Dextromethorphan by Broxson
HB 707 Fantasy Contests by Gaetz, Workman
HB 805 Motor Fuels by Avila, Trujillo

Pursuant to rule 7.12, the filing deadline for amendments to bills on the agenda by a member who is not a member of the committee or subcommittee considering the bill is 6:00 p.m., Monday, January 11, 2016.

By request of the Chair, all Business & Professions Subcommittee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Monday, January 11, 2016.

NOTICE FINALIZED on 01/08/2016 4:16PM by Ellinor.Martha



The Florida House of Representatives

Regulatory Affairs Committee

Business & Professions Subcommittee

Steve Crisafulli
Speaker

Halsey Beshears
Chair

AGENDA

January 12, 2016

12 HOB

1:30 PM – 3:30 PM

- I. **Call to Order & Roll Call**

- II. HB 295 by *Rep. Fresen*
Calder Sloan Swimming Pool Electrical-Safety Task Force

- III. HB 637 by *Rep. Porter*
Public Lodging Establishments

- IV. HB 641 by *Rep. Trumbull*
Department of Agriculture and Consumer Services

- V. HB 643 by *Rep. Trumbull*
Pub. Rec./Department of Agriculture and Consumer Services

- VI. HB 655 by *Rep. Fullwood*
City of Jacksonville, Duval County

- VII. HB 691 by *Rep. Broxson*
Retail Sale of Dextromethorphan

- VIII. HB 707 by *Reps. Gaetz and Workman*
Fantasy Contests

- IX. HB 805 by *Reps. Avila and Trujillo*
Motor Fuels

- X. **Adjournment**

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 295 Calder Sloan Swimming Pool Electrical-Safety Task Force
SPONSOR(S): Fresen
TIED BILLS: IDEN./SIM. **BILLS:** SB 530

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee		Whittier <i>spw</i>	Anstead <i>Ja</i>
2) Government Operations Subcommittee			
3) Government Operations Appropriations Subcommittee			
4) Regulatory Affairs Committee			

SUMMARY ANALYSIS

Several news stories in South Florida in the past two years have highlighted the issue of electrocution in swimming pools. Three children were injured by electrical shocks in a Hialeah condominium community pool in April 2014 and the building inspector's report found that the pool pump was not properly grounded. During the same month in North Miami, a 7-year-old boy, Calder Sloan, died from electrocution in his family's North Miami swimming pool due to faulty wiring.

The Florida Building Commission (FBC) has included standards for the construction of swimming pools in the Florida Building Code (Code). Although provisions related to public pools include the use of low-voltage pool lighting as a safety measure, Code provisions related to residential swimming pools rely on the use of bonding and grounding to protect users from electrocution and do not include a requirement for low voltage lighting.

The bill establishes within the FBC, the Calder Sloan Swimming Pool Electrical-Safety Task Force (Task Force), the purpose of which is to study the need for the adoption of standards for grounding, bonding, lighting, wiring, and all other electrical aspects in and around public and private swimming pools. The focus of the study shall be on minimizing the risks of electrocutions at swimming pools.

The task force is directed to meet as often as necessary to fulfill its responsibilities, and meetings may be conducted by conference call, teleconferencing, or similar technology. The Task Force members are to serve without compensation.

The Task Force must submit a report on its findings, including any recommended revisions to state law, to the Governor, the President of the Senate, and the Speaker of the House of Representatives by November 1, 2016. The Task Force expires on December 31, 2016.

The bill does not appear to have a fiscal effect on state or local governments. The bill provides an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Department of Health (DOH) is responsible for the oversight and regulation of water quality and safety of certain swimming pools in Florida under ch. 514, F.S. Inspections and permitting for swimming pools are conducted by the county health departments. Sanitation and safety standards for public pools have been adopted by rule under Chapter 64E-9 of the Florida Administrative Code.

Current construction rules for public pools require that written approval must be received from DOH before construction can begin.¹ Plans are required to show the pool layout, tile markings, size of the pool ladder, gutter heights and, if night swimming is permitted, an engineer in Florida must provide certification that the underwater lighting meets the requirements of Rule 64E-9.006(2)(c)3 of the Florida Administrative Code, which sets the maximum lighting at 15 volts. The rule also permits all underwater lighting requirements to be waived if overhead lighting provides at least 15 foot candles of illumination at the pool water surface and wet pool deck.²

Electrical equipment and wiring must meet national standards relating to the grounding of pool components. The standards that are incorporated into the rule are those of the National Fire Protection Association 70, National Electrical Code (NEC), 2008 Edition, and with any applicable local code. As a part of the plan approval, the electrical contractor or electrical inspector must certify a pool's compliance, on a form designated by DOH.³

The Florida Building Commission (FBC) has included standards for the construction of swimming pools in the Florida Building Code (Code). Although provisions related to public pools include the use of low-voltage pool lighting as a safety measure, Code provisions related to residential swimming pools rely on the use of bonding and grounding to protect users from electrocution and do not include a requirement for low voltage lighting.⁴

The United States Consumer Product Union issued a Safety Alert in August 2012 recommending the installation of ground-fault circuit interrupter (GFCI) protections for pools, spas, and hot tubs for protection against electrocution hazards involving electrical circuits and underwater lighting circuits in and around pools, spas, and hot tubs.⁵ The Safety Alert noted that pools older than 30 years may not have the proper GFCI protection as the NEC provisions for spas only became effective in 1981 and that "electrical incidents involving underwater pool lighting were more numerous than those involving any other consumer product used in or around pools, spas, and hot tubs."⁶

Several news stories in South Florida in the past two years have also highlighted the issue. Three children were injured by electrical shocks in a Hialeah condominium community pool in April 2014. The building inspector's report found that the pool pump was not properly grounded.⁷ During the same

¹ Rule 64E-9.005, F.A.C.

² Rule 64E-9.006(2)(c)3, F.A.C.

³ Rule 64E-9.006(2)(d), F.A.C.

⁴ Florida Department of Business and Professional Regulation, Agency Analysis of 2016 HB 295 (Nov. 9, 2015).

⁵ U.S. Product Safety Commission, *Safety Alert, CPSC Document #5039* (Aug. 14, 2012), available at <http://www.cpsc.gov/PageFiles/118868/5039.pdf> (last visited: Jan. 8, 2016).

⁶ *Id.*

⁷ Roger Lohse, *Shoddy Electrical Work Lead to 3 Kids' Injuries at a Pool in Hialeah, Police Say*, LOCAL 10.COM, May 8, 2014, available at <http://www.local10.com/news/police-photos-show-shoddy-electrical-work-at-pool-that-caused-three-kids-to-be-shocked/25861796>. (last visited Jan. 8, 2016).

month in North Miami, a 7-year-old boy, Calder Sloan, died from electrocution in his family's North Miami swimming pool due to faulty wiring.⁸

In August 2015, the FBC charged a workgroup comprised of the Swimming Pool Technical Advisory Committee and the Electrical Technical Advisory Committee with making recommendations to the FBC on issues related to electrocution hazards of residential swimming pools.⁹

Effects of Proposed Changes

The bill establishes within the FBC the Calder Sloan Swimming Pool Electrical-Safety Task Force (Task Force), the purpose of which is to study the need for the adoption of standards for grounding, bonding, lighting, wiring, and all other electrical aspects in and around public and private swimming pools. The focus of the study shall be on minimizing the risks of electrocutions at swimming pools.

The task force is to be composed of the Swimming Pool Committee and Electrical Technical Advisory Committee (both within the FBC) and is to be chaired by the Swimming Pool Contractor appointed to the FBC. The FBC will provide such staff, information, and other assistance necessary to assist the task force in carrying out its responsibilities.

The Task Force is directed to meet as often as necessary to fulfill its responsibilities, and meetings may be conducted by conference call, teleconferencing, or similar technology. The Task Force members are to serve without compensation.

The Task Force must submit a report on its findings, including any recommended revisions to state law, to the Governor, the President of the Senate, and the Speaker of the House of Representatives by November 1, 2016. The Task Force expires on December 31, 2016.

B. SECTION DIRECTORY:

Section 1. Creates the Calder Sloan Swimming Pool Electrical-Safety Task Force within the Florida Building Commission; requires a report to the Governor and the Legislature by a specified date; requires the Florida Building Commission to provide staff, information, and other assistance to the task force; provides that members of the task force serve without compensation; provides for future repeal of the task force.

Section 2. Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

⁸ Roger Lohse, *South Fla. Boy Electrocuted by Pool Light While Swimming*, LOCAL10.COM, April 17, 2014, available at <http://www.local10.com/news/south-fla-boy-electrocuted-by-pool-light-while-swimming/25538944> (last visited Jan. 8, 2016).

⁹ Florida Department of Business and Professional Regulation, Agency Analysis of 2016 HB 295 (Nov. 9, 2015).

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to the Calder Sloan Swimming Pool
 3 Electrical-Safety Task Force; providing a short title;
 4 creating the Calder Sloan Swimming Pool Electrical-
 5 Safety Task Force within the Florida Building
 6 Commission; specifying the purpose of the task force;
 7 requiring a report to the Governor and the Legislature
 8 by a specified date; providing for membership;
 9 requiring the Florida Building Commission to provide
 10 staff, information, and other assistance to the task
 11 force; providing that members of the task force serve
 12 without compensation; providing for future repeal of
 13 the task force; providing an effective date.

14
 15 Be It Enacted by the Legislature of the State of Florida:

16
 17 Section 1. The Calder Sloan Swimming Pool Electrical-
 18 Safety Task Force.-

19 (1) This section may be cited as the "Calder Sloan Act."

20 (2) The Calder Sloan Swimming Pool Electrical-Safety Task
 21 Force is established within the Florida Building Commission.

22 (3) The purpose of the task force is to study the need for
 23 the adoption of standards for grounding, bonding, lighting,
 24 wiring, and all other electrical aspects in and around public
 25 and private swimming pools. The task force shall focus its study
 26 on minimizing the risk of electrocutions at swimming pools. The

27 task force shall submit a report by November 1, 2016, to the
 28 Governor, the President of the Senate, and the Speaker of the
 29 House of Representatives which states the findings of the task
 30 force, including any recommended revisions to the Florida
 31 Statutes by the task force.

32 (4) The task force shall consist of the Swimming Pool and
 33 Electrical Technical Advisory Committees of the Florida Building
 34 Commission.

35 (5) The task force shall be chaired by the swimming pool
 36 contractor appointed to the Florida Building Commission pursuant
 37 to s. 553.74, Florida Statutes.

38 (6) The Florida Building Commission shall provide
 39 staffing, information, and other assistance necessary to assist
 40 the task force in carrying out its responsibilities.

41 (7) Members of the task force shall serve without
 42 compensation.

43 (8) The task force shall meet as often as necessary to
 44 fulfill its responsibilities, and meetings may be conducted by
 45 conference call, teleconferencing, or similar technology.

46 (9) This section expires December 31, 2016.

47 Section 2. This act shall take effect July 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 637 Public Lodging Establishments
SPONSOR(S): Porter
TIED BILLS: IDEN./SIM. BILLS: SB 900

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee		Butler BSB	Anstead <i>je</i>
2) Civil Justice Subcommittee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

Under state and federal law, operators of public lodging establishments are prohibited from discriminating against guests based solely upon the race, color, religion, national origin, or sex, and additionally under state law based solely upon handicap or familial status. Operators are not prohibited by either federal or state law from discriminating against a guest based solely upon the age of the guest.

The bill prohibits operators of public lodging establishments from discriminating against a guest based solely upon the age of the guest, and creates a cause of action under the Florida Civil Rights Act for any person aggrieved by an operator's age discrimination.

The bill may result in a significant fiscal impact for state government (see Fiscal Analysis and Economic Impact Statement section for more detail). The Florida Commission on Human Relations anticipates needing 3 FTE positions, \$187,849 in recurring funds, and \$17,434 in non-recurring funds to implement the bill.

The bill provides an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Title VII of the Civil Rights Act of 1964¹

Title VII of the Civil Rights Act of 1964 (Title VII) prohibits discrimination in employment on the basis of race, color, religion, national origin, or sex. Title VII covers employers with 15 or more employees and outlines a number of unlawful employment practices. For example, Title VII makes it unlawful for an employer to refuse to hire, discharge, or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment, based on race, color, religion, national origin, or sex.

Age Discrimination in Employment Act²

The Age Discrimination in Employment Act of 1967 (ADEA), forbids employment discrimination against anyone at least 40 years of age in the United States. Differing from Title VII, the ADEA only covers employers with 20 or more employees.³

Florida Civil Rights Act of 1992

The Florida Civil Rights Act of 1992 (FCRA) was enacted to "secure for all individuals within the state freedom from discrimination because of race, color, religion, sex [or gender], national origin, age, handicap, or marital status...."⁴ The FCRA gives a cause of action for discrimination in employment for every protected class above, and in public accommodations for every protected class above except age.⁵ Additionally, any violation of any Florida statute in regards to education, employment, or public accommodations gives rise to an additional, separate cause of action if the violation was made based on an unlawful discrimination of any protected class (including age).⁶

Similar to Title VII, the FCRA specifically provides a number of actions that, if undertaken by an employer, would be considered unlawful employment practices.⁷ For example, it is unlawful to discharge or fail to hire an individual, or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment based on an individual's color, religion, sex, pregnancy, national origin, age, handicap, or marital status.

¹ 42 U.S.C. s. 2000e. *et seq.*

² 29 U.S.C. s. 621 to s. 634 (2012).

³ 29 U.S.C. s. 630 (2012). *See also Morelli v. Cedel*, 141 F.3d 39, 45 (2d Cir. 1998) (stating that the number of employees of the corporation "a U.S. corporation with many foreign employees but fewer than 20 domestic ones would certainly be subject to the ADEA"

⁴ ss. 760.01 & 760.07, F.S.

⁵ ss. 760.08 & 760.10, F.S. (s. 760.08, F.S., states that, "All persons are entitled to ... accommodations ... without discrimination ... [based on] race, color, national origin, sex, pregnancy, handicap, familial status, or religion." Compare against s. 760.10, F.S., which states, "It is an unlawful employment practice for an employer ... to discriminate ... [based on] race, color, religion, sex, pregnancy, national origin, **age**, handicap, or marital status." Because familial status and marital status are likely the same concept, the only protected class that appears within the employment protections but not within the public accommodations protections is age.

⁶ ss. 760.07, 760.08, & 760.10, F.S.

⁷ s. 760.10, F.S. Note that this section does not apply to a religious corporation, association, educational institution, or society which conditions employment opportunities to members of that religious corporation, association, educational institution, or society.

Procedures for Filing Claims under Title VII and the FCRA

A person may file a charge of an unlawful discrimination with either the federal Equal Employment Opportunity Commission (EEOC) or the Florida Commission on Human Relations (FCHR). A person who wishes to file a complaint with the EEOC must do so within 300 days of a violation in a jurisdiction with a fair employment practices agency (such as Florida, which has the FCHR), or within 180 days in a jurisdiction with no such agency.⁸

The EEOC may investigate the charge of discrimination, or refer it to a local fair employment practices agency, and if it finds reasonable cause to believe a violation of Title VII occurred, it may issue a right to sue notice and the suit must then be filed within 90 days.⁹ However, the EEOC will only investigate cases that may violate federal law, and for the purposes of Title VII, age discrimination is limited to discrimination in employment of persons over 40 years of age.

A person who wishes to file a complaint with the FCHR must do so within 365 days of a violation. If a complaint is filed with the FCHR, the FCHR has 180 days to mediate the claim or determine whether there is reasonable cause to conclude that a discriminatory practice prohibited by FCRA took place, at which point it must notify the complainant and respondent of its determination.¹⁰ If the FCHR concludes that there is reasonable cause to conclude that a violation took place, or if it fails to make any determination as required, the aggrieved person may either bring a civil action in an appropriate court, which may be filed within one year of the determination of reasonable cause, or request an administrative hearing under ss. 120.569 and 120.57, F.S., within 35 days of the determination of reasonable cause.¹¹

If the FCHR determines that there is no reasonable cause to believe a violation of the FCRA occurred, a complainant may only request an administrative proceeding under ss. 120.569 and 120.57, F.S. If the complainant prevails, a final order from the FCHR may be entered requiring affirmative relief, including back pay. The complainant then has one year to accept the affirmative relief offered, or to bring a civil action in state court as if there had originally been a determination of reasonable cause.¹²

Remedies under the FCRA

Remedies available to persons who bring discrimination claims under the FCRA in a public accommodations case include an order prohibiting the discriminatory practice, compensatory damages and punitive damages.¹³ A claimant who prevails in a discrimination claim against a private entity under the FCRA may recover up to \$100,000 in punitive damages.¹⁴ Compensatory damages against private entities, such as damages for mental anguish, loss of dignity, and other intangible injuries, are not limited under the FCRA. However, the total recovery, for a claimant who brings a discrimination claim against the state or its subdivisions is limited under the FCRA to \$300,000.¹⁵

Effect of the Bill

The bill creates a cause of action under the FCRA for discrimination based on age at a public lodging establishment. The operator of a public lodging establishment is prohibited from refusing accommodations or service or from removing or causing a guest to be removed based solely upon age.

⁸ EEOC Compliance Manual, Chapter 2-IV. The enforcement procedures referenced in this paper do not apply to individuals affected by federal agencies, who have a separate process. 29 C.F.R. part 1614.

⁹ 29 C.F.R. s. 1601.70. 42 U.S.C. s. 2000e-5(f)(1); 42 U.S.C. s. 12117.

¹⁰ Section 760.11(3), F.S.

¹¹ Section 760.11(6), F.S.

¹² Section 760.11(7), F.S.

¹³ Section 760.11(5), F.S.

¹⁴ Section 760.11(5), F.S.

¹⁵ Section 760.11(5), F.S., referring to the limited waiver of sovereign immunity in section 768.28, F.S.

A person aggrieved by an operator's discrimination may file a charge of unlawful discrimination with the FCHR, and has all the rights and remedies available under s. 760.11, F.S., and the FCRA.

B. SECTION DIRECTORY:

Section 1 amends s. 509.092, F.S., prohibiting refusal of accommodations or service at a public lodging establishment based solely upon age.

Section 2 amends s. 509.141, F.S., prohibiting removing or causing a guest to be removed from a public lodging establishment based solely upon age.

Section 3 amends s. 509.142, F.S., prohibiting refusing service at a public lodging establishment based solely upon age.

Section 4 provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

	(FY 16-17) Amount	(FY 17-18) Amount	(FY 18-19) Amount
<u>Recurring FTE</u>			
Senior Attorney	\$ 72,278	\$ 72,278	\$ 72,278
Investigation Specialist II	\$ 56,776	\$ 56,776	\$ 56,776
<u>Secretary Specialist</u>	<u>\$ 29,029</u>	<u>\$ 29,029</u>	<u>\$ 29,029</u>
TOTAL	\$158,083	\$158,083	\$158,083
Recurring Expense Package			
Senior Attorney	\$10,367	\$10,367	\$10,367
Investigation Specialist II	\$10,367	\$10,367	\$10,367
<u>Secretary Specialist</u>	<u>\$ 9,042</u>	<u>\$ 9,042</u>	<u>\$ 9,042</u>
TOTAL	\$29,776	\$29,776	\$29,776
TOTAL RECURRING	\$187,849	\$187,849	\$187,849
<u>Non-Recurring</u>			
Senior Attorney	\$ 6,085	\$ 6,085	\$ 6,085
Investigation Specialist II	\$ 6,085	\$ 6,085	\$ 6,085
<u>Secretary Specialist</u>	<u>\$ 5,264</u>	<u>\$ 5,264</u>	<u>\$ 5,264</u>
TOTAL NON-RECURRING	\$17,434	\$17,434	\$17,434

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

There is potential for the bill to be interpreted as preventing a public lodging establishment from prohibiting minors or requiring a parent or guardian. The bill sponsor has indicated an amendment is forthcoming to address this concern.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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A bill to be entitled

An act relating to public lodging establishments;
amending ss. 509.092, 509.141, and 509.142, F.S.;
revising provisions to prohibit the operator of a
public lodging establishment from refusing
accommodations to a person based solely upon such
person's age; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 509.092, Florida Statutes, is amended
to read:

509.092 Public lodging establishments and public food
service establishments; rights as private enterprises.—Public
lodging establishments and public food service establishments
are private enterprises, and the operator has the right to
refuse accommodations or service to any person who is
objectionable or undesirable to the operator, but such refusal
may not be based upon race, creed, color, sex, pregnancy,
physical disability, or national origin. In addition, such
refusal by the operator of a public lodging establishment may
not be based solely upon age. A person aggrieved by a violation
of this section or a violation of a rule adopted under this
section has a right of action pursuant to s. 760.11.

Section 2. Subsection (1) of section 509.141, Florida
Statutes, is amended to read:

27 | 509.141 Refusal of admission and ejection of undesirable
 28 | guests; notice; procedure; penalties for refusal to leave.-
 29 | (1) The operator of any public lodging establishment or
 30 | public food service establishment may remove or cause to be
 31 | removed from such establishment, in the manner hereinafter
 32 | provided, any guest of the establishment who, while on the
 33 | premises of the establishment, illegally possesses or deals in
 34 | controlled substances as defined in chapter 893 or is
 35 | intoxicated, profane, lewd, or brawling; who indulges in any
 36 | language or conduct which disturbs the peace and comfort of
 37 | other guests or which injures the reputation, dignity, or
 38 | standing of the establishment; who, in the case of a public
 39 | lodging establishment, fails to make payment of rent at the
 40 | agreed-upon rental rate by the agreed-upon checkout time; who,
 41 | in the case of a public lodging establishment, fails to check
 42 | out by the time agreed upon in writing by the guest and public
 43 | lodging establishment at check-in unless an extension of time is
 44 | agreed to by the public lodging establishment and guest prior to
 45 | checkout; who, in the case of a public food service
 46 | establishment, fails to make payment for food, beverages, or
 47 | services; or who, in the opinion of the operator, is a person
 48 | the continued entertainment of whom would be detrimental to such
 49 | establishment. The admission to, or the removal from, such
 50 | establishment may ~~shall~~ not be based upon race, creed, color,
 51 | sex, physical disability, or national origin. In addition, the
 52 | admission to, or the removal from, a public lodging

53 establishment may not be based solely upon age.

54 Section 3. Section 509.142, Florida Statutes, is amended
55 to read:

56 509.142 Conduct on premises; refusal of service.—The
57 operator of a public lodging establishment or public food
58 service establishment may refuse accommodations or service to
59 any person whose conduct on the premises of the establishment
60 displays intoxication, profanity, lewdness, or brawling; who
61 indulges in language or conduct such as to disturb the peace or
62 comfort of other guests; who engages in illegal or disorderly
63 conduct; who illegally possesses or deals in controlled
64 substances as defined in chapter 893; or whose conduct
65 constitutes a nuisance. Such refusal may not be based upon race,
66 creed, color, sex, physical disability, or national origin. In
67 addition, such refusal by the operator of a public lodging
68 establishment may not be based solely upon age.

69 Section 4. This act shall take effect July 1, 2016.

BUSINESS AND PROFESSIONS SUBCOMMITTEE

**HB 637 by Rep. Porter
Public Lodging Establishments**

**AMENDMENT SUMMARY
January 12, 2016**

Strike-All Amendment by Rep. Porter: This strike-all amendment clarifies that a public lodging establishment may not deny service or accommodations based solely upon the age of a person over the age of 18 or upon the age of an emancipated minor.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Business & Professions
 2 Subcommittee

3 Representative Porter offered the following:

4
 5 **Amendment**

6 Remove everything after the enacting clause and insert:
 7 Section 1. Section 509.092, Florida Statutes, is amended
 8 to read:

9 509.092 Public lodging establishments and public food
 10 service establishments; rights as private enterprises.—Public
 11 lodging establishments and public food service establishments
 12 are private enterprises, and the operator has the right to
 13 refuse accommodations or service to any person who is
 14 objectionable or undesirable to the operator, but such refusal
 15 may not be based upon race, creed, color, sex, pregnancy,
 16 physical disability, or national origin. In addition, such
 17 refusal by the operator of a public lodging establishment may



Amendment No. 1

18 not be based solely upon the age of a person over the age of 18
19 or upon the age of an emancipated minor. A person aggrieved by a
20 violation of this section or a violation of a rule adopted under
21 this section has a right of action pursuant to s. 760.11.

22 Section 2. Subsection (1) of section 509.141, Florida
23 Statutes, is amended to read:

24 509.141 Refusal of admission and ejection of undesirable
25 guests; notice; procedure; penalties for refusal to leave.—

26 (1) The operator of any public lodging establishment or
27 public food service establishment may remove or cause to be
28 removed from such establishment, in the manner hereinafter
29 provided, any guest of the establishment who, while on the
30 premises of the establishment, illegally possesses or deals in
31 controlled substances as defined in chapter 893 or is
32 intoxicated, profane, lewd, or brawling; who indulges in any
33 language or conduct which disturbs the peace and comfort of
34 other guests or which injures the reputation, dignity, or
35 standing of the establishment; who, in the case of a public
36 lodging establishment, fails to make payment of rent at the
37 agreed-upon rental rate by the agreed-upon checkout time; who,
38 in the case of a public lodging establishment, fails to check
39 out by the time agreed upon in writing by the guest and public
40 lodging establishment at check-in unless an extension of time is
41 agreed to by the public lodging establishment and guest prior to
42 checkout; who, in the case of a public food service
43 establishment, fails to make payment for food, beverages, or

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Amendment No. 1

44 services; or who, in the opinion of the operator, is a person
45 the continued entertainment of whom would be detrimental to such
46 establishment. The admission to, or the removal from, such
47 establishment may ~~shall~~ not be based upon race, creed, color,
48 sex, physical disability, or national origin. In addition, the
49 admission to, or the removal from, a public lodging
50 establishment may not be based solely upon the age of a person
51 over the age of 18 or upon the age of an emancipated minor.

52 Section 3. Section 509.142, Florida Statutes, is amended
53 to read:

54 509.142 Conduct on premises; refusal of service.—The
55 operator of a public lodging establishment or public food
56 service establishment may refuse accommodations or service to
57 any person whose conduct on the premises of the establishment
58 displays intoxication, profanity, lewdness, or brawling; who
59 indulges in language or conduct such as to disturb the peace or
60 comfort of other guests; who engages in illegal or disorderly
61 conduct; who illegally possesses or deals in controlled
62 substances as defined in chapter 893; or whose conduct
63 constitutes a nuisance. Such refusal may not be based upon race,
64 creed, color, sex, physical disability, or national origin. In
65 addition, such refusal by the operator of a public lodging
66 establishment may not be based solely upon the age of a person
67 over the age of 18 or upon the age of an emancipated minor.

68 Section 4. This act shall take effect July 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 641 Department of Agriculture and Consumer Services
SPONSOR(S): Trumbull
TIED BILLS: HB 643 **IDEN./SIM. BILLS:** SB 772

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee		Butler <i>BSB</i>	Anstead <i>fo</i>
2) Agriculture & Natural Resources Appropriations Subcommittee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

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

- Provides that veterans and their spouses applying for certain licenses shall have initial fees waived if recently discharged from a branch of the United States Armed Forces;
- Removes the requirement that one of the board members of the Board of Surveying and Mapping be specialized in photogrammetry;
- Clarifies that telemarketers only have to disclose actual physical locations of operations;
- Exempts certain water-related amusement rides from inspection at facilities not open to the general public, if:
 - The ride is an incidental amenity operated by a licensed lodging or food service establishment;
 - The ride is an incidental amenity at a private, membership-only facility; or,
 - The ride is located at a nonprofit charitable permanent facility.
- Clarifies several fees and standards related to weights and measures in chs. 527 & 531, F.S.;
- Removes “personal trainers,” “tour guides,” and “tour guide services” from regulation;
- Allows a certificate from the International Association of Law Enforcement Firearm Instructors and the Second Amendment Foundation Training Division to qualify an applicant for a Class “K” Firearm Instructor license;
- Requires the Department to participate in FDLE’s Applicant Fingerprint Retention and Notification Program and requires licensees to submit fingerprints and pay retention fees for state and federal fingerprint retention programs;
- Makes several amendments to concealed weapons licensing, including amending the eligibility requirements to clarify what crimes would disqualify an applicant, requiring a live fire demonstration by the trainee in the physical presence of the trainer, and reducing the fee for initial licensure and renewal by \$10;
- Provides the Department may send notice of a suspension or revocation of a concealed weapons license by regular mail; and,
- Allows tax collectors to print and renew concealed weapons licenses on site.

The bill will have a significant fiscal impact on state government, in part, due to the veteran fee waiver programs and the concealed weapons license fee reduction. See **Fiscal Analysis & Economic Impact Statement** for discussion.

Except as otherwise expressly provided in the bill, the effective date of the bill is July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The Department's mission 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 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, and weighing and measuring devices.

The Division of Licensing within the Department is responsible for protecting the public from unethical business practices on the part of persons providing private security, private investigative and recovery services to the public through licensure and regulation of those industries pursuant to Chapter 493, F.S. Additionally, the Division of Licensing is responsible for the issuance of Concealed Weapon or Firearm Licenses in accordance with s. 790.06, F.S.

Military Veteran Fee Waivers

Current Situation

The Division of Consumer Services regulates and licenses surveyors and mappers, health studios, telemarketing, intrastate movers, sellers of liquefied petroleum gasoline, pawn broking, motor vehicle repair, and sellers of travel. The Division of Licensing regulates and licenses private investigation, recovery, and security industries.

There are more than 231,000 veterans of the Afghanistan and Iraq wars that currently live in Florida.¹ One of the greatest challenges facing returning veterans is finding gainful employment in a profession. Several Legislative initiatives have attempted to bridge this gap in recent years.²

Effect of the Bill

The bill provides that the Department shall waive the initial license fees for certain professions and industries under the Division of Consumer Services for veterans. License applications for veterans and their spouses submitted within **60 months** of the veteran's discharge from any branch of the United

¹ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2016 House Bill 641, p. 4 (Nov. 17, 2015).

² In recent years, the Department of Business and Professional Regulation and the Department of Health have begun waiving professional license fees for veterans. Specifically, Chapter 2014-1, Laws of Florida, amended s. 455.213, F.S., to allow the Department of Business and Professional Regulation to waive the initial licensing fee, initial application fee, and initial unlicensed activity fee for a military veteran or his or her spouse within 60 months of discharge. This same bill amended s. 456.013, F.S., and s. 468.304, F.S., to waive similar fees for the Department of Health.

States Armed Services, including the initial license fees for business entities where a veteran or their spouse is the majority owner, shall be waived in the following industries and professions:

- Surveyors and mappers
- Health studios
- Telemarketing
- Intrastate movers
- Sellers of liquefied petroleum gasoline
- Pawn broking
- Motor vehicle repair
- Sellers of travel

The bill further provides the following licenses under the Division of Licensing shall have their fees waived for veterans honorably discharged within the past **24 months**:

- Firearm Instructor (Class K License)
- Private Security Agency Manager (Class MB License)
- Private Security Branch Office Manager (Class AB License)
- Private Security Officer School or Training Facility Instructor (Class DI License)
- Private Investigation Agency Manager (Class MA License)
- Private Investigation Branch Office Manager (Class AB License)
- Private Investigator (Class C License)
- Private Investigator Intern (Class CC License)
- Recovery Agency Manager (Class MR License)
- Recovery Agency School or Training Facility Instructor (Class RI License)
- Recovery Agent (Class E License)
- Recovery Agent Intern (Class EE License)

Security Officers (Class D License) and the Statewide Firearms License (Class G License) are not included in the veteran fee waiver proposal, although Class D Licensees currently do not have a license fee.

Veterans must provide the department with a copy of their DD Form 214, discharge papers, as issued by the United States Department of Defense, or other acceptable form of identification as specified by the Department of Veterans' Affairs to qualify for the waiver.

Board of Professional Surveyors and Mappers

Current Situation

The Board of Professional Surveyors and Mappers consists of nine total members, seven surveyors and mappers, of whom one is a photogrammetric mapper, and two consumer members. Each member is appointed by the Commissioner of Agriculture, subject to confirmation by the Senate, and each serves a 4 year term.³ The practice of surveying and mapping is governed by ch. 472, F.S. The Board has authority to adopt rules to implement ch. 472, F.S., subject to approval by the Department.⁴

Licensed surveyor and mappers 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.⁵

³ s. 472.007, F.S.

⁴ s. 472.008, F.S.

⁵ Florida Department of Agriculture and Consumer Services, *Professional Surveyors and Mappers*,

<http://www.freshfromflorida.com/Divisions-Offices/Consumer-Services/Business-Services/Surveyors-and-Mappers>.

The specialization of photogrammetry focuses on measuring a subject using high-quality images.⁶ Recent technological advances in digital cameras, computer processors, and computational techniques have increased access to accurate photogrammetry measurements.⁷ The Department reports 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.⁸

There are currently only 3 individuals designated as a photogrammetrist licensed in Florida, of which, one is a current second term board member and another is a previous board member.⁹ Due to a lack of interest in this specialization, the Board of Surveyors and Mappers has recommend that the statutory requirement of a photogrammetrist specialized board member be removed.¹⁰

Effect of the Bill

The bill provides that the Board of Surveyors and Mappers is no longer required to have one of the board members obtain the designation of photogrammetrist.

Telemarketing Physical Location

Current Situation

The Department has regulatory authority over telemarketing businesses and regularly conducts onsite investigations looking for unlicensed or unlawful activity. Telemarketing is regulated under Florida's Telemarketing Act, codified in ss. 501.601 – 501.626, F.S.

When applying to become a "commercial telephone seller," an applicant must provide a complete street address for each location from which an applicant will be "doing business."¹¹ An applicant is required to provide an address where the actual telemarketing operation is taking place.¹² A "mail drop" cannot be a location where an applicant will be doing business because by its nature a "mail drop" is shorthand for a location where mail is delivered and retrieved, but where no actual business occurs.¹³

Effect of the Bill

The bill revises s. 501.605, F.S., to remove the requirement to disclose whether a location where the applicant will be doing business is a "mail drop." The removal does not change the prohibition against listing a "mail drop" address as the principal place of business and should have no effect on the industry.

⁶ See generally, Cultural Heritage Imaging, *Photogrammetry: What is it?*, <http://culturalheritageimaging.org/Technologies/Photogrammetry/> (last visited Nov. 18, 2015).

⁷ *Id.*

⁸ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2016 House Bill 641, p. 3-4 (Nov. 17, 2015).

⁹ *Id.*

¹⁰ *Id.*

¹¹ s. 501.059, F.S., defines "doing business in this state" as a business that conducts telephonic sales calls from a location in Florida or from other states or nations to consumers located in Florida. Although not directly stated, there is a strong implication that a location where an entity is "doing business" is the location where the telephonic sales call originates from.

¹² s. 501.605(2)(j), F.S.

¹³ s. 501.605(2)(j), F.S. See generally, *Hertz Corp. v. Friend*, 559 U.S. 77, 97 (2010) (stating that the "principal place of business" for jurisdictional purposes is a business's "nerve center," and that courts should ignore an alleged location that is "nothing more than a mail drop box.")

Safety Standards for Amusement Rides

Current Situation

The Bureau of Fair Rides Inspection within the Department (Bureau of Fair Rides) is assigned to inspect, investigate, and enforce the regulations related to amusement rides. The Bureau of Fair Rides has statewide responsibility to inspect all amusement rides in the state, except for certain large parks which have more than 1,000 employees and have full time inspectors on staff.

The Department has previously removed inspection requirements for private facilities such as residential community centers not open to the general public. The Department currently does not monitor waterslides at hotels that are not open to the public and do not allow day rates.¹⁴

When inspecting their own rides, the owners of fair rides fill out a Department approved form that is generalized and not customized for any specific ride.¹⁵ The Department reports that often owners will fill out the Department form and provide an inspection form provided by the ride's manufacturer.¹⁶

Effect of the Bill

This bill exempts from regulation and inspection any facility operating as a charitable entity licensed under Chapter 496, F.S., which is not open to the general public. The Department states that only two companies would currently qualify under this exemption.¹⁷

The bill also expands the current residential inspection exemption to exempt private, membership-only facilities if the amusement ride is an incidental amenity and the facility is not open to the general public, is not primarily engaged in providing amusement, pleasure, thrills, or excitement, and does not offer day rates.

The bill allows the use of manufacturer inspection forms to be submitted to the Department in lieu of the Department's form, if the manufacturer's form is approved by the Department.

Fair ride owners must submit their new forms for approval. At a minimum, any submitted form must have the same information that is required on the Department's forms, which will continue to be used.

Streamlining of Standards Regulations

Current Situation

The Bureau of Standards is responsible for conducting inspections of petroleum distribution systems, analyzing samples of petroleum products, the accuracy of retail price scanners, packaged goods inspections, and ensuring hundreds of other products that are purchased daily by consumers and business meet safety and performance standards required by law.

The Bureau of Standards also contains the Department's metrology laboratory which maintains the state's primary standards of mass, length and volume and, provides calibration services to the commercial measurement industry, scientific and law enforcement labs, manufacturers, and the aerospace and technology industries.

¹⁴ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2016 House Bill 641, p. 8 (Nov. 17, 2015).

¹⁵ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2016 House Bill 641, p. 9 (Nov. 17, 2015).

¹⁶ *Id.*

¹⁷ *Id.*

Vehicles transporting liquid petroleum gas in bulk must be registered with the Department and are accessed a \$50 fee.¹⁸ Liquid petroleum gas truck meters are also inspected and assessed a \$100 fee.¹⁹

“Weights and measures” is defined as “all weights and measures of every kind, instruments, and devices for weighing and measures, and any appliance and accessories associated with any or all such instruments and devices.”²⁰

The Department charges and collects fees for metrological laboratory calibration and testing services, ranging from \$50 to \$250, depending on the test or calibration that is performed.²¹

When a specific weight or measures device is permitted by the Department, the permit is assigned to the person or business, as it may be, that owns or controls the weights and measures instrument or device. When a business transfers ownership of a weights and measures device, or should the ownership of a business be wholly or partially transferred to another person, s. 531.60, F.S., determines the status of a permitted weights and measures devices.

Effect of the Bill

The bill clarifies the intent of s. 531.60, F.S., and other sections within ch. 531, F.S., that a permit is issued to the person or business who owns the weights and measures instrument or device, and not to the device or instrument itself. The bill also requires the businesses to notify the Department within 30 days if there is a change in permit status, or if the permit will not be renewed.

The bill removes s. 531.60(3), F.S., which permits the Department to test instruments or devices that are not used commercially, if the instrument or device is permitted and the appropriate fees are paid. Currently, the Department does not permit non-commercial instruments or devices, thus, and may not test a non-permitted device.²² Additionally, the Department reports that private companies are available to provide testing for non-commercial instruments and devices.²³

The bill simplifies and clarifies the fees for several calibration and testing services, and clarifies that any item that is not in a condition that is ready to be tested may be refused by the Department. The Department reports instances of customers bringing dirty equipment to the lab for testing and being unable to clean these artifacts before testing.²⁴

Currently, all weights and measures permits are renewed annually and a permit expires one year following its date of issue.²⁵ The bill amends the annual renewal cycle to allow either annual or biennial permits, and to permit a person to elect whether their commercial use permit for a weights and measures device expires after one or two years.

Finally, the bill clarifies several of the fees required for certain weights and measures devices in s. 531.63, F.S., combines the two fees for transporting liquid petroleum gas into a single \$150 fee, and removes “grain moisture meters” from the list of devices that are permitted by the Department. The Department reports that “grain moisture meters” are no longer inspected by the Department and should be removed from the list.²⁶

¹⁸ s. 527.021, F.S.

¹⁹ s. 527.063(2)(i), F.S.

²⁰ s. 531.37(1), F.S.

²¹ s. 531.415, F.S.

²² s. 531.60(1), F.S.

²³ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2016 House Bill 641, p. 7 (Nov. 17, 2015).

²⁴ *Id.*

²⁵ s. 531.62, F.S.

²⁶ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2016 House Bill 641, p. 7 (Nov. 17, 2015).

Sellers of Travel

Current Situation

The Department is responsible for registering and regulating sellers of travel, who must register annually with the department and provide performance bonds if offering vacation certificates. A seller of travel offers prearranged travel or tourist-related services through vacation and tour packages, or through vacation certificates. The Department reports that the current statutes regulating sellers of travel, excepting language related to travel to terrorist nations, need updating to meet the changing marketplace.²⁷

Effect of the Bill

The bill removes regulation of “tour guides.” The Department states that regulation of sellers of travel is focused on high-end vacations, typically bought weeks or months in advance. Tour guides, and same-day travel tours, are not a source of consumer complaints.²⁸

The bill amends the definition of “accommodations” to clarify that regulated accommodations do not include long-term home rentals covered under a lease pursuant to Chapter 83, F.S., Florida’s Landlord and Tenant law.

The bill amends the definition of “vacation certificate” to clarify that a vacation certificate refers to an advance travel purchase, and does not include “travel if exact travel dates are selected, guaranteed, and paid for at the time of the purchase.”

The bill amends the definitions of “prearranged travel,” “purchaser,” “satisfactory consumer complaint history,” and “seller of travel” to remove references to tour guide services, sightseeing tours, and making technical changes.

The bill amends the registration requirements of sellers of travel to allow the Department to deny or refuse to renew a registration for a seller of travel based on a crime or civil penalty related to theft or embezzlement, and to revoke the registration should the seller of travel, or any of its directors, officers, owners, or general partners:

- Fail to meet the requirements of registration;
- Are convicted of a crime involving fraud, theft, embezzlement, dishonest dealing, or any other act of moral turpitude or any other act arising out of conduct as a seller of travel;
- Fail to satisfy a civil fine or penalty arising out of enforcement of a civil action involving fraud, theft, embezzlement, dishonest dealing, or any violation of the sellers of travel statutes or rules;
- Has pending any criminal, administrative, or enforcement proceedings based upon conduct involving fraud, theft, embezzlement, dishonest dealing, or any other act of moral turpitude or any other act arising out of conduct as a seller of travel; or,
- Has had a judgment entered against him or her in any action brought by the Department or the Department of Legal Affairs.

The bill removes a requirement that the Department respond to a seller of travel within ten (10) working days about whether the materials submitted meet the statutory requirements of a vacation certificate, subsequent to the initial registration. Sellers of travel will also not be required to identify the number of vacation certificates to be issued or their expiration dates to the Department.

²⁷ *Id.*

²⁸ *Id.* at 8.

Vacation certificates will be required to include disclosure language in a 10-point font, and the Department will be required to review certificates and contracts for compliance with the disclosure requirements of s. 559.932, F.S.

The cancellation and refund provisions of vacation certificates are clarified to provide that a seller of travel must honor a cancellation request made within 30 days after the date of purchase or receipt, or when the accommodations or facilities are not available. The purchaser may accept comparable alternative accommodations or facilities.

Further, the bill amends and clarifies the intent required for violations made by sellers of travel, including clarifying it is a violation to knowingly make a false statement to the Department or any other governmental agency in response to an inquiry or investigation, or engage in any other fraudulent actions. The bill removes violations for payment-type requirements or any other methods of payment, requirements to state "This is an offer to sell travel" in an advertisement, and disclosure requirements of the seller's fixed business address in solicitations and contracts.

Health Studios

Current Situation

The financial and business methods of health studios are currently regulated by the Department because certain business practices have caused undue financial hardship on citizens within the state.²⁹ The definition of a "health studio" includes both persons who sell services, such as instruction or training in physical exercise, and the facilities, often referred to as "gyms," that contain training and workout equipment which may be contracted to be utilized in exchange for a membership fee.

A "personal trainer" is a person who provides services as an instructor or trainer for physical exercise, but does not necessarily associate with a specific gym. The Department reports that entities like personal trainers that are not affiliated with a gym do not pose a significant risk to consumers because they generally "do not issue extensive binding contracts, may or may not provide equipment, and do not collect monies more than 30 days in advance."³⁰ Despite this, personal trainers who are not affiliated with a gym, and who do not require payment more than 30 days in advance of services are required to register as a "health studio."

Effect of the Bill

The bill exempts a "personal trainer" from the definition of a "health studio" and defines a "personal trainer" as "an individual: (a) Who does not have an established place of business for the primary purpose of the conducting of physical exercise; (b) Whose provision of exercise equipment is incidental to the instruction provided; and (c) Who does not accept payment for services that are to be rendered more than 30 days after the date of payment."

Firearm Instructors for Concealed Carry Permits

Current Situation

In order to obtain a "G" Statewide Firearms License, an individual must receive training from a "K" Firearms Instructor.³¹ To become licensed as a "K" Firearms Instructor, an applicant must submit an application, a background history check, a full set of fingerprints, and provide one of the following certificates, which indicate a proficiency with firearms instruction:

²⁹ s. 501.012, F.S.

³⁰ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2016 House Bill 641, p. 6 (Nov. 17, 2015).

³¹ s. 493.6113, F.S.,

1. The Florida Criminal Justice Standards and Training Commission (FCJSTC) Instructor Certificate and an active firearms certification,
2. The National Rifle Association (NRA) Private Security Firearm Instructor Certificate, or;
3. A firearms instructor certificate issued by a federal law enforcement agency.

To become a general instructor with the FCJSTC, an application must be submitted to the Florida Department of Law Enforcement (FDLE), the Florida General Instructor Techniques Course must be completed,³² and an instructional internship with a training center director or agency administrator must be completed.³³

Further, to possess an active Firearms Instructor Certification from the FCJSTC, an applicant must obtain the general instructor certification (either prior or concurrently),³⁴ obtain three years of experience as a certified criminal justice officer or in firearms instruction, complete the CMS Firearms Instructor Course,³⁵ and complete a high-liability instructor internship.³⁶

To obtain a private security firearm instructor certificate from the NRA, an applicant must be a current member of the NRA, the applicant's agency must be a member of the NRA,³⁷ and the applicant must complete the NRA Law Enforcement Firearm Instructor School Course and obtain a course completion certificate.³⁸

To enroll in the NRA Law Enforcement Firearm Instructor School, an applicant must be one of the following:

- A "sworn" law enforcement officer with at least three years of experience;
- A retired or previously employed "sworn" law enforcement officer with at least three years of experience as a law enforcement officer;
- A licensed "armed" private security officer with three years of experience as an armed private security officer;
- A current member of the United States Armed Forces, with a letter from their unit or command requesting admittance;
- A civilian employed as a full-time firearm instructor by a public law enforcement agency.³⁹

The requirements to obtain a firearms instructor certificate from a federal law enforcement agency vary between each agency; however, generally each agency will only instruct and provide certificates for current employees of the agency, active members of the United States Armed Forces, or state and local law enforcement agency partners.

Effect of the Bill

The bill provides that in addition to FDLE, the NRA, and federal law enforcement agencies, the International Association of Law Enforcement Firearms Instructors (IALEFI) and the Second

³² The Florida General Instructor Techniques Course is a 64 hour course offered by an educational institutions approved by the Florida Criminal Justice Standards and Training Commission. Applicants must complete this course within 4 years of applying for a certificate, or complete an 8 hour refresher course within 4 years of applying. 11B-35.007, F.A.C.

³³ 11B-20.001, F.A.C.

³⁴ Alternatively, an applicant may apply for a General Instructor Certification at the same time as he or she applies for a Firearms Certification.

³⁵ The CMS Firearms Instructor Course is a 44 hour training course. 11B-35.0024, F.A.C.

³⁶ 11B-20.0014, F.A.C.

³⁷ The agencies of applicants employed by law enforcement or the armed forces do not need to have NRA membership. *See* NRA, Application for Certification as a NRA Law Enforcement Firearm Instructor, http://le.nra.org/documents/pdf/law/training/recert-application_form.pdf.

³⁸ The NRA's Law Enforcement Firearm Instructor Course is listed as a 40 hour course. *See* NRA, Instructor Development Schools, <http://le.nra.org/training/instructor-development-schools.aspx> (last visited Dec. 8, 2015).

³⁹ NRA, Instructor Development Schools, <http://le.nra.org/training/instructor-development-schools.aspx> (last visited Dec. 8, 2015).

Amendment Foundation Training Division may provide the training and certification necessary for “K” firearms instructors in Florida.

Currently, in order to obtain certification from IALEFI, an applicant must successfully complete an instructor level training course approved by their state,⁴⁰ and complete a 40 hour course designed by IALEFI.⁴¹

Currently, in order to obtain certification with the Second Amendment Foundation Training Division, and applicant must have outstanding firearm handling safety skills, \$1,000,000 of liability insurance coverage, first aid, CPR, and AED certification, be at least 21 years old, must be able to legally possess and carry firearms under federal and state laws, and complete a five day Defensive Firearms Instructor Certification Course.⁴²

Similar to the NRA, both IALEFI and the Second Amendment Foundation Training Division are private entities, and as such, may increase or reduce the requirements to obtain their certification without consulting the Legislature or the Department.

Duration of a “K” License

Current Situation

In 2011, s. 493.6111, F.S., was amended to extend the duration of the validity of a “K” license from two to three years. However, s. 493.6113, F.S., still requires that all licenses under ch. 493, F.S., must be renewed biennially except for specific licenses which must renew every three years.

Effect of the Bill

The bill amends s. 493.6113, F.S., to include Class “K” licenses within the group of specific licenses that do not have to renew biennially and which may be renewed every three years.

Licensee Fingerprint Retention

Current Situation

An individual who wishes to work in the private security, private investigative, or repossession industries that are regulated by the Department under Chapter 493, F.S., must provide a set of fingerprints and submit to a criminal history background check. After a person has been licensed, the Department is mandated by s. 493.6118, F.S., to continually monitor weekly criminal arrests and match reports furnished by the FDLE to ensure that licensees remain eligible for licensure during the term of the license. The Department reports that the current process is very time consuming, based only on name-search criteria, and does not guarantee accurate identification.⁴³ When a match is found, the Division of Licensing manually reviews the demographic information of the arrested person with the demographic information of the matched licensee.

The Department additionally has difficulty identifying licensees who are arrested outside the State because FDLE is only able to provide reports of arrests that occur in Florida.

⁴⁰ It is unclear based on the documentation provided what courses in Florida would meet this requirement, and if the instructor level training course must be general in nature or specialize in firearms training.

⁴¹ IALEFI, Firearms Instructor Development Course: Course Curriculum (June 2015) (on file with the Business and Professions Subcommittee).

⁴² Second Amendment Foundation Training Division, 5-Day Defensive Firearms Instructor Certification Course (on file with the Business and Professions Subcommittee).

⁴³ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2016 House Bill 641, p. 5 (Nov. 17, 2015).

Effect of the Bill

The bill requires the Department to participate in both a federal and state background check and fingerprint retention program. The state program is administered by FDLE and is referred to as the Applicant Fingerprint Retention and Notification Program (AFRNP) which allows for retention of applicant fingerprints within FDLE's Biometric Identification System.

The Federal Bureau of Investigation (FBI) administers the federal program as part of its Next Generation Identification project, and retains fingerprints at the national level to provide a nation-wide database that the agency and participating state and local entities may use to identify fingerprints. In order for entities to participate in the federal program, fingerprints must be retained at the state level and subsequently enrolled through the state program into the FBI's program.

Participation in FDLE's Biometric Identification System requires an annual fee of \$6.00 for each year that a license is valid. Participation in the FBI's Next Generation Identification project requires a one-time fee of a \$13.00 that covers the cost of fingerprint retention for as long as a license is valid.

These fingerprint retention programs would automate the manual practice of matching arrest records with licensees. Moreover, participation in the FBI's Next Generation Identification project allows the Department to receive information on arrests of licensees in any jurisdiction that also participates in the FBI's Next Generation Identification project.

The bill requires the Department to inform the agency that employs the licensee of any arrest, and the Department may initiate appropriate action against the license.

Starting January 1, 2017, the bill will require renewal licensees to re-submit their fingerprints and pay the processing and retention fees to be enrolled in the federal and statewide fingerprint retention programs if they have not already done so during initial licensure. Licensees will have to submit fingerprints and pay both processing fees upon the first renewal; all subsequent renewals will only require the licensee to pay statewide retention fees.

Residency Requirements

Current Situation

In 2012, the Department of Justice amended regulations of the Bureau of Alcohol, Tobacco, Firearms, and Explosives removing a 90-day residency requirement for a permanent legal resident alien lawfully present in the United States to purchase or acquire firearms.

Based on the former federal requirement, an applicant for a private security, private investigative, or repossession license in Florida, who is a permanent legal resident alien, must reside for 90 days in the state shown on the application.

The Department reports that the 90-day residency requirement serves no practical purpose, and has caused frustration for new Florida residents who must wait before seeking employment in the private security, private investigative, or repossession industries, even if previously employed in another state in those industries.

Effect of the Bill

The bill amends Florida law to remove the 90-day residency requirement for legal resident aliens seeking licensure in the private security, private investigative or repossession industries.

A person who is not a United States citizen must still submit proof that she or he is deemed a permanent legal resident alien by the United States Citizenship and Immigration Services to receive a private security, private investigative, or repossession license.

Concealed Weapon Licensing Law

Current Situation: Application for Concealed Weapons License

An applicant may be disqualified from receiving a concealed weapons license, pursuant to s. 790.06(2)(k), F.S., if the applicant "...had adjudication of guilt withheld or imposition of sentence suspended on any felony or misdemeanor crime of domestic violence...." The Department reports that this has led to some confusion from applicants and licensees, who read this section to believe that only felonies of domestic violence and misdemeanors of domestic violence are disqualifying crimes, instead of all felonies and separately, misdemeanors of domestic violence.⁴⁴

The application for a concealed weapons license requires that applicants list their occupation, per s. 790.06(4)(a), F.S. The Department does not use or collect this information for any purposes related to licensure; an application is considered incomplete if the applicant fails to provide their occupation.⁴⁵

Currently an applicant for a concealed weapons license is not required by statute to provide personal identifying information, including height, weight, eye color, hair color, and other demographic information as required by federal law to process fingerprints of applicants.⁴⁶ However, the Department does request this information on the application.

Effect of the Bill: Application for Concealed Weapon License

The bill clarifies that all felonies are disqualifying crimes for which the Department may deny an applicant from receiving a concealed weapons license. The bill deletes misdemeanors of domestic violence, so that the new section reads, "...had adjudication of guilt withheld or imposition of sentence suspended on any felony..."

The bill creates a new subsection 790.06(2)(l), F.S., to clarify that, in addition to all felonies, misdemeanors of domestic violence shall disqualify an applicant from receiving a concealed weapons license.

The bill removes the requirement that an applicant provide their occupation, and includes a requirement that an applicant supply certain personal identifying information required by federal law to process fingerprints.

Current Situation: Expedited Consideration for Military Applications

Following the domestic terrorism attack on July 16, 2015, resulting in the murder of four United States Marines at a United States Armed Services recruiting center and a Naval Reserve Facility, Governor Scott issued Executive Order No. 15-137 on July 18, 2015. The order directed Florida Adjunct General Michael Calhoun to ensure that all qualified full-time guardsmen were adequately armed and stated that "for those Florida Guardsmen who need a new state concealed weapons permit, the state will support the expedited processing of licenses for those soldiers."⁴⁷

Following Gov. Scott's executive order, Commissioner Putnam announced on July 27, 2015, that the Department would expedite the applications of all active military and veterans applying for a concealed

⁴⁴ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2016 House Bill 641, p. 9 (Nov. 17, 2015).

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Office of the Governor, Exec. Order No. 15-137 (2015).

weapons license.⁴⁸ There is neither a requirement nor prohibition in statute related to expedited consideration of concealed weapons licenses to any member of the general public.

Current Situation: Expedited Consideration for Military Applications

The bill creates s. 790.06(4)(f), s. 790.06(5)(f), F.S., and s. 790.06(6)(f), F.S., to provide that servicemembers and veterans who identify themselves as such to the Department will have their application for a concealed weapons license expedited.

The bill provides that the application for a concealed weapons license shall include directions for an applicant who is a "servicemember, as defined in s. 250.01, or a veteran, as defined in s. 1.01, to request expedited processing of his or her application."

The bill provides that a servicemember may submit either a "copy of the Common Access Card, United States Uniformed Services Identification Card, or current deployment orders" as proof of their status to receive expedited processing. A veteran may submit "a copy of the DD Form 214," or another acceptable form of identification as specified by the Department of Veterans' Affairs to receive expedited processing.

Current Situation: Live Fire Requirements

Firearms instructors who provide the qualifying training for the Florida concealed weapons license, s. 790.06, F.S., "must maintain records certifying that he or she observed the student safely handle and discharge a firearm"; however, the language is unclear as to whether this observation must be made in the actual physical presence of the trainer. The current language is ambiguous as to whether remote viewing or reviewing a prerecording of a firearm discharge would satisfy this requirement, and the current language does not specify if the firearms trainer may use simulated ammunition or firearms to conduct the training.

Effect of the Bill: Live Fire Requirements

The bill requires a student discharge an actual firearm using functional ammunition in the physical presence of a trainer in order to qualify for a concealed weapons license. It also provides that firearm instruction must use a fully functional firearm with live ammunition.

Current Situation: Service Requirements for Notice of Suspension or Revocation

When an agency seeks to revoke or suspend a license, s. 120.60(5), F.S., requires either personal service or service by certified mail of the administrative complaint. When an agency cannot personally serve a licensee and service by certified mail is returned undeliverable, the agency must publish notice of revocation or suspension once each week for 4 consecutive weeks in a newspaper published in the county of the licensee's last known address.

Approximately 176,000 concealed weapons license holders live outside the state of Florida.⁴⁹ The Department currently spends approximately \$140,000 annually on publication. The Department notes that newspaper publication of a license holder's name and license number may violate s. 790.0601, F.S., which makes confidential and exempt the personal identifying information of a concealed weapons license holder.

⁴⁸ See Kellan Howell, *Florida OKs faster concealed weapons permits for military members, vets*, WASHINGTON TIMES (Aug. 1, 2015), <http://www.washingtontimes.com/news/2015/aug/1/florida-oks-faster-concealed-weapons-permits-for-m/>

⁴⁹ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2016 House Bill 641, p. 10-11 (Nov. 17, 2015).

Effect of the Bill: Service Requirements for Notice of Suspension or Revocation

This bill would provide that legal notification to concealed weapons license holders may be conducted either through personal delivery to the licensee or by first-class mail. The bill states that mailing of this notification constitutes notice, and any failure to receive the mailed notice does not stay the Department's suspension or revocation of a concealed weapons license.

This change may have some constitutional concerns. See Comments, Constitutional Issues for discussion.

Current Situation: Renewal Notarization

Concealed weapons license renewal affidavits are required to be notarized pursuant to s. 790.06(11), F.S.

The Department indicated that a total of 1,282,036 concealed weapons licenses will expire over the next six years, and expects a renewal rate between 53 and 78 percent, for approximately 800,000 license renewals. The Department would like to automate its renewal process because the volume of renewals will be overwhelming without an online, automated system.⁵⁰

Effect of the Bill: Renewal Notarization

The bill removes the notarization requirement for concealed weapons licenses renewals and replaces it with a requirement that the form would be submitted under oath and under penalty of perjury.

This section would be effective upon becoming law.

Current Situation: Tax Collector Renewal Authority

As of July 1, 2014, select tax collectors' offices began accepting Florida Concealed Weapon or Firearm License applications on behalf of the Department. The service was made possible by the implementation of Chapter 2014-205, Laws of Florida. Under this program, the Department can enter into a Memorandum of Understanding (MOU) with any constitutionally elected tax collector in Florida to allow the tax collector to provide concealed weapons license application intake services in his or her county.

The Department reports that this program has been successful and may help alleviate the anticipated workload of increasing new and renewal concealed weapons license applications.

Effect of the Bill: Tax Collector Renewal Authority

The bill provides that a tax collector who is accepting concealed weapons license applications may now also print and furnish a renewal license to a concealed weapons license holder. The Department must still approve the renewal prior to issuance.

Current Situation: Concealed Weapon License Fees

Concealed weapons license holders are required to pay an initial license fee of \$70, and a renewal fee of \$60.

Effect of the Bill: Concealed Weapon License Fees

⁵⁰ *Id.*

The bill lowers the fees for concealed weapons licenses to \$60 for the initial license, and \$50 for the renewal.

B. SECTION DIRECTORY:

Section 1 amends s. 427.007, F.S., revising the composition of the Board of Professional Surveyors and Mappers.

Section 2 amends s. 472.015, F.S., requiring the Department to waive the initial license fee for certain veterans.

Section 3 amends s. 493.6105, F.S., waiving the initial license fee for certain veterans for certain professions, authorizes certain fees for fingerprint retention programs, and revises Class "K" license certification requirements.

Section 4 amends s. 493.6106, F.S., removing residency requirements for Class "G" and Class "K" license applications.

Section 5 amends s. 493.6107, F.S., waiving the initial license fees for veterans for certain private investigative, private security, and repossession service licenses.

Section 6 amends s. 493.6108, F.S., requiring the Department of Law Enforcement to retain certain applicant's fingerprints, retain them in state and federal programs, and to report any arrest record information to the Department; requiring the department to provide information about an arrest of a licensee for certain crimes within the state to the agency that employs the licensee.

Section 7 amends s. 493.6113, F.S., clarifying the renewal requirements for Class "K" licenses.

Sections 8, 9, and 10 amend ss. 493.6202, 493.6302, & 493.6402, F.S., waiving initial license fees for veterans for certain private investigative, private security, and repossession service licenses.

Section 11 amends s. 501.0125, F.S., revising the definition of the term "health studio" and defining the term "personal trainer."

Section 12 amends s. 501.015, F.S., **Section 14** amends s. 501.607, F.S., **Section 15** amends s. 507.03, F.S., **Section 16** amends s. 527.02, F.S., **Section 25** amends s. 539.001, F.S., **Section 26** amends s. 559.904, F.S., **Section 28** amends s. 559.928, F.S., requiring the Department to waive the initial registration fee of certain professions for certain veterans and their spouses, or certain business entities that have a majority ownership held by such veterans or spouses.

Section 13 amends s. 501.605, F.S., prohibiting the use of a mail drop as a street address for the principal location of a commercial telephone seller and requiring the department to waive the initial commercial telephone seller license fee for certain veterans, the spouses of such veterans, or certain business entities that have a majority ownership held by such veterans or spouses.

Section 17 amends s. 527.021, F.S., deleting a provision requiring a fee for registering transport vehicles.

Section 18 amends s. 531.37, F.S., revising the definition of the term "weights and measures."

Section 19 amends s. 531.415, F.S., revising the fees for actual metrology laboratory calibration and testing services.

Section 20 amends s. 531.60, F.S., clarifying provisions of weights or measures.

Section 21 amends s. 531.61, F.S., clarifying provisions exempting certain instruments or devices from specified requirements.

Section 22 amends s. 531.62, F.S., specifying that the commercial use permit fee is based upon the number and types of instruments or devices permitted; revising the expiration date of the commercial use permit; requiring annual and biennial commercial use permit renewals to meet the same requirements.

Section 23 amends s. 527.63, F.S., revising the commercial use permit fees and fee structures.

Section 24 amends s. 531.65, F.S., clarifying that the department may use one or more of the prescribed penalties for the unauthorized use of a weights and measures instrument or device.

Section 27 amends s. 559.927, F.S., revising several definitions related to sellers of travel, tour guides, and vacation certificates.

Section 28 amends s. 559.928, F.S., revising the registration requirements for sellers of travel.

Section 29 amends s. 559.929, F.S., revising security requirements for vacation certificates.

Section 30 amends s. 559.9295, F.S., revising disclosure requirements and deleting provisions relating to the duties of the Department.

Section 31 amends s. 559.932, F.S., requiring a specified typeface point size for certain disclosures; requiring the Department to review copies of certain certificates and contracts for compliance with disclosure requirements.

Section 32 amends s. 559.933, F.S., making technical changes to requirements for sellers of travel.

Section 33 amends s. 559.9335, F.S., revising violations relating to the sale of travel.

Section 34 amends s. 559.935, F.S., deleting a provision requiring an affidavit of exemption to obtain a seller of travel affiliate exemption; adding embezzlement as a crime for which the department may revoke certain exemptions.

Section 35 amends s. 559.936, F.S., conforming cross-references.

Section 36 amends s. 616.242, F.S., exempting certain water-related amusement rides from inspection under certain situations; authorizing owners or managers of amusement rides to use alternative forms to record ride inspections and employee training.

Section 37 and Section 38 amend s. 790.06, F.S., revising the requirements for issuance or revocation of a concealed weapons license; reducing initial and renewal fees; providing a process for expediting applications for servicemembers and veterans.

Section 39 amends s. 790.0625, F.S., authorizing certain tax collector offices, upon approval and confirmation of license issuance by the department, to print and deliver concealed weapons or firearm licenses.

Sections 40 and 41 amend ss. 559.9285 & 559.937, F.S., conforming terminology between the sellers of travel statutes.

Section 43 provides that, except as otherwise expressly provided in the bill, the effective date of the bill is July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

	(FY 16-17)	(FY 17-18)	(FY 18-19)
Military Veteran Fee Waiver⁵¹			
<u>Division of Consumer Services</u>			
Application Fees	(\$51,250)	(\$51,250)	(\$51,250)
 <u>Division of Licensing</u>			
Application & License Fees	(\$164,965)	(\$164,965)	(\$164,965)
 Amusement Ride Exemptions	(\$2,280)	(\$2,280)	(\$2,280)
Concealed Weapon License Fee Reduction⁵²			
New CW License Fee Reduction (\$10.00)	(\$1,650,000)	(\$1,550,000)	(\$1,550,000)
Renewal CW License Fee Reduction (\$10.00)	(\$1,294,010)	(\$1,240,260)	(\$1,162,230)
Subtotal For Fee Reduction:	(\$2,994,010)	(\$2,790,260)	(\$2,712,230)
 Fee Reduction, Waiver, or Exemption Total	(\$3,162,505)	(\$3,008,755)	(\$2,930,725)
 Fingerprint Retention Fees			
Federal Bureau of Investigation (FBI) Fee ⁵³	\$1,559,958	\$1,559,958	\$469,577
FDLE Fingerprint Database Fee ⁵⁴	\$1,050,237	\$1,050,237	\$708,840
Subtotal:	\$2,610,195	\$2,610,195	\$1,178,417

2. Expenditures:

	(FY 16-17)	(FY 17-18)	(FY 18-19)
Publication Cost Reduction	(\$140,186)	(\$140,186)	(\$140,186)
FBI/FDLE Disbursements	\$2,592,000	\$2,592,000	\$1,126,000

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

⁵¹ These numbers are based on the Department's estimates of veterans that may take advantage of the fee waiver program. See Florida Department of Agriculture and Consumer Services, Agency Analysis of 2016 House Bill 641, p. 12 (Nov. 17, 2015). The Department states that the total number of veterans in Florida (231,000) represents approximately 1.5% of Florida's population. The Department calculated potential losses by doubling this percentage to 3% (approximately 6,930 applicants), for the Division of Consumer Services and 10% (approximately 23,100 applicants) for the Division of Licensing would qualify and take advantage of the fee waiver. Comparably, DBPR has issued 134 waivers since Oct. 1, 2012 amounting in \$17,867.50 in fees waived and the Department of Health has issued 292 waivers since July 1, 2013 amounting to \$15,513 in fees waived. The Department believes it is unlikely the amount of fees waived will exceed the stated amounts.

⁵² The Department estimates the fee reduction losses on internal metrics for growth of concealed weapons licensees and scheduled renewals for current licensees. Concealed weapons licenses are renewed every 7 years, and renewal rates have ranged from 54% in FY 2007-08 to 78% in FY 2002-03. See Florida Department of Agriculture and Consumer Services, Agency Analysis of 2016 House Bill 641, p. 10 (Nov. 17, 2015).

⁵³ These funds will be collected by the Department and forwarded to the FBI.

⁵⁴ These funds will be collected by the Department and forwarded to FDLE.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Veterans and businesses owned by veterans will have reduced costs related to fee waivers of certain professions under the Department.

D. FISCAL COMMENTS:

None.

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:

Notice of Service Requirements

Procedural Due Process: Generally

The Due Process Clauses of the Fifth and Fourteenth Amendments intend fair process. "An elementary and fundamental requirement of due process in any proceeding that is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objection."⁵⁵ The degree to which due process protections apply varies with the nature of the interests implicated.⁵⁶

The bill allows the Department to deliver notice by regular mail, which may raise procedural due process concerns because it may not, under all the circumstances, apprise an interested party of the action. The bill does not require return receipt, nor does it provide for procedures when the mail is returned undeliverable. The Department may have difficulty proving that notice was effective when only required to use this method of notice, and may have to rely upon the rebuttable presumption that notice sent through regular mail is received by the intended party.⁵⁷

B. RULE-MAKING AUTHORITY:

The bill makes several changes to the application for a concealed weapons license (s. 790.06, F.S.), and the Department may be required to perform rulemaking to update any rules or forms that are affected by these changes under their current rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

⁵⁵ *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

⁵⁶ *Mathews v. Eldridge*, 424 U.S. 319 (1976); *Hadley v. Dept. of Admin.*, 411 So.2d 184 (Fla. 1982).

⁵⁷ Compare *Shelley v. State, Dep't of Fin. Servs.*, 846 So. 2d 577, 577 (Fla. 3d DCA 2003).

1 A bill to be entitled

2 An act relating to the Department of Agriculture and
3 Consumer Services; amending s. 472.007, F.S.; revising
4 the composition of the Board of Professional Surveyors
5 and Mappers; amending s. 472.015, F.S.; requiring the
6 Department of Agriculture and Consumer Services to
7 waive the initial land surveying and mapping license
8 fee for certain veterans, the spouses of such
9 veterans, or certain business entities that have a
10 majority ownership held by such veterans or spouses;
11 amending s. 493.6105, F.S.; waiving the initial
12 application fee for veterans for certain private
13 investigative, private security, and repossession
14 service licenses; revising certain fees for initial
15 license applications; revising the submission
16 requirements for a Class "K" license; amending s.
17 493.6106, F.S.; deleting a provision requiring that
18 certain applicants submit additional documentation
19 establishing state residency; amending s. 493.6107,
20 F.S.; waiving the initial license fees for veterans
21 for certain private investigative, private security,
22 and repossession service licenses; amending s.
23 493.6108, F.S.; requiring the Department of Law
24 Enforcement to retain fingerprints submitted for
25 private investigative, private security, and
26 repossession service licenses, to enter such

27 fingerprints into the statewide automated biometric
 28 identification system and the Federal Bureau of
 29 Investigation's national retained print arrest
 30 notification program, and to report any arrest record
 31 information to the Department of Agriculture and
 32 Consumer Services; requiring the department to provide
 33 information about an arrest of a licensee for certain
 34 crime within the state to the agency that employs the
 35 licensee; amending s. 493.6113, F.S.; clarifying the
 36 renewal requirements for Class "K" licenses; requiring
 37 a person holding a private investigative, private
 38 security, or repossession service license issued
 39 before a certain date to submit, upon first renewal of
 40 the license, a full set of fingerprints and a
 41 fingerprint processing fee; amending ss. 493.6202,
 42 493.6302, and 493.6402, F.S.; waiving initial license
 43 fees for veterans for certain private investigative,
 44 private security, and repossession service licenses;
 45 amending s. 501.0125, F.S.; revising the definition of
 46 the term "health studio"; defining the term "personal
 47 trainer"; amending s. 501.015, F.S.; requiring the
 48 department to waive the initial health studio
 49 registration fee for certain veterans, the spouses of
 50 such veterans, or certain business entities that have
 51 a majority ownership held by such veterans or spouses;
 52 amending s. 501.605, F.S.; prohibiting the use of a

53 mail drop as a street address for the principal
 54 location of a commercial telephone seller; requiring
 55 the department to waive the initial commercial
 56 telephone seller license fee for certain veterans, the
 57 spouses of such veterans, or certain business entities
 58 that have a majority ownership held by such veterans
 59 or spouses; amending s. 501.607, F.S.; requiring the
 60 department to waive the initial telephone salesperson
 61 license fees for certain veterans, the spouses of such
 62 veterans, or certain business entities that have a
 63 majority ownership held by such veterans or spouses;
 64 amending s. 507.03, F.S.; requiring the department to
 65 waive the initial registration fee for an intrastate
 66 mover for certain veterans, the spouses of such
 67 veterans, or certain business entities that have a
 68 majority ownership held by such veterans or spouses;
 69 amending s. 527.02, F.S.; requiring the department to
 70 waive the original liquefied petroleum gas license fee
 71 for certain veterans, the spouses of such veterans, or
 72 certain business entities that have a majority
 73 ownership held by such veterans or spouses; amending
 74 s. 527.021, F.S.; deleting a provision requiring a fee
 75 for registering transport vehicles; amending s.
 76 531.37, F.S.; revising the definition of the term
 77 "weights and measures"; amending s. 531.415, F.S.;
 78 revising the fees for actual metrology laboratory

79 calibration and testing services; amending s. 531.60,
 80 F.S.; clarifying the applicability of permits for
 81 commercially operated or tested weights or measures
 82 instruments or devices; requiring a new permit
 83 application if a new owner acquires and moves an
 84 instrument or a device; requiring a business to notify
 85 the department of certain information under certain
 86 circumstances; deleting a provision authorizing the
 87 department to test weights and measures instruments or
 88 devices under certain circumstances; amending s.
 89 531.61, F.S.; clarifying provisions exempting certain
 90 instruments or devices from specified requirements;
 91 amending s. 531.62, F.S.; specifying that the
 92 commercial use permit fee is based upon the number and
 93 types of instruments or devices permitted; revising
 94 the expiration date of the commercial use permit;
 95 requiring annual and biennial commercial use permit
 96 renewals to meet the same requirements; amending s.
 97 531.63, F.S.; revising the commercial use permit fees
 98 and fee structures; amending s. 531.65, F.S.;
 99 clarifying that the department may use one or more of
 100 the prescribed penalties for the unauthorized use of a
 101 weights and measures instrument or device; amending s.
 102 539.001, F.S.; requiring the department to waive the
 103 initial pawnbroker license fee for certain veterans,
 104 the spouses of such veterans, or certain business

105 | entities that have a majority ownership held by such
 106 | veterans or spouses; amending s. 559.904, F.S.;
 107 | requiring the department to waive the initial motor
 108 | vehicle repair shop registration fee for certain
 109 | veterans, the spouses of such veterans, or certain
 110 | business entities that have a majority ownership held
 111 | by such veterans or spouses; amending s. 559.927,
 112 | F.S.; revising definitions; amending s. 559.928, F.S.;
 113 | revising the registration requirements for sellers of
 114 | travel; requiring the department to waive the initial
 115 | seller of travel registration fee for certain
 116 | veterans, the spouses of such veterans, or certain
 117 | business entities that have a majority ownership held
 118 | by such veterans or spouses; requiring each
 119 | advertisement, each certificate, or any other travel
 120 | document to include a specified phrase; deleting a
 121 | provision requiring an advertisement to include a
 122 | specified phrase; revising the circumstances under
 123 | which the department may deny or refuse to renew a
 124 | registration; authorizing the department to revoke the
 125 | registration of a seller of travel under certain
 126 | circumstances; amending s. 559.929, F.S.; revising
 127 | certain security requirements; amending s. 559.9295,
 128 | F.S.; revising the requirements that certain sellers
 129 | of travel submit and disclose to the department;
 130 | deleting provisions relating to the duties of the

131 department; amending s. 559.932, F.S.; requiring a
 132 specified typeface point size for certain disclosures;
 133 requiring the department to review copies of certain
 134 certificates and contracts for compliance with
 135 disclosure requirements; amending s. 559.933, F.S.;
 136 making technical changes; amending s. 559.9335, F.S.;
 137 revising violations relating to the sale of travel;
 138 amending s. 559.935, F.S.; deleting a provision
 139 requiring an affidavit of exemption to obtain a seller
 140 of travel affiliate exemption; adding embezzlement as
 141 a crime for which the department may revoke certain
 142 exemptions; amending s. 559.936, F.S.; conforming
 143 cross-references; amending s. 616.242, F.S.; exempting
 144 water-related amusement rides operated by lodging and
 145 food service establishments and membership
 146 campgrounds, amusement rides at private, membership-
 147 only facilities, and nonprofit permanent facilities
 148 from certain safety standards; authorizing owners or
 149 managers of amusement rides to use alternative forms
 150 to record ride inspections and employee training;
 151 amending s. 790.06, F.S.; revising the requirements
 152 for issuance of a concealed weapon or firearm license;
 153 requiring directions for expedited processing requests
 154 in the license application form; revising the initial
 155 and renewal fees for a concealed weapon or firearm
 156 license; providing a process for expediting

157 applications for servicemembers and veterans;
 158 requiring that notice of the suspension or revocation
 159 of a concealed weapon or firearm license or the
 160 suspension of the processing of an application for
 161 such license be given by personal delivery or first-
 162 class mail; specifying deadlines for requests for a
 163 hearing for suspensions or revocations; specifying
 164 standards of proof for notice of suspensions or
 165 revocations; requiring concealed weapon or firearm
 166 license renewals to include an affidavit submitted
 167 under oath and under penalty of perjury, rather than a
 168 notarized affidavit; amending s. 790.0625, F.S.;
 169 authorizing certain tax collector offices, upon
 170 approval and confirmation of license issuance by the
 171 department, to print and deliver concealed weapon or
 172 firearm licenses; amending ss. 559.9285 and 559.937,
 173 F.S.; conforming terminology; providing effective
 174 dates.

175

176 Be It Enacted by the Legislature of the State of Florida:

177

178 Section 1. Subsection (1) of section 472.007, Florida
 179 Statutes, is amended to read:

180 472.007 Board of Professional Surveyors and Mappers.—There
 181 is created in the Department of Agriculture and Consumer
 182 Services the Board of Professional Surveyors and Mappers.

183 (1) The board shall consist of nine members, seven ~~six~~ of
 184 whom shall be registered surveyors and mappers primarily engaged
 185 in the practice of surveying and mapping, ~~one of whom shall be a~~
 186 ~~registered surveyor and mapper with the designation of~~
 187 ~~photogrammetrist,~~ and two of whom shall be laypersons who are
 188 not and have never been surveyors and mappers or members of any
 189 closely related profession or occupation.

190 Section 2. Subsection (3) of section 472.015, Florida
 191 Statutes, is amended to read:

192 472.015 Licensure.—

193 (3) (a) Before the issuance of any license, the department
 194 may charge an initial license fee as determined by rule of the
 195 board. Upon receipt of the appropriate license fee, except as
 196 provided in subsection (6), the department shall issue a license
 197 to any person certified by the board, or its designee, as having
 198 met the applicable requirements imposed by law or rule. However,
 199 an applicant who is not otherwise qualified for licensure is not
 200 entitled to licensure solely based on a passing score on a
 201 required examination.

202 (b) The department shall waive the initial license fee for
 203 an honorably discharged veteran of the United States Armed
 204 Forces, the spouse of such a veteran, or a business entity that
 205 has a majority ownership held by such a veteran or spouse if the
 206 department receives an application, in a format prescribed by
 207 the department, within 60 months after the date of the veteran's
 208 discharge from any branch of the United States Armed Forces. To

209 qualify for the waiver, a veteran must provide to the department
 210 a copy of his or her DD Form 214, as issued by the United States
 211 Department of Defense, or another acceptable form of
 212 identification as specified by the Department of Veterans'
 213 Affairs; the spouse of a veteran must provide to the department
 214 a copy of the veteran's DD Form 214, as issued by the United
 215 States Department of Defense, or another acceptable form of
 216 identification as specified by the Department of Veterans'
 217 Affairs, and a copy of a valid marriage license or certificate
 218 verifying that he or she was lawfully married to the veteran at
 219 the time of discharge; or a business entity must provide to the
 220 department proof that a veteran or the spouse of a veteran holds
 221 a majority ownership in the business, a copy of the veteran's DD
 222 Form 214, as issued by the United States Department of Defense,
 223 or another acceptable form of identification as specified by the
 224 Department of Veterans' Affairs, and, if applicable, a copy of a
 225 valid marriage license or certificate verifying that the spouse
 226 of the veteran was lawfully married to the veteran at the time
 227 of discharge.

228 Section 3. Paragraph (c) is added to subsection (1) of
 229 section 493.6105, Florida Statutes, and paragraph (j) of
 230 subsection (3) and paragraph (a) of subsection (6) of that
 231 section are amended, to read:

232 493.6105 Initial application for license.—

233 (1) Each individual, partner, or principal officer in a
 234 corporation, shall file with the department a complete

235 application accompanied by an application fee not to exceed \$60,
 236 except that the applicant for a Class "D" or Class "G" license
 237 is not required to submit an application fee. The application
 238 fee is not refundable.

239 (c) The initial application fee for a veteran, as defined
 240 in s. 1.01, if he or she applies for a Class "C," Class "CC,"
 241 Class "DI," Class "E," Class "EE," Class "K," Class "M," Class
 242 "MA," Class "MB," Class "MR," or Class "RI" license within 24
 243 months after being discharged from a branch of the United States
 244 Armed Forces shall be waived. An eligible veteran must include a
 245 copy of his or her DD Form 214, as issued by the United States
 246 Department of Defense, or another acceptable form of
 247 identification as specified by the Department of Veterans'
 248 Affairs with his or her application in order to obtain a waiver.

249 (3) The application must contain the following information
 250 concerning the individual signing the application:

251 (j) A full set of fingerprints, a fingerprint processing
 252 fee, and a fingerprint retention fee. The fingerprint processing
 253 and retention fees shall ~~to~~ be established by rule of the
 254 department based upon costs determined by state and federal
 255 agency charges and department processing costs, which must
 256 include the cost of retaining the fingerprints in the statewide
 257 automated biometric identification system established in s.
 258 943.05(2)(b) and the cost of enrolling the fingerprints in the
 259 national retained print arrest notification program as required
 260 under s. 493.6108. An applicant who has, within the immediately

261 preceding 6 months, submitted such fingerprints and ~~fees~~ ~~fee~~ for
 262 licensing purposes under this chapter and who still holds a
 263 valid license is not required to submit another set of
 264 fingerprints or another fingerprint processing fee. An applicant
 265 who holds multiple licenses issued under this chapter is
 266 required to pay only a single fingerprint retention fee.

267 (6) In addition to the requirements under subsection (3),
 268 an applicant for a Class "K" license must:

269 (a) Submit one of the following:

270 1. The Florida Criminal Justice Standards and Training
 271 Commission Instructor Certificate and written confirmation by
 272 the commission that the applicant possesses an active firearms
 273 certification.

274 2. The National Rifle Association Private Security Firearm
 275 Instructor Certificate.

276 3. A firearms instructor certificate issued by a federal
 277 law enforcement agency.

278 4. An International Association of Law Enforcement
 279 Firearms Instructors certification.

280 5. A Second Amendment Foundation Training Division
 281 Firearms Instructors certification.

282 Section 4. Paragraph (f) of subsection (1) of section
 283 493.6106, Florida Statutes, is amended to read:

284 493.6106 License requirements; posting.—

285 (1) Each individual licensed by the department must:

286 (f) Be a citizen or permanent legal resident alien of the

287 United States or have appropriate authorization issued by the
 288 United States Citizenship and Immigration Services of the United
 289 States Department of Homeland Security.

290 1. An applicant for a Class "C," Class "CC," Class "D,"
 291 Class "DI," Class "E," Class "EE," Class "M," Class "MA," Class
 292 "MB," Class "MR," or Class "RI" license who is not a United
 293 States citizen must submit proof of current employment
 294 authorization issued by the United States Citizenship and
 295 Immigration Services or proof that she or he is deemed a
 296 permanent legal resident alien by the United States Citizenship
 297 and Immigration Services.

298 2. An applicant for a Class "G" or Class "K" license who
 299 is not a United States citizen must submit proof that she or he
 300 is deemed a permanent legal resident alien by the United States
 301 Citizenship and Immigration Services, ~~together with additional~~
 302 ~~documentation establishing that she or he has resided in the~~
 303 ~~state of residence shown on the application for at least 90~~
 304 ~~consecutive days before the date that the application is~~
 305 ~~submitted.~~

306 3. An applicant for an agency or school license who is not
 307 a United States citizen or permanent legal resident alien must
 308 submit documentation issued by the United States Citizenship and
 309 Immigration Services stating that she or he is lawfully in the
 310 United States and is authorized to own and operate the type of
 311 agency or school for which she or he is applying. An employment
 312 authorization card issued by the United States Citizenship and

313 Immigration Services is not sufficient documentation.

314 Section 5. Subsection (6) is added to section 493.6107,
315 Florida Statutes, to read:

316 493.6107 Fees.—

317 (6) The initial license fee for a veteran, as defined in
318 s. 1.01, shall be waived if he or she applies for a Class "M" or
319 Class "K" license within 24 months after being discharged from
320 any branch of the United States Armed Forces. An eligible
321 veteran must include a copy of his or her DD Form 214, as issued
322 by the United States Department of Defense, or another
323 acceptable form of identification as specified by the Department
324 of Veterans' Affairs with his or her application in order to
325 obtain a waiver.

326 Section 6. Subsections (4) and (5) are added to section
327 493.6108, Florida Statutes, to read:

328 493.6108 Investigation of applicants by Department of
329 Agriculture and Consumer Services.—

330 (4) The Department of Law Enforcement shall:

331 (a) Retain and enter into the statewide automated
332 biometric identification system established in s. 943.05(2)(b)
333 all fingerprints submitted to the Department of Agriculture and
334 Consumer Services pursuant to this chapter.

335 (b) When the Department of Law Enforcement begins
336 participation in the Federal Bureau of Investigation's national
337 retained print arrest notification program, enroll such
338 fingerprints in the program. The fingerprints must thereafter be

339 available for arrest notifications and all purposes and uses
 340 authorized for arrest fingerprint submissions entered into the
 341 statewide automated biometric identification system established
 342 in s. 943.05(2) (b).

343 (c) Search all arrest fingerprints against fingerprints
 344 retained.

345 (d) Report to the Department of Agriculture and Consumer
 346 Services any arrest record that it identifies or that is
 347 identified by the Federal Bureau of Investigation.

348 (5) If the department receives information about an arrest
 349 within the state of a person who holds a valid license issued
 350 under this chapter for a crime that could potentially disqualify
 351 the person from holding such a license, the department must
 352 provide the arrest information to the agency that employs the
 353 licensee.

354 Section 7. Subsections (1) and (3) of section 493.6113,
 355 Florida Statutes, are amended to read:

356 493.6113 Renewal application for licensure.-

357 (1) A license granted under the provisions of this chapter
 358 shall be renewed biennially by the department, except for Class
 359 "A," Class "B," Class "AB," Class "K," Class "R," and branch
 360 agency licenses, which shall be renewed every 3 years.

361 (3) Each licensee is responsible for renewing his or her
 362 license on or before its expiration by filing with the
 363 department an application for renewal accompanied by payment of
 364 the renewal fee and the fingerprint retention fee to cover the

365 cost of ongoing retention in the statewide automated biometric
 366 identification system established in s. 943.05(2)(b) ~~prescribed~~
 367 ~~license fee.~~ A person holding a valid license issued under this
 368 chapter before January 1, 2017, must submit, upon first renewal
 369 of the license, a full set of fingerprints and a fingerprint
 370 processing fee to cover the cost of entering the fingerprints
 371 into the statewide automated biometric identification system
 372 under s. 493.6108(4)(a). Subsequent renewals may be completed
 373 without submission of a set of fingerprints.

374 (a) Each Class "B" licensee shall additionally submit on a
 375 form prescribed by the department a certification of insurance
 376 that evidences that the licensee maintains coverage as required
 377 under s. 493.6110.

378 (b) Each Class "G" licensee shall additionally submit
 379 proof that he or she has received during each year of the
 380 license period a minimum of 4 hours of firearms recertification
 381 training taught by a Class "K" licensee and has complied with
 382 such other health and training requirements that the department
 383 shall adopt by rule. Proof of completion of firearms
 384 recertification training shall be submitted to the department
 385 upon completion of the training. If the licensee fails to
 386 complete the required 4 hours of annual training during the
 387 first year of the 2-year term of the license, the license shall
 388 be automatically suspended. The licensee must complete the
 389 minimum number of hours of range and classroom training required
 390 at the time of initial licensure and submit proof of completion

391 of such training to the department before the license may be
 392 reinstated. If the licensee fails to complete the required 4
 393 hours of annual training during the second year of the 2-year
 394 term of the license, the licensee must complete the minimum
 395 number of hours of range and classroom training required at the
 396 time of initial licensure and submit proof of completion of such
 397 training to the department before the license may be renewed.

398 The department may waive the firearms training requirement if:

399 1. The applicant provides proof that he or she is
 400 currently certified as a law enforcement officer or correctional
 401 officer under the Criminal Justice Standards and Training
 402 Commission and has completed law enforcement firearms
 403 requalification training annually during the previous 2 years of
 404 the licensure period;

405 2. The applicant provides proof that he or she is
 406 currently certified as a federal law enforcement officer and has
 407 received law enforcement firearms training administered by a
 408 federal law enforcement agency annually during the previous 2
 409 years of the licensure period; or

410 3. The applicant submits a valid firearm certificate among
 411 those specified in s. 493.6105(6)(a) and provides proof of
 412 having completed requalification training during the previous 2
 413 years of the licensure period.

414 (c) Each Class "DS" or Class "RS" licensee shall
 415 additionally submit the current curriculum, examination, and
 416 list of instructors.

417 (d) Each Class "K" licensee shall additionally submit one
 418 of the certificates specified under s. 493.6105(6) as proof that
 419 he or she remains certified to provide firearms instruction.

420 Section 8. Subsection (4) is added to section 493.6202,
 421 Florida Statutes, to read:

422 493.6202 Fees.—

423 (4) The initial license fee for a veteran, as defined in
 424 s. 1.01, shall be waived if he or she applies for a Class "C,"
 425 Class "CC," or Class "MA" license within 24 months after being
 426 discharged from any branch of the United States Armed Forces. An
 427 eligible veteran must include a copy of his or her DD Form 214,
 428 as issued by the United States Department of Defense, or another
 429 acceptable form of identification as specified by the Department
 430 of Veterans' Affairs with his or her application in order to
 431 obtain a waiver.

432 Section 9. Subsection (4) is added to section 493.6302,
 433 Florida Statutes, to read:

434 493.6302 Fees.—

435 (4) The initial license fee for a veteran, as defined in
 436 s. 1.01, shall be waived if he or she applies for a Class "D,"
 437 Class "DI," or Class "MB" license within 24 months after being
 438 discharged from any branch of the United States Armed Forces. An
 439 eligible veteran must include a copy of his or her DD Form 214,
 440 as issued by the United States Department of Defense, or another
 441 acceptable form of identification as specified by the Department
 442 of Veterans' Affairs with his or her application in order to

443 obtain a waiver.

444 Section 10. Subsection (4) is added to section 493.6402,
445 Florida Statutes, to read:

446 493.6402 Fees.—

447 (4) The initial license fee for a veteran, as defined in
448 s. 1.01, shall be waived if he or she applies for a Class "E,"
449 Class "EE," Class "MR," or Class "RI" license within 24 months
450 after being discharged from any branch of the United States
451 Armed Forces. An eligible veteran must include a copy of his or
452 her DD Form 214, as issued by the United States Department of
453 Defense, or another acceptable form of identification as
454 specified by the Department of Veterans' Affairs with his or her
455 application in order to obtain a waiver.

456 Section 11. Subsection (1) of section 501.0125, Florida
457 Statutes, is amended, and subsection (6) is added to that
458 section, to read:

459 501.0125 Health studios; definitions.—For purposes of ss.
460 501.012-501.019, the following terms shall have the following
461 meanings:

462 (1) "Health studio" means any person who is engaged in the
463 sale of services for instruction, training, or assistance in a
464 program of physical exercise or in the sale of services for the
465 right or privilege to use equipment or facilities in furtherance
466 of a program of physical exercise. The term does not include an
467 individual acting as a personal trainer.

468 (6) "Personal trainer" means an individual:

469 (a) Who does not have an established place of business for
 470 the primary purpose of the conducting of physical exercise;

471 (b) Whose provision of exercise equipment is incidental to
 472 the instruction provided; and

473 (c) Who does not accept payment for services that are to
 474 be rendered more than 30 days after the date of payment.

475 Section 12. Subsection (2) of section 501.015, Florida
 476 Statutes, is amended to read:

477 501.015 Health studios; registration requirements and
 478 fees.—Each health studio shall:

479 (2) Remit an annual registration fee of \$300 to the
 480 department at the time of registration for each of the health
 481 studio's business locations. The department shall waive the
 482 initial license fee for an honorably discharged veteran of the
 483 United States Armed Forces, the spouse of such a veteran, or a
 484 business entity that has a majority ownership held by such a
 485 veteran or spouse if the department receives an application, in
 486 a format prescribed by the department, within 60 months after
 487 the date of the veteran's discharge from any branch of the
 488 United States Armed Forces. To qualify for the waiver, a veteran
 489 must provide to the department a copy of his or her DD Form 214,
 490 as issued by the United States Department of Defense, or another
 491 acceptable form of identification as specified by the Department
 492 of Veterans' Affairs; the spouse of a veteran must provide to
 493 the department a copy of the veteran's DD Form 214, as issued by
 494 the United States Department of Defense, or another acceptable

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495 form of identification as specified by the Department of
 496 Veterans' Affairs, and a copy of a valid marriage license or
 497 certificate verifying that he or she was lawfully married to the
 498 veteran at the time of discharge; or a business entity must
 499 provide to the department proof that a veteran or the spouse of
 500 a veteran holds a majority ownership in the business, a copy of
 501 the veteran's DD Form 214, as issued by the United States
 502 Department of Defense, or another acceptable form of
 503 identification as specified by the Department of Veterans'
 504 Affairs, and, if applicable, a copy of a valid marriage license
 505 or certificate verifying that the spouse of the veteran was
 506 lawfully married to the veteran at the time of discharge.

507 Section 13. Paragraph (j) of subsection (2) and paragraph
 508 (b) of subsection (5) of section 501.605, Florida Statutes, are
 509 amended to read:

510 501.605 Licensure of commercial telephone sellers.—

511 (2) An applicant for a license as a commercial telephone
 512 seller must submit to the department, in such form as it
 513 prescribes, a written application for the license. The
 514 application must set forth the following information:

515 (j) The complete street address of each location,
 516 designating the principal location, from which the applicant
 517 will be doing business. The street address may not be ~~If any~~
 518 ~~location is a mail drop, this shall be disclosed as such.~~

519
 520 The application shall be accompanied by a copy of any: Script,

521 outline, or presentation the applicant will require or suggest a
 522 salesperson to use when soliciting, or, if no such document is
 523 used, a statement to that effect; sales information or
 524 literature to be provided by the applicant to a salesperson; and
 525 sales information or literature to be provided by the applicant
 526 to a purchaser in connection with any solicitation.

527 (5) An application filed pursuant to this part must be
 528 verified and accompanied by:

529 (b) A fee for licensing in the amount of \$1,500. The fee
 530 shall be deposited into the General Inspection Trust Fund. The
 531 department shall waive the initial license fee for an honorably
 532 discharged veteran of the United States Armed Forces, the spouse
 533 of such a veteran, or a business entity that has a majority
 534 ownership held by such a veteran or spouse if the department
 535 receives an application, in a format prescribed by the
 536 department, within 60 months after the date of the veteran's
 537 discharge from any branch of the United States Armed Forces. To
 538 qualify for the waiver, a veteran must provide to the department
 539 a copy of his or her DD Form 214, as issued by the United States
 540 Department of Defense, or another acceptable form of
 541 identification as specified by the Department of Veterans'
 542 Affairs; the spouse of a veteran must provide to the department
 543 a copy of the veteran's DD Form 214, as issued by the United
 544 States Department of Defense, or another acceptable form of
 545 identification as specified by the Department of Veterans'
 546 Affairs, and a copy of a valid marriage license or certificate

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547 verifying that he or she was lawfully married to the veteran at
 548 the time of discharge; or a business entity must provide to the
 549 department proof that a veteran or the spouse of a veteran holds
 550 a majority ownership in the business, a copy of the veteran's DD
 551 Form 214, as issued by the United States Department of Defense,
 552 or another acceptable form of identification as specified by the
 553 Department of Veterans' Affairs, and, if applicable, a copy of a
 554 valid marriage license or certificate verifying that the spouse
 555 of the veteran was lawfully married to the veteran at the time
 556 of discharge.

557 Section 14. Paragraph (b) of subsection (2) of section
 558 501.607, Florida Statutes, is amended to read:

559 501.607 Licensure of salespersons.—

560 (2) An application filed pursuant to this section must be
 561 verified and be accompanied by:

562 (b) A fee for licensing in the amount of \$50 per
 563 salesperson. The fee shall be deposited into the General
 564 Inspection Trust Fund. The fee for licensing may be paid after
 565 the application is filed, but must be paid within 14 days after
 566 the applicant begins work as a salesperson. The department shall
 567 waive the initial license fee for an honorably discharged
 568 veteran of the United States Armed Forces, the spouse of such a
 569 veteran, or a business entity that has a majority ownership held
 570 by such a veteran or spouse if the department receives an
 571 application, in a format prescribed by the department, within 60
 572 months after the date of the veteran's discharge from any branch

573 of the United States Armed Forces. To qualify for the waiver, a
 574 veteran must provide to the department a copy of his or her DD
 575 Form 214, as issued by the United States Department of Defense,
 576 or another acceptable form of identification as specified by the
 577 Department of Veterans' Affairs; the spouse of a veteran must
 578 provide to the department a copy of the veteran's DD Form 214,
 579 as issued by the United States Department of Defense, or another
 580 acceptable form of identification as specified by the Department
 581 of Veterans' Affairs, and a copy of a valid marriage license or
 582 certificate verifying that he or she was lawfully married to the
 583 veteran at the time of discharge; or a business entity must
 584 provide to the department proof that a veteran or the spouse of
 585 a veteran holds a majority ownership in the business, a copy of
 586 the veteran's DD Form 214, as issued by the United States
 587 Department of Defense, or another acceptable form of
 588 identification as specified by the Department of Veterans'
 589 Affairs, and, if applicable, a copy of a valid marriage license
 590 or certificate verifying that the spouse of the veteran was
 591 lawfully married to the veteran at the time of discharge.

592 Section 15. Subsection (3) of section 507.03, Florida
 593 Statutes, is amended to read:

594 507.03 Registration.—

595 (3) (a) Registration fees shall be calculated at the rate
 596 of \$300 per year per mover or moving broker. All amounts
 597 collected shall be deposited by the Chief Financial Officer to
 598 the credit of the General Inspection Trust Fund of the

599 department for the sole purpose of administration of this
 600 chapter.

601 (b) The department shall waive the initial license fee for
 602 an honorably discharged veteran of the United States Armed
 603 Forces, the spouse of such a veteran, or a business entity that
 604 has a majority ownership held by such a veteran or spouse if the
 605 department receives an application, in a format prescribed by
 606 the department, within 60 months after the date of the veteran's
 607 discharge from any branch of the United States Armed Forces. To
 608 qualify for the waiver, a veteran must provide to the department
 609 a copy of his or her DD Form 214, as issued by the United States
 610 Department of Defense, or another acceptable form of
 611 identification as specified by the Department of Veterans'
 612 Affairs; the spouse of a veteran must provide to the department
 613 a copy of the veteran's DD Form 214, as issued by the United
 614 States Department of Defense, or another acceptable form of
 615 identification as specified by the Department of Veterans'
 616 Affairs, and a copy of a valid marriage license or certificate
 617 verifying that he or she was lawfully married to the veteran at
 618 the time of discharge; or a business entity must provide to the
 619 department proof that a veteran or the spouse of a veteran holds
 620 a majority ownership in the business, a copy of the veteran's DD
 621 Form 214, as issued by the United States Department of Defense,
 622 or another acceptable form of identification as specified by the
 623 Department of Veterans' Affairs, and, if applicable, a copy of a
 624 valid marriage license or certificate verifying that the spouse

625 of the veteran was lawfully married to the veteran at the time
 626 of discharge.

627 Section 16. Subsection (3) of section 527.02, Florida
 628 Statutes, is amended to read:

629 527.02 License; penalty; fees.—

630 (3) (a) An ~~Any~~ applicant for an original license who
 631 submits an ~~whose~~ application ~~is submitted~~ during the last 6
 632 months of the license year may have the original license fee
 633 reduced by one-half for the 6-month period. This provision
 634 applies ~~shall apply~~ only to those companies applying for an
 635 original license and may ~~shall~~ not be applied to licensees who
 636 held a license during the previous license year and failed to
 637 renew the license. The department may refuse to issue an initial
 638 license to an ~~any~~ applicant who is under investigation in any
 639 jurisdiction for an action that would constitute a violation of
 640 this chapter until such time as the investigation is complete.

641 (b) The department shall waive the initial license fee for
 642 an honorably discharged veteran of the United States Armed
 643 Forces, the spouse of such a veteran, or a business entity that
 644 has a majority ownership held by such a veteran or spouse if the
 645 department receives an application, in a format prescribed by
 646 the department, within 60 months after the date of the veteran's
 647 discharge from any branch of the United States Armed Forces. To
 648 qualify for the waiver, a veteran must provide to the department
 649 a copy of his or her DD Form 214, as issued by the United States
 650 Department of Defense or another acceptable form of

651 identification as specified by the Department of Veterans'
 652 Affairs; the spouse of a veteran must provide to the department
 653 a copy of the veteran's DD Form 214, as issued by the United
 654 States Department of Defense, or another acceptable form of
 655 identification as specified by the Department of Veterans'
 656 Affairs, and a copy of a valid marriage license or certificate
 657 verifying that he or she was lawfully married to the veteran at
 658 the time of discharge; or a business entity must provide to the
 659 department proof that a veteran or the spouse of a veteran holds
 660 a majority ownership in the business, a copy of the veteran's DD
 661 Form 214, as issued by the United States Department of Defense,
 662 or another acceptable form of identification as specified by the
 663 Department of Veterans' Affairs, and, if applicable, a copy of a
 664 valid marriage license or certificate verifying that the spouse
 665 of the veteran was lawfully married to the veteran at the time
 666 of discharge.

667 Section 17. Subsection (4) of section 527.021, Florida
 668 Statutes, is amended to read:

669 527.021 Registration of transport vehicles.-

670 ~~(4) An inspection fee of \$50 shall be assessed for each~~
 671 ~~registered vehicle inspected by the department pursuant to s.~~
 672 ~~527.061. All inspection fees collected in connection with this~~
 673 ~~section shall be deposited in the General Inspection Trust Fund~~
 674 ~~for the purpose of administering the provisions of this chapter.~~

675 Section 18. Subsection (1) of section 531.37, Florida
 676 Statutes, is amended to read:

677 531.37 Definitions.—As used in this chapter:

678 (1) "Weights and measures" means all weights and measures
 679 of every kind, instruments, and devices for weighing and
 680 measuring, and any appliance and accessories associated with any
 681 or all such instruments and devices, excluding those weights and
 682 measures used for the purpose of inspecting the accuracy of
 683 devices used in conjunction with aviation fuel.

684 Section 19. Subsections (1) and (2) of section 531.415,
 685 Florida Statutes, are amended to read:

686 531.415 Fees.—

687 (1) The department shall charge and collect fees of not
 688 more than the following ~~fees~~ for actual metrology laboratory
 689 calibration and testing services rendered:

690 (a) For each mass standard that is tested or certified to
 691 meet tolerances less stringent than American National Standards
 692 Institute/American Society for Testing and Materials (ANSI/ASTM)
 693 Standard E617 Class 4, ~~the department shall charge a fee of not~~
 694 ~~more than:~~

Weight	Fee/Unit
695 0 - 2 lb.	\$6
696 3 - 10 lb.	\$8
697 11 - 50 lb.	\$12
698 51 - 500 lb.	\$20
699 501 - 1000 lb.	\$30
700 1001 - 2500 lb.	\$40
701 2501 - 5000 lb.	\$50

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703 (b) For each mass standard that is tested or certified to
 704 meet ANSI/ASTM Standard Class 4 or National Institute of
 705 Standards and Technology Class P tolerances, ~~the department~~
 706 ~~shall charge a fee of not more than:~~

Weight	Fee/Unit
708 0 - 10 lb.	\$20
709 11 - 50 lb.	\$30
710 51 - 500 lb.	\$40
711 501 - 1000 lb.	\$50
712 1001 - 2500 lb.	\$60
713 2501 - 5000 lb.	\$75

714 (c) For each mass standard that is calibrated to determine
 715 actual mass or apparent mass values, ~~the department shall charge~~
 716 ~~a fee of not more than:~~

Weight	Fee/Unit
718 0 - 20 lb.	\$40
719 21 - 50 lb.	\$50
720 51 - 1000 lb.	\$70
721 1001 - 2500 lb.	\$150
722 2501 - 5000 lb.	\$250

723 (d) For each volumetric ~~flask, graduate, or test measure,~~
 724 ~~the department shall charge a fee of not more than:~~

Vessel	Fee/Test Point
726 0 - 5 gal.	\$35
727 Over 5 gal.	Plus \$0.75 for each additional gallon

728 ~~(e) For each linear measure that is tested or certified,~~

729 ~~the department shall charge a fee of not more than \$75.~~

730 ~~(e)(f) For each linear measure test that is calibrated to~~
 731 ~~determine actual values, the department shall charge a fee of~~
 732 ~~\$75 not more than \$100.~~

733 ~~(g) For each liquid in glass or electronic thermometer~~
 734 ~~that is tested or certified, the department shall charge a fee~~
 735 ~~of not more than \$50.~~

736 ~~(f)(h) For each temperature measuring device, ~~liquid in~~~~
 737 ~~glass or electronic thermometer that is calibrated to determine~~
 738 ~~actual values, the department shall charge a fee of \$50 not more~~
 739 ~~than \$100.~~

740 ~~(g)(i) For each special test or special preparation, the~~
 741 ~~department shall charge a fee of not more than \$50 per hour.~~

742 (2) Each fee is payable to the department at the time the
 743 testing is done, regardless of whether the item tested is
 744 certified. The department may refuse to accept for testing any
 745 item deemed by the department to be unsuitable for its intended
 746 use or not to be in a condition ready for testing. The
 747 department shall deposit all fees collected under this section
 748 into the General Inspection Trust Fund.

749 Section 20. Section 531.60, Florida Statutes, is amended
 750 to read:

751 531.60 Permit for commercially operated or tested weights
 752 or measures instrument or devices.—

753 (1) A weights and measures instrument or device may not
 754 operate or be used for commercial purposes, as defined by

755 department rule, within this state without first being permitted
 756 through a valid commercial use permit issued by the department
 757 to the person who owns the weights and measures device, unless
 758 exempted as provided in s. 531.61. Such permit applies only to
 759 the specific location and instrument types or device types
 760 listed on ~~for which~~ the permit ~~was issued~~. However, the
 761 department may allow such permit to be applicable to a
 762 replacement for the original instrument or device.

763 (2) If ownership of a business ~~an instrument or device~~ for
 764 which a permit has been issued changes and the instruments or
 765 devices affected by the permit ~~instrument or device~~:

766 (a) Remain ~~Remains~~ in the same location, the permit
 767 transfers to the new owner and remains in effect until its
 768 original expiration date. Within 30 days after the change in
 769 ownership, the new owner shall notify the department of the
 770 change and provide the pertinent information regarding the
 771 change in ownership and an updated replacement permit shall be
 772 issued if needed.

773 (b) Move ~~Moves~~ to a new location, the permit automatically
 774 expires and a new permit must be applied for by the new owner of
 775 the instruments or devices ~~issued which will expire 1 year~~
 776 ~~following the date of issuance~~.

777 (3) A person who holds a permit that has been issued under
 778 this section must notify the department within 30 days after a
 779 change in permit status or if a permit will not be renewed due
 780 to the termination in use or removal of all weighing and

781 measuring instruments or devices from the permitted location
 782 ~~Weights and measures instruments or devices that are not used~~
 783 ~~commercially may be tested by the department under this chapter~~
 784 ~~only if they are permitted and appropriate fees paid as~~
 785 ~~prescribed by this section and adopted rules.~~

786 Section 21. Section 531.61, Florida Statutes, is amended
 787 to read:

788 531.61 Exemptions from permit requirement.—Commercial
 789 weights or measures instruments or devices are exempt from the
 790 ~~permit~~ requirements of ss. 531.60-531.66 if:

791 (1) The device is a taximeter that is licensed, permitted,
 792 or registered by a municipality, county, or other local
 793 government and is tested for accuracy and compliance with state
 794 standards by the local government in cooperation with the state
 795 as authorized in s. 531.421.

796 (2) The device is used exclusively for weighing railroad
 797 cars and is tested for accuracy and compliance with state
 798 standards by a private testing agency.

799 (3) The device is used exclusively for measuring aviation
 800 fuel or petroleum products inspected under chapter 525.

801 Section 22. Subsections (1), (2), and (4) of section
 802 531.62, Florida Statutes, are amended to read:

803 531.62 Permit application and renewal.—

804 (1) An application for a ~~weights and measures~~ commercial
 805 use permit shall be submitted to the department on a form
 806 prescribed and furnished by the department and must contain such

807 information as the department may require by rule.

808 (2) The application must be accompanied by a fee in an
 809 amount determined by the number and types of instruments or
 810 devices covered by the permit as provided by department rule.
 811 However, the fee for each instrument or device listed on the
 812 permit may not exceed the maximum limits set forth in s. 531.63.

813 (4) A permit expires 2 years ~~1 year~~ following its date of
 814 issue and must be renewed biennially ~~annually~~. If a complete an
 815 application package for renewal is not received by the
 816 department before the permit expires ~~within 30 days after its~~
 817 ~~due date~~, a late fee of up to \$100 must be paid in addition to
 818 the ~~annual~~ commercial use permit fee. However, a person may
 819 elect to renew a commercial use permit on an annual basis rather
 820 than a biennial basis. An annual renewal must meet the same
 821 requirements and conditions as a biennial renewal.

822 Section 23. Paragraph (a) of subsection (1) and subsection
 823 (2) of section 531.63, Florida Statutes, are amended to read:

824 531.63 Maximum permit fees.—The commercial use permit fees
 825 established for weights or measures instruments or devices shall
 826 be in an amount necessary to administer this chapter but may not
 827 exceed the amounts provided in this section.

828 (1) For weighing devices, the fees must be based on the
 829 manufacturer's rated capacity or the device's design and use and
 830 whether measuring by inch or pounds or the metric equivalent:

831 (a) For weighing devices of up to and including the 100-
 832 pound capacity which are used during any portion of the period

833 covered by the permit, the maximum annual fees per category of
 834 device ~~retail establishment~~ may not exceed the following:

835	Number of devices	
836	in a single <u>category</u> retail	
837	establishment	Maximum Fee
838	1 to 5	\$60
839	6 to 10	\$150
840	11 to 30	\$200
841	More than 30	\$300

842 (2) For other measuring devices, the annual permit fees
 843 per device may not exceed the following:

844 (a) Mass flow meters having a maximum flow rate of up to
 845 150 pounds per minute.....\$100.

846 This includes all mass flow meters used to dispense compressed
 847 and liquefied natural gas for retail sale.

848 (b) Mass flow meters having a maximum flow rate greater
 849 than 150 pounds per minute.....\$500.

850 (c) Volumetric flow meters having a maximum flow rate of
 851 up to 20 gallons per minute.....\$50.

852 This includes all devices used to dispense diesel exhaust fluid
 853 for retail sale.

854 (d) Volumetric flow meters having a maximum flow rate
 855 greater than 20 gallons per minute.....\$100.

856 (e) Tanks, under 500 gallons capacity, used as measure
 857 containers, with or without gage rods or markers.....\$100.

858 (f) Tanks, 500 or more gallons capacity, used as measure

859 containers, with or without gage rods or markers.....\$200.
 860 (g) Taximeters.....\$50.
 861 ~~(h) Grain moisture meters.....\$25.~~
 862 (h)(i) Multiple-dimension measuring
 863 devices.....\$100.
 864 (i) Liquefied petroleum gas bulk delivery vehicles with a
 865 meter owned or leased by a liquefied petroleum gas licensee\$150.

866 Section 24. Section 531.65, Florida Statutes, is amended
 867 to read:

868 531.65 Unauthorized use; penalties.—If a weights or
 869 measures instrument or device is used commercially without a
 870 valid commercial use permit, the department may do one or more
 871 of the following:

872 (1) Prohibit the further commercial use of the unpermitted
 873 instrument or device until the proper permit has been issued.†

874 (2) Employ and attach to the instrument or device such
 875 form, notice, tag, or seal to prevent the continued unauthorized
 876 use of the instrument or device.†

877 (3) In addition to the permit fees prescribed by rule for
 878 the commercial use of a weights and measures instrument or
 879 device, assess the late fee authorized under s. 531.62.†~~or~~

880 (4) Impose penalties as prescribed in s. 531.50 in
 881 addition to the payment of appropriate permit fees for the
 882 commercial use of a weights and measures instrument or device.

883 Section 25. Paragraph (c) of subsection (3) of section
 884 539.001, Florida Statutes, is amended to read:

885 539.001 The Florida Pawnbroking Act.—
 886 (3) LICENSE REQUIRED.—
 887 (c) Each license is valid for a period of 1 year unless it
 888 is earlier relinquished, suspended, or revoked. Each license
 889 shall be renewed annually, and each licensee shall, initially
 890 and annually thereafter, pay to the agency a license fee of \$300
 891 for each license held. The agency shall waive the initial
 892 license fee for an honorably discharged veteran of the United
 893 States Armed Forces, the spouse of such a veteran, or a business
 894 entity that has a majority ownership held by such a veteran or
 895 spouse if the agency receives an application, in a format
 896 prescribed by the agency, within 60 months after the date of the
 897 veteran's discharge from any branch of the United States Armed
 898 Forces. To qualify for the waiver, a veteran must provide to the
 899 agency a copy of his or her DD Form 214, as issued by the United
 900 States Department of Defense, or another acceptable form of
 901 identification as specified by the Department of Veterans'
 902 Affairs; the spouse of a veteran must provide to the agency a
 903 copy of the veteran's DD Form 214, as issued by the United
 904 States Department of Defense, or another acceptable form of
 905 identification as specified by the Department of Veterans'
 906 Affairs, and a copy of a valid marriage license or certificate
 907 verifying that he or she was lawfully married to the veteran at
 908 the time of discharge; or a business entity must provide to the
 909 agency proof that a veteran or the spouse of a veteran holds a
 910 majority ownership in the business, a copy of the veteran's DD

911 Form 214, as issued by the United States Department of Defense,
 912 or another acceptable form of identification as specified by the
 913 Department of Veterans' Affairs, and, if applicable, a copy of a
 914 valid marriage license or certificate verifying that the spouse
 915 of the veteran was lawfully married to the veteran at the time
 916 of discharge.

917 Section 26. Subsection (3) of section 559.904, Florida
 918 Statutes, is amended to read:

919 559.904 Motor vehicle repair shop registration;
 920 application; exemption.—

921 (3) (a) Each application for registration must be
 922 accompanied by a registration fee calculated on a per-year basis
 923 as follows:

924 1. ~~(a)~~ If the place of business has 1 to 5 employees: \$50.

925 2. ~~(b)~~ If the place of business has 6 to 10 employees:
 926 \$150.

927 3. ~~(c)~~ If the place of business has 11 or more employees:
 928 \$300.

929 (b) The department shall waive the initial registration
 930 fee for an honorably discharged veteran of the United States
 931 Armed Forces, the spouse of such a veteran, or a business entity
 932 that has a majority ownership held by such a veteran or spouse
 933 if the department receives an application, in a format
 934 prescribed by the department, within 60 months after the date of
 935 the veteran's discharge from any branch of the United States
 936 Armed Forces. To qualify for the waiver, a veteran must provide

937 to the department a copy of his or her DD Form 214, as issued by
 938 the United States Department of Defense, or another acceptable
 939 form of identification as specified by the Department of
 940 Veterans' Affairs; the spouse of a veteran must provide to the
 941 department a copy of the veteran's DD Form 214, as issued by the
 942 United States Department of Defense, or another acceptable form
 943 of identification as specified by the Department of Veterans'
 944 Affairs, and a copy of a valid marriage license or certificate
 945 verifying that he or she was lawfully married to the veteran at
 946 the time of discharge; or a business entity must provide to the
 947 department proof that a veteran or the spouse of a veteran holds
 948 a majority ownership in the business, a copy of the veteran's DD
 949 Form 214, as issued by the United States Department of Defense
 950 or another acceptable form of identification as specified by the
 951 Department of Veterans' Affairs, and, if applicable, a copy of a
 952 valid marriage license or certificate verifying that the spouse
 953 of the veteran was lawfully married to the veteran at the time
 954 of discharge.

955 Section 27. Subsections (1), (7), (8), (10), (11), and
 956 (13) of section 559.927, Florida Statutes, are amended to read:

957 559.927 Definitions.—For the purposes of this part, the
 958 term:

959 (1) "Accommodations" means any hotel or motel room,
 960 condominium or cooperative unit, cabin, lodge, or apartment; any
 961 other commercial structure designed for occupancy by one or more
 962 individuals; or any lodging establishment as provided by law.

963 The term does not include long-term home rentals covered under a
 964 lease pursuant to chapter 83.

965 (7) "Prearranged travel or, tourist-related services, ~~or~~
 966 ~~tour guide services~~" includes, but is not limited to, car
 967 rentals, lodging, transfers, ~~and sightseeing tours~~ and all other
 968 such services that ~~which~~ are reasonably related to air, sea,
 969 rail, motor coach, or other medium of transportation, or
 970 accommodations for which a purchaser receives a premium or
 971 contracts or pays before ~~prior to~~ or after departure. This term
 972 ~~These terms~~ also includes ~~include~~ services for which a
 973 purchaser, whose legal residence is outside the United States,
 974 contracts or pays before ~~prior to~~ departure, and any arrangement
 975 by which a purchaser prepays for, receives a reservation or any
 976 other commitment to provide services before ~~prior to~~ departure
 977 for, or otherwise arranges for travel directly to a terrorist
 978 state and which originates in Florida.

979 (8) "Purchaser" means the purchaser of, or person
 980 otherwise entitled to receive, prearranged travel or, tourist-
 981 related services, ~~or tour guide services~~, for a fee or
 982 commission, or who has acquired a vacation certificate for
 983 personal use.

984 (10) "Satisfactory consumer complaint history" means no
 985 unresolved complaints regarding prearranged travel or, tourist-
 986 related services, ~~or tour guide services~~ are on file with the
 987 department. A complaint is unresolved when a seller of travel
 988 does not respond to the department's efforts to mediate the

989 | complaint or a complaint where the department has determined
 990 | that a violation of this part has occurred and the complainant
 991 | ~~complaint~~ has not been satisfied by the seller of travel.

992 | (11) "Seller of travel" means any ~~resident or nonresident~~
 993 | person, firm, corporation, or business entity who offers for
 994 | sale, directly or indirectly, at wholesale or retail,
 995 | prearranged travel or, tourist-related services, ~~or tour-guide~~
 996 | ~~services~~ for individuals or groups, including, but not limited
 997 | to, vacation ~~or tour~~ packages, or vacation certificates in
 998 | exchange for a fee, commission, or other valuable consideration.
 999 | The term includes any business entity offering membership in a
 1000 | travel club or travel services for an advance fee or payment,
 1001 | even if no travel contracts or certificates or vacation or tour
 1002 | packages are sold by the business entity.

1003 | (13) "Vacation certificate" means any advance travel
 1004 | purchase arrangement, plan, program, or vacation package that
 1005 | ~~promotes, discusses, or discloses a destination or itinerary or~~
 1006 | ~~type of travel,~~ whereby a purchaser ~~for consideration paid in~~
 1007 | ~~advance~~ is entitled to the use of travel, accommodations, or
 1008 | facilities for any number of days, whether certain or uncertain,
 1009 | during the period in which the certificate can be exercised, and
 1010 | no specific date or dates for its use are designated. A vacation
 1011 | certificate does not include prearranged travel or, tourist-
 1012 | related services, ~~or tour-guide services~~ when a seller of travel
 1013 | remits full payment for the cost of such services to the
 1014 | provider or supplier within 10 business days of the purchaser's

1015 initial payment to the seller of travel. The term does not
 1016 include travel if exact travel dates are selected, guaranteed,
 1017 and paid for at the time of the purchase.

1018 Section 28. Section 559.928, Florida Statutes, is amended
 1019 to read:

1020 559.928 Registration.—

1021 (1) Each seller of travel shall annually register with the
 1022 department, providing: its legal business or trade name, mailing
 1023 address, and business locations; the full names, addresses, and
 1024 telephone numbers of its owners or corporate officers and
 1025 directors and the Florida agent of the corporation; a statement
 1026 whether it is a domestic or foreign corporation, its state and
 1027 date of incorporation, its charter number, and, if a foreign
 1028 corporation, the date it registered with this state, and
 1029 business tax receipt where applicable; ~~the date on which a~~
 1030 ~~seller of travel registered its fictitious name if the seller of~~
 1031 ~~travel is operating under a fictitious or trade name;~~ the name
 1032 of all other corporations, business entities, and trade names
 1033 through which each owner of the seller of travel operated, was
 1034 known, or did business as a seller of travel within the
 1035 preceding 5 years; a list of all authorized independent agents,
 1036 including the agent's trade name, full name, mailing address,
 1037 business address, and telephone numbers; the business location
 1038 and address of each branch office and full name and address of
 1039 the manager or supervisor; the certification required under s.
 1040 559.9285; and proof of purchase of adequate bond as required in

1041 this part. A certificate evidencing proof of registration shall
 1042 be issued by the department and must be prominently displayed in
 1043 the seller of travel's primary place of business.

1044 (2) (a) Registration fees shall be as follows:

1045 1. Three hundred dollars per year per registrant
 1046 certifying its business activities under s. 559.9285(1) (a).

1047 2. One thousand dollars per year per registrant certifying
 1048 its business activities under s. 559.9285(1) (b).

1049 3. Twenty-five hundred dollars per year per registrant
 1050 certifying its business activities under s. 559.9285(1) (c).

1051 (b) All amounts collected shall be deposited by the Chief
 1052 Financial Officer to the credit of the General Inspection Trust
 1053 Fund of the Department of Agriculture and Consumer Services
 1054 pursuant to s. 570.20, for the sole purpose of administration of
 1055 this part.

1056 (c) The department shall waive the initial registration
 1057 fee for an honorably discharged veteran of the United States
 1058 Armed Forces, the spouse of such a veteran, or a business entity
 1059 that has a majority ownership held by such a veteran or spouse
 1060 if the department receives an application, in a format
 1061 prescribed by the department, within 60 months after the date of
 1062 the veteran's discharge from any branch of the United States
 1063 Armed Forces. To qualify for the waiver, a veteran must provide
 1064 to the department a copy of his or her DD Form 214, as issued by
 1065 the United States Department of Defense, or another acceptable
 1066 form of identification as specified by the Department of

1067 Veterans' Affairs; the spouse of a veteran must provide to the
 1068 department a copy of the veteran's DD Form 214, as issued by the
 1069 United States Department of Defense, or another acceptable form
 1070 of identification as specified by the Department of Veterans'
 1071 Affairs, and a copy of a valid marriage license or certificate
 1072 verifying that he or she was lawfully married to the veteran at
 1073 the time of discharge; or a business entity must provide to the
 1074 department proof that a veteran or the spouse of a veteran holds
 1075 a majority ownership in the business, a copy of the veteran's DD
 1076 Form 214, as issued by the United States Department of Defense,
 1077 or another acceptable form of identification as specified by the
 1078 Department of Veterans' Affairs, and, if applicable, a copy of a
 1079 valid marriage license or certificate verifying that the spouse
 1080 of the veteran was lawfully married to the veteran at the time
 1081 of discharge.

1082 (3) Each independent agent shall annually file an
 1083 affidavit with the department before ~~prior to~~ engaging in
 1084 business in this state. This affidavit must include the
 1085 independent agent's full name, legal business or trade name,
 1086 mailing address, business address, telephone number, and the
 1087 name and address of each seller of travel represented by the
 1088 independent agent. A letter evidencing proof of filing must be
 1089 issued by the department and must be prominently displayed in
 1090 the independent agent's primary place of business. Each
 1091 independent agent must also submit an annual registration fee of
 1092 \$50. All moneys collected pursuant to the imposition of the fee

1093 shall be deposited by the Chief Financial Officer into the
 1094 General Inspection Trust Fund of the Department of Agriculture
 1095 and Consumer Services for the sole purpose of administrating
 1096 this part. As used in this subsection, the term "independent
 1097 agent" means a person who represents a seller of travel by
 1098 soliciting persons on its behalf; who has a written contract
 1099 with a seller of travel which is operating in compliance with
 1100 this part and any rules adopted thereunder; who does not receive
 1101 a fee, commission, or other valuable consideration directly from
 1102 the purchaser for the seller of travel; who does not at any time
 1103 have any unissued ticket stock or travel documents in his or her
 1104 possession; and who does not have the ability to issue tickets,
 1105 vacation certificates, or any other travel document. The term
 1106 "independent agent" does not include an affiliate of the seller
 1107 of travel, as that term is used in s. 559.935(3), or the
 1108 employees of the seller of travel or of such affiliates.

1109 (4) Any person applying for or renewing a local business
 1110 tax receipt to engage in business as a seller of travel must
 1111 exhibit a current registration certificate from the department
 1112 before the local business tax receipt may be issued or reissued.

1113 (5) Each contract, advertisement, or certificate, or any
 1114 other travel document, of a seller of travel must include the
 1115 phrase "...(NAME OF FIRM)... is registered with the State of
 1116 Florida as a Seller of Travel. Registration No....."

1117 ~~(6) Each advertisement of a seller of travel must include~~
 1118 ~~the phrase "Fla. Seller of Travel Reg. No....."~~

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1119 (6)~~(7)~~ A ~~Ne~~ registration is not ~~shall be~~ valid for any
 1120 seller of travel transacting business at any place other than
 1121 that designated in its application, unless the department is
 1122 first notified in writing in advance of any change of location.
 1123 A ~~Nor shall the~~ registration is not ~~be~~ valid for an affiliate of
 1124 the seller of travel who engages in the prearranged travel and
 1125 tourist business. A registration issued under this part may
 1126 ~~shall~~ not be assignable, and the seller of travel may ~~shall~~ not
 1127 be permitted to conduct business under more than one name except
 1128 as registered. A seller of travel desiring to change its
 1129 registered name or location or designated agent for service of
 1130 process at a time other than upon renewal of registration shall
 1131 notify the department of such change.

1132 (7)~~(8)~~ Applications under this section are ~~shall be~~
 1133 subject to ~~the provisions of~~ s. 120.60.

1134 (8)~~(9)~~ The department may deny, ~~or~~ refuse to renew, or
 1135 revoke the registration of any seller of travel based upon a
 1136 determination that the seller of travel, or any of its
 1137 directors, officers, owners, or general partners:

1138 (a) Has failed to meet the requirements for registration
 1139 as provided in this part;

1140 (b) Has been convicted of a crime involving fraud, theft,
 1141 embezzlement, dishonest dealing, or any other act of moral
 1142 turpitude or any other act arising out of conduct as a seller of
 1143 travel;

1144 (c) Has not satisfied a civil fine or penalty arising out

1145 of any administrative or enforcement action brought by any
 1146 governmental agency or private person based upon conduct
 1147 involving fraud, theft, embezzlement, dishonest dealing, or any
 1148 violation of this part;

1149 (d) Has pending against her or him any criminal,
 1150 administrative, or enforcement proceedings in any jurisdiction,
 1151 based upon conduct involving fraud, theft, embezzlement,
 1152 dishonest dealing, or any other act of moral turpitude or any
 1153 other act arising out of conduct as a seller of travel; or

1154 (e) Has had a judgment entered against her or him in any
 1155 action brought by the department or the Department of Legal
 1156 Affairs pursuant to ss. 501.201-501.213 or this act ~~part~~.

1157 Section 29. Subsections (2) and (6) of section 559.929,
 1158 Florida Statutes, are amended to read:

1159 559.929 Security requirements.-

1160 (2) The bond must be filed with the department on a form
 1161 adopted by department rule and must be in favor of the
 1162 department for the use and benefit of a traveler who is injured
 1163 by the fraud, misrepresentation, breach of contract, or
 1164 financial failure, or any other violation of this part by the
 1165 seller of travel. Such liability may be enforced by proceeding
 1166 in an administrative action as specified in subsection (3) or by
 1167 filing a civil action. However, in such civil action the bond
 1168 posted with the department may ~~shall~~ not be amenable or subject
 1169 to a judgment or other legal process issuing out of or from such
 1170 court in connection with such civil action, but such bond shall

1171 | be amenable to and enforceable only by and through
 1172 | administrative proceedings before the department. It is the
 1173 | intent of the Legislature that such bond be applicable and
 1174 | liable only for the payment of claims duly adjudicated by order
 1175 | of the department. The bond must be open to successive claims,
 1176 | but the aggregate amount awarded may not exceed the amount of
 1177 | the bond. In addition to the foregoing, a bond provided by a
 1178 | registrant or applicant for registration which certifies its
 1179 | business activities under s. 559.9285(1)(b) or (c) must be in
 1180 | favor of the department, with payment in the following order of
 1181 | priority:

1182 | (a) The expenses for prosecuting the registrant or
 1183 | applicant in an administrative or civil action under this part,
 1184 | including attorney fees and fees for other professionals, court
 1185 | costs or other costs of the proceedings, and all other expenses
 1186 | incidental to the action.

1187 | (b) The costs and expenses of investigation before the
 1188 | commencement of an administrative or civil action under this
 1189 | part.

1190 | (c) An unpaid administrative fine imposed by final order
 1191 | or an unpaid civil penalty imposed by final judgment under this
 1192 | part.

1193 | (d) Damages or compensation for a traveler injured as
 1194 | provided in this subsection.

1195 | (6) The department may waive the bond requirement on an
 1196 | annual basis if the seller of travel has had 5 or more

1197 consecutive years of experience as a seller of travel in this
 1198 state in compliance with this part, has not had a civil,
 1199 criminal, or administrative action instituted against the seller
 1200 of travel in the vacation and travel business by a governmental
 1201 agency or an action involving fraud, theft, misappropriation of
 1202 property, violation of a statute pertaining to business or
 1203 commerce with a terrorist state, ~~or~~ moral turpitude, or other
 1204 violation of this part and has a satisfactory consumer complaint
 1205 history with the department, and certifies its business
 1206 activities under s. 559.9285. Such waiver may be revoked if the
 1207 seller of travel violates this part. A seller of travel which
 1208 certifies its business activities under s. 559.9285(1)(b) or (c)
 1209 is not entitled to the waiver provided in this subsection.

1210 Section 30. Subsections (10), (14), and (17) of section
 1211 559.9295, Florida Statutes, are amended to read:

1212 559.9295 Submission of vacation certificate documents.—
 1213 Sellers of travel who offer vacation certificates must submit
 1214 and disclose to the department with the application for
 1215 registration, and any time such document is changed, but prior
 1216 to the sale of any vacation certificate, the following
 1217 materials:

1218 ~~(10) A statement of the number of certificates to be~~
 1219 ~~issued and the date of their expiration.~~

1220 (13)~~(14)~~ A listing of the full name, address, and
 1221 telephone number of each person through which the distribution
 1222 and sale of vacation certificates is to be carried out,

1223 ~~including the number of vacation certificates allocated or sold~~
 1224 ~~to each such person and the name and address of a Florida~~
 1225 registered agent for service of process.

1226 ~~(17) Within 10 working days after receipt of any materials~~
 1227 ~~submitted subsequent to filing an initial registration~~
 1228 ~~application or any annual renewal thereof, the department shall~~
 1229 ~~determine whether such materials are adequate to meet the~~
 1230 ~~requirements of this section. The department shall notify the~~
 1231 ~~seller of travel that materials submitted are in substantial~~
 1232 ~~compliance, or shall notify the seller of travel of any specific~~
 1233 ~~deficiencies. If the department fails to notify the seller of~~
 1234 ~~travel of its determination within the period specified in this~~
 1235 ~~subsection, the materials shall be deemed in compliance,~~
 1236 ~~however, the failure of the department to send notification in~~
 1237 ~~either case will not relieve the seller of travel from the duty~~
 1238 ~~of complying with this section. Neither the submission of these~~
 1239 ~~materials nor the department's response implies approval,~~
 1240 ~~recommendation, or endorsement by the department or that the~~
 1241 ~~contents of said materials have been verified by the department.~~

1242 Section 31. Section 559.932, Florida Statutes, is amended
 1243 to read:

1244 559.932 Vacation certificate disclosure.-

1245 (1) A ~~It shall be unlawful for any seller of travel must~~
 1246 ~~to fail to provide each person solicited with a contract that~~
 1247 includes which shall include the following in a 10-point font,
 1248 unless otherwise specified:

1249 (a) A space for the date, name, address, and signature of
 1250 the purchaser.

1251 (b) The expiration date of the vacation certificate and
 1252 the terms and conditions of its extension or renewal, if
 1253 available.

1254 (c) The name and business address of any seller of travel
 1255 who may solicit vacation certificate purchasers for further
 1256 purchases, and a full and complete statement as to the nature
 1257 and method of that solicitation.

1258 (d) The total financial obligation of the purchaser which
 1259 shall include the initial purchase price and any additional
 1260 charges to which the purchaser may be subject, including, but
 1261 not limited to, any per diem, seasonal, reservation, or
 1262 recreational charge.

1263 (e) The name and street address of any person who has the
 1264 right to alter, amend, or add to the charges to which the
 1265 purchaser may be subject and the terms and conditions under
 1266 which such charges may be imposed.

1267 (f) If any accommodation or facility which a purchaser
 1268 acquires the right to use pursuant to the vacation certificate
 1269 is not completed at the time the certificate is offered for
 1270 sale, the date of availability of each component of the
 1271 accommodation or facility.

1272 (g) By means of a section entitled "terms and conditions":

1273 1. All eligibility requirements for use of the vacation
 1274 certificate, including, but not limited to, age, sex, marital

1275 status, group association, residency, or geographic limitations.

1276 2. All eligibility requirements for use of any discount or
1277 complimentary coupon or ticket.

1278 3. A statement as to whether transportation and meals are
1279 provided pursuant to use of the certificate.

1280 4. Any room deposit requirement, including all conditions
1281 for its return or refund.

1282 5. The manner in which reservation requests are to be made
1283 and the method by which they are to be confirmed.

1284 6. Any identification, credential, or other means by which
1285 a purchaser must establish her or his entitlement to the rights,
1286 benefits, or privileges of the vacation certificate.

1287 7. Any restriction or limitation upon transfer of the
1288 vacation certificate or any right, benefit, or privilege
1289 thereunder.

1290 8. Any other term, limitation, condition, or requirement
1291 material to use of the vacation certificate or any right,
1292 benefit, or privilege thereunder.

1293 (h) In immediate proximity to the space reserved in the
1294 contract for the date and the name, address, and signature of
1295 the purchaser, the following statement in boldfaced type of a
1296 size of 10 points:

1297
1298 "YOU MAY CANCEL THIS CONTRACT WITHOUT ANY PENALTY OR
1299 OBLIGATION WITHIN 30 DAYS FROM THE DATE OF PURCHASE OR RECEIPT
1300 OF THE VACATION CERTIFICATE, WHICHEVER OCCURS LATER."

1301 "YOU MAY ALSO CANCEL THIS CONTRACT IF ACCOMMODATIONS OR
 1302 FACILITIES ARE NOT AVAILABLE PURSUANT TO A REQUEST FOR USE AS
 1303 PROVIDED IN THE CONTRACT."

1304 "IF YOU DECIDE TO CANCEL, YOU MUST NOTIFY THE SELLER IN
 1305 WRITING OF YOUR INTENT TO CANCEL BY RETURNING THE CERTIFICATE
 1306 AND SENDING NOTICE TO: ... (NAME OF SELLER)... AT ... (SELLER'S
 1307 ADDRESS)...."

1308
 1309 (i) In immediate proximity to the statement required in
 1310 paragraph (h), the following statement in boldfaced type of a
 1311 size of 12 ~~10~~ points:

1312
 1313 "NO PURCHASER SHOULD RELY UPON REPRESENTATIONS OTHER THAN
 1314 THOSE INCLUDED IN THIS CONTRACT."

1315
 1316 However, inclusion of this statement shall not impair any
 1317 purchaser's right to bring legal action based on verbal
 1318 statements.

1319 (j) In immediate proximity to the statement required in
 1320 paragraph (i), the following statement:

1321 "This contract is for the purchase of a vacation
 1322 certificate and puts all assignees on notice of the consumer's
 1323 right to cancel under section 559.933, Florida Statutes."

1324 (2) If a sale or agreement to purchase a vacation
 1325 certificate is completed over the telephone, the seller shall
 1326 inform the purchaser over the telephone that:

1327 (a) The purchaser may cancel the contract without any
 1328 penalty or obligation within 30 days from the date of purchase
 1329 or receipt of the vacation certificate, whichever occurs later.

1330 (b) The purchaser may also cancel the contract if
 1331 accommodations or facilities are not available upon request for
 1332 use as provided in the contract.

1333 (3) Upon receipt of a copy of a vacation certificate or
 1334 contract required pursuant to s. 559.9295, the department must
 1335 review the certificate or contract for compliance with the
 1336 disclosures required under this section.

1337 Section 32. Section 559.933, Florida Statutes, is amended
 1338 to read:

1339 559.933 Vacation certificate cancellation and refund
 1340 provisions.-

1341 (1) A ~~It shall be unlawful for any~~ seller of travel or
 1342 assignee must honor a purchaser's request to cancel a vacation
 1343 certificate if such request is made:

1344 ~~(1) To fail or refuse to honor a purchaser's vacation~~
 1345 ~~certificate request to cancel if such request is made:~~

1346 (a) Within 30 days after ~~from~~ the date of purchase or
 1347 receipt of the vacation certificate, whichever occurs later; or

1348 (b) At any time accommodations or facilities are not
 1349 available pursuant to a request for use as provided in the
 1350 contract, provided that:

1351 1. The contract may ~~shall~~ not require notice greater than
 1352 60 days in advance of the date requested for use;

1353 2. If acceptable to the purchaser, comparable alternate
 1354 accommodations or facilities in a city, or reservations for a
 1355 date different than that requested, may be provided.

1356 (2) A seller of travel or assignee must ~~To fail to~~ refund
 1357 any and all payments made by the vacation certificate purchaser
 1358 within 30 days after receipt of the certificate and notice of
 1359 cancellation made pursuant to this section, if the purchaser has
 1360 not received any benefits pursuant to the vacation certificate.

1361 (3) A seller of travel or assignee must, if the purchaser
 1362 has received any benefits pursuant to the vacation certificate,
 1363 ~~to fail to~~ refund within 30 days after receipt of the
 1364 certificate and notice of cancellation made pursuant to this
 1365 section any and all payments made by the purchaser which exceed
 1366 a pro rata portion of the total price, representing the portion
 1367 of any benefits actually received by the vacation certificate
 1368 purchaser during the time preceding cancellation.

1369 (4) If ~~Where~~ any purchaser has received confirmation of
 1370 reservations in advance and is refused accommodations upon
 1371 arrival, a seller of travel or assignee must ~~to fail to~~ procure
 1372 comparable alternate accommodations for the purchaser in the
 1373 same city at no expense to the purchaser, or ~~to fail to~~ fully
 1374 compensate the purchaser for the room rate incurred in securing
 1375 comparable alternate accommodations himself or herself.

1376 (5) A seller of travel or assignee may not ~~To~~ collect more
 1377 than the full contract price from the purchaser.

1378 (6) A seller of travel or assignee may not ~~To~~ sell,

1379 assign, or otherwise transfer any interest in a seller of travel
 1380 business, or ~~to~~ sell, assign, or otherwise transfer to a third
 1381 party any interest in any vacation certificate unless:

1382 (a) The third party agrees in writing to fully honor the
 1383 rights of vacation certificate purchasers to cancel and to
 1384 receive an appropriate refund or reimbursement as provided in
 1385 this section.

1386 (b) The third party agrees in writing to comply with all
 1387 other provisions of this part for as long as the third party
 1388 continues the sale of vacation certificates or for the duration
 1389 of the period of validity of outstanding vacation certificates,
 1390 whichever is longer in time.

1391 (c) The seller of travel agrees to be liable for and fully
 1392 indemnify a purchaser from any loss occasioned by the failure of
 1393 the third party to honor the purchaser's right to cancel and
 1394 failure to make prompt and complete refund to the purchaser of
 1395 all sums paid to the third party, or occasioned by the third
 1396 party's failure to comply with the provisions of this part.

1397 (7) A seller of travel or assignee must ~~To fail to~~ fulfill
 1398 the terms of a vacation certificate within 18 months after ~~of~~
 1399 the initial payment of any consideration by the purchaser to a
 1400 seller of travel or third party.

1401 Section 33. Section 559.9335, Florida Statutes, is amended
 1402 to read:

1403 559.9335 Violations.—It is a violation of this part for
 1404 any seller of travel, independent agent, or other person:

1405 (1) To conduct business as a seller of travel without
 1406 registering annually with the department unless exempt pursuant
 1407 to s. 559.935.

1408 (2) To conduct business as a seller of travel without an
 1409 annual purchase of a performance bond in the amount set by the
 1410 department unless exempt pursuant to s. 559.935.

1411 (3) Knowingly to make any false statement, representation,
 1412 or certification in any application, document, or record
 1413 required to be submitted or retained under this part or in any
 1414 response to an inquiry or investigation conducted by the
 1415 department or any other governmental agency.

1416 (4) Knowingly to sell or market any ~~number of~~ vacation
 1417 certificates that exceed the accommodations available at the
 1418 time of sale ~~the number disclosed to the department pursuant to~~
 1419 ~~this section.~~

1420 (5) Knowingly to sell or market vacation certificates with
 1421 an expiration date of more than 18 months from the date of
 1422 issuance.

1423 ~~(6) Knowingly to require, request, encourage, or suggest,~~
 1424 ~~directly or indirectly, that payment for the right to obtain a~~
 1425 ~~travel contract, certificate, or vacation package must be by~~
 1426 ~~credit card authorization or to otherwise announce a preference~~
 1427 ~~for that method of payment over any other when no correct and~~
 1428 ~~true explanation for such preference is likewise stated.~~

1429 (6)~~(7)~~ Knowingly to state, represent, indicate, suggest,
 1430 or imply, directly or indirectly, that the travel contract,

1431 certificate, or vacation package being offered by the seller of
 1432 travel cannot be purchased at some later time or may not
 1433 otherwise be available after the initial contact, or that
 1434 callbacks by the prospective purchaser are not accepted, when no
 1435 such restrictions or limitations in fact exist.

1436 (7)~~(8)~~ To misrepresent ~~in any manner~~ the purchaser's right
 1437 to cancel and to receive an appropriate refund or reimbursement
 1438 as provided by this part.

1439 (8)~~(9)~~ To sell any vacation certificate the duration of
 1440 which exceeds the duration of any agreement between the seller
 1441 and any business entity obligated thereby to provide
 1442 accommodations or facilities pursuant to the vacation
 1443 certificate.

1444 (9)~~(10)~~ To misrepresent or deceptively represent:

1445 (a) The amount of time or period of time accommodations or
 1446 facilities will be available.

1447 (b) The location of accommodations or facilities offered.

1448 (c) The price, size, nature, extent, qualities, or
 1449 characteristics of accommodations or facilities offered.

1450 (d) The nature or extent of other goods, services, or
 1451 amenities offered.

1452 (e) A purchaser's rights, privileges, or benefits.

1453 (f) The conditions under which the purchaser may obtain a
 1454 reservation for the use of offered accommodations or facilities.

1455 (g) That the recipient of an advertisement or promotional
 1456 materials is a winner, or has been selected, or is otherwise

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1457 being involved in a select group for receipt, of a gift, award,
 1458 or prize, unless this fact is the truth.

1459 (10)~~(11)~~ To fail to inform a purchaser of a nonrefundable
 1460 cancellation policy before ~~prior to~~ the seller of travel
 1461 accepting any fee, commission, or other valuable consideration.

1462 ~~(12) To fail to include, when offering to sell a vacation~~
 1463 ~~certificate, in any advertisement or promotional material, the~~
 1464 ~~following statement: "This is an offer to sell travel."~~

1465 (11)~~(13)~~ To fail to honor and comply with all provisions
 1466 of the vacation certificate regarding the purchaser's rights,
 1467 benefits, and privileges thereunder.

1468 (12)~~(14)~~(a) To include in any vacation certificate or
 1469 contract any provision purporting to waive or limit any right or
 1470 benefit provided to purchasers under this part; or

1471 (b) To seek or solicit such waiver or acceptance of
 1472 limitation from a purchaser concerning rights or benefits
 1473 provided under this part.

1474 (13)~~(15)~~ To offer vacation certificates for any
 1475 accommodation or facility for which there is no contract with
 1476 the owner of the accommodation or facility securing the
 1477 purchaser's right to occupancy and use, unless the seller is the
 1478 owner.

1479 ~~(16) To use a local mailing address, registration~~
 1480 ~~facility, drop box, or answering service in the promotion,~~
 1481 ~~advertising, solicitation, or sale of vacation certificates,~~
 1482 ~~unless the seller's fixed business address is clearly disclosed~~

1483 ~~during any telephone solicitation and is prominently and~~
 1484 ~~conspicuously disclosed on all solicitation materials and on the~~
 1485 ~~contract.~~

1486 (14)~~(17)~~ To use any registered trademark, trade name, or
 1487 trade logo in any promotional, advertising, or solicitation
 1488 materials without written authorization from the holder of such
 1489 trademark, trade name, or trade logo.

1490 (15)~~(18)~~ To represent, directly or by implication, any
 1491 affiliation with, or endorsement by, any governmental,
 1492 charitable, educational, medical, religious, fraternal, or civic
 1493 organization or body, or any individual, in the promotion,
 1494 advertisement, solicitation, or sale of vacation certificates
 1495 without express written authorization.

1496 (16)~~(19)~~ To sell a vacation certificate to any purchaser
 1497 who is ineligible for its use.

1498 ~~(20) To sell any number of vacation certificates exceeding~~
 1499 ~~the number disclosed pursuant to this part.~~

1500 (17)~~(21)~~ During the period of a vacation certificate's
 1501 validity, in the event, for any reason whatsoever, of lapse or
 1502 breach of an agreement for the provision of accommodations or
 1503 facilities to purchasers, to fail to procure similar agreement
 1504 for the provision of comparable alternate accommodations or
 1505 facilities in the same city or surrounding area.

1506 (18)~~(22)~~ To offer to sell, at wholesale or retail,
 1507 prearranged travel or~~7~~ tourist-related services~~, or tour guide~~
 1508 ~~services~~ for individuals or groups directly to any terrorist

1509 state and which originate in Florida, without disclosing such
 1510 business activities in a certification filed under s.
 1511 559.9285(1)(b) or (c).

1512 ~~(19)(23)~~ To violate any state or federal law restricting
 1513 or prohibiting commerce with terrorist states.

1514 ~~(20)(24)~~ To engage in ~~do~~ any other fraudulent action that
 1515 ~~act which~~ constitutes fraud, misrepresentation, or failure to
 1516 disclose a material fact, or to commit any other violation of,
 1517 or fail to comply with, this part.

1518 ~~(21)(25)~~ To refuse or fail, or for any of its principal
 1519 officers to refuse or fail, after notice, to produce any
 1520 document or record or disclose any information required to be
 1521 produced or disclosed.

1522 ~~(22)(26)~~ Knowingly to make a material false statement in
 1523 response to any request or investigation by the department, the
 1524 Department of Legal Affairs, or the state attorney.

1525 Section 34. Subsections (3) and (4) of section 559.935,
 1526 Florida Statutes, are amended to read:

1527 559.935 Exemptions.—

1528 (3) Sections 559.928, 559.929, 559.9295, 559.931, and
 1529 559.932 ~~shall~~ also do not apply to a seller of travel that is an
 1530 affiliate of an entity exempt pursuant to subsection (2) subject
 1531 to the following conditions:

1532 (a) ~~If in the event~~ the department finds the affiliate
 1533 does not have a satisfactory consumer complaint history or the
 1534 affiliate fails to respond to a consumer complaint within 30

1535 days, the related seller of travel exempt pursuant to subsection
 1536 (2) is ~~shall be~~ liable for the actions of the affiliate, subject
 1537 to the remedies provided in ss. 559.9355 and 559.936.

1538 (b) ~~If In the event~~ the department is unable to locate an
 1539 affiliate, the related seller of travel exempt pursuant to
 1540 subsection (2) is ~~shall be~~ fully liable for the actions of the
 1541 affiliate, subject to the remedies provided in ss. 559.9355 and
 1542 559.936.

1543 ~~(c) In order to obtain an exemption under this subsection,~~
 1544 ~~the affiliate shall file an affidavit of exemption on a form~~
 1545 ~~prescribed by the department and shall certify its business~~
 1546 ~~activities under s. 559.9285(1)(a). The affidavit of exemption~~
 1547 ~~shall be executed by a person who exercises identical control~~
 1548 ~~over the seller of travel exempt pursuant to subsection (2) and~~
 1549 ~~the affiliate. Failure to file an affidavit of exemption or~~
 1550 ~~certification under s. 559.9285(1)(a) prior to engaging in~~
 1551 ~~seller of travel activities shall subject the affiliate to the~~
 1552 ~~remedies provided in ss. 559.9355 and 559.936.~~

1553 ~~(c)(d)~~ Revocation by the department of an exemption
 1554 provided to a seller of travel under subsection (2) shall
 1555 constitute automatic revocation by law of an exemption obtained
 1556 by an affiliate under the subsection.

1557 ~~(d)(e)~~ This subsection does ~~shall~~ not apply to:

1558 1. An affiliate that independently qualifies for another
 1559 exemption under this section.

1560 2. An affiliate that sells, or offers for sale, vacation

1561 certificates.

1562 3. An affiliate that certifies its business activities
1563 under s. 559.9285(1)(b) or (c).

1564 (e)~~(f)~~ For purposes of this section, the term ~~an~~
1565 "affiliate" means an entity that meets the following:

1566 1. The entity has the identical ownership as the seller of
1567 travel that is exempt under subsection (2).

1568 2. The ownership controlling the seller of travel that is
1569 exempt under subsection (2) also exercises identical control
1570 over the entity.

1571 3. The owners of the affiliate hold the identical
1572 percentage of voting shares as they hold in the seller of travel
1573 that is exempt under subsection (2).

1574 (4) The department may revoke the exemption provided in
1575 subsection (2) or subsection (3) if the department finds that
1576 the seller of travel does not have a satisfactory consumer
1577 complaint history, has been convicted of a crime involving
1578 fraud, theft, embezzlement, misappropriation of property,
1579 deceptive or unfair trade practices, or moral turpitude, or has
1580 not complied with the terms of any order or settlement agreement
1581 arising out of an administrative or enforcement action brought
1582 by a governmental agency or private person based on conduct
1583 involving fraud, theft, embezzlement, misappropriation of
1584 property, deceptive or unfair trade practices, or moral
1585 turpitude.

1586 Section 35. Subsection (3) of section 559.936, Florida

1587 Statutes, is amended to read:

1588 559.936 Civil penalties; remedies.-

1589 (3) The department may seek a civil penalty in the Class
 1590 III category pursuant to s. 570.971 for each act or omission in
 1591 violation of s. 559.9335(18) or (19) ~~s. 559.9335(22) or (23)~~.

1592 Section 36. Paragraph (b) of subsection (5), paragraph (a)
 1593 of subsection (10), and subsections (15) and (16) of section
 1594 616.242, Florida Statutes, are amended to read:

1595 616.242 Safety standards for amusement rides.-

1596 (5) ANNUAL PERMIT.-

1597 (b) To apply for an annual permit, an owner must submit to
 1598 the department a written application on a form prescribed by
 1599 rule of the department, which must include the following:

1600 1. The legal name, address, and primary place of business
 1601 of the owner.

1602 2. A description, manufacturer's name, serial number,
 1603 model number and, if previously assigned, the United States
 1604 Amusement Identification Number of the amusement ride.

1605 3. A valid certificate of insurance ~~or bond~~ for each
 1606 amusement ride.

1607 4. An affidavit of compliance that the amusement ride was
 1608 inspected in person by the affiant and that the amusement ride
 1609 is in general conformance with the requirements of this section
 1610 and all applicable rules adopted by the department. The
 1611 affidavit must be executed by a professional engineer or a
 1612 qualified inspector no earlier than 60 days before, but not

1613 later than, the date of the filing of the application with the
 1614 department. The owner shall request inspection and permitting of
 1615 the amusement ride within 60 days of the date of filing the
 1616 application with the department. The department shall inspect
 1617 and permit the amusement ride within 60 days after filing the
 1618 application with the department.

1619 5. If required by subsection (6), an affidavit of
 1620 nondestructive testing dated and executed no earlier than 60
 1621 days before ~~prior to~~, but not later than, the date of the filing
 1622 of the application with the department. The owner shall request
 1623 inspection and permitting of the amusement ride within 60 days
 1624 of the date of filing the application with the department. The
 1625 department shall inspect and permit the amusement ride within 60
 1626 days after filing the application with the department.

1627 6. A request for inspection.

1628 7. Upon request, the owner shall, at no cost to the
 1629 department, provide the department a copy of the manufacturer's
 1630 current recommended operating instructions in the possession of
 1631 the owner, the owner's operating fact sheet, and any written
 1632 bulletins in the possession of the owner concerning the safety,
 1633 operation, or maintenance of the amusement ride.

1634 (10) EXEMPTIONS.—

1635 (a) This section does not apply to:

1636 1. Permanent facilities that employ at least 1,000 full-
 1637 time employees and that maintain full-time, in-house safety
 1638 inspectors. Furthermore, the permanent facilities must file an

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1639 affidavit of the annual inspection with the department, on a
 1640 form prescribed by rule of the department. Additionally, the
 1641 Department of Agriculture and Consumer Services may consult
 1642 annually with the permanent facilities regarding industry safety
 1643 programs.

1644 2. Any playground operated by a school, local government,
 1645 or business licensed under chapter 509, if the playground is an
 1646 incidental amenity and the operating entity is not primarily
 1647 engaged in providing amusement, pleasure, thrills, or
 1648 excitement.

1649 3. Museums or other institutions principally devoted to
 1650 the exhibition of products of agriculture, industry, education,
 1651 science, religion, or the arts.

1652 4. Conventions or trade shows for the sale or exhibit of
 1653 amusement rides if there are a minimum of 15 amusement rides on
 1654 display or exhibition, and if any operation of such amusement
 1655 rides is limited to the registered attendees of the convention
 1656 or trade show.

1657 5. Skating rinks, arcades, laser ~~lazer~~ or paint ball war
 1658 games, bowling alleys, miniature golf courses, mechanical bulls,
 1659 inflatable rides, trampolines, ball crawls, exercise equipment,
 1660 jet skis, paddle boats, airboats, helicopters, airplanes,
 1661 parasails, hot air or helium balloons whether tethered or
 1662 untethered, theatres, batting cages, stationary spring-mounted
 1663 fixtures, rider-propelled merry-go-rounds, games, side shows,
 1664 live animal rides, or live animal shows.

1665 6. Go-karts operated in competitive sporting events if
 1666 participation is not open to the public.

1667 7. Nonmotorized playground equipment that is not required
 1668 to have a manager.

1669 8. Coin-actuated amusement rides designed to be operated
 1670 by depositing coins, tokens, credit cards, debit cards, bills,
 1671 or other cash money and which are not required to have a
 1672 manager, and which have a capacity of six persons or less.

1673 9. Facilities described in s. 549.09(1)(a) when such
 1674 facilities are operating cars, trucks, or motorcycles only.

1675 10. Battery-powered cars or other vehicles that are
 1676 designed to be operated by children 7 years of age or under and
 1677 that cannot exceed a speed of 4 miles per hour.

1678 11. Mechanically driven vehicles that pull train cars,
 1679 carts, wagons, or other similar vehicles, that are not confined
 1680 to a metal track or confined to an area but are steered by an
 1681 operator and do not exceed a speed of 4 miles per hour.

1682 12. A water-related amusement ride operated by a business
 1683 licensed under chapter 509 if the water-related amusement ride
 1684 is an incidental amenity and the operating business is not
 1685 primarily engaged in providing amusement, pleasure, thrills, or
 1686 excitement and does not offer day rates.

1687 13. An amusement ride at a private, membership-only
 1688 facility if the amusement ride is an incidental amenity and the
 1689 facility is not open to the general public; is not primarily
 1690 engaged in providing amusement, pleasure, thrills, or

1691 excitement; and does not offer day rates.

1692 14. A nonprofit permanent facility registered under
 1693 chapter 496 which is not open to the general public.

1694 (15) INSPECTION BY OWNER OR MANAGER.—~~Before~~ ~~Prior to~~
 1695 opening on each day of operation and before ~~prior to~~ any
 1696 inspection by the department, the owner or manager of an
 1697 amusement ride must inspect and test the amusement ride to
 1698 ensure compliance with all requirements of this section. Each
 1699 inspection must be recorded on a form prescribed by rule of the
 1700 department and signed by the person who conducted the
 1701 inspection. In lieu of the form prescribed by rule of the
 1702 department, the owner or manager may request approval of an
 1703 alternative form if the alternative form includes, at a minimum,
 1704 the information required on the form prescribed by rule of the
 1705 department. Inspection records of the last 14 daily inspections
 1706 must be kept on site by the owner or manager and made
 1707 immediately available to the department upon request.

1708 (16) TRAINING OF EMPLOYEES.—The owner or manager of an ~~any~~
 1709 amusement ride shall maintain a record of employee training for
 1710 each employee authorized to operate, assemble, disassemble,
 1711 transport, or conduct maintenance on an amusement ride, ~~on a~~
 1712 form prescribed by rule of the department. In lieu of the form
 1713 prescribed by rule of the department, the owner or manager may
 1714 request approval of an alternative form if the alternative form
 1715 includes, at a minimum, the information required on the form
 1716 prescribed by rule of the department. The training record must

1717 be kept on site by the owner or manager and made immediately
 1718 available to the department upon request. Training may not be
 1719 conducted when an amusement ride is open to the public unless
 1720 the training is conducted under the supervision of an employee
 1721 who is trained in the operation of that ride. The owner or
 1722 manager shall certify that each employee is trained, as required
 1723 by this section and any rules adopted thereunder, on the
 1724 amusement ride for which the employee is responsible.

1725 Section 37. Subsections (2), (4), and (5) of section
 1726 790.06, Florida Statutes, are amended, paragraph (f) is added to
 1727 subsection (6) of that section, and subsection (10) of that
 1728 section is amended, to read:

1729 790.06 License to carry concealed weapon or firearm.—

1730 (2) The Department of Agriculture and Consumer Services
 1731 shall issue a license if the applicant:

1732 (a) Is a resident of the United States and a citizen of
 1733 the United States or a permanent resident alien of the United
 1734 States, as determined by the United States Bureau of Citizenship
 1735 and Immigration Services, or is a consular security official of
 1736 a foreign government that maintains diplomatic relations and
 1737 treaties of commerce, friendship, and navigation with the United
 1738 States and is certified as such by the foreign government and by
 1739 the appropriate embassy in this country;

1740 (b) Is 21 years of age or older;

1741 (c) Does not suffer from a physical infirmity which
 1742 prevents the safe handling of a weapon or firearm;

1743 (d) Is not ineligible to possess a firearm pursuant to s.
 1744 790.23 by virtue of having been convicted of a felony;

1745 (e) Has not been committed for the abuse of a controlled
 1746 substance or been found guilty of a crime under the provisions
 1747 of chapter 893 or similar laws of any other state relating to
 1748 controlled substances within a 3-year period immediately
 1749 preceding the date on which the application is submitted;

1750 (f) Does not chronically and habitually use alcoholic
 1751 beverages or other substances to the extent that his or her
 1752 normal faculties are impaired. It shall be presumed that an
 1753 applicant chronically and habitually uses alcoholic beverages or
 1754 other substances to the extent that his or her normal faculties
 1755 are impaired if the applicant has been committed under chapter
 1756 397 or under the provisions of former chapter 396 or has been
 1757 convicted under s. 790.151 or has been deemed a habitual
 1758 offender under s. 856.011(3), or has had two or more convictions
 1759 under s. 316.193 or similar laws of any other state, within the
 1760 3-year period immediately preceding the date on which the
 1761 application is submitted;

1762 (g) Desires a legal means to carry a concealed weapon or
 1763 firearm for lawful self-defense;

1764 (h) Demonstrates competence with a firearm by any one of
 1765 the following:

- 1766 1. Completion of any hunter education or hunter safety
 1767 course approved by the Fish and Wildlife Conservation Commission
 1768 or a similar agency of another state;

1769 2. Completion of any National Rifle Association firearms
 1770 safety or training course;

1771 3. Completion of any firearms safety or training course or
 1772 class available to the general public offered by a law
 1773 enforcement agency, junior college, college, or private or
 1774 public institution or organization or firearms training school,
 1775 using ~~utilizing~~ instructors certified by the National Rifle
 1776 Association, Criminal Justice Standards and Training Commission,
 1777 or the Department of Agriculture and Consumer Services;

1778 4. Completion of any law enforcement firearms safety or
 1779 training course or class offered for security guards,
 1780 investigators, special deputies, or any division or subdivision
 1781 of a law enforcement agency or security enforcement;

1782 5. Presents evidence of equivalent experience with a
 1783 firearm through participation in organized shooting competition
 1784 or military service;

1785 6. Is licensed or has been licensed to carry a firearm in
 1786 this state or a county or municipality of this state, unless
 1787 such license has been revoked for cause; or

1788 7. Completion of any firearms training or safety course or
 1789 class conducted by a state-certified or National Rifle
 1790 Association certified firearms instructor;

1791

1792 A photocopy of a certificate of completion of any of the courses
 1793 or classes; ~~or~~ an affidavit from the instructor, school, club,
 1794 organization, or group that conducted or taught such ~~said~~ course

1795 or class attesting to the completion of the course or class by
 1796 the applicant; or a copy of any document that ~~which~~ shows
 1797 completion of the course or class or evidences participation in
 1798 firearms competition shall constitute evidence of qualification
 1799 under this paragraph. ~~A~~ any person who conducts a course
 1800 pursuant to subparagraph 2., subparagraph 3., or subparagraph
 1801 7., or who, as an instructor, attests to the completion of such
 1802 courses, must maintain records certifying that he or she
 1803 observed the student safely handle and discharge the firearm in
 1804 his or her physical presence and that the discharge of the
 1805 firearm included live fire using a firearm and ammunition as
 1806 defined in s. 790.001;

1807 (i) Has not been adjudicated an incapacitated person under
 1808 s. 744.331, or similar laws of any other state, unless 5 years
 1809 have elapsed since the applicant's restoration to capacity by
 1810 court order;

1811 (j) Has not been committed to a mental institution under
 1812 chapter 394, or similar laws of any other state, unless the
 1813 applicant produces a certificate from a licensed psychiatrist
 1814 that he or she has not suffered from disability for at least 5
 1815 years before ~~prior to~~ the date of submission of the application;

1816 (k) Has not had adjudication of guilt withheld or
 1817 imposition of sentence suspended on any felony ~~or misdemeanor~~
 1818 ~~crime of domestic violence~~ unless 3 years have elapsed since
 1819 probation or any other conditions set by the court have been
 1820 fulfilled, or expunction has occurred ~~the record has been sealed~~

1821 ~~or expunged;~~

1822 (l) Has not had adjudication of guilt withheld or
 1823 imposition of sentence suspended on any misdemeanor crime of
 1824 domestic violence unless 3 years have elapsed since probation or
 1825 any other conditions set by the court have been fulfilled, or
 1826 the record has been sealed or expunged;

1827 (m) ~~(l)~~ Has not been issued an injunction that is currently
 1828 in force and effect and that restrains the applicant from
 1829 committing acts of domestic violence or acts of repeat violence;
 1830 and

1831 (n) ~~(m)~~ Is not prohibited from purchasing or possessing a
 1832 firearm by any other provision of Florida or federal law.

1833 (4) The application shall be completed, under oath, on a
 1834 form adopted ~~promulgated~~ by the Department of Agriculture and
 1835 Consumer Services and shall include:

1836 (a) The name, address, place of birth, ~~and~~ date of birth,
 1837 and race, ~~and occupation~~ of the applicant;

1838 (b) A statement that the applicant is in compliance with
 1839 criteria contained within subsections (2) and (3);

1840 (c) A statement that the applicant has been furnished a
 1841 copy of this chapter and is knowledgeable of its provisions;

1842 (d) A conspicuous warning that the application is executed
 1843 under oath and that a false answer to any question, or the
 1844 submission of any false document by the applicant, subjects the
 1845 applicant to criminal prosecution under s. 837.06; ~~and~~

1846 (e) A statement that the applicant desires a concealed

1847 | weapon or firearms license as a means of lawful self-defense;
 1848 | and—

1849 | (f) Directions for an applicant who is a servicemember, as
 1850 | defined in s. 250.01, or a veteran, as defined in s. 1.01, to
 1851 | request expedited processing of his or her application.

1852 | (5) The applicant shall submit to the Department of
 1853 | Agriculture and Consumer Services or an approved tax collector
 1854 | pursuant to s. 790.0625:

1855 | (a) A completed application as described in subsection
 1856 | (4).

1857 | (b) A nonrefundable license fee of up to \$60 ~~\$70~~ if he or
 1858 | she has not previously been issued a statewide license or of up
 1859 | to \$50 ~~\$60~~ for renewal of a statewide license. The cost of
 1860 | processing fingerprints as required in paragraph (c) shall be
 1861 | borne by the applicant. However, an individual holding an active
 1862 | certification from the Criminal Justice Standards and Training
 1863 | Commission as a law enforcement officer, correctional officer,
 1864 | or correctional probation officer as defined in s. 943.10(1),
 1865 | (2), (3), (6), (7), (8), or (9) is exempt from the licensing
 1866 | requirements of this section. If such individual wishes to
 1867 | receive a concealed weapon ~~weapons~~ or firearm ~~firearms~~ license,
 1868 | he or she is exempt from the background investigation and all
 1869 | background investigation fees, but must pay the current license
 1870 | fees regularly required to be paid by nonexempt applicants.
 1871 | Further, a law enforcement officer, a correctional officer, or a
 1872 | correctional probation officer as defined in s. 943.10(1), (2),

1873 or (3) is exempt from the required fees and background
 1874 investigation for ~~a period of~~ 1 year after his or her
 1875 retirement.

1876 (c) A full set of fingerprints of the applicant
 1877 administered by a law enforcement agency or the Division of
 1878 Licensing of the Department of Agriculture and Consumer Services
 1879 or an approved tax collector pursuant to s. 790.0625 together
 1880 with any personal identifying information required by federal
 1881 law to process fingerprints.

1882 (d) A photocopy of a certificate, affidavit, or document
 1883 as described in paragraph (2) (h).

1884 (e) A full frontal view color photograph of the applicant
 1885 taken within the preceding 30 days, in which the head, including
 1886 hair, measures 7/8 of an inch wide and 1 1/8 inches high.

1887 (f) For expedited processing of an application:

1888 1. A servicemember shall submit a copy of the Common
 1889 Access Card, United States Uniformed Services Identification
 1890 Card, or current deployment orders.

1891 2. A veteran shall submit a copy of the DD Form 214,
 1892 issued by the United States Department of Defense, or another
 1893 acceptable form of identification as specified by the Department
 1894 of Veterans' Affairs.

(6)

1896 (f) The Department of Agriculture and Consumer Services
 1897 shall, upon receipt of a completed application and the
 1898 identifying information required under paragraph (5) (f),

1899 expedite the processing of a servicemember's or a veteran's
 1900 concealed weapon or firearm license application.

1901 (10) A license issued under this section shall be
 1902 suspended or revoked pursuant to chapter 120 if the licensee:

1903 (a) Is found to be ineligible under the criteria set forth
 1904 in subsection (2);

1905 (b) Develops or sustains a physical infirmity which
 1906 prevents the safe handling of a weapon or firearm;

1907 (c) Is convicted of a felony which would make the licensee
 1908 ineligible to possess a firearm pursuant to s. 790.23;

1909 (d) Is found guilty of a crime under the provisions of
 1910 chapter 893, or similar laws of any other state, relating to
 1911 controlled substances;

1912 (e) Is committed as a substance abuser under chapter 397,
 1913 or is deemed a habitual offender under s. 856.011(3), or similar
 1914 laws of any other state;

1915 (f) Is convicted of a second violation of s. 316.193, or a
 1916 similar law of another state, within 3 years after ~~of~~ a first
 1917 ~~previous~~ conviction of such section, or similar law of another
 1918 state, even though the first violation may have occurred before
 1919 ~~prior to~~ the date on which the application was submitted;

1920 (g) Is adjudicated an incapacitated person under s.
 1921 744.331, or similar laws of any other state; or

1922 (h) Is committed to a mental institution under chapter
 1923 394, or similar laws of any other state.

1924

1925 Notwithstanding s. 120.60(5), notice by the Department of
 1926 Agriculture and Consumer Services of the suspension or
 1927 revocation of a concealed weapon or firearm license of this
 1928 state or the suspension of the processing of an application for
 1929 such license must be by personal delivery to the licensee or
 1930 applicant or by mail in an envelope, first class, postage
 1931 prepaid, addressed to the licensee or applicant at his or her
 1932 last known mailing address provided to the department. Such
 1933 mailing by the department constitutes notice, and any failure by
 1934 the person to receive the mailed notice does not stay the
 1935 effective date or term of the suspension or revocation. A
 1936 request for a hearing must be filed with the department within
 1937 21 days if notice was received by personal delivery, or within
 1938 26 days after the date the department deposited the notice in
 1939 the United States mail (21 days plus 5 days for mailing). Proof
 1940 of the giving of notice shall be made by entry in the records of
 1941 the department that such notice was given. The entry is
 1942 admissible in the courts of this state and constitutes
 1943 sufficient proof that notice was given.

1944 Section 38. Effective upon this act becoming a law,
 1945 paragraph (a) of subsection (11) of section 790.06, Florida
 1946 Statutes, is amended to read:

1947 790.06 License to carry concealed weapon or firearm.—
 1948 (11)(a) At least ~~No less than~~ 90 days before the
 1949 expiration date of the license, the Department of Agriculture
 1950 and Consumer Services shall mail to each licensee a written

1951 notice of the expiration and a renewal form prescribed by the
 1952 Department of Agriculture and Consumer Services. The licensee
 1953 must renew his or her license on or before the expiration date
 1954 by filing with the Department of Agriculture and Consumer
 1955 Services the renewal form containing an ~~a notarized~~ affidavit
 1956 submitted under oath and under penalty of perjury stating that
 1957 the licensee remains qualified pursuant to the criteria
 1958 specified in subsections (2) and (3), a color photograph as
 1959 specified in paragraph (5)(e), and the required renewal fee.
 1960 Out-of-state residents must also submit a complete set of
 1961 fingerprints and fingerprint processing fee. The license shall
 1962 be renewed upon receipt of the completed renewal form, color
 1963 photograph, appropriate payment of fees, and, if applicable,
 1964 fingerprints. Additionally, a licensee who fails to file a
 1965 renewal application on or before its expiration date must renew
 1966 his or her license by paying a late fee of \$15. A license may
 1967 not be renewed 180 days or more after its expiration date, and
 1968 such a license is deemed to be permanently expired. A person
 1969 whose license has been permanently expired may reapply for
 1970 licensure; however, an application for licensure and fees under
 1971 subsection (5) must be submitted, and a background investigation
 1972 shall be conducted pursuant to this section. A person who
 1973 knowingly files false information under this subsection is
 1974 subject to criminal prosecution under s. 837.06.

1975 Section 39. Subsection (8) is added to section 790.0625,
 1976 Florida Statutes, to read:

1977 790.0625 Appointment of tax collectors to accept
 1978 applications for a concealed weapon or firearm license; fees;
 1979 penalties.-

1980 (8) Upon receipt of a completed renewal application, a new
 1981 color photograph, and appropriate payment of fees, a tax
 1982 collector authorized to accept renewal applications for
 1983 concealed weapon or firearm licenses under this section may,
 1984 upon approval and confirmation of license issuance by the
 1985 department, print and deliver a concealed weapon or firearm
 1986 license to a licensee renewing his or her license at the tax
 1987 collector's office.

1988 Section 40. Subsection (1) and paragraph (d) of subsection
 1989 (3) of section 559.9285, Florida Statutes, are amended to read:
 1990 559.9285 Certification of business activities.-

1991 (1) Each certifying party, as defined in s. 559.927(2):

1992 (a) Which does not offer for sale, at wholesale or retail,
 1993 prearranged travel or, ~~tourist-related services, or tour-guide~~
 1994 ~~services~~ for individuals or groups directly to any terrorist
 1995 state and which originate in Florida;

1996 (b) Which offers for sale, at wholesale or retail, only
 1997 prearranged travel or, ~~tourist-related services, or tour-guide~~
 1998 ~~services~~ for individuals or groups directly to any terrorist
 1999 state and which originate in Florida, but engages in no other
 2000 business dealings or commerce with any terrorist state; or

2001 (c) Which offers for sale, at wholesale or retail,
 2002 prearranged travel or, ~~tourist-related services, or tour-guide~~

2003 ~~services~~ for individuals or groups directly to any terrorist
 2004 state and which originate in Florida, and also engages in any
 2005 other business dealings or commerce with any terrorist state,
 2006

2007 shall annually certify its business activities by filing a
 2008 disclosure statement with the department which accurately
 2009 represents the scope of the seller's business activities
 2010 according to the criteria provided in paragraph (a), paragraph
 2011 (b), or paragraph (c).

2012 (3) The department shall specify by rule the form of each
 2013 certification under this section which shall include the
 2014 following information:

2015 (d) The type of all prearranged travel or tourist-related
 2016 ~~services, or tour guide services~~ that the certifying party
 2017 offers for sale to individuals or groups traveling directly to
 2018 any terrorist state and that originate in Florida, and the
 2019 frequency with which such services are offered.

2020 Section 41. Subsection (2) of section 559.937, Florida
 2021 Statutes, is amended to read:

2022 559.937 Criminal penalties.—Any person or business that
 2023 violates this part:

2024 (2) Which violation directly or indirectly pertains to an
 2025 offer to sell, at wholesale or retail, prearranged travel or
 2026 ~~tourist-related services, or tour guide services~~ for individuals
 2027 or groups directly to any terrorist state and which originate in
 2028 Florida, commits a felony of the third degree, punishable as

HB 641

2016

2029 | provided in s. 775.082 or s. 775.083.

2030 | Section 42. Except as otherwise expressly provided in this

2031 | act, this act shall take effect July 1, 2016.

BUSINESS AND PROFESSIONS SUBCOMMITTEE

**HB 641 by Rep. Trumbull
Department of Agriculture and Consumer Services**

**AMENDMENT SUMMARY
January 12, 2016**

Amendment 1 by Rep. Trumbull: This is a technical amendment that conforms language.

Amendment 2 by Rep. Trumbull: This amendment alters the notice provisions for concealed carry permit holders to provide notice of the suspension or revocation of a concealed weapon or firearm license by certified mail, and if the notice by certified mail is returned undeliverable, by first class mail or e-mail.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Business & Professions
2 Subcommittee

3 Representative Trumbull offered the following:

4
5 **Amendment**

6 Remove line 482 and insert:

7 initial registration fee for an honorably discharged veteran of
8 the

9 Remove line 601 and insert:

10 (b) The department shall waive the initial registration
11 fee for



Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Business & Professions
 2 Subcommittee

3 Representative Trumbull offered the following:

4
 5 **Amendment**

6 Remove lines 1925-1943 and insert:

7 Notwithstanding s. 120.60(5), service of a notice of the
 8 suspension or revocation of a concealed weapon or firearm
 9 license must be given by either certified mail, return receipt
 10 requested, to the licensee at his or her last known mailing
 11 address furnished to the Department of Agriculture and Consumer
 12 Services, or by personal service. If a notice given by certified
 13 mail is returned as undeliverable, a second attempt must be made
 14 to provide notice to the licensee at that address, by either
 15 first-class mail in an envelope, postage prepaid, addressed to
 16 the licensee at his or her last known mailing address furnished
 17 to the department, or, if the licensee has provided an e-mail

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Amendment No. 2

18 address to the department, by e-mail. Such mailing by the
19 department constitutes notice, and any failure by the licensee
20 to receive such notice does not stay the effective date or term
21 of the suspension or revocation. A request for hearing must be
22 filed with the department within 21 days after notice is
23 received by personal delivery, or within 26 days after the date
24 the department deposits the notice in the United States mail (21
25 days plus 5 days for mailing). The department shall document its
26 attempts to provide notice and such documentation is admissible
27 in the courts of this state and constitutes sufficient proof
28 that notice was given.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 643 Pub. Rec./Department of Agriculture and Consumer Services
SPONSOR(S): Trumbull
TIED BILLS: HB 641 **IDEN./SIM. BILLS:** SB 754

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee		Butler <i>BSB</i>	Anstead <i>pa</i>
2) Government Operations Subcommittee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

The Department of Agriculture and Consumer Services (Department) collaborates with state and federal investigative agencies when pursuing remedies for administrative and civil investigations, most specifically as it relates to the Department's regulation of charitable organizations. Many charitable organizations operate both inside and outside of Florida.

Florida's public records laws do not allow the Department to keep information received from other state or federal agencies, such as the Federal Trade Commission (FTC) or Internal Revenue Service (IRS) confidential and exempt from public record laws. Because of this, the Department is unable to participate in data sharing with several state and federal agencies.

This bill, which is contingent upon the passage of House Bill 641, creates a public record exemption for criminal or civil intelligence or investigative information or any other information held by the Department as part of a joint or multi-agency examination or investigation with another state or federal regulatory, administrative, or criminal justice agency when the information shared is confidential or exempt under the laws or regulations of that state or federal agency.

However, the public records exemption does not apply to information held by the Department as part of an independent examination or investigation conducted by the Department.

The bill provides that the public records exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a public necessity statement as required by the State Constitution.

The bill does not appear to have a fiscal impact on state or local governments.

The Florida Constitution, art. I, s. 24(c), requires that all newly created or expanded public records exemptions be passed by a two-thirds vote of each house and that such law shall state with specificity the public necessity justifying the exemption and shall be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public records exemption; thus, it requires a two-thirds vote for final passage.

The bill shall be effective upon becoming law if HB 641 or similar legislation is adopted in the same legislative session or an extension thereof and becomes a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Public Records Laws

The State of Florida has a long history of providing public access to governmental records and meetings. The Florida Legislature enacted the first public records law in 1892.¹ One hundred years later, Floridians adopted an amendment to the Florida Constitution that raised the statutory right of access to public records to a constitutional level.² Article I, section 24 of the Florida Constitution provides that:

(a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the Florida Constitution, the Public Records Act,³ which pre-dates the Florida Constitution's public records provisions, specifies conditions under which public access must be provided to records of an agency.⁴ Section 119.07(1)(a), F.S., provides that every person who has custody of a public record must permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

Unless specifically exempted, all agency records are available for public inspection. The term "public records" is broadly defined to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency."⁵

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge.⁶ All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.⁷

¹ s. 1390, 1391 F.S. (Rev. 1892).

² FLA. CONST. art. I, s. 24.

³ ch. 119, F.S.

⁴ The word "agency" is defined in s. 119.011(2), F.S., to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Florida Constitution also establishes a right of access to any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except those records exempted by law or the State Constitution.

⁵ s. 119.011(12), F.S.

⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

⁷ *Wait v. Florida Power & Light Co.*, 372 So.2d 420 (Fla. 1979).

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.⁸ If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.⁹

Only the Legislature is authorized to create exemptions to open government requirements.¹⁰ Exemptions must be created by general law, must specifically state the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the law.¹¹ A bill enacting an exemption¹² may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.¹³

Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)¹⁴ provides for the systematic review, through a five-year cycle ending October 2 of the fifth year following enactment, of an exemption from public records requirements.

The Act states that an exemption may be created, revised, or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves.¹⁵ An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An exemption meets the three statutory criteria if it:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of the individual under this provision is exempted.
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.¹⁶

The Department of Agriculture and Consumer Services

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;

⁸ 85-62 Fla. Op. Att'y Gen. (1985).

⁹ *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991), *review denied*, 589 So.2d 289 (Fla. 1991).

¹⁰ FLA. CONST. art. I, s. 24.

¹¹ *Memorial Hospital-West Volusia v. News-Journal Corporation*, 784 So.2d 438 (Fla. 2001); *Halifax Hospital Medical Center v. News-Journal Corp.*, 724 So.2d 567, 569 (Fla. 1999).

¹² Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

¹³ FLA. CONST. art. I, s. 24.

¹⁴ s. 119.15, F.S.

¹⁵ s. 119.15(6)(b), F.S.

¹⁶ *Id.*

- 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 Department investigates and regulates several professions in the State of Florida. The Department's oversight and regulation of charitable organizations was significantly expanded in 2014.¹⁷ The Department is particularly interested in the state and federal resources available to assist with the enforcement and regulation of these entities.

These resources are unavailable to the Department currently because Florida's public records laws do not allow the Department to keep information private when received from another state or federal agency, such as the FTC or the IRS. Due to the Department's inability to agree to maintain the confidentiality of such investigative data, the Department is unable to participate in data sharing with several state and federal agencies.

It would be of significant assistance to the Department to be able to receive data from other state and federal agencies. The FTC operates a Consumer Sentinel database that is protected from public record disclosure and can only be provided to a state agency that agrees not to disseminate the information. This database contains information on subjects related to:

- Identity Theft
- Do-Not-Call Registry violations
- Computers, the Internet, and Online Auctions
- Telemarketing Scams
- Advance-fee Loans and Credit Scams
- Immigration Services
- Sweepstakes, Lotteries, and Prizes
- Business Opportunities and Work-at-Home Schemes
- Health and Weight Loss Products
- Debt Collection, Credit Reports, and Financial Matters

Similarly, the IRS would be willing to share certain information, on a case by case basis, if the Department could agree that such information would not be disseminated. The IRS has access to tax filing information that would be very valuable to the Department when investigating whether an organization is observing, especially a charitable organization, Florida's laws.

Effect of the Bill

The bill, which is contingent upon the passage of House Bill 641, creates a public records exemption for criminal or civil intelligence or investigative information or any other information held by the Department as part of a joint or multi-agency examination or investigation with another state or federal regulatory, administrative, or criminal justice agency when the information that is shared is confidential or exempt under the laws or regulations of that state or federal agency. The Department may obtain, use, and release the information in accordance with the conditions imposed by the joint or multi-agency agreement.

The public records exemption does not apply to information held by the Department as part of an independent examination or investigation conducted by the Department.

¹⁷ ch. 2014-122, L.O. F.
STORAGE NAME: h0643.BPS.DOCX
DATE: 1/8/2016

The Department may release the confidential and exempt information in the furtherance of its official duties and responsibilities, or to another governmental agency in the furtherance of its official duties and responsibilities.

The bill provides that the section is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature. The bill also provides a public necessity statement as required by the State Constitution.

B. SECTION DIRECTORY:

Section 1 creates s. 570.077, F.S., relating to confidentiality of intelligence or investigative information.

Section 2 provides a public necessity statement.

Section 3 provides a contingent effective date; the bill shall be effective upon becoming law if HB 641 or similar legislation is adopted in the same legislative session or an extension thereof and becomes a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may create a minimal fiscal impact on the Department because staff responsible for complying with public records requests could require training related to the creation of the public records exemption. In addition, the Department could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the Department.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a public records exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public records exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires a newly created or expanded public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public records exemption for information held by the Department as part of a joint or multiagency examination or investigation. The exemption does not appear to be in conflict with the constitutional requirement that it be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Department of Agriculture and Consumer Services

According to the Department, adopting this public records exemption will increase efficiency in investigations by saving time on developing leads, and increasing witness and victim data. Further, the Department believes that it will be able to field consumer complaints more efficiently.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to public records; creating s.
 3 570.077, F.S.; providing an exemption from public
 4 records requirements for criminal or civil
 5 intelligence or investigative information or any other
 6 information held by the Department of Agriculture and
 7 Consumer Services as part of an examination or
 8 investigation with another state or federal
 9 regulatory, administrative, or criminal justice
 10 agency; providing exceptions to the exemption;
 11 providing applicability; providing for future
 12 legislative review and repeal of the exemption;
 13 providing a statement of public necessity; providing a
 14 contingent effective date.

15
 16 Be It Enacted by the Legislature of the State of Florida:

17
 18 Section 1. Section 570.077, Florida Statutes, is created
 19 to read:

20 570.077 Confidentiality of intelligence or investigative
 21 information.-

22 (1) Criminal or civil intelligence or investigative
 23 information or any other information held by the department as
 24 part of a joint or multiagency examination or investigation with
 25 another state or federal regulatory, administrative, or criminal
 26 justice agency which is confidential or exempt under the laws or

27 regulations of that state or federal agency is confidential and
 28 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 29 Constitution. The department may obtain, use, and release the
 30 information in accordance with the conditions imposed by the
 31 joint or multiagency agreement.

32 (2) The department may release information that is made
 33 confidential and exempt under subsection (1):

34 (a) In the furtherance of its official duties and
 35 responsibilities.

36 (b) To another governmental agency in the furtherance of
 37 its official duties and responsibilities.

38 (3) The public records exemption provided in subsection
 39 (1) does not apply to information held by the department as part
 40 of an independent examination or investigation conducted by the
 41 department.

42 (4) This section is subject to the Open Government Sunset
 43 Review Act in accordance with s. 119.15 and shall stand repealed
 44 on October 2, 2021, unless reviewed and saved from repeal
 45 through reenactment by the Legislature.

46 Section 2. The Legislature finds that it is a public
 47 necessity that criminal or civil intelligence or investigative
 48 information or any other information held by the Department of
 49 Agriculture and Consumer Services as part of a joint or
 50 multiagency examination or investigation with another state or
 51 federal regulatory, administrative, or criminal justice agency
 52 which is confidential or exempt under the laws or regulations of

53 that state or federal agency be made confidential and exempt
 54 from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of
 55 the State Constitution. Without the exemption, the department
 56 will be unable to obtain information that could assist it in
 57 pursuing violations of law under its jurisdiction. With this
 58 exemption, the department should increase efficiency of
 59 investigations by saving time on developing investigative leads,
 60 witness data, and victim data. Furthermore, the exemption is
 61 necessary to enable the department to participate in joint or
 62 multiagency investigations and examinations. Without the
 63 exemption, the department would continue to be excluded from
 64 information due to the inability to maintain investigative
 65 confidentiality. Without the sharing and coordination of
 66 information, governmental agencies may be required to conduct
 67 duplicative independent investigations or examinations in order
 68 to meet their regulatory responsibilities. With this exemption,
 69 the department will strengthen relationships with other state
 70 and federal agencies, allowing them to become more efficient by
 71 sharing critical investigative data.

72 Section 3. This act shall take effect upon becoming a law
 73 if HB 641 or similar legislation is adopted in the same
 74 legislative session or an extension thereof and becomes a law.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 655 City of Jacksonville, Duval County
SPONSOR(S): Fullwood
TIED BILLS: IDEN./SIM. **BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Government Affairs Subcommittee	7 Y, 0 N	Darden	Miller
2) Business & Professions Subcommittee		Butler <i>BSB</i>	Anstead <i>ja</i>
3) Local & Federal Affairs Committee			

SUMMARY ANALYSIS

Florida’s Beverage Law places a limit on the number of “quota licenses” that the Department of Business and Professional Regulation (DBPR) may issue per county. A quota license allows a business to serve any alcoholic beverage regardless of alcoholic content, including liquor, for both on and off premises consumption. DBPR is not limited by the Beverage Law on the number of licenses it may issue for businesses who wish to serve only malt beverages and wine.

In excess of the quota limitation, DBPR is authorized to issue a Special Restaurant Beverage license (SRX), which allows a restaurant to sell any alcoholic beverage, including liquor, under certain circumstances.

Under the general state law, a restaurant may be issued an SRX license if it has at least 2,500 square feet of service area, is equipped to serve 150 full-service customers, and derives at least 51 percent of the its gross revenue from the sale of food and non-alcoholic beverages.

Currently, under a local exception, a restaurant in certain designated areas of Jacksonville may be issued an SRX license if it has at least 1,800 square feet of service area, is equipped to serve at least 100 full-service customers, and derives at least 51 percent of the its gross revenue from the sale of food and non-alcoholic beverages.

The bill expands the areas of Jacksonville where a restaurant may be issued an SRX license under the reduced requirements of the local exception to include the Riverside Avondale Urban Transition Area and the Riverside Avondale Commercial Character Areas.

The bill takes effect upon becoming law.

According to House Rule 5.5(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. Since this bill creates an exemption to general law, the provisions of House Rule 5.5(b) apply.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Alcoholic Beverage Licensing

The Division of Alcoholic Beverages and Tobacco (Division) within DBPR is responsible for regulating the conduct, management, and operation of the manufacturing, packaging, distribution, and sale within the state of alcoholic beverages. Chapters 561-565 and 567-568, F.S., comprise Florida's Beverage Law.

Under the Beverage Law, DBPR is not limited on the number of licenses it issues to businesses who wish to sell malt beverages or wine; however, s. 561.20, F.S., limits the number of licenses that may be issued for licenses under s. 565.02(1)(a)-(f), F.S., to one license per 7,500 residents per county with a minimum of three (3) licenses per county that has approved the sale of intoxicating liquors.¹ This license, often referred to as a "quota license," allows a business to sell any alcoholic beverage regardless of alcoholic content, including liquor or distilled spirits.²

There are several exceptions to the quota license limitation, and businesses who meet the requirements set out in one of the exceptions pursuant to s. 561.20(2), F.S., may be issued a special license by DBPR that allows the business to serve any alcoholic beverages regardless of alcoholic content.

One such license is the SRX license, which may be issued to a "restaurant having 2,500 square feet of service area and equipped to serve 150 persons full course meals at tables at one time, and deriving at least 51 percent of its gross revenue from the sale of food and nonalcoholic beverages" so long as any alcoholic beverages sold under such license is for on premises consumption only.³ Some older restaurants may qualify at a lower total gross revenue threshold.⁴ A restaurant must offer full course meal service at any time alcohol beverages are being served to qualify for a license.⁵ A full course meal must contain a salad or vegetable, entrée, beverage, and bread.⁶

Jacksonville Special Zone

In 1987, the Legislature created more lenient requirements for the issuance of SRX licenses in a special zone in Jacksonville.⁷ At the time, the zone included three areas: Northside West, Northside East, and Southbank.⁸ The zone was expanded in 2011 to include the Urban Transition area.⁹

A restaurant in the zone must still derive at least 51 percent of its total gross revenue from the sale of food and non-alcoholic beverages to qualify for a SRX license, but is only required to have 1,800 or more square feet of floor space and accommodations for the service and seating of at least 100 full-

¹ s. 561.20(1), F.S.

² s. 565.02, F.S.

³ s. 561.20(2)(a)4., F.S.

⁴ Rule 61A-3.0141, F.A.C. This provision applies to all licenses issued after April 18, 1972. For licenses issued between September 1, 1969 and April 18, 1972, at least thirty percent of the restaurant's total gross revenue must be derived from the sale of food and non-alcoholic beverages; for licenses issued prior to September 1, 1969, there is no minimum gross revenue threshold, but the restaurant must be "bona fide" and meet the other requirements of the rule.

⁵ *Id.*

⁶ *Id.*

⁷ ch. 87-471, Laws of Fla.

⁸ *Id.*

⁹ ch. 2011-255, Laws of Fla.

service customers.¹⁰ The issuance of the license is also subject to any zoning requirement establishing a minimum distance between liquor-serving establishments and schools or churches, as well as any state alcoholic beverage law not otherwise inconsistent with the special act.¹¹

Effect of Proposed Changes

The bill expands the special zone created by Ch. 87-471, Laws of Florida, to include the areas known as Riverside Avondale Commercial Character Areas. The bill also clarifies that the "Urban Transition" area added to the special zone by Ch. 2011-255, Laws of Fla., should be referred to as the "Riverside Avondale Urban Transition."

This bill was unanimously approved by members of the Duval County local legislative delegation present and voting at the delegation public meeting held on September 24, 2015.

According to House Rule 5.5(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. Since this bill creates an exemption to general law, the provisions of House Rule 5.5(b) apply.

B. SECTION DIRECTORY:

Section 1: Amends Ch. 87-471, Laws of Florida, to add additional areas to a special zone in downtown Jacksonville in which DPBR can grant an SRX license to restaurants notwithstanding the provisions of s. 561.20(1), F.S.

Section 2: Provides that the bill shall take effect upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? September 28, 2015

WHERE? *Financial News & Daily Record*, a daily (except Saturday and Sunday) newspaper published in Duval County, Florida.

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

¹⁰ ch. 87-471, Laws of Fla.

¹¹ *Id.*

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The bill does not provide rulemaking authority or require executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

FINANCIAL NEWS &

Daily Record

PROOF OF PUBLICATION

(Published Daily Except Saturday and Sunday)

Jacksonville, Duval County, Florida

STATE OF FLORIDA, }
 COUNTY OF DUVAL, } SS:

Before the undersigned authority personally appeared James F. Bailey, Jr., who on oath says that he is the Publisher of FINANCIAL NEWS and DAILY RECORD, a daily (except Saturday and Sunday) newspaper published at Jacksonville, in Duval County, Florida; that the attached copy of advertisement, being a

Notice of Intention to Seek Local Legislation

in the matter of A bill to be entitled

in the _____ Court, of Duval County, Florida, was published

in said newspaper in the issues of September 28, 2015

Affiant further says that the said FINANCIAL NEWS and DAILY RECORD is a newspaper at Jacksonville, in said Duval County, Florida, and that the said newspaper has heretofore been continuously published in said Duval County, Florida, each day (except Saturday and Sunday) and has been entered as periodicals matter at the post office in Jacksonville, in said Duval County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that he has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in said newspaper.

 Publisher

Sworn to and subscribed before me this day of September 28, 2015

ANGELA CAMPBELL
 Notary Public, State of Florida
 My Comm. Expires April 10, 2017
 Commission No. EE 871981

Angela Campbell

 Notary Signature

Angela Campbell
 Notary Public
 EE871981

seal

James F. Bailey, Jr. personally known to me

Ref: [unclear] 18
 HB 105

NOTICE OF INTENTION TO SEEK LOCAL LEGISLATION TO WHOM IT MAY CONCERN: NOTICE IS HEREBY GIVEN of intent that the undersigned will apply to the next Session of the Legislature of the State of Florida for the introduction of a local bill

A bill to be entitled
 An act relating to the City of Jacksonville, Duval County; amending Chapter 87-471, Laws of Florida; adding a special zone in Jacksonville Florida so as to provide an exception for space and seating requirements for liquor licenses for restaurants in the zone; providing an effective date.
 Sept. 28 00 (15-11307)

**HOUSE OF REPRESENTATIVES
2015 LOCAL BILL CERTIFICATION FORM**

BILL #: J-1
SPONSOR(S): Representative Reggie Fullwood
RELATING TO: Amending Chapter 87-471; adding a special zone in Jacksonville, FL so as to provide an exception for space and seating requirements for liquor licenses for restaurants in the zone
[Indicate Area Affected (City, County, or Special District) and Subject]
NAME OF DELEGATION: Duval County Legislative Delegation
CONTACT PERSON: Paula Shoup
PHONE NO.: (904) 630-1680 **E-Mail:** paulas@coj.net

I. *House local bill policy requires that three things occur before a committee or subcommittee of the House considers a local bill: (1) The members of the local legislative delegation must certify that the purpose of the bill cannot be accomplished at the local level; (2) the legislative delegation must hold a public hearing in the area affected for the purpose of considering the local bill issue(s); and (3) the bill must be approved by a majority of the legislative delegation, or a higher threshold if so required by the rules of the delegation, at the public hearing or at a subsequent delegation meeting. Please submit this completed, original form to the Local Government Affairs Subcommittee as soon as possible after a bill is filed.*

(1) Does the delegation certify that the purpose of the bill cannot be accomplished by ordinance of a local governing body without the legal need for a referendum?

YES NO

(2) Did the delegation conduct a public hearing on the subject of the bill?

YES NO

Date hearing held: September 24, 2015

Location: Council Chambers, City Hall, 117 W. Duval St, Jacksonville, FL 32202

(3) Was this bill formally approved by a majority of the delegation members?

YES NO

II. *Article III, Section 10 of the State Constitution prohibits passage of any special act unless notice of intention to seek enactment of the bill has been published as provided by general law (s. 11.02, F. S.) or the act is conditioned to take effect only upon approval by referendum vote of the electors in the area affected.*

Has this constitutional notice requirement been met?

Notice published: YES NO **DATE** September 28, 2015

Where? Daily Record **County** Duval

Referendum in lieu of publication: YES NO

Date of Referendum _____

III. *Article VII, Section 9(b) of the State Constitution prohibits passage of any bill creating a special taxing district, or changing the authorized millage rate for an existing special taxing district, unless the bill subjects the taxing provision to approval by referendum vote of the electors in the area affected.*

(1) Does the bill create a special district and authorize the district to impose an ad valorem tax?

YES [] NO [] NOT APPLICABLE []

(2) Does this bill change the authorized ad valorem millage rate for an existing special district?

YES [] NO [] NOT APPLICABLE []

If the answer to question (1) or (2) is YES, does the bill require voter approval of the ad valorem tax provision(s)?

YES [] NO []

Note: House policy requires that an Economic Impact Statement for local bills be prepared at the local level and be submitted to the Local Government Affairs Subcommittee.



Delegation Chair (Original Signature)

9/24/15

Date

Janet H. Adkins

Printed Name of Delegation Chair

**HOUSE OF REPRESENTATIVES
2016 ECONOMIC IMPACT STATEMENT FORM**

****Read all instructions carefully.****

House local bill policy requires that no local bill will be considered by a committee or a subcommittee without an Economic Impact Statement. This form must be prepared at the LOCAL LEVEL by an individual who is qualified to establish fiscal data and impacts and has personal knowledge of the information given (for example, a chief financial officer of a particular local government). Please submit this completed, original form to the Local Government Affairs Subcommittee as soon as possible after a bill is filed. Additional pages may be attached as necessary.

BILL #: J-1
SPONSOR(S): Representative Reggie Fullwood
RELATING TO: Special Zone for restaurant licensing in the Riverside Avondale neighborhood of Duval County.
(Indicate Area Affected (City, County or Special District) and Subject)

I. REVENUES:

These figures are new revenues that would not exist but for the passage of the bill. The term "revenue" contemplates, but is not limited to, taxes, fees and special assessments. For example, license plate fees may be a revenue source. If the bill will add or remove property or individuals from the tax base, include this information as well.

	<u>FY 16-17</u>	<u>FY 17-18</u>
Revenue decrease due to bill:	\$ <u>0</u>	\$ <u>0</u>
Revenue increase due to bill:	\$ positive	\$ positive

II. COST:

Include all costs, both direct and indirect, including start-up costs. If the bill repeals the existence of a certain entity, state the related costs, such as satisfying liabilities and distributing assets.

Expenditures for Implementation, Administration and Enforcement:

	<u>FY 16-17</u>	<u>FY 17-18</u>
	\$ <u>N/A</u>	\$ <u>N/A</u>

Please include explanations and calculations regarding how each dollar figure was determined in reaching total cost.

This bill, and previous ones like it, have proven to be revenue positive from an increase in sales tax revenue perspective and licensing revenue, but impossible to quantify. Easing the restrictions on bona fide restaurant's ability to serve a full bar increases the opportunity to make a profit which in turn creates more jobs and sales tax revenue.

III. FUNDING SOURCE(S):

State the specific sources from which funding will be received, for example, license plate fees, state funds, borrowed funds, or special assessments.

If certain funding changes are anticipated to occur beyond the following two fiscal years, explain the change and at what rate taxes, fees or assessments will be collected in those years.

	<u>FY 16-17</u>	<u>FY 17-18</u>
Local:	\$ _N/A_	\$ _N/A_
State:	\$ _N/A_	\$ _N/A_
Federal:	\$ _N/A_	\$ _N/A_

IV. ECONOMIC IMPACT:

Potential Advantages:

Include all possible outcomes linked to the bill, such as increased efficiencies, and positive or negative changes to tax revenue. If an act is being repealed or an entity dissolved, include the increased or decreased efficiencies caused thereby.

Include specific figures for anticipated job growth.

1. Advantages to Individuals: More diverse dining options

2. Advantages to Businesses: Increased likelihood of success in a very competitive field. Levels the playing field for smaller, independently owned businesses.
3. Advantages to Government: More sales tax revenue with no increase in services or staff. Higher license fee revenue:
2COP returns \$392 per year to state while a 4COP returns \$1820 per year in Duval County

Potential Disadvantages:

Include all possible outcomes linked to the bill, such as inefficiencies, shortages, or market changes anticipated.

Include reduced business opportunities, such as reduced access to capital or training.

State any decreases in tax revenue as a result of the bill.

- 1. Disadvantages to Individuals: None

- 2. Disadvantages to Businesses: None

- 3. Disadvantages to Government: None

V. DESCRIBE THE POTENTIAL IMPACT OF THE BILL ON PRESENT GOVERNMENTAL SERVICES:

There is already staff in place to support this bill. The only change would be issuing more 4COP/SRX licenses and fewer 2COP licenses resulting in more license revenue for the state plus more sales tax revenue from the businesses.

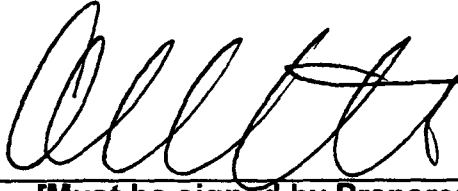
VI. SPECIFIC DATA USED IN REACHING ESTIMATES:

Include the type(s) and source(s) of data used, percentages, dollar figures, all assumptions made, history of the industry/issue affected by the bill, and any audits.

All data from real world application of operating a business with a 2COP and several businesses with 4COPS. Additionally, I have gone through the process before and am an owner of a business that has seen direct positive benefit from this change within another part of the Riverside Avondale neighborhood.

VII. CERTIFICATION BY PREPARER

I hereby certify I am qualified to establish fiscal data and impacts and have personal knowledge of the information given. I have reviewed all available financial information applicable to the substance of the above-stated local bill and confirm the foregoing Economic Impact Statement is a true and accurate estimate of the economic impact of the bill.



PREPARED BY:

[Must be signed by Preparer]

Print preparer's name: Allan DeVault

August 11, 2015
Date

TITLE (such as Executive Director, Actuary, Chief Accountant, or Budget Director):

Managing partner – Black Sheep Restaurant
Treasurer – Riverside Avondale Preservation

REPRESENTING: Myself and Riverside Avondale Preservation

PHONE: (904) 612-9065

E-MAIL ADDRESS: allan@blacksheep5points.com

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A bill to be entitled
An act relating to the City of Jacksonville, Duval County;
amending chapter 87-471, Laws of Florida, as amended;
establishing special zones in downtown Jacksonville;
providing exceptions for space and seating requirements
for liquor licenses for restaurants in the zones, subject
to local zoning requirements; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Chapter 87-471, Laws of Florida, as amended by
chapter 2011-255, Laws of Florida, is amended to read:

Section 1. There are ~~is~~ created a special zones ~~zone~~ in
downtown Jacksonville covering the following described areas,
known as Northside West, Northside East, ~~and~~ Southbank,
Riverside Avondale Urban Transition Area, and Riverside Avondale
Commercial Character Areas for the purposes of this act. The
areas are described as:

The Northside West area is that part of the City of
Jacksonville, Duval County, Florida described as:

Begin at the point of intersection of the West right-
of-way line of Main Street, State Road No. 5, with the
South right-of-way line of West Bay Street; thence,
Westerly along said South right-of-way line of West

27 Bay Street to a line being a Southerly prolongation of
 28 the West right-of-way line of Julia Street; thence
 29 Northerly along said line and said West right-of-way
 30 line of Julia Street to the South right-of-way line of
 31 Forsyth Street; thence Westerly along said South
 32 right-of-way line of Forsyth Street to the West right-
 33 of-way line of Pearl Street; thence Northerly along
 34 said West right-of-way line of Pearl Street to the
 35 North right-of-way line of State Street; thence
 36 Westerly and Northwesterly along said North right-of-
 37 way line of State Street to the Northwesterly right-
 38 of-way of Interstate 95 and State Road No. 9; thence
 39 Southwesterly along said Northwesterly and Westerly
 40 right-of-way line to an intersection with a line being
 41 a Westerly prolongation of the Northeasterly right-of-
 42 way line of that portion of Interstate 95 leading to
 43 and from the Fuller Warren Bridge over the St. Johns
 44 River; thence Southeasterly along said line and
 45 Northeasterly right-of-way line to the center line of
 46 the St. Johns River; thence Northeasterly and Easterly
 47 along said center line to the West right-of-way line
 48 of the John T. Alsop (Main Street) Bridge; thence
 49 Northerly along said West right-of-way line of the
 50 John T. Alsop (Main Street) Bridge to the Point of
 51 Beginning.

52

53 The Northside East area is that part of the City of
 54 Jacksonville, Duval County, Florida described as:
 55
 56 Begin on the west, Pearl Street extending from State
 57 on the north to Forsyth Street on the south and Julia
 58 Street from Forsyth on the north to Bay Street on the
 59 south, and Main Street beginning at Bay Street on the
 60 north and extending south to the St. Johns River. The
 61 northern boundary is State Street, beginning at Pearl
 62 Street, and extends eastward to Liberty Street at
 63 which point the boundary extends eastward along the
 64 Jacksonville Expressway to a point where the
 65 Jacksonville Expressway intersects with the Haines
 66 Street Expressway. Then north along the Haines Street
 67 Expressway to Marshall Street, and then eastward along
 68 Marshall Street to Talleyrand Avenue. North along
 69 Talleyrand Avenue to Fairway Street, and then eastward
 70 along Fairway Street to the St. Johns River. The
 71 eastern and southern boundaries are the St. Johns
 72 River, beginning at Fairway Street and extending
 73 southward to a point beyond the Hart Bridge, then
 74 westward to Main Street at a point running north to
 75 Bay Street and then west along Bay Street to Julia
 76 Street, then north along Julia Street to Forsyth
 77 Street, then extending west to Pearl Street.
 78

79 The Southbank area is that part of the City of
 80 Jacksonville, Duval County, Florida described as:
 81
 82 Begin at the point of intersection of the North right-
 83 of-way line of Gulf Life Drive with the West right-of-
 84 way line of South Main Street, State Road No. 5;
 85 thence westerly along said North right-of-way line of
 86 Gulf Life Drive to the Northeasterly right-of-way line
 87 of that portion of the Jacksonville Expressway leading
 88 to and from the Acosta Bridge over the St. Johns
 89 River; thence Southeasterly along said Northeasterly
 90 right-of-way line to an intersection with a
 91 Northeasterly prolongation of a line lying 60 feet
 92 Southeasterly from, when measured at right angles to,
 93 the Southeasterly face of the Prudential Building;
 94 thence Southwesterly along said line and a
 95 Southwesterly prolongation thereof to an intersection
 96 with the South right-of-way line of Prudential Drive;
 97 then Easterly along said South right-of-way line of
 98 Prudential Drive to an intersection with a
 99 Northeasterly prolongation of the Westerly edge of the
 100 Easternmost Baptist Medical Center driveway; thence
 101 Southwesterly along said line and Westerly edge of
 102 driveway and Southwesterly prolongation thereof to an
 103 intersection with the Northerly right-of-way line of
 104 Interstate 95, State Road No. 9; thence Easterly along

105 | said Northerly right-of-way line to a point of
 106 | intersection with the Southwesterly edge of the
 107 | Southbound roadway of South Main Street; thence
 108 | Northeasterly along a line drawn straight from the
 109 | last described point to the Northwesterly corner of
 110 | Lot 18, Block 1, Bostwick's Subdivision of Block 46 in
 111 | South Jacksonville, as shown on plat recorded in Plat
 112 | Book 3, Page 68 of the Current Public Records of said
 113 | County, said Northwest corner being located in the
 114 | Northeasterly right-of-way line of the Northbound
 115 | approach to said South Main Street from said
 116 | Interstate 95; thence Southeasterly and Easterly along
 117 | said Northeasterly right-of-way line and Northerly
 118 | right-of-way line of Interstate 95 to an intersection
 119 | with the Southeasterly right-of-way line of Vine
 120 | Street; thence Northeasterly along said Southeasterly
 121 | right-of-way line of Vine Street to the Northeasterly
 122 | line of that certain alley running Southeasterly
 123 | through Block 17, Reeds Fourth Subdivision of South
 124 | Jacksonville, as shown on plat recorded in Plat Book
 125 | 1, Page 46 of the former public records of said
 126 | County; thence Southeasterly along said Northeasterly
 127 | alley line to an intersection with the Northwesterly
 128 | right-of-way line of Alamo Street; thence
 129 | Northeasterly along said Northwesterly right-of-way
 130 | line of Alamo Street and a Northeasterly prolongation

131 | thereof to an intersection with the mean high water
 132 | line of the St. Johns River; thence Northwesterly
 133 | along said mean high water line to an intersection
 134 | with a line being a Northerly prolongation of the West
 135 | face of the Gulf Life Insurance Company's parking
 136 | garage; thence Southerly along said line, said West
 137 | garage face, and a Southerly prolongation thereof to
 138 | an intersection with the North right-of-way line of
 139 | Gulf Life Drive; thence Westerly along said North
 140 | right-of-way line to the Northerly prolongation of the
 141 | Easterly right-of-way line of Flagler Avenue; thence
 142 | Northerly along said prolongation of the Easterly
 143 | right-of-way line of Flagler Avenue to an intersection
 144 | with a line being the Easterly prolongation of the
 145 | South face of the multistory Hilton Hotel building;
 146 | thence Westerly along said line, the said South face
 147 | of the Hilton Hotel to the Westerly right-of-way line
 148 | of South Main Street; thence Southerly along said
 149 | Westerly right-of-way line of South Main Street to the
 150 | Point of Beginning.

151 |
 152 | The Riverside Avondale Urban Transition Area is that
 153 | part of the Riverside Avondale Historic District of
 154 | the City of Jacksonville, Duval County, Florida
 155 | described as:
 156 |

157 The area bound by Margaret Street to the west,
 158 Dellwood Avenue and Interstate 95 to the north and
 159 northeast, and the St. Johns River to the east and
 160 south.

161
 162 The Riverside Avondale Commercial Character Areas are
 163 those parts of the Riverside/Avondale Historic
 164 District of the City of Jacksonville, Duval County,
 165 Florida described as:

166
 167 Riverside Avondale Commercial Character Area #1: Lot
 168 22, Arden, according to the plat thereof as recorded
 169 in Plat Book 5 Page 89 of the Current Public Records
 170 of Duval County, Florida. Block 22, Lots 3, 4, 5, and
 171 6 Block 16, Fishweir Park, according to the plat there
 172 of as recorded in Plat Book 3 Page 84 of the Current
 173 Public Records of Duval County, Florida. A part of the
 174 George Atkinson Grant, Section 58, Township 2 South,
 175 Range 26 East Duval County, Florida as recorded in
 176 Official Records: Book 10027 Page 872, Book 8723 Page
 177 91, Book 14566 Page 1943, Book 8234 Page 171, Book
 178 17088 Page 1988, Book 3153 Page 846, and Book 8558
 179 Page 222

180
 181 Riverside Avondale Commercial Character Area #2: Lots
 182 10, 11, and 12 Block 104, Lots 7, 8, and 9 Block 121,

183 Riverside Heights, according to the plat thereof as
 184 recorded in Plat Book 2 Page 61 of the Current Public
 185 Records of Duval County, Florida. Lots 1, 2, 3, and 4
 186 of BJ Skinner's Subdivision of Block 3 of Diterich's
 187 Subdivision of part of the Hutchinson Grant according
 188 to the plat thereof as recorded in Plat Book 8 Page 14
 189 of the Current Public Records of Duval County,
 190 Florida. Lots 7, 8, 9, 10, 11, and 12 Block 2, Lots 6,
 191 7, 8, 9, and 10 Block 1, St Johns Heights, according
 192 to the plat thereof as recorded in Plat Book 3 Page 22
 193 of the Current Public Records of Duval County,
 194 Florida. Lots 1, 2, 3, 10, 11, and 12 Block 1
 195 Diterich's Subdivision of Lot 4 of the Hutchinson
 196 Grant, Northwestern 65 feet of Lots 1 and 2, all of
 197 Lot 3 Diterich's Replat of Lot 1 Block 8, Edgewood,
 198 according to the plat thereof as recorded in Plat Book
 199 2 Page 86 of the Current Public records of Duval
 200 County, Florida. Lots 130, 131, and 132, Avondale,
 201 according to the plat thereof as recorded in Plat Book
 202 7 Page 31 of the Current Public Records of Duval
 203 County, Florida.

204
 205 Riverside Avondale Commercial Character Area #3: Lot 1
 206 (Except any portion taken by the City of Jacksonville
 207 for right of way purposes) Block A, North Riverside
 208 Heights, according to the plat thereof as recorded in

209 Plat Book 2 Page 99 of the Current Public Records of
 210 Duval County, Florida. Lots 4 and 5 Block 13, Lots 1,
 211 2, 3, 4, 5, the North 1/2 of a closed alley lying
 212 Southeasterly of said lots, and Lot 6 Block 14, Lots 1
 213 and 2 Block 15, Lots 1, 36, 37, and 38 Block 16, St
 214 Johns Heights, according to the plat thereof as
 215 recorded in Plat Book 3 Page 22 of the Current Public
 216 Records of Duval County, Florida. Lots 7, 8, and 9
 217 Block 49, Riverside Heights, according to the plat
 218 thereof as recorded in Plat Book 2 Page 61 of the
 219 Current Public Records of Duval County, Florida. A
 220 portion of Eloise St closed and vacated by Ordinance
 221 No. BB-153 of the City of Jacksonville, Florida.

222
 223 Riverside Avondale Commercial Character Area #4: Lots
 224 2, 3, 6, and part of Lot 7 recorded in Official Record
 225 Book 9501 Page 290 Block 16. Lots 1, 4, 5, and part of
 226 Lot 8 recorded in Official Record Book 9501 Page 292
 227 Block 17, Ingleside Park, according to the plat
 228 thereof as recorded in Plat Book 2 Page 77 of the
 229 current Public Records of Duval County, Florida. Lots
 230 9, 10, 11, 12, 13, 14, and 15 Block 3. Lots 6, 7
 231 (except part in right of way), 8, 9, 10, 11, 12, 13,
 232 14, and 15 Block 6. Lots 1, 2, and 3 Block 7, Willow
 233 Brook Terrace, according to the plat thereof as

234 recorded in Plat Book 8 Page 36 of the Current Public
 235 records of Duval County, Florida.

236
 237 Riverside Avondale Commercial Character Area #5: Lot
 238 7, Lots 8, 9, 10, and 11 (except parts in right of
 239 way) Block 18, Central Addition to Riverside,
 240 according to the plat thereof as recorded in Plat Book
 241 6 Page 6 of the Current Public Records of Duval
 242 County, Florida. Part of Lot 7 recorded in Official
 243 Record Book 14809 Page 692, Lots 8, 9, and 10, Lot 11
 244 and 12 (except parts in right of way), and Lot 13
 245 Block 1. Lot 8 (except part in right of way), Lots 9,
 246 10, 11, 12, 13, 14, 15, and part of Lots 16, 17, and
 247 18 recorded in Official Record Book 15097 Page 1955
 248 Block 2, Riverside Extension, according to the plat
 249 thereof as recorded in Plat Book 6 Page 11 of the
 250 Current Public Records of Duval County, Florida. Part
 251 of Lot 6 recorded in Official Records Book 6934 Page
 252 1451, Lots 7, 8, 9, and 10, Riverside Pines, according
 253 to the plat thereof as recorded in Plat Book 17 Page
 254 13 of the Current Public Records of Duval County,
 255 Florida.

256
 257 Riverside Avondale Commercial Character Area #6: Lots
 258 7, 8, 9, 10, 11, and 12 of re-plat of Block 2,
 259 Lightbody's Subdivision, according to the plat thereof

260 as recorded in Plat Book 6 Page 1 of the Current
 261 Public records of Duval County, Florida. Lots 1, 2, 3,
 262 and 4 Block 3, Lightbody's Subdivision, according to
 263 the plat thereof as recorded in Plat Book 3 Page 95 of
 264 the Current Public records of Duval County, Florida.
 265 Lots 12 and 13, Re-plat of Lots 12 & 13 Block 8
 266 Riverside Annex, according to the plat thereof as
 267 recorded in Plat Book 9 Page 8 of the Current Public
 268 records of Duval County, Florida. Lots 1, 2, 3, 4, 5,
 269 6, 7, 8, 9, 10, 11, and 25, Shackelton's Subdivision
 270 of Block 8 Riverside Annex, according to the plat
 271 thereof as recorded in Plat Book 2 Page 67 of the
 272 Current Public records of Duval County, Florida. Lots
 273 1, 2, 3, 4, 5, 6, 7, 8, 9, East 15FT Lot 10, West 35FT
 274 Lot 11 Block 5. Lots 1, 2, 3, 4, 5, and 6 Block 6,
 275 Riverside Annex, according to the plat thereof as
 276 recorded in Plat Book 1 Page 106 of the Current Public
 277 records of Duval County, Florida. Lots 1, 2, 3, 4, 5,
 278 6, 7, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27,
 279 28, and 29, Duval Company's Re-plat of Block 7
 280 Riverside Annex, according to the plat thereof as
 281 recorded in Plat Book 2 Page 90 of the Current Public
 282 records of Duval County, Florida. That fractional part
 283 of Park St located Southeasterly of lots 16 and 17
 284 Duval Company's Re-plat of Block 7 Riverside Annex
 285 known as Parcel C recorded in Official Record Book

286 16195 Page 2011. Closed alley within Plat Book 2 Page
 287 90 closed by City of Jacksonville Ordinance No. 82-
 288 314-147. Tracts D and E. Lots 1, 2, 3, 4, 5, and 6
 289 Block 6. Lots 1, 2, 3, and 4 Block 7. Lots 1, 2, 3, 4,
 290 5, 6, 7, and 8 Block 8. Lots 2, 3, 4, 5, 6, 7, 8, 9,
 291 10, 11, 12, 13, 14, 15, and closed alley recorded in
 292 Official Record Book 11597-1171 Block 9. Lots 18, 19,
 293 20, 21, 22, and 23 Block 12. Lots 14 and part closed
 294 street lying South thereof, 15, 16, 17, 18, and 19
 295 Block 13, New Riverside, according to the plat thereof
 296 as recorded in Plat Book 3 Page 54 of the Current
 297 Public records of Duval County, Florida. Lots 1, 2,
 298 and 3, Valz & Yerkes Subdivision, according to the
 299 plat thereof as recorded in Plat Book 7 Page 32 of the
 300 Current Public records of Duval County, Florida.
 301 Parcels of land being part of Government Lot 4 in
 302 Section 22, Township 2 South, Range 26 East, Duval
 303 County Florida as described in Deed Book 127 Page177,
 304 Deed Book 127 Page 178, Official record Book 754
 305 Page176, Official Record Book 1140 Page 279, Official
 306 Record Book 2314 Page 133, and Official Record Book
 307 4024 Page 200.

308
 309 Riverside Avondale Commercial Character Area #7: Lot 6
 310 Block 83, Riverside, according to the plat thereof as
 311 recorded in Plat Book 4 Page 6 of the Current Public

312 records of Duval County, Florida. The West 60FT and
 313 the North 25FT of the East 10FT of Lot 7 and the North
 314 25FT of the West 1/2 of Lot 6, Block 83, Riverside,
 315 according to the plat thereof as recorded in Plat Book
 316 2 Page 24 of the Current Public records of Duval
 317 County, Florida. The East 50FT of the common area
 318 parcel of the John Gorrie Condominium described in
 319 Official record Book 15698 Page 444 of the Current
 320 Public Records of Duval County, Florida.

321

322 Riverside Avondale Commercial Character Area #8: All
 323 of Lots 2 through 8, together with that portion of a
 324 15FT alley (closed by ordinance 2002-393) lying
 325 Southerly of said lots 7 and 8. Lots 1, 2, 3, 4, 5, 6,
 326 7, 20, 21, 22 and part of a closed alley lying
 327 southerly to Lots 6 and 7 and Easterly to Lots 6, 7,
 328 and 22 Block 9. Fractional Lot 1 Block 11. Lots 1, 2,
 329 3, 4, 5 and closed alley lying Easterly of Lots 6 & 26
 330 Block 12 (except any part in right of way), R I CO's
 331 addition to Riverside, according to the plat thereof
 332 as recorded in Plat Book 5 Page 47 of the Current
 333 Public Records of Duval County, Florida. Part of Lot
 334 4, Riverside, according to the plat thereof as
 335 recorded in Plat Book 1 Page 109 of the Current Public
 336 Records of Duval County, Florida. West 1/2 Lot 5,
 337 fractional Lot 6, and the West 1/2 of Lot 7 Block 102,

338 Riverside, according to the plat thereof as recorded
 339 in Plat Book 4 Page 6 of the Current Public Records of
 340 Duval County, Florida.

341
 342 Riverside Avondale Commercial Character Area #9: Lots
 343 1 through 10 Block 51. Lots 1, 2, 3, and part of Lot 4
 344 recorded in Official Record Book 11528 Page 2345 Block
 345 52, Riverside, according to the plat thereof as
 346 recorded in Plat Book 1 Page 109 of the Current Public
 347 Records of Duval County, Florida. A part of Oak Street
 348 North of Block 51, plat of Riverside, as recorded in
 349 Official record Book 9853 Page 1080 of the Public
 350 Records of Duval County, Florida.

351
 352 Section 2. Notwithstanding ~~the provisions of~~ s. 561.20(1),
 353 Florida Statutes, in the areas herein described as Northside
 354 West, Northside East, Southbank, Riverside Avondale ~~and~~ Urban
 355 Transition Area, and Riverside Avondale Commercial Character
 356 Areas, the Division of Alcoholic Beverages and Tobacco of the
 357 Department of Business Regulation may issue a special alcoholic
 358 beverage license to any bona fide restaurant containing all
 359 necessary equipment and supplies for and serving full course
 360 meals regularly and having accommodations at all times for
 361 service of 100 or more patrons at tables and occupying not less
 362 than 1,800 square feet of floor space which derive no less than
 363 51 percent of gross income per annum from the sale of food

364 consumed on the premises; provided that such licenses shall be
 365 subject to local zoning requirements ~~setting distance~~
 366 ~~requirements between liquor serving establishments and churches~~
 367 ~~and schools~~ and to any provision of the alcoholic beverage laws
 368 of the state and rules of the division not inconsistent
 369 herewith.

370 Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 691 Retail Sale of Dextromethorphan

SPONSOR(S): Broxson

TIED BILLS: **IDEN./SIM. BILLS:** SB 938

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee		Brown-Blake	WBD Anstead <i>Je</i>
2) Local Government Affairs Subcommittee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

Dextromethorphan (DXM) is a common active ingredient used by pharmaceutical companies in many over-the-counter (OTC) cough suppressant medications. The ingredient is used most commonly as a cough suppressant and an expectorant, but is also used for the temporary relief of sinus congestions, runny nose, cough, sneezing, itchy nose and throat, and watery eyes caused by allergies, cold, flu, or other upper respiratory infections.

The use of DXM in larger than therapeutic doses causes impaired vision, sweating, fever, rapid breathing, increased blood pressure and heart rate, slurred speech, impaired judgment and mental function, hallucinations and dissociative effects, and in higher doses, coma, or death. Teenagers and young adults have been documented as abusing DXM in larger than therapeutic doses in order to achieve the dissociative effect, where the drug distorts how they perceive sight and sound and creates a feeling of detachment from the environment. The dangers associated with DXM abuse include possible overdose of DMX, overdose of other combined substances, impairment leading to injury or death, and dependence upon the drug.

The bill restricts the sale of a "finished drug product" that contains DXM to persons over the age of 18. Specifically, retail entities are prohibited from knowingly or willfully selling a finished drug product that contains any quantity of CXM to a person younger than 18 years old. Additionally, the bill prohibits a person younger than 18 years of age from purchasing a finished drug product that contains any quantity of DXM. The person making the sale of the finished drug product that contains DXM is required to obtain proof of age from the purchaser prior to completing the sale, unless the person making the sale could reasonably presume from the consumer's outward appearance that the consumer is 25 years old or older.

The bill provides for the following fines to be paid by entities or individuals in violation of these requirements:

- A manufacturer, distributor, or retailer whose employee sells to a consumer under the age of 18 during the course of employment or in association with the manufacturer, distributor, or retailer, is subject to a \$100 fine. The manufacturer, distributor, or retailer may avoid the fine if it can demonstrate a good faith effort to comply with the requirements;
- An employee or representative of a manufacturer, distributor, or retailer who sells to a person under the age of 18 during the course of employment is subject to a \$25 fine;
- Any person under the age of 18 who purchases a finished drug product that contains DXM is subject to a fine of \$25.

The bill preempts any ordinance regulating the sale, distribution, receipt, or possession of DXM which may be enacted by a county, municipality, or other political subdivision of the state. DXM is not subject to further regulation by such political subdivisions.

The bill is expected to have no financial impact on a state or local agency.

The bill has an effective date of January 1, 2017.

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

STORAGE NAME: h0691.BPS.DOCX

DATE: 1/5/2016

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

General:

DXM is a common active ingredient used by pharmaceutical companies in many OTC cough suppressant medications. The ingredient is used most commonly as a cough suppressant and an expectorant, but is also used for the temporary relief of sinus congestions, runny nose, cough, sneezing, itchy nose and throat, and watery eyes caused by allergies, cold, flu, or other upper respiratory infections. Approximately 70 products which contain DXM are available to consumers. Additionally, DXM can be purchased in bulk over the internet in a powder form as the pure raw ingredient used by pharmaceutical companies to manufacture the cough medicines. When taken as directed in an OTC medication, DXM has few side effects and has a long history of safety and effectiveness.¹

The use of DXM in larger than therapeutic doses causes impaired vision, sweating, fever, rapid breathing, increased blood pressure and heart rate, slurred speech, impaired judgment and mental function, hallucinations and dissociative effects, and in higher doses, coma.² Teenagers and young adults have been documented as abusing DXM in larger than therapeutic doses in order to achieve the dissociative effect, where the drug distorts how they perceive sight and sound and creates a feeling of detachment from the environment.³ The dangers associated with DXM abuse include possible overdose of DMX, overdose of other combined substances, impairment leading to injury or death, and dependence upon the drug.

Overdoses:

Before 2009, there were five documented fatal overdoses associated with ingestion of DXM.⁴ Very high doses of DXM are shown to shut down the central nervous system, causing death. Additionally, OTC medications that include DXM typically are combined with acetaminophen to relieve pain, or other medications that can be toxic in larger than therapeutic doses, causing liver damage, heart attack, stroke, and death.

Impairment:

DXM causes impaired vision, altered consciousness, and hallucinations, which can lead to irrational or dangerous behavior or otherwise impede the ability of a person to act responsibly. A person who is suffering from these conditions would be a risk to themselves and others if they chose to operate a motor vehicle or otherwise be in a place where their safety was not insured. Individuals have killed and been killed in car related accidents while high on DXM.⁵

¹ Center for Substance Abuse Research, *Dextromethorphan (DXM)*, found at <http://www.cesar.umd.edu/cesar/drugs/dxm.asp> (last visited January 6, 2016).

² WebMD, *Teen Drug Abuse of Cough Medicine*, found at <http://www.webmd.com/parenting/teen-abuse-cough-medicine-9/teens-and-dxm-drug-abuse?page=3> (last visited January 6, 2016).

³ What is DXM, *About DXM*, found at <http://www.whatisdxm.com/about-dxm.html>, (last visited January 6, 2016).

⁴ Journal of Analytical Toxicology, Vol. 33, March 2009, *Five Deaths Resulting from Abuse of Dextromethorphan Sold Over the Internet*, found at

https://www.researchgate.net/publication/24037337_Five_Deaths_Resulting_from_Abuse_of_Dextromethorphan_Sold_Over_the_Internet, (last visited on January 6, 2016).

⁵ The Morning Call, *Moore teen who drove high on 'poor man's PCP,' killing 2, pleads guilty*," found at <http://www.mcall.com/news/breaking/mc-moore-township-teen-killed-two-while-driving-high-cough-syrup-20151023-story.html>, (last visited on January 6, 2016).

Dependence:

The level and likelihood of experiencing addiction to DXM depends upon the dose and frequency of the use by an individual. High dose chronic use of DXM can lead to toxic psychosis, a mental condition which is characterized by loss of contact with reality and confusion, as well as other physiological and behavioral problems.⁶

Regulation:

The sale of DXM directly to consumers is not regulated by the state of Florida or the Federal government. It is not considered a controlled substance that would require a prescription. The Federal Drug Administration approved DXM in 1958 as an OTC cough suppressant. During the 1960s and 70s, DXM was available OTC in tablet form by the brand name of Romilar. In 1975, the extensive abuse of Romilar was recognized, and the medication was removed from the OTC market. However, DXM was specifically excluded from the 1970 Controlled Substances Act (CSA), which required the regulation of manufacture, importation, possession, use, and distribution of certain medications. Because DXM was excluded from the CSA, it remained legal to produce and sell in OTC medications, thus it was still readily available for abuse. Shortly after the removal of Romilar from the market, other pharmaceutical companies introduced other medications, including various cough syrups, which included DXM.⁷ These new medications were allegedly designed to limit recreation use by creating an unpleasant taste if consumed in large quantities. However, shortly after their introduction, many of the companies introduced more tolerable flavors in order to increase sales of their products.⁸

Currently, larger retailers such as Target, Walgreens, and CVS already prohibit their employees from selling DXM-related products to persons under the age of 18. Therefore, the possible violations of this provision are likely to be related to the sale of DXM-related products from smaller retailers or retailers that do not specialize in the sale of OTC medications and do not currently require age verification prior to sale.

Effect of the Bill

The bill restricts the sale of a “finished drug product” that contains DXM to persons over the age of 18. The term “finished drug product” is defined to mean a drug legally marketed under the Federal Food, Drug, and Cosmetic Act that is in finished dosage form.

Specifically, retail entities are prohibited from knowingly or willfully selling a finished drug product that contains any quantity of DXM to a person younger than 18 years old. Additionally, the bill prohibits a person younger than 18 years of age from purchasing a finished drug product that contains any quantity of DXM. The person making the sale of the finished drug product that contains DXM is required to obtain proof of age from the purchaser prior to completing the sale, unless the person making the sell could reasonably presume from the consumer’s outward appearance that the consumer is 25 years old or older.

“Proof of age” is defined to mean any government agency-issued document that contains the date of birth and a description or photograph of the consumer. The term includes a passport, military identification card, or driver’s license.

Fines:

The bill provides for the following fines to be paid by entities or individuals in violation of these requirements:

- A manufacturer, distributor, or retailer whose employee sells to a consumer under the age of 18 during the course of employment or in association with the manufacturer, distributor, or retailer, is

⁶ Jaffe, J.H. (ed). (1995). Encyclopedia of Drugs and Alcohol, Vol. 1. Simon & Schuster MacMillan: New York. (Id. Footnote 1).

⁷ Id. at 1.

⁸ Id. at 1.

subject to a \$100 fine. The manufacturer, distributor, or retailer may avoid the fine if it can demonstrate a good faith effort to comply with the requirements;

- An employee or representative of a manufacturer, distributor, or retailer who sells to a person under the age of 18 during the course of employment is subject to a \$25 fine;
- Any person under the age of 18 who purchases a finished drug product that contains DXM is subject to a fine of \$25.

The requirements of the bill do not:

- Impose any restriction on the placement of finished drug products that contain DXM in a retail store, direct access of consumers to the finished drug product, or maintenance of transaction records; or
- Apply to a medication that contains DXM that is sold pursuant to a prescription.

The bill preempts any ordinance regulating the sale, distribution, receipt, or possession of DXM which may be enacted by a county, municipality, or other political subdivision of the state. DXM is not subject to further regulation by such political subdivisions.

B. SECTION DIRECTORY:

Section 1 restricts the sale of a “finished drug product” that contains dextromethorphan to persons over the age of 18.

Section 2 provides an effective date of January 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not specify the recipient of the fines paid. However, it is likely that local jurisdictions would recover the fines after the issuance of citations by local law enforcement officers to persons who violate this provision. Therefore, there would be a minimal increase in revenues for local governments that receive payment for the fines, though the amount is difficult to determine and would likely be minimal due to the anticipated low number of citations issued.

2. Expenditures:

Local law enforcement offices would be required to issue citations for the violations. Because the possible violations of this provision are likely to be related to the sale of DXM related products from smaller retailers, and the officers would need to be present or run a sting in order to catch a violation, the number of violations is likely to be low. Local law enforcement agencies likely will be able to meet these requirements with existing resources. Therefore, there should be no measurable expenditures on local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Private entities would be required to train their employees to check the identifications of individuals purchasing certain cough medications. If there is a cost to this additional training, it should be minimal.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill does not place the language into a statute. Therefore, it will be difficult for impacted entities, their employees, or persons under the age of 18 to have notice of the requirements. The language could be placed into a statute in order to ensure adequate notice.

As the language is not placed in a specific statute, it is difficult to determine what agency or agencies would act as the enforcing agency for these violations. The language could be clarified to specify what enforcing agency is responsible for ensuring compliance.

The language provides strict liability for any employee that sells the finished drug product that contains DXM and for any person under the age of 18 that purchases the finished drug product that contains DXM. The language could be amended to provide a warning to these persons prior to issuing a fine.

The language does not provide for the process that will be followed if the individual or entity fails to pay the fine. The language could be amended to provide for civil recovery by a local jurisdiction to clarify the process following failure to pay the fine.

The term "drug" is not defined.

The bill sponsor has indicated he will provide amendments addressing these drafting issues.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to the retail sale of
 3 dextromethorphan; providing definitions; prohibiting a
 4 retail entity from knowingly or willfully selling a
 5 finished drug product containing dextromethorphan to a
 6 person younger than 18 years of age; prohibiting a
 7 person younger than 18 years of age from purchasing a
 8 finished drug product containing dextromethorphan;
 9 requiring a person making a retail sale of a finished
 10 drug product containing any quantity of
 11 dextromethorphan to obtain certain proof of age from
 12 the purchaser; providing an exception; providing
 13 penalties; providing applicability; preempting local
 14 government regulation of dextromethorphan; providing
 15 an effective date.

16
 17 Be It Enacted by the Legislature of the State of Florida:

18
 19 Section 1. Restrictions on sale of dextromethorphan.-

20 (1) As used in this section, the term:

21 (a) "Finished drug product" means a drug legally marketed
 22 under the Federal Food, Drug, and Cosmetic Act that is in
 23 finished dosage form.

24 (b) "Proof of age" means any document issued by a
 25 governmental agency that contains the date of birth and a
 26 description or photograph of the person purchasing the finished

27 drug product. The term includes, but is not limited to, a
 28 passport, military identification card, or driver license.

29 (2) (a) A retail entity may not knowingly or willfully sell
 30 a finished drug product containing any quantity of
 31 dextromethorphan to a person younger than 18 years of age.

32 (b) A person younger than 18 years of age may not purchase
 33 a finished drug product containing any quantity of
 34 dextromethorphan.

35 (3) A person making a retail sale of a finished drug
 36 product containing any quantity of dextromethorphan must require
 37 and obtain proof of age from the purchaser before completing the
 38 sale, unless from the purchaser's outward appearance the person
 39 making the sale would reasonably presume the purchaser to be 25
 40 years of age or older.

41 (4) (a) A manufacturer, distributor, or retailer whose
 42 employee or representative, during the course of the employee's
 43 or representative's employment or association with the
 44 manufacturer, distributor, or retailer, sells dextromethorphan
 45 in violation of this section is subject to a \$100 fine, except
 46 that a manufacturer, distributor, or retailer who demonstrates a
 47 good faith effort to comply with this section is not subject to
 48 such penalty.

49 (b) An employee or representative of a manufacturer,
 50 distributor, or retailer who, during the course of the
 51 employee's or representative's employment or association with
 52 the manufacturer, distributor, or retailer, sells

53 dextromethorphan in violation of this section is subject to a
 54 \$25 fine.

55 (c) A person who purchases dextromethorphan in violation
 56 of this section is subject to a \$25 fine.

57 (d) A person who possesses or receives dextromethorphan in
 58 violation of this section, with the intent to distribute, is
 59 subject to a \$25 fine.

60 (5) This section does not:

61 (a) Impose any restriction on the placement of products in
 62 a retail store, direct access of customers to finished drug
 63 products, or the maintenance of transaction records.

64 (b) Apply to a medication containing dextromethorphan that
 65 is sold by a retail entity pursuant to a valid prescription.

66 (6) This section preempts any ordinance regulating the
 67 sale, distribution, receipt, or possession of dextromethorphan
 68 enacted by a county, municipality, or other political
 69 subdivision of the state, and dextromethorphan is not subject to
 70 further regulation by such political subdivisions.

71 Section 2. This act shall take effect January 1, 2017.

BUSINESS AND PROFESSIONS SUBCOMMITTEE

HB 691 by Rep. Broxson Relating to Retail Sale of Dextromethorphan

AMENDMENT SUMMARY January 12, 2016

Amendment by Rep. Broxson (Strike-all): The strike-all makes the following changes:

- Creates s. 501.975, F.S., placing the language in Consumer Protection chapter of the Florida Statutes.
- Clarifies the definition of “drug”.
- Updates the term “proof of age” to mirror the identification requirements for the sale of tobacco.
- Extends the prohibition to sell to include manufacturers, distributors, retailers and their employees and representatives.
- Clarifies that the violation is non-criminal.
- Clarifies that failure to pay the required fine issued for a violation will subject the person to civil recovery by the local jurisdiction.
- Provides due process for individuals or entities to dispute the violation in county court.
- Provides enforcement by local law enforcement.
- Removes penalties for underage purchasers or employees in violation of this section.
- Provides a warning for any violations by employees and for first violations by distributors, manufacturers, and retailers.
- Provides a \$100 fine for a second violation and \$500 for any subsequent violation by distributors, manufacturers, and retailers.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Business & Professions
 2 Subcommittee

3 Representative Broxson offered the following:

4
5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:
 7 Section 1. Section 501.975, Florida Statutes, is created
 8 to read:

9 501.975 Restrictions on sale of dextromethorphan.-

10 (1) As used in this section, the term:

11 (a) "Finished drug product" means a drug legally marketed
 12 under the Federal Food, Drug, and Cosmetic Act that is in
 13 finished dosage form. For purposes of this section, the term
 14 "drug" is defined pursuant to s. 499.003(18).

15 (b) "Proof of age" means any document issued by a
 16 governmental agency that contains the date of birth and a



Amendment No. 1

17 description or photograph of the person purchasing the finished
18 drug product. The term includes, but is not limited to, a
19 passport, United States Armed Services identification card,
20 driver license, or an identification card issued by this state
21 or another state of the United States.

22 (2) (a) A manufacturer, distributor, retail entity, or its
23 employees and representatives, may not knowingly or willfully
24 sell a finished drug product containing any quantity of
25 dextromethorphan to a person younger than 18 years of age.

26 (b) A person younger than 18 years of age may not purchase
27 a finished drug product containing any quantity of
28 dextromethorphan.

29 (3) An employee or representative of a retail entity
30 making a retail sale of a finished drug product containing any
31 quantity of dextromethorphan must require and obtain proof of
32 age from the purchaser before completing the sale, unless from
33 the purchaser's outward appearance the person making the sale
34 would reasonably presume the purchaser to be 25 years of age or
35 older.

36 (4) (a) A manufacturer, distributor, or retailer whose
37 employee or representative, during the course of the employee's
38 or representative's employment or association with the
39 manufacturer, distributor, or retailer, sells dextromethorphan
40 in violation of this section is subject to:

41 1. A written warning for the initial violation for each
42 sales location;



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43 2. A civil penalty of not more than \$100 for the second
44 violation for each sales location;

45 3. A civil penalty of not more than \$500 for subsequent
46 violations for each sales location.

47
48 A manufacturer, distributor, or retailer who demonstrates a good
49 faith effort to comply with this section is not subject to a
50 civil penalty. The civil penalty shall accrue and may be
51 recovered in a civil action brought by the local jurisdiction

52 (b) A person who possesses or receives dextromethorphan
53 with the intent to distribute in violation of this section, is
54 subject to a civil penalty of not more than \$25 for each
55 violation, which shall accrue and may be recovered in a civil
56 action brought by the local jurisdiction. A civil penalty issued
57 to a person pursuant to this subparagraph shall include
58 information regarding how to dispute the penalty, and shall
59 clearly state that the violation is a noncriminal violation.

60 (c) An employee or representative of a manufacturer,
61 distributor, or retailer who, during the course of the
62 employee's or representative's employment or association with
63 the manufacturer, distributor, or retailer, sells
64 dextromethorphan in violation of this section is subject to a
65 written warning.

66 (5) Any civil penalty issued to a manufacturer,
67 distributor, or retailer shall be provided to the manager on
68 duty at the time the penalty is discovered. If no manager is



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69 available, the law enforcement officer shall attempt to contact
70 the manager for service. If unsuccessful, the law enforcement
71 officer may leave a copy with the employee and mail a copy to
72 the owner's business address as filed with the Department of
73 State or may return for service at a later time. The civil
74 penalty shall provide the following information:

75 (a) The date and approximate time of the sale in violation
76 of this section;

77 (b) The location of the sale, including the address;

78 (c) The name of the employee or representative that
79 completed the sale;

80 (d) Information regarding how to dispute the penalty; and

81 (e) Notice that the violation is a noncriminal violation.

82 (6) This section shall be applied uniformly throughout the
83 state. Enforcement of this section shall remain with local law
84 enforcement departments and officials charged with the
85 enforcement of the laws of the state.

86 (7) To dispute the civil penalty, the recipient of the
87 penalty must provide notice of the dispute to the clerk of the
88 county court in the jurisdiction in which the violation occurred
89 within 15 days of receipt of the penalty. The local
90 jurisdiction, through its duly authorized officers, shall hold a
91 hearing in the court of competent jurisdiction when a civil
92 penalty for violation of this section is issued, the violation
93 is disputed, and the recipient is issued the penalty by a law
94 enforcement officer employed by or acting on behalf of the



Amendment No. 1

95 jurisdiction. If the court finds in favor of the jurisdiction,
96 the court shall require the payment of the fines as provided in
97 this section.

98 (8) This section does not:

99 (a) Impose any restriction on the placement of products in
100 a retail store, direct access of customers to finished drug
101 products, or the maintenance of transaction records.

102 (b) Apply to a medication containing dextromethorphan that
103 is sold by a retail entity pursuant to a valid prescription.

104 (c) Create a criminal violation. Any person who violates
105 the provisions of this section commits a noncriminal violation
106 as provided in s. 775.08(3).

107 (9) This section preempts any ordinance regulating the
108 sale, distribution, receipt, or possession of dextromethorphan
109 enacted by a county, municipality, or other political
110 subdivision of the state, and dextromethorphan is not subject to
111 further regulation by such political subdivisions.

112 Section 2. This act shall take effect January 1, 2017.

114 -----

115 T I T L E A M E N D M E N T

116 Remove everything before the enacting clause and insert:

117 A bill to be entitled

118 An act relating to the retail sale of
119 dextromethorphan; creating s 501.975, F.S.; providing
120 definitions; prohibiting a retail entity from



Amendment No. 1

121 | knowingly or willfully selling a finished drug product
122 | containing dextromethorphan to a person younger than
123 | 18 years of age; prohibiting a person younger than 18
124 | years of age from purchasing a finished drug product
125 | containing dextromethorphan; requiring a person making
126 | a retail sale of a finished drug product containing
127 | any quantity of dextromethorphan to obtain certain
128 | proof of age from the purchaser; providing an
129 | exception; providing penalties; providing
130 | applicability; preempting local government regulation
131 | of dextromethorphan; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 707 Fantasy Contests
SPONSOR(S): Gaetz and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 832

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee		Anderson CA	Anstead <i>Fe</i>
2) Regulatory Affairs Committee			

SUMMARY ANALYSIS

A fantasy contest (also called a fantasy sport or fantasy game) is a type of contest where participants assemble, own, and manage imaginary teams made up of actual professional sports players. The fantasy teams compete based on the statistical performance of actual players in an actual sports game. Participants can play fantasy contests at home or online, through a servicer or with friends, with or without an entry fee, and over a full season or over a shorter period of time.

The bill creates s. 501.935, F.S. to regulate fantasy contests. The bill provides requirements for fantasy contest operators and outlines civil penalties for violations of the provisions which may be recovered through civil action brought by the Department of Agriculture and Consumer Services (DACS).

The bill defines "fantasy contest" as a fantasy or simulated game or contest that meets the following conditions:

- The sponsor of the fantasy contest may not be a participant in the fantasy contest.
- The value of all prizes and awards offered to winning players must be established and made known in advance of the contest.
- Winning outcomes must reflect the relative knowledge and skill of the players and are determined by accumulated statistical results of the performance of individuals.
- Winning outcomes must not be based on the score, point spread, or any performance of any single sports team or combination of such teams or solely on a single performance of an individual athlete in a single sporting event.

The bill requires "fantasy contest operators" to:

- Restrict employees of the fantasy contest operator and certain relatives of such employees from competing in fantasy contests with a cash prize of more than \$5.
- Verify that contest players are 18 years of age or older.
- Restrict a person from entering a fantasy contest that is determined on the accumulated statistical results of a team of individuals in which the person is a player.
- Allow a person to restrict or prevent his or her own access to a fantasy contest upon request.
- Disclose the number of entries that a fantasy contest player may submit to a fantasy contest and provide steps to prevent players from submitting more than the allowable number.
- Separate contest players' funds from operational funds and maintain a reserve.
- Contract with a third party to perform an annual independent audit to ensure compliance with this section and submit the results to DACS.

The bill also provides that "fantasy contests" would be exempt from regulation under ch. 849, F.S., entitled "Gambling."

The bill results in a significant fiscal impact on the state government and will require DACS to hire an additional senior attorney to address civil actions.

The bill provides an effective date of July 1, 2016.

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

STORAGE NAME: h0707.BPS.DOCX

DATE: 1/11/2016

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background of fantasy contest industry:

A fantasy contest (also called a fantasy sport or fantasy game) is a type of contest where participants assemble, own, and manage imaginary teams made up of actual professional sports players. The teams compete based on the statistical performance generated by the actual players in an actual sports game. The players' performances are converted into points that are compiled according to the participant's team roster. In fantasy contests, participants draft, trade, and cut players similar to a real team owner.

The online fantasy contest industry is a \$4 billion dollar industry in the United States.¹ Fantasy NFL football is the most popular fantasy contest and in 2015, an estimated 56.8 million people competed in fantasy contests in the United States and Canada.²

Although fantasy contests began as a contest played amongst friends or co-workers, new technology in the mid-1990s allowed for broader access to the public to pursue fantasy contests because statistics could be easily and quickly compiled online. Additionally, news and information about players was more readily available through growing access to the Internet.

Daily fantasy contests are an accelerated version of fantasy contests, which are played across a shorter period of time. For example, daily fantasy contests may be played over a single week in a season, rather than the entire season. Daily fantasy contests are typically played as "contests" which require an entry fee. The fee funds an advertised prize pool from which the servicer takes a rake-off as revenue.³

The legality of daily fantasy contests has been challenged nationwide with critics arguing that the contests more closely resemble proposition wagering on athlete performance than traditional fantasy contests.

Current situation:

In general, gambling is illegal in Florida.⁴ Chapter 849, F.S., prohibits keeping a gambling house,⁵ running a lottery,⁶ or the manufacture, sale, lease, play, or possession of slot machines.⁷ Certain exceptions have been authorized, with restrictions on permitted locations, operators, and prizes, including penny-ante games,⁸ bingo,⁹ cardrooms,¹⁰ charitable drawings,¹¹ game promotions (sweepstakes),¹² and bowling tournaments.¹³

¹ FANTASY SPORTS TRADE ASSOCIATION, <http://fsta.org/about> (last visited January 8, 2016).

² FANTASY SPORTS TRADE ASSOCIATION, <http://fsta.org/research/industry-demographics/> (last visited January 8, 2016).

³ THE WASHINGTON POST, *Daily fantasy sports Web sites find riches in Internet gaming law loophole*, https://www.washingtonpost.com/sports/daily-fantasy-sports-web-sites-find-riches-in-internet-gaming-law-loophole/2015/03/27/92988444-d172-11e4-a62f-ee745911a4ff_story.html (last visited January 8, 2016).

⁴ s. 849.08, F.S.

⁵ s. 849.01, F.S.

⁶ s. 849.09, F.S.

⁷ s. 849.16, F.S.

⁸ s. 849.085, F.S.

⁹ s. 849.0931, F.S.

¹⁰ s. 849.086, F.S.

¹¹ s. 849.0935, F.S.

¹² s. 849.094, F.S., authorizes game promotions in connection with the sale of consumer products or services.

¹³ s. 546.10, F.S.

In 2013, the Legislature clarified that Internet café style gambling machines were illegal in the state. The legislation clarified existing sections of law regarding slot machines, charitable drawings, game promotions, and amusement machines and created a rebuttable presumption that machines used to simulate casino-style games in schemes involving consideration and prize are prohibited slot machines.¹⁴

In 2015, the Legislature determined that the regulation of the operation of skill-based amusement games and machines would ensure compliance with Florida law and prevent the expansion of casino-style gambling. The Legislature clarified the operation and use of amusement games or machines to ensure that regulations would not be interpreted as creating an exception to the state's general prohibitions against gambling.¹⁵

Lotteries

Lotteries are prohibited by the Florida Constitution.¹⁶ The constitutional prohibition is codified in statute at s. 849.09, F.S. Other than the statement in the Florida Constitution that indicates that the term "lottery" does not include "types of pari-mutuel pools authorized by law as of the effective date of this constitution," the term "lottery" is not defined by the Florida Constitution or statute. Generally, a lottery is a scheme which contains three elements: consideration, chance, and prize. As to consideration, while most states view consideration narrowly as a tangible asset, such as money, Florida views consideration broadly, as the conferring of any benefit.¹⁷ Thus, even if players do not pay to participate in a game where they have a chance to win a prize, it may be an illegal lottery.

In 1986, Florida voters approved an amendment to the Florida Constitution to allow the state to operate a lottery. This lottery is known as the Florida Education Lotteries and directs proceeds to the State Education Lotteries Trust Fund.

To allow activities that would otherwise be illegal lotteries, the Legislature has carved out several narrow exceptions to the statutory lottery prohibition. Statutory exceptions are provided for charitable bingo, charitable drawings, and game promotions. Charities use drawings or raffles as a fundraising tool. Organizations suggest a donation, collect entries, and randomly select an entry to win a prize. Under s. 849.0935, F.S., qualified organizations may conduct drawings by chance, provided the organization has complied with all applicable provisions of ch. 496, F.S. Game promotions, often called sweepstakes, are advertising tools by which businesses promote their goods or services. As they contain the three elements of a lottery: consideration, chance, and prize, they are generally prohibited by Florida law unless they meet a statutory exception.¹⁸

Slot machines

Slot machines have been generally prohibited in Florida since 1937.¹⁹ Section 849.16, F.S., defines a slot machine as a machine or device that requires the insertion of a piece of money, coin, account number, code, or other object or information to operate and allows the user, whether by application of skill or by reason of any element of chance or of any other outcome of such operation unpredictable by him or her, to receive money, credit, allowance, or thing of value, or secure additional chances or rights to use such machine, apparatus, or device. Slot machines are authorized at certain facilities in Broward

¹⁴ Florida House of Representatives Select Committee on Gaming, Final Bill Analysis of 2013 CS/HB 155, p. 1 (Apr. 19, 2013).

¹⁵ s. 546.10, F.S.

¹⁶ Article X, s. 7, Fla. Const. *But, see*, Article X, s. 15, Fla. Const., authorizing lotteries operated by the state.

¹⁷ *Little River Theatre Corp. v. State ex rel. Hodge*, 135 Fla. 854 (1939).

¹⁸ *Little River Theatre Corp.*, *supra* at 868.

¹⁹ s. 849.15, F.S., originally enacted by s. 1, ch. 18143, L.O.F. (1937).

and Miami-Dade counties by constitutional amendment or statute and are regulated under ch. 551, F.S.²⁰

Gaming Compact

Chapter 285, F.S., ratified the gaming compact with the Seminole Tribe of Florida (the "2010 Compact"). It provides that it is not a crime for a person to participate in raffles, drawings, slot machine gaming, or banked card games (e.g., blackjack or baccarat) at a tribal facility operating under the compact.²¹ The 2010 Compact provides for revenue sharing. For the exclusive authority to offer banked card games on tribal lands at five locations and to offer slot machine gaming outside Miami-Dade and Broward Counties, the Seminole Tribe pays the State of Florida a share of "net win" (approximately \$240 million per year). Section 285.710(1)(f), F.S., designates the Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation as the "state compliance agency" having authority to carry out the state's oversight responsibilities under the 2010 Compact. The 2010 Compact took effect when published in the Federal Register on July 6, 2010 and lasts for 20 years, expiring July 31, 2030, unless renewed.

The 2010 Compact provides for a reduction in revenue sharing if "internet/online gaming (or any functionally equivalent remote gaming system that permits a person to game from home or any other location that is remote from a casino or other commercial gaming facility)" is offered in the state.

A new compact was executed by the Governor and the Tribe on December 7, 2015 (the "2015 Compact"), but must be ratified by the Legislature and approved by the United States Secretary of the Interior to become effective.²² Part XII of the 2015 Compact provides the Tribe a grant of exclusivity to operate games, with certain exceptions.²³ One exception covers internet gaming and states that if state law is amended to permit "internet/on-line gaming (or any functionally equivalent remote gaming system that permits a person to game from home or any other location that is remote from a casino or other commercial gaming facility," the payments required by the Tribe will be adjusted.²⁴ Internet gaming is not defined in the 2015 Compact and fantasy contests are not specifically mentioned.

Pari-mutuel wagering

Chapter 550, F.S., authorizes pari-mutuel wagering at licensed tracks and frontons and provides for state regulation. Pari-mutuel is defined as "a system of betting on races or games in which the winners divide the total amount bet, after deducting management expenses and taxes, in proportion to the sums they have wagered individually and with regard to the odds assigned to particular outcomes."²⁵

Chapter 551, F.S., authorizes slot machine gaming at the location of certain licensed pari-mutuel locations in Miami-Dade County or Broward County and provides for state regulation. Chapter 849, F.S., authorizes cardrooms at certain pari-mutuel facilities.²⁶ A license to offer pari-mutuel wagering, slot machine gambling, or a cardroom at a pari-mutuel facility is a privilege granted by the state.²⁷

Except for the Seminole casinos authorized in the 2010 Compact, free-standing, commercial casinos are not authorized, and gaming activity, other than what is expressly authorized, is illegal.

²⁰ See Article X, Section 23, Florida Constitution; ch. 2010-29, L.O.F. and chapter 551, F.S.

²¹ s. 285.710, F.S.

²² *Id.*

²³ *2015 Gaming Compact Between the Seminole Tribe of Florida and the State of Florida*, p. 43 (Dec. 7, 2015), on file with the Business & Professions Subcommittee.

²⁴ *Id.* at 50.

²⁵ s. 550.002(22), F.S.

²⁶ s. 849.086(2)(c), F.S., defines "cardroom" to mean a facility where authorized card games are played for money or anything of value and to which the public is invited to participate in such games and charges a fee for participation by the operator of such facility.

²⁷ See s. 550.1625(1), F.S., "...legalized pari-mutuel betting at dog tracks is a privilege and is an operation that requires strict supervision and regulation in the best interests of the state."

Fantasy contests in Florida

The Florida Constitution, Florida Statutes, and Florida courts have not specifically addressed fantasy contests. Regardless of whether fantasy contests are games of skill or games of chance, they may be subject to the state's gambling laws and anti-bookmaking statute. Section 849.14, F.S., provides that a stake, bet, or wager of money or another thing of value placed "upon the result of any trial or contest of skill, speed, power, or endurance of human or beast" is unlawful. Receiving money or acting as the custodian or depository of money as part of such a stake, bet, or wager is also unlawful.

Section 849.25, F.S., Florida's anti-bookmaking statute, defines bookmaking as "the act of taking or receiving, while engaged in the business or profession of gambling, any bet or wager upon the result of any trial or contest of skill, speed, power, or endurance of human, beast, fowl, motor vehicle, or mechanical apparatus or upon the result of any chance, casualty, unknown, or contingent event whatsoever." The statute includes factors that are to be considered evidence of bookmaking, including charging a percentage on accepted wagers, receiving more than five wagers in a day, and receiving over \$500 in total wages in a single day or over \$1500 in a single week.²⁸

On January 8th, 1991, Florida Attorney General Robert A. Butterworth provided an advisory legal opinion²⁹ regarding whether participation in a fantasy sports league violated Florida's gambling laws. Butterworth concluded that the operation of a fantasy league would violate s. 849.14, F.S. Butterworth concluded that since the fantasy sports league's entry fee was used to make up the prizes, it qualified as a "stake, bet, or wager" under Florida law.³⁰ He stated that, "while the skill of the individual contestant picking the members of the fantasy team is involved, the prizes are paid to the contestants based upon the performance of the individual professional football players in actual games."³¹

Butterworth concluded that contests, in which the skill of the contestant predominates over the element of chance, such as in certain sports contests, are not prohibited lotteries. As an example, he noted that golf and bowling tournaments were contests of skill and were not prohibited. He considered that "it might well be argued that skill is involved in the selection of a successful fantasy team by requiring knowledge of the varying abilities and skills of the professional football players who will be selected to make up the fantasy team."³²

Fantasy contests may be subject to Florida's anti-lottery laws. Players in daily fantasy contests are competing for a distribution of a prize that may be made from a pool of funds that are made up of players' contributions. This type of game may be considered pool betting or pari-mutuel betting. The Attorney General of Nevada has determined that daily fantasy contests constitute sports pools.³³ Daily fantasy contest sites may apply to the Nevada Gaming Control Board for a license to operate a sports pool in the state. Internationally, some daily fantasy contest sites are licensed for pool betting.³⁴ The Florida Constitution³⁵ prohibits lotteries other than pari-mutuel pools authorized by law as of the effective date of the 1968 Constitution.

²⁸ s. 849.25(1)(b), F.S.

²⁹ 91-03 Fla. Op. Att'y Gen. (1991).

³⁰ *Creash v. State*, 131 Fla. 111, 118 (Fla. 1938).

³¹ 91-03 Fla. Op. Att'y Gen. (1991).

³² *Id.*

³³ 2015-102 Nev. Op. Att'y Gen. 8 (2015).

³⁴ DraftKings, Inc. is licensed for Pool Betting and Gambling Software by the UK Gambling Commission.

<https://secure.gamblingcommission.gov.uk/gccustomweb/PublicRegister/PRAccountDetails.aspx?accountNo=42475> (last visited January 6, 2015).

³⁵ FLA. CONST. art. X, s. 7.

Fantasy contests in the United States

The federal Unlawful Internet Gambling Enforcement Act of 2006³⁶ ("UIGEA") prohibits the processing of certain online financial wagering to prevent payment systems from being used in illegal online gambling. The UIGEA prohibits gambling businesses from knowingly accepting payments in connection with a "bet or wager" that involves the use of the Internet and that is unlawful under any federal or state law.

The UIGEA expressly states that participation in fantasy or simulation sports contests is not included in the definition of "bet or wager"³⁷ when certain conditions are met. For purposes of the UIGEA, participation in a fantasy or simulation sports contest is not a bet or wager when:

- Prizes and awards offered to winning participants are established and made known in advance of the game or contest and the value is not determined by the number of participants or amount of fees paid by the participants.
- Winning outcomes reflect the relative knowledge and skill of the participants and are determined predominantly by accumulated statistical results of the performance of individuals.
- Winning outcomes are not based on the score, point spread, or any performance of any single sports team or combination of such teams or solely on a single performance of an individual athlete in a single sporting event.

The UIGEA exempts fantasy and simulation sports contests from the application of the UIGEA, but does not make such contests legal generally. The UIGEA does not change or preempt any other federal or state law. As expressed in the Rule of Construction in the UIGEA, "no provision of this subchapter shall be construed as altering, limiting, or extending any federal or state law or tribal-state compact prohibiting, permitting, or regulating gambling within the United States."³⁸ Therefore, any other state or federal law could apply.

The federal Professional and Amateur Sports Protection Act of 1992 ("PAPSA") states that it is unlawful for a governmental entity or person to operate or promote any gambling that is based directly or indirectly on one or more competitive sports games or on the performance of an amateur or professional athlete in a competitive sports game.³⁹

Several states, including Arizona, Iowa, Louisiana, Montana, and Washington have current laws that have been interpreted to make fantasy contests illegal in their jurisdictions, though some of the states have proposed legislation to legalize and regulate fantasy contests.⁴⁰ Several other states, including California, Illinois, Massachusetts, and Pennsylvania, have proposed legislation to clarify and regulate fantasy contests.⁴¹ Maryland and Kansas expressly legalized fantasy contests in 2012 and 2015, respectively. Currently, there is not a regulatory framework for fantasy contests in the State of Florida.

Effect of the bill:

The bill creates s. 501.935, F.S., to regulate fantasy contests. Chapter 501 is entitled "Consumer Protection" and is regulated by DACS. The bill provides requirements for fantasy contest operators and outlines penalties for violations of the provisions.

³⁶ 31 U.S.C. § 5361-5366 (2006).

³⁷ 31 U.S.C. § 5362(1) (2006).

³⁸ 31 U.S.C. § 5361(b) (2006).

³⁹ 28 U.S.C. § 3702 (1992).

⁴⁰ Iowa, Louisiana, and Montana brought forth unsuccessful legislation to clarify and regulate fantasy contests in 2015. Washington held a committee hearing on a bill to be introduced in the 2016 session.

⁴¹ See LEGAL SPORTS REPORT, <http://www.legalsportsreport.com/dfs-bill-tracker/> (last visited Jan. 6, 2016).

The bill defines the term "fantasy contest" to mean a fantasy or simulated game or contest that meets the following conditions:

- The sponsor of the game or contest may not be a participant in the game or contest.
- The value of all prizes and awards offered to winning players must be established and made known in advance of contest.
- Winning outcomes must reflect the relative knowledge and skill of the players and are determined by accumulated statistical results of the performance of individuals.
- Winning outcomes must not be based on the score, point spread, or any performance of any single sports team or combination of such teams or solely on a single performance of an individual athlete in a single sporting event.

Although this definition generally follows the exception provided in the UIGEA, the requirement that the value of the prize not be determined by the number of participants in the contest or the amount of fees paid by the participants is not included. Also, the definition of "fantasy contest" does not limit contests to athletic contests or sports, which may leave open the possibility of legalizing other types of contests.

The bill defines the term "fantasy contest operator" to mean a person or entity that offers fantasy contests for a cash prize to the general public. A fantasy contest operator is required to implement the following procedures:

- Restrict employees of the fantasy contest operator and certain relatives of such employees from competing in fantasy contests with a cash prize of more than \$5.
- Verify that contest players are 18 years of age or older.
- Restrict a person from entering a fantasy contest that is determined on the accumulated statistical results of a team of individuals in which the person is a player.
- Allow a person to restrict or prevent his or her own access to a fantasy contest upon request.
- Disclose the number of entries that a fantasy contest player may submit to a fantasy contest and provide steps to prevent players from submitting more than the allowable number.
- Separate contest players' funds from operational funds and maintain a reserve.
- Contract with a third party to perform an annual independent audit to ensure compliance with this section and submit the results to the Department Agriculture and Consumer Services (DACS).

The bill provides that a person, firm, corporation, association, agent, or employee who violates the provisions in this bill is subject to a civil penalty not to exceed \$1,000 which shall accrue to the state and may be recovered through civil action brought by DACS. However, no registration is required and it is uncertain how DACS would be able to pursue fantasy operators who do not reside in the state.

The bill provides that "fantasy contests" as defined in the bill would be exempt from regulation under ch. 849, F.S., entitled "Gambling." Because the bill defines "fantasy contests" as only those operated by a sponsor who is not a participant in the contest, small groups of friends who traditionally organize to play a season-long fantasy contest may not be exempted from the prohibitions contained in ch. 849, F.S.

B. SECTION DIRECTORY:

Section 1 amends s. 501.935, F.S., to provide requirements for the operation of fantasy contests, provide that violation of such requirements will result in a civil penalty, and specify that fantasy contests are excluded from gambling regulation.

Section 2 provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.⁴²

2. Expenditures:

\$107,867 for FY 16-17 and \$98,868 for FY 17-18 and FY 18-19 per DACS analysis.⁴³ This includes the cost of DACS's estimated need of hiring one additional Senior Attorney.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Similar Senate Bill 832 (2016) requires a game operator offering fantasy games in the state to register with DACS and pay an initial registration fee of \$500,000 and an annual renewal fee of \$100,000. The current House bill does not have this provision. If the House bill adds this or a similar provision, the bill could have a fiscal impact of providing revenues to the state government. Such revenues could outweigh the expenditures as determined by DACS. Without a registration fee, more operators may offer fantasy contests, which may require DACS to obtain a regulatory consultant to review the third-party audits.⁴⁴

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

Indeterminate.

B. RULE-MAKING AUTHORITY:

There appears to be no rulemaking authority added or amended.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill states that one of the conditions required to meet the definition of the term "fantasy contest" is that the value of all prizes and awards offered to winning players must be established and made known in advance of the contest. This condition differs from similar language in the UIGEA which states that additionally, the value of such prizes is not determined by the number of participants in the contest or the amount of fees paid by the participants. If the bill language is intended to conform to the UIGEA language, this could be amended.

⁴² Department of Agriculture and Consumer Services, Agency Analysis of 2015 House Bill 707, p. 2 (Dec. 4, 2015).

⁴³ *Id.* at p. 3.

⁴⁴ *Id.* at p. 2.

It is unclear how the bill would address players in a fantasy contest played between small groups of people at home or work. The bill could be amended to specifically address this type of contest.

The bill does not require operators to register with DACS, but requires DACS to review audits and file civil actions. In order for DACS to be able to track operators in the state and pursue consumer complaints, language could be added to require registration with DACS.

Under section (2)(g) of the bill, DACS would be required to review the audits performed by the independent third-party. Penalties would be assessed for any violations found. As written, the bill would allow DACS to file a civil action for any infraction. DACS recommends that administrative remedies be made available as an additional remedy.⁴⁵

Section (3) of the bill does not specify where the funds from a civil penalty should be paid. This provision could be clarified to specify whether funds will be paid to the General Revenue Fund or to a specific trust fund.

Senate Bill 832 includes provisions related to the following that are not included in the House version of the bill:

- Includes "educational game or contest" in the definition of "fantasy game;"
- Limits the number of participants in order to be considered a "game operator" requiring registration;
- Requires registration with DACS and a registration fee to operate in the state;
- Prohibits game officials from participating in fantasy contests;
- Prohibits employees from sharing confidential information; and
- Requires that the annual audit be done in compliance with specified accounting principles.

The bill sponsor has indicated that he intends to file an amendment to address various drafting issues.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

⁴⁵ *Id.* at p. 2.

1 A bill to be entitled
 2 An act relating to fantasy contests; creating s.
 3 501.935, F.S.; providing definitions; providing
 4 requirements for the operation of fantasy contests;
 5 providing penalties; specifying that chapter 849,
 6 F.S., relating to gambling offenses, does not apply to
 7 fantasy contests; providing an effective date.

8
 9 Be It Enacted by the Legislature of the State of Florida:

10
 11 Section 1. Section 501.935, Florida Statutes, is created
 12 to read:

13 501.935 Fantasy contests.-

14 (1) As used in this section, the term:

15 (a) "Department" means the Department of Agriculture and
 16 Consumer Services.

17 (b) "Fantasy contest" means a fantasy or simulated game or
 18 contest in which:

19 1. The sponsor of the game or contest is not a participant
 20 in the game or contest;

21 2. The value of all prizes and awards offered to winning
 22 players is established and made known to the players in advance
 23 of the contest;

24 3. All winning outcomes reflect the relative knowledge and
 25 skill of the players and are determined predominantly by
 26 accumulated statistical results of the performance of

27 individuals, including athletes in the case of sporting events;
 28 and

29 4. Winning outcomes are not based on the score, point
 30 spread, or any performance of any single actual sports team or
 31 combination of such teams or solely on any single performance of
 32 an individual athlete in any single actual sporting event.

33 (c) "Fantasy contest operator" means a person or entity
 34 that offers fantasy contests for a cash prize to the general
 35 public.

36 (d) "Fantasy contest player" or "player" means a person
 37 who participates in a fantasy contest offered by a fantasy
 38 contest operator.

39 (2) A fantasy contest operator offering fantasy contests
 40 in the state shall:

41 (a) Prevent employees of the fantasy contest operator, and
 42 relatives living in the same household as such employees, from
 43 competing in all fantasy contests offered by any fantasy contest
 44 operator in which the operator offers a cash prize of more than
 45 \$5;

46 (b) Verify that a fantasy contest player is 18 years of
 47 age or older;

48 (c) Restrict a person from entering a fantasy contest that
 49 is determined, in whole or in part, on the accumulated
 50 statistical results of a team of individuals in a fantasy
 51 contest in which he or she is a player;

52 (d) Allow a person to restrict himself or herself from

53 entering a fantasy contest upon request and provide reasonable
 54 steps to prevent the person from entering the operator's fantasy
 55 contests;

56 (e) Disclose the number of entries that a fantasy contest
 57 player may submit to each fantasy contest and provide reasonable
 58 steps to prevent players from submitting more than the allowable
 59 number;

60 (f) Segregate fantasy contest player funds from
 61 operational funds and maintain a reserve in the form of cash,
 62 cash equivalents, an irrevocable letter of credit, a bond, or a
 63 combination thereof, in the amount of the deposits made to the
 64 accounts of fantasy contest players for the benefit and
 65 protection of the funds held in such accounts; and

66 (g) Contract with a third party to annually perform an
 67 independent audit to ensure compliance with this section and
 68 submit the results of such audit to the department.

69 (3) A person, firm, corporation, association, agent, or
 70 employee who violates this section is subject to a civil penalty
 71 of not more than \$1,000 for each violation, which shall accrue
 72 to the state and may be recovered in a civil action brought by
 73 the department.

74 (4) Chapter 849 does not apply to a fantasy contest as
 75 defined in this section.

76 Section 2. This act shall take effect July 1, 2016.

BUSINESS & PROFESSIONS SUBCOMMITTEE
HB 707, by Rep. Gaetz
Fantasy Contests

AMENDMENT SUMMARY
January 12, 2016

Amendment 1, by Rep. Gaetz (strike-all): The strike-all makes the following changes to the bill:

- Defines the term "confidential information" to mean information related to fantasy contests which is obtained solely as a result of a person's employment with a contest operator;
- Revises the definition of fantasy contest to require that the membership of the fantasy or simulation sports team not be based on the current membership of an actual amateur or professional sports team;
- Clarifies that athletes or players chosen as part of a fantasy contest team must be human;
- Revises the definition of the term "contest operator" to specify that contests must be offered by such operator to 750 or more members of the public per year in order to qualify as a "contest operator";
- Requires the contest operator to register with the Department of Agriculture and Consumer Services and pay a registration fee to operate in the state;
- Prohibits game officials from participating in fantasy contests;
- Prohibits employees from sharing confidential information that could affect fantasy contest play until the information is publicly available;
- Requires that the annual audit be done in compliance with specified accounting principles; and
- Provides an exemption for persons or entities that offer fantasy contests to fewer than 750 members of the public per year from regulation under chapter 849 and the registration fee.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

Committee/Subcommittee hearing bill: Business & Professions
Subcommittee

Representative Gaetz offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:
Section 1. Section 501.935, Florida Statutes, is created
to read:

501.935 Fantasy contests.-

(1) DEFINITIONS.-As used in this section, the term:

(a) "Confidential information" means information related
to the playing of fantasy contests by contest participants which
is obtained solely as a result of a person's employment with or
work as an agent for a contest operator.

(b) "Department" means the Department of Agriculture and
Consumer Services.



Amendment No. 1

17 (c) "Fantasy contest" means a fantasy or simulation sports
18 game or contest where the contest participant manages and owns a
19 fantasy or simulation sports team made up of athletes or players
20 that are members of an amateur or professional sports
21 organization and that meets the following conditions:

22 1. The membership of the fantasy or simulation sports team
23 is not based on the current membership of an actual team that is
24 a member of an amateur or professional sports organization.

25 2. The value of all prizes and awards offered to winning
26 contest participants is established and made known to the
27 contest participants in advance of the fantasy contest.

28 3. All winning outcomes reflect the relative knowledge and
29 skill of contest participants and are determined predominantly
30 by accumulated statistical results of the performance of human
31 athletes or players in a sporting event or game.

32 4. A winning outcome is not based on the score, point
33 spread, or performance of a single actual team or combination of
34 such teams or on any single performance of a single human
35 athlete or player in a single event.

36 (d) "Contest operator" means a person or an entity that
37 offers fantasy contests for a cash prize to 750 or more members
38 of the public per year.

39 (e) "Contest participant" means a person who participates
40 in a fantasy contest offered by a contest operator.

41 (2) CONSUMER PROTECTION.-



Amendment No. 1

42 (a) A contest operator offering fantasy contests in this
43 state must register with the department. The initial
44 registration fee is \$500,000 and the annual renewal fee is
45 \$100,000.

46 (b) A contest operator offering fantasy contests in this
47 state must implement procedures that are intended to:

48 1. Prevent employees or relatives living in the same
49 household as any contest operator or employee of a contest
50 operator from competing in a fantasy contest in which the
51 contest cash prize is over \$5.

52 2. Prohibit the contest operator from being a contest
53 participant in a fantasy contest that he or she offers.

54 3. Prevent the employees or agents of the contest operator
55 from sharing confidential information that could affect fantasy
56 contest play with third parties until the information is made
57 publicly available.

58 4. Verify that a contest participant is 18 years of age or
59 older.

60 5. Restrict an individual who is a player, game official,
61 or other participant in a real-world game or competition from
62 participating in a fantasy contest that is determined in whole
63 or in part on the performance of that individual, the
64 individual's real-world team, or the accumulated statistical
65 results of the sport or competition in which he or she is a
66 player, game official, or other participant.



Amendment No. 1

67 6. Allow individuals to restrict or prevent their own
68 access to a fantasy contest and take reasonable steps to prevent
69 those individuals from entering a fantasy contest.

70 7. Disclose the number of fantasy contests a single
71 contest participant may enter and take reasonable steps to
72 prevent contest participants from entering more than the
73 allowable number of fantasy contests.

74 8. Segregate contest participants' funds from operational
75 funds and maintain a reserve in the form of cash, cash
76 equivalents, an irrevocable letter of credit, a bond, or a
77 combination thereof in the total amount of deposits in contest
78 participant accounts for the benefit and protection of
79 authorized contest participants' funds held in fantasy contest
80 accounts.

81 (c) A contest operator offering fantasy contests in this
82 state must annually contract with a third party to perform an
83 independent audit, consistent with the standards established by
84 the Public Company Accounting Oversight Board, to ensure
85 compliance with this chapter. The contest operator must submit
86 the results of the independent audit to the department.

87 (3) PENALTIES.—A contest operator, or an employee or agent
88 thereof, who violates this chapter is subject to a civil penalty
89 not to exceed \$1,000 for each violation, which shall accrue to
90 the state and may be recovered in a civil action brought by the
91 department.

92 (4) EXEMPTIONS.—



Amendment No. 1

93 (a) Fantasy contests are exempt from regulation under
94 chapter 849.

95 (b) A person or entity that offers fantasy contests to
96 fewer than 750 members of the public per year is not considered
97 a contest operator and is exempt from regulation under chapter
98 849 and subsection (2) of this section.

99 (5) ADMINISTRATION.--The department is authorized to adopt
100 rules for the administration of this section.

101

102

103

T I T L E A M E N D M E N T

104

Remove everything before the enacting clause and insert:

105

A bill to be entitled

106

An act relating to fantasy contests; creating s.

107

501.935, F.S.; providing definitions; providing

108

requirements for the operation of fantasy contests;

109

providing penalties; specifying that chapter 849, F.S.,

110

relating to gambling offenses, does not apply to fantasy

111

contests; providing that persons or entities that offer

112

fantasy contests in specified circumstances are not

113

considered contest operators and are exempt from certain

114

regulations; providing rulemaking authority; providing

115

an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 805 Motor Fuels
SPONSOR(S): Avila and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 906

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee		Butler	BSB Anstead <i>ja</i>
2) Agriculture & Natural Resources Appropriations Subcommittee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

Following the Arab Oil Embargo of 1973, and the subsequent federal price control and allocation restrictions of liquid petroleum (also known as gasoline or a motor fuel), petroleum refiners and producers were accused of unfairly distributing the limited supply of motor fuel to their own retail operations over the retail operations of franchisees.

In response to these accusations, several states, including Florida, passed restrictions on the ownership of retail assets by petroleum refiners and producers. This practice, known as "divorcement," prevents the vertical integration of petroleum suppliers and petroleum retailers, and prevents petroleum refiners from selling directly to customers.

Although originally passed in 1974, due to uncertainty over the constitutionality of petroleum divorcement, Florida's petroleum divorcement law was never actually enforced before it was repealed in 1985.

The bill would reinstate the "divorcement" of petroleum refiner and retail operations and provides that a producer, refiner, or a subsidiary of any producer or refiner may not operate a retail outlet selling petroleum products under its own brand or a secondary brand name. The bill requires any producer, refiner, or any subsidiary to come into compliance with this mandate by October 1, 2016.

The bill amends the definition of "refiner," to mean "any person engaged in the refining of crude oil to produce motor fuel and includes any affiliate of such person."

The bill has an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Motor Fuel and Liquid Petroleum Gasoline Regulation

Petroleum Marketing Practices Act

The Petroleum Marketing Practices Act (PMPA) regulates the contracts between gasoline refiners or distributors and their retailers by prohibiting, with some exceptions, franchisors terminating or failing to renew a franchise.¹ The PMPA is intended to protect distributors and retailers, and preempts state and local laws related to the termination or non-renewal of a franchise.

Motor Fuel Marketing Practices Act

The Motor Fuel Marketing Practices Act, ss. 526.301 through 526.313, F.S., and the rest of ch. 526, F.S., (collectively referred to as “the Act”) regulate the motor fuel and liquid petroleum industries to encourage fair and healthy competition in the marketing of motor fuel and discourage certain predatory, discriminatory, and unfair marketing practices which impair competition. As part of the Act and subject to certain exceptions, it is unlawful to resell motor fuel below the “acquisition cost” of the motor fuel, where the effect is to injure competition.²

The Florida Department of Agriculture and Consumer Services (Department) is charged by the Act to investigate any complaints of unfair and anticompetitive business practices that are restricted by the Act. The Department may impose civil sanctions for violations of the Act.

The Act also provides a private cause of action for persons injured as a result of an act or practice that violates the Act. A person can pursue declarative and injunctive relief for violations, and a person that proves actual damages as a result of a violation of the act may recover treble damages.

1973 Arab Oil Embargo Crisis and Divorcement

Beginning in October 1973, several members of the Organization of the Petroleum Exporting Countries (OPEC), proclaimed an oil embargo in response to American involvement in the 1973 Yom Kippur War.³ During the crisis, suspicions arose that major refiners were holding back on providing gas to affiliate and franchised stations and giving preference of their limited supply to refiner owned stations.⁴

In response to these suspicions and federal price control and allocation regulations, the Legislature passed restrictions on refiners of petroleum products that severely reduced the number of retail locations a refiner could own and operate, codified as s. 526.151, F.S.⁵ This practice, commonly referred to as “divorcement,” restricts vertical integration within the industry and forces entities currently operating as a refiner and a retailer to separate, or divorce, the ownership and operation of the retail and refiner aspects of the organization.

¹ 15 U.S.C. §§ 2801 to 2807 (2012).

² s. 526.304, F.S., (subsection (1)(a) restricts a refiner from selling motor fuel below the refiner’s cost and subsection (1)(b) restricts and nonrefiner from selling motor fuel below nonrefiner cost).

³ NELSON INSTITUTE CENTER FOR CULTURE, HISTORY, AND ENVIRONMENT, *A CHE Primer on Energy: Responding to Crisis*, <http://nelson.wisc.edu/che/events/place-based-workshops/2010/project/energy-perspectives/crisis.php> (last visited Jan. 6, 2016).

⁴ Al Hall, *Gasoline divorce law still meets opposition*, GAINESVILLE SUN, Feb. 13, 1985, at 5D (archived on GoogleNews at <https://news.google.com/newspapers?id=njtWAAAIBAJ&sjid=mekDAAAIBAJ&pg=6650%2C4404852>).

⁵ Ch. 74-387, Laws of Fla., codified as s. 526.151, F.S., and subsequently repealed by Ch. 85-74, Laws of Fla.

Petroleum divorcement was ruled unconstitutional under the United States Constitution by a Florida circuit court in 1975;⁶ however, after a similar law related to petroleum divorcement from Maryland was upheld as constitutional by the U.S. Supreme Court in 1978,⁷ Florida's First District Court of Appeal reversed the earlier circuit court decision and certified several questions of the constitutionality of petroleum divorcement under the Florida and U.S. Constitution to the Florida Supreme Court in 1984.⁸ Prior to the Florida Supreme Court considering the certified questions, the Florida Legislature repealed the petroleum divorcement statute in 1985, rendering the questions moot.⁹

Ownership Structure of Retail Locations in Florida

Currently in Florida, the majority of gasoline stations are independently owned and operated by nonrefiners.¹⁰ One notable exception is the Marathon Petroleum Corporation, whose wholly owned subsidiary Speedway LLC recently completed a \$2.6 billion acquisition of Hess's retail locations, including 248 in Florida.¹¹ Marathon finished converting the former Hess locations in Florida to their Speedway brand in 2015.¹²

Effect of the Bill

The bill amends the definition of "refiner" in s. 526.303, F.S., to mean "any person engaged in the refining of crude oil to produce motor fuel and includes any affiliate of such person."

The bill prohibits a producer, refiner, or a subsidiary of any producer or refiner from operating a retail outlet selling its petroleum products under its own brand or a secondary brand name. The bill requires any producer, refiner, or any subsidiary to come into compliance with this mandate by October 1, 2016.

B. SECTION DIRECTORY:

Section 1 amends s. 526.303, F.S., revising the definition of "refiner."

Section 2 amends s. 526.304, F.S., providing that a producer, refiner, or subsidiary may not operate a retail outlet for petroleum products after October 1, 2016.

Section 3 and **Section 4** reenact ss. 526.311 & 526.312, F.S., confirming cross references.

Section 5 provides and effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

⁶ See State ex rel. Gas Kwick, Inc. v. Conner, 453 So. 2d 863, 864 (Fla. 1d DCA 1984) (stating that the decision declaring s. 526.151, F.S. unconstitutional in *Exxon Corporation, Shell Oil Company, Union Oil Company of California, and Phillips Petroleum Company v. Conner*, Cases No. 74-1449, 74-1577, and 74-1772, Circuit Court of the Second Judicial Circuit in and for Leon County [January 23, 1975] was unreported and never appealed).

⁷ *Exxon Corp. v. Governor of Maryland*, 437 U.S. 117, 120-21 (1978).

⁸ *Gas Kwick, Inc.*, 453 So. 2d at 864.

⁹ Ch. 85-74, Laws of Fla.

¹⁰ Testimony of Max Alvarez, Retail Gasoline Station Owner, at the Senate Appropriations Subcommittee on Transportation, Tourism, and Economic Development Subcommittee Meeting (April 4, 2015).

¹¹ Susan Salisbury, *Marathon stations on the increase; Hess brand is gone*, PALM BEACH POST, (Aug 5, 2015), <http://www.palmbeachpost.com/news/business/marathon-stations-on-the-increase-hess-brand-is-go/nnDYZ/>.

¹² *Id.*

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Industry Effect of Divorcement

Marathon Petroleum, owners of Speedway, LCC, claim that should this bill become law, their operations in Florida would be adversely effected. Marathon acquired the retail locations of Hess Corporation in Florida in 2014, and has spent the last two years converting the former Hess locations to Speedway locations. Should this bill become law, Marathon would be forced to either sell or close their company-owned 248 Speedway retail locations in Florida by October 1, 2016, which employ 2,454 employees statewide.¹³

Several states have explored divorcement of retail and refiner operations in the motor fuel industry, including Virginia and Maryland.¹⁴ Several economists argue that divorcement in the motor fuel market has reduced choice among consumers and had the effect of raising the price of gas in markets that have divorcement legislation.¹⁵ Proponents for petroleum divorcement argue that the economic inefficiencies created by divorcement are necessary to protect small businesses.

Michael Vita, the former Deputy Assistant Director of the Bureau of Economics for the Federal Trade Commission (FTC), noted that "divorcement regulations raise the price of gasoline by about 2.7¢ per gallon," and found that while in some cases preventing vertical integration can result in efficiency by preventing anticompetitive practices, empirical evidence of the effect of gasoline divorcement legislation fails to show such policies lower prices.¹⁶ A recent FTC advisory opinion stated that bans and restrictions on vertical integration and "direct-to-consumer sales" of motor fuel are likely anticompetitive and harmful to consumers.¹⁷

D. FISCAL COMMENTS:

None.

¹³ Email from Nancy Stewart, Representative for Marathon Petroleum, [EXTERNAL] Marathon Statistics and Figures (Jan. 6, 2016) (on file with the Business and Professions Subcommittee).

¹⁴ Michael G. Vita, *Regulatory Restrictions on Vertical Integration and Control: The Competitive Impact of Gasoline Divorcement Policies*, 18 J. Reg. Econ. 217-33 (2000). [hereinafter Vita Study]

¹⁵ See generally Asher A. Blass & Dennis W. Carlton, *The Choice of Organizational Form in Gasoline Retailing and the Cost of Laws That Limit That Choice*, 44 J.L. & Econ. 511, 524 (2001) (indicating that "a policy of divorcement is likely to impose significant costs on society.")

¹⁶ Vita Study, *supra* note 14, at 22.

¹⁷ Federal Trade Commission, *Staff Advisory Opinion to Rep. Michael J. Colona*, archived at 2014 WL 2109057 (May 15, 2014) (stating that a "ban on direct-to-consumer sales by motor vehicle franchisors is very likely anticompetitive and harmful to consumers ... [and] arguments that have been offered in its defense appear to be contrary to a significant body of economic study and FTC experience.")

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

Petroleum divorcement was ruled unconstitutional under the United States Constitution by a Florida circuit court in 1975;¹⁸ however, after a similar law related to petroleum divorcement from Maryland was upheld as constitutional by the U.S. Supreme Court in 1978,¹⁹ Florida's First District Court of Appeal reversed the earlier circuit court decision and certified several questions of the constitutionality of petroleum divorcement under the Florida and U.S. Constitution to the Florida Supreme Court in 1984.²⁰ Prior to the Florida Supreme Court considering the certified questions, the Florida Legislature repealed the petroleum divorcement statute in 1985, rendering the questions moot.²¹

The Florida Supreme Court has not addressed the issue of petroleum divorcement under the U.S. or Florida Constitutions.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

¹⁸ See *Gas Kwick, Inc.*, 453 So. 2d at 864 (stating that the decision declaring s. 526.151, F.S., unconstitutional in *Exxon Corporation, Shell Oil Company, Union Oil Company of California, and Phillips Petroleum Company v. Conner*, Cases No. 74-1449, 74-1577, and 74-1772, Circuit Court of the Second Judicial Circuit in and for Leon County [January 23, 1975] was unreported and never appealed).

¹⁹ *Exxon*, 437 U.S. at 120-21.

²⁰ *Gas Kwick, Inc.*, 453 So. 2d at 864.

²¹ Ch. 85-74, Laws of Fla.

1 A bill to be entitled
2 An act relating to motor fuels; amending s. 526.303,
3 F.S.; revising the definition of the term "refiner";
4 amending s. 526.304, F.S.; prohibiting a producer,
5 refiner, or subsidiary after a specified time from
6 operating certain retail outlets selling its petroleum
7 products under certain circumstances; reenacting s.
8 526.311(1), F.S., relating to enforcement, civil
9 penalties, and injunctive relief; reenacting s.
10 526.312(1), F.S., relating to enforcement, private
11 actions, and injunctive relief; providing an effective
12 date.

13
14 Be It Enacted by the Legislature of the State of Florida:
15

16 Section 1. Subsection (10) of section 526.303, Florida
17 Statutes, is amended to read:

18 526.303 Definitions.—As used in this act:

19 (10) "Refiner" means any person engaged in the refining of
20 crude oil to produce motor fuel and includes any affiliate of
21 such person ~~who stores or exchanges motor fuel at a terminal~~
22 ~~facility in this state and who sells or transfers motor fuel~~
23 ~~through the loading rack at such terminal facility, and includes~~
24 ~~an affiliate of such refiner with respect to such affiliate's~~
25 ~~sale of motor fuel.~~

26 Section 2. Subsection (4) is added to section 526.304,

27 Florida Statutes, to read:

28 526.304 Predatory practices unlawful; exceptions.—

29 (4) After October 1, 2016, a producer, refiner, or a
 30 subsidiary of any producer or refiner may not operate, using its
 31 company personnel, a retail outlet selling its petroleum
 32 products under its own brand or a secondary brand name.

33 Section 3. For the purpose of incorporating the amendment
 34 made by this act to section 526.304, Florida Statutes, in a
 35 reference thereto, subsection (1) of section 526.311, Florida
 36 Statutes, is reenacted to read:

37 526.311 Enforcement; civil penalties; injunctive relief.—

38 (1) A person who knowingly violates this act shall be
 39 subject to a civil penalty in the Class III category pursuant to
 40 s. 570.971 for each violation. Each day that a violation of this
 41 act occurs shall be considered a separate violation, but the
 42 civil penalty may not exceed \$250,000. Such a person shall also
 43 be liable for attorney fees and shall be subject to an action
 44 for injunctive relief.

45 Section 4. For the purpose of incorporating the amendment
 46 made by this act to section 526.304, Florida Statutes, in a
 47 reference thereto, subsection (1) of section 526.312, Florida
 48 Statutes, is reenacted to read:

49 526.312 Enforcement; private actions; injunctive relief.—

50 (1) Any person injured as a result of an act or practice
 51 which violates this act may bring a civil action for appropriate
 52 relief, including an action for a declaratory judgment,

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53 | injunctive relief, and actual damages.

54 | Section 5. This act shall take effect July 1, 2016.