

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Commerce and Tourism Committee

BILL: CS/SB 1916

INTRODUCER: Commerce and Tourism Committee and Senator Detert

SUBJECT: Department of Agriculture and Consumer Services

DATE: March 29, 2011 **REVISED:** _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------|----------------|-----------|--------|
| 1. | McCarthy | Cooper | CM | Fav/CS |
| 2. | _____ | _____ | BC | _____ |
| 3. | _____ | _____ | _____ | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

This CS (the bill), filed at the request of the Department of Agriculture and Consumer Services (DACS), addresses a variety of issues. The significant changes include:

- Changing the name of the Division of Consumer Services to the Division of Consumer Protection;
- Deleting the authority for DACS to enforce the prohibition against unconscionable prices relating to the rental or sale of essential commodities during a declared state of emergency (also known as the statutory “Price Gouging” restriction); and
- Transferring DACS responsibilities under the Motor Vehicle Warranty Enforcement Act (or “Lemon Law”) to the Attorney General.

As it relates to citizenship and residency qualifications for all licenses for security guard, private investigator, and recovery agents the bill requires:

- Applicants for an armed security guard or firearms instructor license must be a U.S. citizen or permanent legal resident alien, and provide proof that the applicant (permanent

- resident alien) has resided in the state of residence shown on the application for at least 90 consecutive days before the date the application is submitted; and
- Applicants for a security guard, private investigator, or recovery agent to be a U.S. citizen, permanent resident alien, or submit proof of current employment authorization issued by the United States Citizenship and Immigration Services.

The bill extends the Class “K” firearms instructor license period, from 2 to 3 years.

Consistent with other licensing and registration provisions in ch. 501, F.S., this bill removes the requirement to provide a social security number for licenses and registration through DACS, consistent with the restrictions imposed by the Federal Privacy Act. In lieu of a social security number, the bill requires commercial telephone sellers (s. 501.605, F.S.) and telemarketing salespersons (s. 501.607, F.S.), to provide “other valid form of identification.”

This bill also deletes the requirement that the seller of a business opportunity, registered under ch. 559, F.S., provide the social security numbers of the seller’s agents to DACS.

As to miscellaneous provisions relating to licenses for security guard, private investigator and recovery agents, the bill makes technical, minor and conforming changes to the current law.

This bill substantially amends the following sections of the Florida Statutes: 14.26, 20.14, 213.053, 320.275, 320.90, 366.85, 493.6105, 493.6106, 493.6107, 493.6108, 493.6111, 493.6113, 493.6115, 493.6118, 493.6121, 493.6202, 493.6203, 493.6302, 493.6303, 493.6304, 493.6401, 493.6402, 493.6406, 496.404, 496.411, 496.412, 496.419, 501.015, 501.017, 501.145, 501.160, 501.605, 501.607, 539.001, 559.805, 559.904, 559.928, 559.935, 570.29, 570.544, 681.102, 681.103, 681.108, 681.109, 681.1095, 681.1096, 681.112, 681.117, and 849.0915.

II. Present Situation:

Price Gouging Statute

Chapter 501, F.S., governs the rental or sale of essential commodities during a declared state of emergency; prohibition against unconscionable prices also known as price gouging. This statute requires DACS, the office of the state attorney, or the Department of Legal Affairs to enforce the provisions of this section.¹

Lemon Law Statute

Section 681.10, F.S., is the Florida “Motor Vehicle Warranty Enforcement Act.” The intent of this act is that a good faith motor vehicle warranty complaint by a consumer be resolved by the manufacturer within a specified period of time; however, it is not the intent of the Legislature that a consumer establish the presumption of a reasonable number of attempts as to each manufacturer that provides a warranty directly to the consumer. The act provides the statutory procedures whereby a consumer may receive a replacement motor vehicle, or a full refund, for a

¹ Section 501.160(8), F.S.

motor vehicle which cannot be brought into conformity with the warranty provided for in this chapter.²

Private Security, Private Investigative, and Recovery Services

The Division of Licensing of the Department of Agriculture and Consumer Services is responsible for the regulation of licensing of private security, private investigative and recovery services, and firearms instructors as well as the agencies and schools who provide training for these groups.³

A **security officer** is defined as:

any individual who, for consideration, advertises as providing or performs bodyguard services or otherwise guards persons or property; attempts to prevent theft or unlawful taking of goods, wares, and merchandise; or attempts to prevent the misappropriation or concealment of goods, wares or merchandise, money, bonds, stocks, choses in action, notes, or other documents, papers, and articles of value or procurement of the return thereof. The term also includes armored car personnel and those personnel engaged in the transportation of prisoners.⁴

A “**private investigator**” is defined as “any individual who, for consideration, advertises as providing or performs private investigation.”⁵ Private investigation is defined as an investigation to obtain information on any of the following matters:

- Crime or wrongs done or threatened against the United States or any state or territory of the United States, when operating under express written authority of the governmental official responsible for authorizing such investigation.
- The identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation, or character of any society, person, or group of persons.
- The credibility of witnesses or other persons.
- The whereabouts of missing persons, owners of unclaimed property or escheated property, or heirs to estates.
- The location or recovery of lost or stolen property.
- The causes and origin of, or responsibility for, fires, libels, slanders, losses, accidents, damage, or injuries to real or personal property.
- The business of securing evidence to be used before investigating committees or boards of award or arbitration or in the trial of civil or criminal cases and the preparation therefore.⁶

² Section 681.101, F.S.

³ Chapter 493, F.S. Regulating private investigative, private security, and recovery industries was assigned to the Department of State in 1965. In 2002, the Division of Licensing of the Department of State was transferred to the Department of Agriculture and Consumer Services, including the Concealed Weapons Permit Program. See ss. 1, 3-10, ch. 2002-295, L.O.F.

⁴ Section 493.6101(19), F.S.

⁵ Section 493.6101(16), F.S.

⁶ Section 493.6101(17), F.S.

A “**recovery agent**” is defined as “any individual who, for consideration, advertises as providing or performs repossessions.”⁷ “Recovery agency” is defined as “any person who, for consideration, advertises as providing or is engaged in the business of performing repossessions.”⁸ “Repossession” means recovery of motor vehicles, motor boats, airplanes, personal watercraft, all-terrain vehicles, farm equipment, industrial equipment, and motor homes:

“...by an individual who is authorized by the legal owner, lienholder, or lessor to recover, or to collect money payment in lieu of recovery of, that which has been sold or leased under a security agreement that contains a repossession clause.”⁹

Certain individuals are exempt from the licensing requirements for private security and private investigative services. These include local, state, and federal law enforcement officers, licensed insurance investigators and individuals solely, exclusively, and regularly employed as unarmed investigators and security officers “in connection with the business of his or her employer, when there exists an employer-employee relationship.”¹⁰

Florida law establishes criteria for granting licenses for security, private investigative, and repossession services. Individuals seeking a license must clear a criminal background check as well as meet specific training and experience requirements, which vary by the type of license. In addition, the applicant must:

- Be at least 18 years of age;
- Be of good moral character;
- Not be adjudicated incapacitated;
- Not be a chronic and habitual user of alcoholic beverages to the extent normal facilities are impaired;
- Not have been committed for abuse of controlled substances or found guilty of a crime under ch. 893, F.S.; and
- Be a citizen or legal resident alien of the U.S or have been granted authorization to seek employment in this country by the United States Bureau of Citizenship and Immigration Services.¹¹

Aliens

A Permanent Resident Alien is an alien admitted to the United States as a lawful permanent resident. Permanent residents are also commonly referred to as immigrants; however, the Immigration and Nationality Act (INA) broadly defines an immigrant as any alien in the United States, except one legally admitted under specific nonimmigrant categories.¹² An illegal alien who entered the United States without inspection, for example, would be strictly defined as an immigrant under the INA but is not a permanent resident alien.¹³

⁷ Section 493.6101(21), F.S.

⁸ Section 493.6101(20), F.S.

⁹ Section 493.6101(22), F.S.

¹⁰ Section 493.6102(1)-(4), F.S.

¹¹ Section 493.6106(1), F.S.

¹² INA section 101(a)(15)

¹³ See <http://www.visaportal.com/glossary/term.asp?id=45>.

Non-permanent resident aliens are citizens of another country who reside in the U.S. under a Conditional Resident Alien Card, Temporary Resident Card, work visa, student visa or some other permit for some specified period of time.

However, there are more than 75 classifications of nonimmigrant visas – each based on the reason for entering the United States and having different terms of admission. The U. S. Citizenship and Immigration Services data further indicates that in 2004, the United States received almost 173 million nonimmigrant visits.¹⁴

License Classifications

Chapter 493, F.S., provides for the following classification of licenses issued by the Division of Licensing of DACS:¹⁵

| | |
|--|--------------------------------------|
| PRIVATE INVESTIGATION | |
| Agency | Class “A” |
| Private Investigator | Class “C” |
| Armed Private Investigator | Class “C” & Class “G” |
| Branch Office | Class “AA” |
| Manager | Class “C” or Class “MA” or Class “M” |
| Intern | Class “CC” |
| PRIVATE SECURITY | |
| Agency | Class “B” |
| Security Officer | Class “D” |
| Armed Security Officer | Class “D” & Class “G” |
| Branch Office | Class “BB” |
| Manager | Class “MB” or Class “M” |
| REPOSSESSION ACTIVITY | |
| Agency | Class “R” |
| Recovery Agent | Class “E” |
| Branch Office | Class “RR” |
| Manager | Class “MR” or Class “E” |
| Intern | Class “EE” |
| COMBINED PRIVATE INVESTIGATION AND SECURITY | |
| Agency | Class “A” & Class “B” |
| Branch Office | Class “AB” |
| Manager | Class “M” |
| SCHOOLS | |
| Security Officer School or Training Facility | Class “DS” |
| Security Officer Instructor | Class “DI” |
| Recovery Agent School or Training Facility | Class “RS” |
| Recovery Agent Instructor | Class “RI” |
| FIREARMS | |
| Instructor | Class “K” |
| Statewide Firearm License | Class “G” |

¹⁴ U.S. Citizenship and Immigration Services, Temporary Migration to the United States: Nonimmigrant Admissions Under U. S. Immigration Law, January 2006.

¹⁵ See. 5N-1.116(1), F.A.C.

| | |
|--|---|
| MANAGERS | |
| Private Investigative Agency or Branch | Class “C”, “MA”, or “M” |
| Private Security Agency or Branch | Class “MB” or “M” |
| Recovery Agency or Branch | Class “E” or “MR” |
| Armed Manager | Appropriate Manager’s License and Class “G” |

Class G or K Licenses

In addition to the general application requirements, applicants for a Class “G” statewide firearms license or a Class “K” firearms instructor, must satisfy minimum training criteria for firearms. However, the department can waive this requirement for a Class “K” license if the applicant can show proof that he or she is an active law enforcement officer currently certified under the Criminal Justice Standards and Training Commission or has completed the training required for that certification within the last 12 months, or if the applicant submits one of the following certificates:

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

III. Effect of Proposed Changes:

Sections 1-4, 6, 24-26, 39, 40, and 49 change references to the Division of Consumer *Services* to the Division of Consumer *Protection* with respect to the following statutes.

- Section 14.26 Citizen’s Assistance Office
- Section 20.14 Department of Agriculture and Consumer Services
- Section 213.053 Confidentiality and information sharing
- Sections 320.275 Automobile Dealers Industry Advisory Board
- Section 366.85 Responsibilities of Division of Consumer Services
- Sections 496.404, 496.412, 496.411 Solicitation of Funds
- Section 570.29, 570.544 Department of Agriculture and Consumer Services
- Section 849.0915 Referral Selling

Section 5 amends s. 320.90, F.S., to delete the requirement that DACS distribute, upon request and free of charge, a “motor vehicle consumer rights pamphlet” developed by the Department of Highway Safety and Motor Vehicles.

Section 6 (See effect of Proposed Changes, Section 1)

Section 7 amends s. 493.6105, F.S., to change application requirements for security, private investigator, or recovery licenses, and the related businesses or schools.

The section also amends current law by deleting the requirement that an application be notarized and requires that it be verified by the applicant under oath as provided in s. 92.525, F.S.

In lieu of the applicant providing his residence addresses for the 5 years immediately preceding the submission of the application, and the list of occupations over the same period, the applicant will only be required to submit their current residence address and mailing address.

Consistent with applications for other categories of licensees, this section reduces from two to one the number of photographs applicants for private investigator, private investigator intern, recovery agent, recovery agent intern, statewide firearms license (Class “C,” “CC,” “E,” “EE,” “G”), must supply with their application.

This section expands the amount of information related to previous convictions that applicants must submit for licensure. For all licenses the statement of all criminal convictions must include all criminal convictions, findings of guilt, and pleas of guilty or nolo contendere, regardless of adjudication of guilt. An applicant for a Class “G” statewide firearms license or a Class “K” firearms instructor license who is younger than 24 years of age must also include a statement regarding any finding of having committed a delinquent act in any state, territory, or country which would be a felony if committed by an adult and which is punishable by imprisonment for a term exceeding 1 year.

The section also clarifies the need for confirmation from the Florida Criminal Justice Standards and Training Commission that the applicant possesses an active firearms instructor certification if that document has been submitted by the applicant with the application.

Section 8 amends s. 493.6106, F.S., as it relates to citizenship and residency qualifications for all licenses for security guard, private investigator, and recovery agents, to include related businesses and schools, to require all applicants be either a citizen or a permanent legal resident alien of the U.S. or have appropriate authorization issued by the United States Citizenship and Immigration Services of the United States Department of Homeland Security.

A new provision is created to require individual licensees – not businesses or schools – to require applicants who are not U.S. citizens to provide proof of current employment authorization or proof that they are a permanent resident alien. These individual licenses include:

- Class “C” Private Investigator
- Class “CC” Private Investigator Intern
- Class “D” Security Officer
- Class “DI” Security Officer Instructor
- Class “E” Recovery Agent
- Class “EE” Recovery Agent Intern
- Class “M” Combined Private Investigator and Security Manager
- Class “MA” Private Investigative Agency or Branch
- Class “MB” Private Security Manager
- Class “MR” Manager Recovery Agency or Branch
- Class “RI” Recovery Agent Instructor

This section also requires applicants for a Class “G” statewide firearms license or a Class “K” firearms instructor license who are not a U.S. citizen to submit proof that he or she is deemed a permanent legal resident alien together with additional documentation establishing that he or she has resided in the state shown on the application for at least 90 consecutive days before the date that the application is submitted.

In addition, an applicant for an agency or school license who is not a U.S. citizen or permanent resident alien is required to submit documentation issued by the U.S. citizenship and Immigration Services stating that he or she is lawfully in the U.S. and is authorized to own and operate the type of agency or school for which he or she is applying.

Finally, an applicant will be denied licensure for a Class “G” statewide firearms license, or Class “K” firearms instructor license, if he or she is otherwise prohibited from purchasing or possessing a firearm under federal or state law.

Section 9 amends s. 493.6107, F.S., to allow DACS to accept personal checks or funds by electronic transfer in payment of application fees when the application is approved, except for applicants for Class “G” statewide firearms license and Class “M” manager license who must pay the fee when the application is made.

Section 10 amends s. 493.6108, F.S., to make technical corrections and adds the requirement that DACS must investigate the mental history and current mental and emotional fitness of any Class “K” firearms instructor license application before it may issue a license. It also authorizes DACS to deny a Class “K” firearms instructor license to anyone who has a history of mental illness or drug or alcohol abuse.

Section 11 amends s. 493.6111(2), F.S., to extend the license period for a Class “K” firearms instructor licensee from 2 to 3 years.

Section 12 deletes the requirement that a Class “A” or Class “R” licensee submit certification of insurance with their renewal application pursuant to s. 493.6110, F.S. This is a correction to make s. 493.6113, F.S., match the requirement in s. 493.6110, F.S.

This section also provides that each Class “K” firearms instructor licensee renewing his license must provide proof that he remains certified to provide firearms instruction.

Section 13 corrects a cross-reference in s. 493.6115, F.S., necessitated by changes made in Section 7 of the bill.

Section 14 adds paragraph (u) to subsection 493.6118(1), F.S., which establishes grounds for disciplinary action for a Class “G” statewide firearms licensee or a Class “K” firearms instructor licensee who is prohibited from purchasing or possessing a firearm by state or federal law.

Section 15 deletes s. 493.6121(6), F.S., a reference to an obsolete a program operated by Florida

Department of Law Enforcement for providing criminal history record information.

Section 16 amends s. 493.6202, F.S., to allow DACS to accept personal checks and electronic funds transfers for application fees at the time the application is approved except that the application for a Class “G” statewide firearms license, Class “C” Private Investigator, Class “CC” Private Investigator Intern, Class “M” manager, or Class “MA” manager license must pay the license fee at the time the application is made.

Section 17 amends s. 493.6203, F.S., to specify that experience in performing bodyguard services is not creditable toward the requirements to become a private investigator.

This section also requires that all professional training required for a Class “CC” Private Investigator Intern license be completed before submission of an application to the department, effective January 1, 2012. In addition, it makes provisions for those applicants who apply between the effective date of this bill and of this section.

Section 18 amends s. 493.6302, F.S., to allow for payment of application fees by personal check or electronic funds transfer at the time the application is approved except that the applicant of a Class “D” Security Officer, Class “G” statewide firearms license, Class “M,” or Class “MB” Private Security Agency or Branch license must pay the license fee at the time the application is made.

Section 19 amends s. 493.6303, F.S., to require that all professional training required for a Class “D” Security Officer license be completed before submission of an application to the department, effective January 1, 2012. In addition, it makes provisions for those applicants who apply between the effective date of this bill and of this section.

Section 20 amends s. 493.6304, F.S., to delete the requirement that an application for the security officer school be notarized and instead require that it be verified by the applicant under oath as provided in s. 92.525, F.S.

Section 21 amends s. 493.6401, F.S., to replace the term “repossessor” with “recovery agent” school or training facility, consistent with other provisions in the chapter.

Section 22 amends s. 493.6402, F.S., to replace the term “license reposessor” with “license-recovery agent,” consistent with other provisions in this section. The section is also amended to allow DACS to accept personal checks and electronic funds transfers for applications when they are approved except for a Class “E” Recovery Agent, Class “EE,” or Class “MR,” license that must pay at the time application is made.

Section 23 amends s. 493.6406, F.S., to replace the term “repossessor services” with “recovery agent services,” consistent with other provisions in the chapter. This section also deletes the requirement that an application for a recovery agent be notarized and instead requires that the application be verified by the applicant under oath as provided in s. 92.525, F.S.

Section 24 – 26 (See Effect of Proposed Changes, Section 1)

Section 27 amends s. 496.419, F.S., to change the action of DACS from “canceling” to “revoking” an exemption granted under s. 496.406, F.S., for registration relating to the solicitation of funds. This change reflects the nomenclature preferred by DACS.

Section 28 amends s. 501.015, F.S., to replace the obsolete reference to “occupational license” with “business tax receipt.”

Section 29 amends s. 501.017, F.S., relating to health studios, to clarify the size of the type to be used in the contract.

Section 30 amends s. 501.145, F.S., relating to the Bedding Label Act, to delete an unnecessary definition for “department,” which is not used in the act.

Section 31 amends s. 501.160, F.S., to delete authority for DACS to enforce the the prohibition against unconscionable prices relating to the rental or sale of essential commodities during a declared state of emergency (also known as the statutory “Price Gouging” restriction).

Section 32 amends s. 501.605, F.S., to delete a requirement that commercial telephone sellers provide their social security number to DACS as part of the application and requires instead that another valid form of identification be provided. This is consistent with other licensing and registration provisions in ch. 501, F.S.

Section 33 amends s. 501.607, F.S., to delete a requirement that a salesperson submit, as part of their application for a license, their social security number, and requires instead that another valid form of identification be provided. This is consistent with other licensing and registration provisions in ch. 501, F.S.

Section 34 amends s. 539.001, F.S., to replace the obsolete reference to “occupational license” with “business tax receipt.”

Section 35 amends s. 559.805, F.S., to clarify provisions relating to advertisements by sellers of travel, and to delete the requirement that the social security number of the registered agents of a seller of a business opportunity be on file with DACS.

Section 36 amends s. 559.904, F.S., to replace the obsolete reference to “occupational license” with “business tax receipt.”

Section 37 amends s. 559.928, F.S., to replace the obsolete reference to “occupational license” with “business tax receipt.”

Section 38 amends s. 559.935, F.S., to replace the obsolete reference to “occupational license” with “business tax receipt.”

Section 39—40 (See Effect of Proposed Changes, Section 1)

Sections 41-48, transfer DACS responsibilities for enforcement of the Motor Vehicle Warranty Enforcement Act (or Lemon Law) to the Attorney General. The following sections of the statutes

are amended to effect this change: 681.102, 681.103, 681.108, 681.109, 681.1095, 681.1096, 681.112, and 681.117 F.S.

Section 45 amends s. 681.1095, F.S., to decrease from 30 to 15 the number of days the appealing party has in which to provide a copy of the settlement or the order or judgment of the court to the department.

This section also authorizes the Department of Legal Affairs to adopt rules to administer this section.

Section 46 amends s. 681.1096, F.S., to correct a cross-reference, necessitated by changes made in Section 41 of the bill.

Section 49 (See Effect of Proposed Changes, Section 1)

Section 50 provides for an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The extension of the license period from 2 years to 3 years for a Class “K” firearms instructor license will reduce the fees generated by DACS by approximately \$5,200 in FY 11/12.¹⁶

B. Private Sector Impact:

Extends class “K” firearms instructor license period from 2 to 3 years, thereby reducing the license renewal costs to licensees.

¹⁶ DACS analysis dated March 22, 2011, on file with the Senate Commerce and Tourism Committee.

C. Government Sector Impact:

There will be a \$386,415 reduction in costs in the form salaries, benefits and expenses to DACS based upon the responsibility for the Lemon Law going entirely to the Department of Legal Affairs. There will also be a corresponding decrease in revenues in the amount of \$248,617.¹⁷

DACS will also have less administrative costs with respect to changes made to ch. 493, F.S., in that applicants will have to complete their training before they apply for a license, thus eliminating the processing of numerous suspensions that took effect by operation of law due to licensees not meeting their training requirements, as specified under current law.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

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

CS by Commerce and Tourism Committee on March 29, 2011:

The CS amends:

- s. 320.90, F.S., to delete the requirement that DACS distribute, upon request and free of charge, a “motor vehicle consumer rights pamphlet” developed by the Department of Highway Safety and Motor Vehicles;
- s. 559.928., F.S. to replace the obsolete reference to “occupational license” with “business tax receipt,” and to delete the requirement that the social security number of the registered sellers of travel be submitted to DACS on the required annual affidavit;
- s. 559.935, F.S., to replace the obsolete reference to “occupational license” with “business tax receipt”; and
- s. 570.29, F.S., to change references to the Division of Consumer *Services* to the Division of Consumer *Protection*.

B. Amendments:

None.

¹⁷ Id.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
