



Business & Professional Regulation Subcommittee

**Tuesday, February 18, 2014
1:00 PM
12 HOB**

MEETING PACKET

**Will Weatherford
Speaker**

**Debbie Mayfield
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Business & Professional Regulation Subcommittee

Start Date and Time: Tuesday, February 18, 2014 01:00 pm

End Date and Time: Tuesday, February 18, 2014 03:00 pm

Location: 12 HOB

Duration: 2.00 hrs

Consideration of the following bill(s):

HB 169 Alternative Nicotine Products by Artiles, Renuart

HB 185 Gasoline Stations by Danish

CS/HB 425 Condominiums by Civil Justice Subcommittee, Rodríguez, J.

HB 523 Applications for Concealed Weapons or Firearms Licenses by Grant

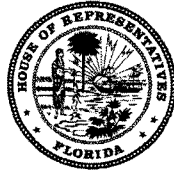
HB 525 Pub. Rec./Personal Identifying Information/License to Carry a Concealed Weapon or Firearm by Grant

HB 629 Charities by Boyd

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, February 17, 2014.

By request of the Chair, all Business & Professional Regulation Subcommittee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Monday, February 17, 2014.

NOTICE FINALIZED on 02/11/2014 16:03 by Ellinor.Martha



The Florida House of Representatives

Regulatory Affairs Committee

Business & Professional Regulation Subcommittee

Will Weatherford
Speaker

Debbie Mayfield
Chair

AGENDA

February 18, 2014
12 House Office Building
1:00 PM – 3:00 PM

- I. Call to Order & Roll Call
- II. Welcoming Remarks
- III. HB 169 by *Reps. Artilles and Renuart*
Alternative Nicotine Products
- IV. HB 185 by *Rep. Danish*
Gasoline Stations
- V. CS/HB 425 by *Civil Justice Subcommittee and Rep. J. Rodriguez*
Condominiums
- VI. HB 523 by *Rep. Grant*
Applications for Concealed Weapons or Firearms Licenses
- VII. HB 525 *Rep. Grant*
Pub. Rec./Personal Identifying Information/License to Carry a
Concealed Weapon or Firearm
- VIII. HB 629 by *Rep. Boyd*
Charities
- IX. Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 169 Alternative Nicotine Products

SPONSOR(S): Artiles and others

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professional Regulation Subcommittee		Butler BSB	Luczynski my
2) Government Operations Appropriations Subcommittee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

Electronic cigarettes (e-cigarettes) are small devices, usually shaped like cigarettes, cigars or pipes that allow users to inhale vaporized nicotine, flavor, and other chemicals, without fire, smoke, ash, or carbon dioxide.

The Center for Disease Control & Prevention estimates that the number of middle and high school students using e-cigarettes has more than doubled from 2011 to 2012. Several states have passed regulations banning the sale of e-cigarettes to minors under the age of 18.

The bill amends the current tobacco law to define and include "electronic cigarettes" as "alternative nicotine products" and to prohibit the sale or giving of "alternative nicotine products" to minors under the age of 18, a violation punishable as a second degree misdemeanor. It creates a noncriminal violation for persons under 18 years to possess, purchase, or misrepresent their age or military service to obtain alternative nicotine products in certain circumstances.

Because the bill does not require a permit to sell alternative nicotine products, certain bill provisions that apply to a tobacco permit holder (dealer) will not apply to a non-permitted e-cigarette retailer (a retailer who sells e-cigarettes, but not tobacco products).

The bill requires that holders of a retail tobacco products dealer permit issued by the Department of Business and Professional Regulation (DBPR) update their signage with signs that inform employees and the public that sale of "alternative nicotine products" is prohibited to minors under the age of 18.

The bill requires DBPR to provide updated signage to each retail tobacco products dealer at an estimated cost of \$23,000.

The bill provides an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Electronic Cigarettes

Electronic cigarettes, also known as e-cigarettes, are electronic products that allow users to inhale vaporized nicotine, flavor, and other chemicals, without fire, smoke, ash, or carbon dioxide. Electronic cigarettes are manufactured to resemble cigarettes, cigars, or pipes, but some are manufactured to resemble pens and USB memory sticks.¹

E-Cigarette vendors include retailers who also sell tobacco products, retailers who do not sell tobacco products, and Internet retailers. According to the Department of Business and Professional Regulation (DBPR or Department), there are 27,039 tobacco permit holders² in Florida; however, the number that also sell e-cigarettes is unknown. Additionally, there is no data on the number of retailers with physical or Internet stores that sell e-cigarettes, but not tobacco products.

Tobacco Regulation in Florida

DBPR licenses and regulates businesses and professionals in Florida. It is structured to include separate divisions and various professional boards responsible for carrying out DBPR's mission to license efficiently and regulate fairly. The Division of Alcoholic Beverage and Tobacco (Division) within DBPR is responsible for the enforcement of ch. 569, F.S., regulating tobacco products.

Definitions and Licensing

Section 569.002, F.S., states that the terms "dealer" and "retail tobacco products dealer" are synonymous terms that refer to "the holder of a retail tobacco products dealer permit (tobacco permit)."

Section 569.002(6), F.S., defines the term "tobacco products" to include:

[L]oose tobacco leaves, and products made from tobacco leaves, in whole or in part, and cigarette wrappers, which can be used for smoking, sniffing, or chewing.

Section 210.25(11), F.S., relating to the tax on tobacco products other than cigarettes or cigars, defines the term "tobacco products" to mean:

[L]oose tobacco suitable for smoking; snuff; snuff flour; cavendish; plug and twist tobacco; fine cuts and other chewing tobaccos; shorts; refuse scraps; clippings, cuttings, and sweepings of tobacco, and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing; but "tobacco products" does not include cigarettes, as defined by s. 210.01(1)[F.S.], or cigars.

Section 569.003, F.S., requires:

Each person, firm, association, or corporation that seeks to deal, at retail, in tobacco products within this state, or to allow a tobacco products vending machine to be located on its premises in this state, must obtain a retail tobacco

¹ *Sottera, Inc. v. Food & Drug Admin.*, 627 F.3d 891 (D.C. Cir. 2010); see also U.S. Food & Drug Administration, News & Events, What are Electronic Cigarettes?, available at <http://www.fda.gov/newsevents/publichealthfocus/ucm172906.htm> (Last visited January 23, 2014).

² Florida Department of Business and Professional Regulation, 2014 Agency Legislative Bill Analysis for SB 224 (Oct. 30, 2013) (on file with the Business & Professional Regulation Subcommittee).

products dealer permit for each place of business or the premises where tobacco products are sold.

Section 569.0075, F.S., prohibits a dealer from giving sample tobacco products to persons under the age of 18.

General Provisions, Prohibitions, and Penalties Related to Minors

Section 569.101, F.S., prohibits the sale, delivery, bartering, furnishing or giving of tobacco products to persons under the age of 18. A violation of this prohibition is a second degree misdemeanor.³ A second or subsequent violation within one year of the first violation is a first degree misdemeanor.⁴

Section 569.101(3), F.S., provides a complete defense to a person charged with a violation of this section if the buyer or recipient falsely evidenced that he or she was 18 years of age or older, a prudent person would believe the buyer or recipient to be 18 years of age or older, and the buyer or recipient presented false identification⁵ upon which the person relied upon in good faith.

Section 569.11, F.S., prohibits persons under the age of 18 from possessing, directly or indirectly, any tobacco products. A first violation of this prohibition is a non-criminal violation with a penalty of 16 hours of community service or a \$25 fine, and attendance at a school-approved anti-tobacco program, if locally available. A second violation within 12 weeks of the first violation is punishable with a \$25 fine. A third or subsequent violation within 12 weeks of the first violation requires that the person must be punished with the suspension or revocation of his or her driver's license or driving privilege, as provided in s. 322.056, F.S.

In FY 2012-13, the Department of Highway Safety and Motor Vehicles revoked the driver's license for one person and suspended the driver's license for 561 persons for underage possession of tobacco products, and suspended the driver's license for one underage person for misrepresenting the age to purchase tobacco products.⁶

Section 569.14, F.S., requires that dealers must post a clear and conspicuous sign that the sale of tobacco products is prohibited to persons under the age of 18 and that proof of age is required for purchase. The Division is required to make the signs available to retail tobacco products dealers. Retail tobacco products dealers must also have instructional material in the form of a calendar or similar format to assist in determining the age of the person attempting to purchase a tobacco product.

It is not clear whether the tobacco prohibitions for minors in current law include e-cigarettes as tobacco products. In an attempt to restrict minors' access to e-cigarettes, the Division's Internet site advises:

Electronic cigarettes containing nicotine from tobacco leaves are tobacco products regulated in the state, and that it is unlawful to sell tobacco products, including electronic cigarettes, to a person under 18 years of age.⁷

Currently, the Division's sworn law enforcement officers, as well as the non-sworn inspectors, routinely inspect tobacco permit holders for compliance with ch. 569, F.S. The Division's sworn law enforcement officers also perform what is termed "surveys," which are undercover operations with underage operatives, as a means of enforcing the prohibitions on the sale of tobacco products to persons less

³ Sections 775.082 and 775.083, F.S. (providing penalties for a misdemeanor of the second degree).

⁴ *Id.* (providing penalties for a misdemeanor of the first degree).

⁵ See s. 569.101(2)(c), F.S., (requiring carefully checking the identification presented by the buyer or recipient and acting in good faith and in reliance upon the representation and appearance of the buyer or recipient in the belief that the buyer or recipient was 18 years of age or older).

⁶ Florida Department of Highway Safety and Motor Vehicles, 2014 Agency Legislative Analysis for SB 224 (Oct. 4, 2013) (on file with the Business & Professional Regulation Subcommittee).

⁷ See Florida Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco, <http://www.myfloridalicense.com/dbpr/abt/index.html> (Last visited Jan. 24, 2013).

than 18 years of age; and the prohibition on possession of tobacco products by persons less than 18 years of age.⁸

According to the Department, for the period of January 1, 2012 through December 28, 2012, the Division performed 2,805 visits of retail tobacco dealers to determine compliance with ch. 569, F.S. These inspections resulted in 270 arrests for selling, delivering, furnishing, or giving tobacco products to persons under the age of 18. These visits also found three violations for failure to hold a valid tobacco permit.

According to the Division, 29 administrative cases were initiated against licensees for selling tobacco products to underage persons and 28 civil penalties were collected. Section 569.008(5), F.S., requires a pattern of three or more violations by the employees of the tobacco permit holder during a 180 period before a permit holder can be sanctioned for sales made by his or her employee. During this same period, the Division also cited 136 persons under the age of 18 for possession of tobacco products.

Federal Regulation of E-Cigarettes

The Federal U.S. Food and Drug Administration (FDA) is a federal agency within the Department of Health and Human Services. The FDA's organization consists of the Office of the Commissioner and four directorates overseeing the core functions of the agency: Medical Products and Tobacco; Foods; Global Regulatory Operations and Policy; and Operations.⁹ The Office of Medical Products and Tobacco provides advice and regulatory oversight to the FDA Commissioner through the centers for drug, biologics, medical devices, and tobacco products. The office also oversees the agency's special medical programs.¹⁰

Electronic cigarettes that are marketed for therapeutic purposes are regulated by the FDA Center for Drug Evaluation and Research (CDER).¹¹ The FDA Center for Tobacco Products regulates cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco.

The authority of the FDA to regulate e-cigarettes is based on the Family Smoking Prevention and Tobacco Control Act of 2009 (Tobacco Control Act).¹² Enacted on June 22, 2009, this act amended the Federal Food, Drug, and Cosmetic Act (FDCA) to authorize the FDA to regulate "tobacco products." The Tobacco Control Act defines the term "tobacco product," in part, as any product "made or derived from tobacco" that is not a "drug," "device," or combination product under the FDCA.

The Food and Drug Administration initially determined that certain e-cigarettes were both a drug and a device under the FDCA.¹³ Products that fall under the authority of the FDCA as drugs or devices must go through a preapproval process before they can be marketed or sold to the consumer. Tobacco products do not have to go through a preapproval process.

The regulatory classification of e-cigarettes as tobacco products was resolved by the United States Court of Appeals for the District of Columbia Circuit, in *Sottera, Inc. v. Food & Drug Administration*.¹⁴

⁸ Florida Department of Business and Professional Regulation, 2014 Agency Legislative Bill Analysis for SB 224 (Oct. 30, 2013) (on file with the Business & Professional Regulation Subcommittee).

⁹ See U.S. Food & Drug Administration, FDA Organization, available at <http://www.fda.gov/AboutFDA/CentersOffices/default.htm>. (Last visited Jan. 24, 2014).

¹⁰ See U.S. Food & Drug Administration, Office of Medical Products and Tobacco, available at <http://www.fda.gov/AboutFDA/CentersOffices/OfficeofMedicalProductsandTobacco/default.htm>. (Last visited Jan. 24, 2014).

¹¹ See U.S. Food & Drug Administration, News & Events, FDA Regulation of e-Cigarettes, available at <http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm172906.htm> (Last visited Jan. 24, 2014).

¹² Federal Food, Drug, and Cosmetic Act, 21 USC s. 351 et seq.

¹³ See Department of Health & Human Service, Food and Drug Administration, Letter to Matt Salmon, President of Electronic Cigarette Association, dated September 8, 2010, available at <http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/UCM225263.pdf> (Last visited October 10, 2013).

¹⁴ *Sottera, Inc. v. Food & Drug Administration*, 627 F.3d 891 (D.C. Cir. 2010).

The court determined that the FDA has the authority to regulate e-cigarettes as "tobacco products" under the Family Smoking and Tobacco Control Act of 2009¹⁵ not as drugs/devices under the FDCA.

The case involved Sottera, Inc., an importer and distributor of e-cigarettes, whose shipment of e-cigarettes had been denied entry by the FDA because, the FDA asserted, they appeared to be adulterated, misbranded, or unapproved drug-device combinations under the FDCA. The company sought an injunction to bar the FDA from denying their e-cigarettes entry into the United States and from regulating e-cigarettes under the drug-device combinations under the FDCA. The United States District Court for the District of Columbia granted the injunction and agreed that e-cigarettes were subject to regulation as tobacco products and were not subject to regulation as drugs/devices under FDCA.

On appeal, the United States Court of Appeals for the District of Columbia Circuit held that e-cigarettes and other products made or derived from tobacco should be regulated as "tobacco products," and not regulated as drugs/devices unless they are marketed for therapeutic purposes. The FDA did not appeal this decision. The FDA has stated its intent to issue a proposed rule that would extend FDA's tobacco product regulatory authority to products that meet the statutory definition of "tobacco product."¹⁶

The National Association of Attorneys General issued a letter to the commissioner of the FDA urging the FDA to immediately regulate the sale and advertising of e-cigarettes as "tobacco products." The letter was signed by 42 attorneys general, including Florida Attorney General Pam Bondi. The letter noted that e-cigarettes with fruit and candy flavors that appeal to youth and advertising have led consumers to believe that e-cigarettes are a safe alternative to cigarettes. The letter asserted that e-cigarettes are addictive, and regulatory oversight was needed to ensure the safety of e-cigarette ingredients.¹⁷

Some e-cigarettes specifically note in their marketing that e-cigarettes have not been evaluated by the Food and Drug Administration, are not intended to help people to stop smoking, and are not intended to treat, prevent or cure any disease or condition. Some retailers also assert that they voluntarily restrict sales to persons who are 18 years of age or older.

The Centers for Disease Control and Prevention reported that the number of middle school and high school students in the United States who used electronic cigarettes doubled in 2012 compared to the previous year. According to the report, nearly 1.78 million students tried e-cigarettes in 2012 nationwide.¹⁸ In Florida, 4.3 percent of middle school students and 12.1 percent of high school students have tried e-cigarettes in 2013. The number of Florida high school students who have tried e-cigarettes has increased from 6 percent in 2011 to 12.1 percent in 2013.¹⁹

¹⁵ The Family Smoking and Tobacco Control Act of 2009, Pub.L. 111-31, 123 Stat. 1776.

¹⁶ See Department of Health & Human Services, Food & Drug Administration, Unified Entry, "Tobacco Products" Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act, (Dec. 2013) available at <http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201310&RIN=0910-AG38> (Last visited Jan. 24, 2014).

¹⁷ National Association of Attorneys General, Letter to The Honorable Margaret Hamburg, Commissioner of the U.S. Food and Drug Administration (Oct. 23, 2013) available at [http://www.naag.org/assets/files/pdf/signons/E Cigarette Final Letter w Florida.pdf](http://www.naag.org/assets/files/pdf/signons/E%20Cigarette%20Final%20Letter%20w%20Florida.pdf) (Last visited Jan. 24, 2014).

¹⁸ See Centers for Disease Control & Prevention, Press Release, E-cigarette use more than doubles among U.S. middle and high school students from 2011-2012, (Sept. 5, 2012), available at <http://www.cdc.gov/media/releases/2013/p0905-ecigarette-use.html> (Last visited Jan. 24, 2013).

¹⁹ See Florida Department of Health, Press Release, New CDC Report: E-Cigarette Use Among Teens in the U.S. Doubles, available at <http://newsroom.doh.state.fl.us/wp-content/uploads/newsroom/2013/05/090613-E-Cigarette-Use-Among-Teens-Doubles.pdf> (Last visited Jan. 24, 2014).

Effect of the Bill

This bill makes amendments to ch. 569, F.S., to include e-cigarettes, labeled as “alternative nicotine products,” in the tobacco product prohibitions for persons under the age of 18.

Dealer versus Non-permitted E-Cigarette Retailer

A “dealer” is a defined term in ch. 569, F.S., referring to a person who holds a tobacco permit; whereas, a retailer that only sells alternative nicotine products or e-cigarettes and does not sell any other tobacco products does not fall under the definition of dealer. Thus the bill provisions related to “alternative nicotine products” that apply based on a person’s status as a “dealer” will not apply to persons who sell alternative nicotine products, but do not also sell tobacco products (non-permitted e-cigarette retailer).

The bill amends s. 569.002, F.S., to define “alternative nicotine product” as:

[A] product that consists of or contains nicotine that can be ingested into the body by any means, including, but not limited to, chewing, smoking, absorbing, dissolving, and inhaling. The term includes an electronic cigarette, but does not include any of the following:

1. Tobacco products.
2. A product that is a drug as defined in 21 U.S.C. s. 321(g)(1).
3. A product that is a device as defined in 21 U.S.C. s. 321(h).
4. A combination product that is a device regulated under 21 U.S.C. s. 353(g).

The bill defines “electronic cigarette” as:

[A] device or product that produces a vapor that delivers nicotine or other substances to a person inhaling from the device to simulate smoking and that is offered to or purchased by consumers as an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product.

Samples of Alternative Nicotine Products

The bill amends s. 569.0075, F.S., to prohibit a tobacco products dealer from giving sample alternative nicotine products to persons under the age of 18. This provision will not apply to a non-permitted e-cigarette retailer.

Sale of Alternative Nicotine Products

The bill amends s. 569.101(1), F.S., to prohibit the sale, delivery, bartering, furnishing or giving of alternative nicotine products by a person to a minor under the age of 18. The prohibition against selling alternative nicotine products to a minor may be enforced administratively or criminally against a dealer, which could result in the revocation of the dealer’s permit or criminal penalties. Violations of this provision can be enforced criminally against an employee of a non-permitted e-cigarette retailer, but not administratively.

Minor’s Possession of Alternative Nicotine Product or Misrepresentation of Age to a Dealer

The bill amends s. 569.11, F.S., to prohibit minors under the age of 18 from possessing an “alternative nicotine product,” and makes it unlawful for a minor to misrepresent his or her age to a tobacco dealer in order to induce the dealer, or an agent or employee of the dealer, into selling the minor a “alternative nicotine product.” This provision will not prohibit a minor from misrepresenting his or her age to a non-permitted e-cigarette retailer.

Posting Signs

The bill amends s. 569.14, F.S., to require tobacco dealers to post signs stating:

THE SALE OF TOBACCO PRODUCTS OR ALTERNATIVE NICOTINE PRODUCTS TO PERSONS UNDER THE AGE OF 18 IS AGAINST FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.

The bill also requires dealers to provide point of sale materials to assist in determining whether a person is of legal age to purchase tobacco products or alternative nicotine products that state:

IF YOU WERE BORN BEFORE THIS DATE
(insert date and applicable year)
YOU CANNOT BUY TOBACCO PRODUCTS OR ALTERNATIVE NICOTINE PRODUCTS.

These provisions related to posting signs and point of sale materials will not apply to a non-permitted e-cigarette retailer.

Enforcement

A "dealer" will be subject to administrative or criminal enforcement for violations of any provisions of ch. 569, F.S. A non-permitted e-cigarette retailer will be subject to criminal but not administrative enforcement for violations. Additionally, a retail tobacco products dealer whose permit is suspended or revoked is not prohibited from continuing to sell alternative nicotine products.

B. SECTION DIRECTORY:

Section 1 amends s. 569.002(1), F.S., to define "alternative nicotine product" and "electronic cigarette".

Section 2 amends s. 569.0075, F.S., prohibiting the gift of sample alternative nicotine products to persons younger than 18 years of age.

Section 3 amends s. 569.101, F.S., prohibiting the sale, delivery, bartering, furnishing, or giving of alternative nicotine products to persons younger than 18 years of age.

Section 4 amends s. 569.11, F.S., prohibiting a person who is younger than 18 years of age from buying, possessing, or misrepresenting his or her age to a dealer in order to buy alternative nicotine products.

Section 5 amends s. 569.14, F.S., revising the contents of signs that a dealer must display at locations where alternative nicotine products are available for purchase.

Section 6 reenacts s. 322.056, F.S., relating to mandatory driver license revocation or suspension for persons younger than 18 years of age who commit certain offenses, to incorporate changes made by the act to s. 569.11, F.S., in a reference thereto.

Section 7 provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill requires DBPR to provide new signage for all tobacco products dealers at an estimated one-time cost of \$23,000.

The bill does not require DBPR to perform additional surveys to enforce the prohibitions against the sale of e-cigarettes to minors. DBPR has indicated that one or more additional survey teams would be required to conduct surveys to help deter the sale of e-cigarettes to minors if the current level of tobacco product surveys is to be maintained. A new survey team, which consists of two law enforcement officers and one underage operative, can complete an average of 1,192 surveys per year. The estimated cost of a survey team is \$250,550 for the first year and \$176,415 for subsequent years.²⁰

The Office of State Courts Administrator indicates that any fiscal impact on expenditures of the State Courts System because of the bill is anticipated to be insignificant.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Tobacco permit holders would be required to replace their point of sale calendars that indicate the date that a person is of legal age to purchase tobacco products to new calendars that reference alternative nicotine products, unless the permit holders are using readers, scanners, or other electronic or automated systems. They would also be required to replace signage that gives notice that the sale of tobacco products to persons under the age of 18 is prohibited with signage that also references alternative nicotine products. DBPR will print and provide the required signs to all tobacco dealers at no cost to the dealer.

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:

None.

²⁰ Florida Department of Business and Professional Regulation, 2014 Agency Legislative Bill Analysis for SB 224 (Oct. 30, 2013) (on file with the Business & Professional Regulation Subcommittee).

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled

2 An act relating to alternative nicotine products;
 3 amending s. 569.002, F.S.; providing and revising
 4 definitions; amending s. 569.0075, F.S.; prohibiting
 5 the gift of sample alternative nicotine products to
 6 persons younger than 18 years of age; amending s.
 7 569.101, F.S.; prohibiting the sale, delivery,
 8 bartering, furnishing, or giving of alternative
 9 nicotine products to persons younger than 18 years of
 10 age; amending s. 569.11, F.S.; prohibiting a person
 11 who is younger than 18 years of age from buying,
 12 possessing, or misrepresenting his or her age in order
 13 to buy alternative nicotine products; amending s.
 14 569.14, F.S.; revising the contents of signs that must
 15 be displayed at locations where alternative nicotine
 16 products are available for purchase; reenacting s.
 17 322.056(2) and (3), F.S., relating to mandatory driver
 18 license revocation or suspension for persons younger
 19 than 18 years of age who commit certain offenses, to
 20 incorporate changes made by the act to s. 569.11,
 21 F.S., in a reference thereto; providing an effective
 22 date.

23
 24 Be It Enacted by the Legislature of the State of Florida:

25
 26 Section 1. Section 569.002, Florida Statutes, is amended

27 | to read:

28 | 569.002 Definitions.—

29 | (1) As used in this chapter, the term:

30 | (a) "Alternative nicotine product" means a product that
 31 | consists of or contains nicotine that can be ingested into the
 32 | body by any means, including, but not limited to, chewing,
 33 | smoking, absorbing, dissolving, and inhaling. The term includes
 34 | an electronic cigarette, but does not include any of the
 35 | following:

36 | 1. Tobacco products.

37 | 2. A product that is a drug as defined in 21 U.S.C. s.
 38 | 321(g)(1).

39 | 3. A product that is a device as defined in 21 U.S.C. s.
 40 | 321(h).

41 | 4. A combination product that is a device regulated under
 42 | 21 U.S.C. s. 353(g).

43 | ~~(1) "Dealer" is synonymous with the term "retail tobacco~~
 44 | ~~products dealer."~~

45 | ~~(b)(2)~~ "Division" means the Division of Alcoholic
 46 | Beverages and Tobacco of the Department of Business and
 47 | Professional Regulation.

48 | (c) "Electronic cigarette" means a device or product that
 49 | produces a vapor that delivers nicotine or other substances to a
 50 | person inhaling from the device to simulate smoking and that is
 51 | offered to or purchased by consumers as an electronic cigarette,
 52 | electronic cigar, electronic cigarillo, electronic pipe, or

53 other similar device or product.

54 ~~(3) "Permit" is synonymous with the term "retail tobacco~~
 55 ~~products dealer permit."~~

56 (d)(4) "Retail tobacco products dealer" or "dealer" means
 57 the holder of a retail tobacco products dealer permit.

58 (e)(5) "Retail tobacco products dealer permit" or "permit"
 59 means a permit issued by the division pursuant to s. 569.003.

60 (f)(6) "Tobacco products" includes loose tobacco leaves,
 61 and products made from tobacco leaves, in whole or in part, and
 62 cigarette wrappers, which can be used for smoking, sniffing, or
 63 chewing.

64 (2)(7) The term "Any person under the age of 18" does not
 65 include a any person under the age of 18 who:

66 (a) Has had his or her disability of nonage removed under
 67 chapter 743;

68 (b) Is in the military reserve or on active duty in the
 69 Armed Forces of the United States;

70 (c) Is otherwise emancipated by a court of competent
 71 jurisdiction and released from parental care and responsibility;
 72 or

73 (d) Is acting in his or her scope of lawful employment
 74 with an entity licensed under the provisions of chapter 210 or
 75 this chapter.

76 Section 2. Section 569.0075, Florida Statutes, is amended
 77 to read:

78 569.0075 Sample gifts of ~~Gift of sample~~ tobacco products

79 | or alternative nicotine products prohibited.—The gift of sample
 80 | tobacco products or alternative nicotine products to a ~~any~~
 81 | person under the age of 18 by an entity licensed or permitted
 82 | under ~~the provisions of~~ chapter 210 or this chapter, or by an
 83 | employee of such entity, is prohibited and is punishable as
 84 | provided in s. 569.101.

85 | Section 3. Section 569.101, Florida Statutes, is amended
 86 | to read:

87 | 569.101 Selling, delivering, bartering, furnishing, or
 88 | giving tobacco products or alternative nicotine products to
 89 | persons under 18 years of age; criminal penalties; defense.—

90 | (1) It is unlawful to sell, deliver, barter, furnish, or
 91 | give, directly or indirectly, to a ~~any~~ person who is under 18
 92 | years of age, any tobacco product or alternative nicotine
 93 | product.

94 | (2) ~~A Any~~ person who violates subsection (1) commits a
 95 | misdemeanor of the second degree, punishable as provided in s.
 96 | 775.082 or s. 775.083. However, a ~~any~~ person who violates
 97 | subsection (1) for a second or subsequent time within 1 year of
 98 | the first violation, commits a misdemeanor of the first degree,
 99 | punishable as provided in s. 775.082 or s. 775.083.

100 | (3) A person charged with a violation of subsection (1)
 101 | has a complete defense if, at the time the tobacco product or
 102 | alternative nicotine product was sold, delivered, bartered,
 103 | furnished, or given:

104 | (a) The buyer or recipient falsely evidenced that she or

105 he was 18 years of age or older;

106 (b) The appearance of the buyer or recipient was such that
 107 a prudent person would believe the buyer or recipient to be 18
 108 years of age or older; and

109 (c) Such person carefully checked a driver ~~driver's~~
 110 license or an identification card issued by this state or
 111 another state of the United States, a passport, or a United
 112 States armed services identification card presented by the buyer
 113 or recipient and acted in good faith and in reliance upon the
 114 representation and appearance of the buyer or recipient in the
 115 belief that the buyer or recipient was 18 years of age or older.

116 Section 4. Section 569.11, Florida Statutes, is amended to
 117 read:

118 569.11 Possession, misrepresenting age or military service
 119 to purchase, and purchase of tobacco products or alternative
 120 nicotine products by persons under 18 years of age prohibited;
 121 ~~penalties; jurisdiction; disposition of fines.-~~

122 (1) It is unlawful for a ~~any~~ person under 18 years of age
 123 to knowingly possess any tobacco product or alternative nicotine
 124 product. ~~A~~ ~~Any~~ person under 18 years of age who violates ~~the~~
 125 ~~provisions of~~ this subsection commits a noncriminal violation as
 126 provided in s. 775.08(3), punishable by:

127 (a) For a first violation, 16 hours of community service
 128 ~~or, instead of community service,~~ a \$25 fine. ~~In addition,~~ The
 129 person must also attend a school-approved anti-tobacco program,
 130 if locally available;

131 (b) For a second violation within 12 weeks of the first
 132 violation, a \$25 fine; or

133 (c) For a third or subsequent violation within 12 weeks of
 134 the first violation, the court must direct the Department of
 135 Highway Safety and Motor Vehicles to withhold issuance of or
 136 suspend or revoke the person's driver ~~driver's~~ license or
 137 driving privilege, as provided in s. 322.056.

138
 139 A ~~Any~~ second or subsequent violation not within the 12-week time
 140 period after the first violation is punishable as provided for a
 141 first violation.

142 (2) It is unlawful for a ~~any~~ person under 18 years of age
 143 to misrepresent his or her age or military service for the
 144 purpose of inducing a dealer or an agent or employee of the
 145 dealer to sell, give, barter, furnish, or deliver any tobacco
 146 product or alternative nicotine product, or to purchase, or
 147 attempt to purchase, any tobacco product or alternative nicotine
 148 product from a person or a vending machine. A ~~Any~~ person under
 149 18 years of age who violates ~~a provision of~~ this subsection
 150 commits a noncriminal violation as provided in s. 775.08(3),
 151 punishable by:

152 (a) For a first violation, 16 hours of community service
 153 ~~or, instead of community service,~~ a \$25 fine. ~~and, in addition,~~
 154 The person must also attend a school-approved anti-tobacco
 155 program, if available;

156 (b) For a second violation within 12 weeks of the first

157 violation, a \$25 fine; or

158 (c) For a third or subsequent violation within 12 weeks of
 159 the first violation, the court must direct the Department of
 160 Highway Safety and Motor Vehicles to withhold issuance of or
 161 suspend or revoke the person's driver ~~driver's~~ license or
 162 driving privilege, as provided in s. 322.056.

163

164 A ~~Any~~ second or subsequent violation not within the 12-week time
 165 period after the first violation is punishable as provided for a
 166 first violation.

167 (3) A ~~Any~~ person ~~under 18 years of age~~ cited for
 168 committing a noncriminal violation under this section must sign
 169 and accept a civil citation indicating a promise to appear
 170 before the county court or pay ~~comply with the requirement for~~
 171 ~~paying~~ the fine and must attend a school-approved anti-tobacco
 172 program, if locally available. If a fine is assessed for a
 173 violation of this section, the fine must be paid within 30 days
 174 after the date of the citation or, if a court appearance is
 175 mandatory, within 30 days after the date of the hearing.

176 (4) A person charged with a noncriminal violation under
 177 this section must appear before the county court or pay ~~comply~~
 178 ~~with the requirement for paying~~ the fine. The court, after a
 179 hearing, shall determine ~~make a determination as to~~ whether the
 180 noncriminal violation was committed. If the court finds the
 181 violation was committed, it shall impose an appropriate penalty
 182 as specified in subsection (1) or subsection (2). A person who

183 participates in community service is ~~shall be~~ considered an
 184 employee of the state for the purpose of chapter 440~~7~~, for the
 185 duration of such service.

186 (5)~~(a)~~ If a person ~~under 18 years of age~~ is found by the
 187 court to have committed a noncriminal violation under this
 188 section and that person has failed to:

189 (a) Complete community service, pay the fine as required
 190 by paragraph (1)(a) or paragraph (2)(a), or attend a school-
 191 approved anti-tobacco program, if locally available, the court
 192 must direct the Department of Highway Safety and Motor Vehicles
 193 to withhold issuance of or suspend the driver ~~driver's~~ license
 194 or driving privilege of that person for ~~a period of~~ 30
 195 consecutive days.

196 (b) ~~If a person under 18 years of age is found by the~~
 197 ~~court to have committed a noncriminal violation under this~~
 198 ~~section and that person has failed to~~ Pay the applicable fine as
 199 required by paragraph (1)(b) or paragraph (2)(b), the court must
 200 direct the Department of Highway Safety and Motor Vehicles to
 201 withhold issuance of or suspend the driver ~~driver's~~ license or
 202 driving privilege of that person for ~~a period of~~ 45 consecutive
 203 days.

204 (6) Eighty percent of all civil penalties received by a
 205 county court pursuant to this section shall be remitted by the
 206 clerk of the court to the Department of Revenue for transfer to
 207 the Department of Education to provide for teacher training and
 208 for research and evaluation to reduce and prevent the use of

209 tobacco products by minors ~~children~~. The remaining 20 percent of
 210 ~~civil penalties received by a county court pursuant to this~~
 211 ~~section~~ shall remain with the clerk of the county court to cover
 212 administrative costs.

213 Section 5. Section 569.14, Florida Statutes, is amended to
 214 read:

215 569.14 Posting of a sign stating that the sale of tobacco
 216 products or alternative nicotine products to persons under 18
 217 years of age is unlawful; enforcement; penalty.—

218 (1) A ~~Any~~ dealer that sells tobacco products or
 219 alternative nicotine products shall post a clear and conspicuous
 220 sign in each place of business where such products are sold
 221 which substantially states the following:

222

223 THE SALE OF TOBACCO PRODUCTS OR ALTERNATIVE NICOTINE
 224 PRODUCTS TO PERSONS UNDER THE AGE OF 18 IS AGAINST
 225 FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.

226

227 (2) The division shall make signs available to dealers of
 228 tobacco products or alternative nicotine products which ~~signs~~
 229 ~~that~~ meet the requirements of subsection (1).

230 (3) A ~~Any~~ dealer that sells tobacco products or
 231 alternative nicotine products shall provide at the checkout
 232 counter in a location clearly visible to the dealer, the
 233 dealer's agent, or employee, instructional material in a
 234 calendar format or similar format to assist in determining

235 whether a person is of legal age to purchase tobacco products or
 236 alternative nicotine products. This point of sale material must
 237 contain substantially the following language:

238

239 IF YOU WERE NOT BORN BEFORE THIS DATE

240 (insert date and applicable year)

241 YOU CANNOT BUY TOBACCO PRODUCTS OR ALTERNATIVE NICOTINE
 242 PRODUCTS.

243

244 Upon approval by the division, in lieu of a calendar, a dealer
 245 may use card readers, scanners, or other electronic or automated
 246 systems that can verify whether a person is of legal age to
 247 purchase tobacco products or alternative nicotine products.

248 Failure to comply with ~~the provisions contained in~~ this
 249 subsection shall result in ~~imposition of~~ administrative
 250 penalties as provided in s. 569.006.

251 (4) The division, ~~through its agents and inspectors,~~ shall
 252 enforce this section through its agents and inspectors.

253 (5) A ~~Any~~ person who fails to comply with subsection (1)
 254 commits is guilty of a misdemeanor of the second degree,
 255 punishable as provided in s. 775.082 or s. 775.083.

256 Section 6. For the purpose of incorporating the amendments
 257 made by this act to section 569.11, Florida Statutes, in a
 258 reference thereto, subsections (2) and (3) of section 322.056,
 259 Florida Statutes, are reenacted to read:

260 322.056 Mandatory revocation or suspension of, or delay of

261 eligibility for, driver's license for persons under age 18 found
 262 guilty of certain alcohol, drug, or tobacco offenses;
 263 prohibition.—

264 (2) If a person under 18 years of age is found by the
 265 court to have committed a noncriminal violation under s. 569.11
 266 and that person has failed to comply with the procedures
 267 established in that section by failing to fulfill community
 268 service requirements, failing to pay the applicable fine, or
 269 failing to attend a locally available school-approved anti-
 270 tobacco program, and:

271 (a) The person is eligible by reason of age for a driver's
 272 license or driving privilege, the court shall direct the
 273 department to revoke or to withhold issuance of his or her
 274 driver's license or driving privilege as follows:

- 275 1. For the first violation, for 30 days.
- 276 2. For the second violation within 12 weeks of the first
 277 violation, for 45 days.

278 (b) The person's driver's license or driving privilege is
 279 under suspension or revocation for any reason, the court shall
 280 direct the department to extend the period of suspension or
 281 revocation by an additional period as follows:

- 282 1. For the first violation, for 30 days.
- 283 2. For the second violation within 12 weeks of the first
 284 violation, for 45 days.

285 (c) The person is ineligible by reason of age for a
 286 driver's license or driving privilege, the court shall direct

287 | the department to withhold issuance of his or her driver's
 288 | license or driving privilege as follows:

- 289 | 1. For the first violation, for 30 days.
- 290 | 2. For the second violation within 12 weeks of the first
 291 | violation, for 45 days.

292 |
 293 | Any second violation of s. 569.11 not within the 12-week period
 294 | after the first violation will be treated as a first violation
 295 | and in the same manner as provided in this subsection.

296 | (3) If a person under 18 years of age is found by the
 297 | court to have committed a third violation of s. 569.11 within 12
 298 | weeks of the first violation, the court must direct the
 299 | Department of Highway Safety and Motor Vehicles to suspend or
 300 | withhold issuance of his or her driver's license or driving
 301 | privilege for 60 consecutive days. Any third violation of s.
 302 | 569.11 not within the 12-week period after the first violation
 303 | will be treated as a first violation and in the same manner as
 304 | provided in subsection (2).

305 | Section 7. This act shall take effect July 1, 2014.



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 & Professional
2 Regulation Subcommittee

3 Representative Renuart offered the following:

4
5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Subsection (8) is added to section 569.002,

8 Florida Statutes, to read:

9 569.002 Definitions.—As used in this chapter, the term:

10 (8) "Nicotine dispensing devices" mean any product that
11 can be used to deliver nicotine to an individual by inhaling
12 vaporized nicotine from the product, including, but not limited
13 to, an electronic cigarette, electronic cigar, electronic
14 cigarillo, electronic pipe, or other similar device or product
15 and any replacement nicotine cartridge for the device or
16 product.



Amendment No. 1

17 Section 2. Section 569.0075, Florida Statutes, is amended
18 to read:

19 569.0075 Gift of sample tobacco products or sample
20 nicotine dispensing devices prohibited.—The gift of sample
21 tobacco products or sample nicotine dispensing devices to any
22 person under the age of 18 by an entity licensed or permitted
23 under the provisions of chapter 210 or this chapter, or by an
24 employee of such entity, is prohibited and is punishable as
25 provided in s. 569.101.

26 Section 3. Subsections (1) and (3) of section 569.101,
27 Florida Statutes, are amended to read:

28 569.101 Selling, delivering, bartering, furnishing, or
29 giving tobacco products or nicotine dispensing devices to
30 persons under 18 years of age; criminal penalties; defense.—

31 (1) It is unlawful to sell, deliver, barter, furnish, or
32 give, directly or indirectly, to any person who is under 18
33 years of age, any tobacco product or nicotine dispensing device.

34 (3) A person charged with a violation of subsection (1)
35 has a complete defense if, at the time the tobacco product or
36 nicotine dispensing device was sold, delivered, bartered,
37 furnished, or given:

38 (a) The buyer or recipient falsely evidenced that she or
39 he was 18 years of age or older;

40 (b) The appearance of the buyer or recipient was such that
41 a prudent person would believe the buyer or recipient to be 18
42 years of age or older; and



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43 (c) Such person carefully checked a driver ~~driver's~~
44 license or an identification card issued by this state or
45 another state of the United States, a passport, or a United
46 States armed services identification card presented by the buyer
47 or recipient and acted in good faith and in reliance upon the
48 representation and appearance of the buyer or recipient in the
49 belief that the buyer or recipient was 18 years of age or older.

50 Section 4. Subsections (1), (2), (5), and (6) of section
51 569.11, Florida Statutes, are amended to read:

52 569.11 Possession, misrepresenting age or military service
53 to purchase, and purchase of tobacco products or nicotine
54 dispensing devices by persons under 18 years of age prohibited;
55 penalties; jurisdiction; disposition of fines.—

56 (1) It is unlawful for any person under 18 years of age to
57 knowingly possess any tobacco product or nicotine dispensing
58 device. Any person under 18 years of age who violates the
59 provisions of this subsection commits a noncriminal violation as
60 provided in s. 775.08(3), punishable by:

61 (a) For a first violation, 16 hours of community service
62 or, instead of community service, a \$25 fine. In addition, the
63 person must attend a school-approved anti-tobacco and nicotine
64 program, if locally available;

65 (b) For a second violation within 12 weeks of the first
66 violation, a \$25 fine; or

67 (c) For a third or subsequent violation within 12 weeks of
68 the first violation, the court must direct the Department of



Amendment No. 1

69 Highway Safety and Motor Vehicles to withhold issuance of or
70 suspend or revoke the person's driver ~~driver's~~ license or
71 driving privilege, as provided in s. 322.056.

72

73 Any second or subsequent violation not within the 12-week time
74 period after the first violation is punishable as provided for a
75 first violation.

76 (2) It is unlawful for any person under 18 years of age to
77 misrepresent his or her age or military service for the purpose
78 of inducing a dealer or an agent or employee of the dealer to
79 sell, give, barter, furnish, or deliver any tobacco product or
80 nicotine dispensing device, or to purchase, or attempt to
81 purchase, any tobacco product or nicotine dispensing device from
82 a person or a vending machine. Any person under 18 years of age
83 who violates a provision of this subsection commits a
84 noncriminal violation as provided in s. 775.08(3), punishable
85 by:

86 (a) For a first violation, 16 hours of community service
87 or, instead of community service, a \$25 fine and, in addition,
88 the person must attend a school-approved anti-tobacco and
89 nicotine program, if available;

90 (b) For a second violation within 12 weeks of the first
91 violation, a \$25 fine; or

92 (c) For a third or subsequent violation within 12 weeks of
93 the first violation, the court must direct the Department of
94 Highway Safety and Motor Vehicles to withhold issuance of or



Amendment No. 1

95 suspend or revoke the person's driver ~~driver's~~ license or
96 driving privilege, as provided in s. 322.056.

97

98 Any second or subsequent violation not within the 12-week time
99 period after the first violation is punishable as provided for a
100 first violation.

101 (5) (a) If a person under 18 years of age is found by the
102 court to have committed a noncriminal violation under this
103 section and that person has failed to complete community
104 service, pay the fine as required by paragraph (1) (a) or
105 paragraph (2) (a), or attend a school-approved anti-tobacco
106 program, if locally available, the court must direct the
107 Department of Highway Safety and Motor Vehicles to withhold
108 issuance of or suspend the driver ~~driver's~~ license or driving
109 privilege of that person for ~~a period of~~ 30 consecutive days.

110 (b) If a person under 18 years of age is found by the
111 court to have committed a noncriminal violation under this
112 section and that person has failed to pay the applicable fine as
113 required by paragraph (1) (b) or paragraph (2) (b), the court must
114 direct the Department of Highway Safety and Motor Vehicles to
115 withhold issuance of or suspend the driver ~~driver's~~ license or
116 driving privilege of that person for ~~a period of~~ 45 consecutive
117 days.

118 (6) Eighty percent of all civil penalties received by a
119 county court pursuant to this section shall be remitted by the
120 clerk of the court to the Department of Revenue for transfer to



Amendment No. 1

121 the Department of Education to provide for teacher training and
122 for research and evaluation to reduce and prevent the use of
123 tobacco products or nicotine dispensing devices by children. The
124 remaining 20 percent of civil penalties received by a county
125 court pursuant to this section shall remain with the clerk of
126 the county court to cover administrative costs.

127 Section 5. Subsections (1), (2), and (3) of section
128 569.14, Florida Statutes, are amended to read:

129 569.14 Posting of a sign stating that the sale of tobacco
130 products or nicotine dispensing devices to persons under 18
131 years of age is unlawful; enforcement; penalty.—

132 (1) Any dealer that sells tobacco products or nicotine
133 dispensing devices shall post a clear and conspicuous sign in
134 each place of business where such products are sold which
135 substantially states the following:

136
137 THE SALE OF TOBACCO PRODUCTS OR NICOTINE DISPENSING DEVICES TO
138 PERSONS UNDER THE AGE OF 18 IS AGAINST FLORIDA LAW. PROOF OF AGE
139 IS REQUIRED FOR PURCHASE.

140
141 (2) The division shall make available to dealers of
142 tobacco products or nicotine dispensing devices signs that meet
143 the requirements of subsection (1).

144 (3) Any dealer that sells tobacco products or nicotine
145 dispensing devices shall provide at the checkout counter in a
146 location clearly visible to the dealer, the dealer's agent or

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Amendment No. 1

147 employee, instructional material in a calendar format or similar
148 format to assist in determining whether a person is of legal age
149 to purchase tobacco products or nicotine dispensing devices.
150 This point of sale material must contain substantially the
151 following language:

152
153 IF YOU WERE NOT BORN BEFORE THIS DATE

154 (insert date and applicable year)

155 YOU CANNOT BUY TOBACCO PRODUCTS OR NICOTINE DISPENSING DEVICES.
156

157 Upon approval by the division, in lieu of a calendar a dealer
158 may use card readers, scanners, or other electronic or automated
159 systems that can verify whether a person is of legal age to
160 purchase tobacco products or nicotine dispensing devices.
161 Failure to comply with the provisions contained in this
162 subsection shall result in imposition of administrative
163 penalties as provided in s. 569.006.

164 Section 6. Subsection (3) of section 569.19, Florida
165 Statutes, is amended to read:

166 569.19 Annual report.—The division shall report annually
167 with written findings to the Legislature and the Governor by
168 December 31, on the progress of implementing the enforcement
169 provisions of this chapter. This must include, but is not
170 limited to:

171 (3) The number of violations for selling tobacco products
172 or nicotine dispensing devices to persons under age 18, and the



Amendment No. 1

173 results of administrative hearings on the above and related
174 issues.

175 Section 7. For the purpose of incorporating the amendments
176 made by this act to section 569.11, Florida Statutes, in a
177 reference thereto, subsections (2) and (3) of section 322.056,
178 Florida Statutes, are reenacted and amended to read:

179 322.056 Mandatory revocation or suspension of, or delay of
180 eligibility for, driver ~~driver's~~ license for persons under age
181 18 found guilty of certain alcohol, drug, or tobacco offenses;
182 prohibition.—

183 (2) If a person under 18 years of age is found by the
184 court to have committed a noncriminal violation under s. 569.11
185 and that person has failed to comply with the procedures
186 established in that section by failing to fulfill community
187 service requirements, failing to pay the applicable fine, or
188 failing to attend a locally available school-approved anti-
189 tobacco program, and:

190 (a) The person is eligible by reason of age for a driver
191 ~~driver's~~ license or driving privilege, the court shall direct
192 the department to revoke or to withhold issuance of his or her
193 driver ~~driver's~~ license or driving privilege as follows:

- 194 1. For the first violation, for 30 days.
195 2. For the second violation within 12 weeks of the first
196 violation, for 45 days.

197 (b) The person's driver ~~driver's~~ license or driving
198 privilege is under suspension or revocation for any reason, the



Amendment No. 1

199 court shall direct the department to extend the period of
200 suspension or revocation by an additional period as follows:

- 201 1. For the first violation, for 30 days.
202 2. For the second violation within 12 weeks of the first
203 violation, for 45 days.

204 (c) The person is ineligible by reason of age for a driver
205 ~~driver's~~ license or driving privilege, the court shall direct
206 the department to withhold issuance of his or her driver
207 ~~driver's~~ license or driving privilege as follows:

- 208 1. For the first violation, for 30 days.
209 2. For the second violation within 12 weeks of the first
210 violation, for 45 days.

211

212 Any second violation of s. 569.11 not within the 12-week period
213 after the first violation will be treated as a first violation
214 and in the same manner as provided in this subsection.

215 (3) If a person under 18 years of age is found by the
216 court to have committed a third violation of s. 569.11 within 12
217 weeks of the first violation, the court must direct the
218 Department of Highway Safety and Motor Vehicles to suspend or
219 withhold issuance of his or her driver ~~driver's~~ license or
220 driving privilege for 60 consecutive days. Any third violation
221 of s. 569.11 not within the 12-week period after the first
222 violation will be treated as a first violation and in the same
223 manner as provided in subsection (2).

224 Section 8. This act shall take effect July 1, 2014.



Amendment No. 1

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T I T L E A M E N D M E N T
Remove everything before the enacting clause and insert:
A bill to be entitled
An act relating to nicotine dispensing devices;
amending s. 569.002, F.S.; providing a definition;
amending s. 569.0075, F.S.; prohibiting the gift of
sample nicotine dispensing devices to persons under 18
years of age; amending s. 569.101, F.S.; prohibiting
the selling, delivering, bartering, furnishing, or
giving of nicotine dispensing devices to persons under
18 years of age, to which penalties apply; amending s.
569.11, F.S.; prohibiting persons under 18 years of
age from possessing, purchasing, or misrepresenting
their age or military service to purchase nicotine
dispensing devices; providing civil penalties;
amending s. 569.14, F.S.; requiring certain signage
where a dealer sells nicotine dispensing devices;
amending s. 569.19, F.S.; requiring the Division of
Alcoholic Beverages and Tobacco of the Department of
Business and Professional Regulation to submit the
number of violations for selling nicotine dispensing
devices in its annual report; reenacting and amending
s. 322.056(2) and (3), F.S., relating to mandatory



Amendment No. 1

251 driver license revocation or suspension for persons
252 younger than 18 years of age who commit certain
253 offenses, to incorporate the amendments to s. 569.11,
254 F.S., in a reference thereto; making editorial
255 changes; providing an effective date.



Amendment No. a1

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 & Professional
 2 Regulation Subcommittee
 3 Representative Rouson offered the following:

4
 5 **Amendment to Amendment (170671) by Representative Renuart**
 6 **(with directory and title amendments)**

7 Between lines 9 and 10 of the amendment, insert:

8 (6) "Tobacco products" includes loose tobacco leaves, and
 9 products made from tobacco leaves, in whole or in part, liquid
 10 nicotine, and cigarette wrappers, which can be used for smoking,
 11 sniffing, inhaling, ingesting, or chewing.

12
 13 -----
 14 **D I R E C T O R Y A M E N D M E N T**

15 Remove lines 7-8 of the amendment and insert:



Amendment No. a1

16 Section 1. Subsection (6) of section 569.002, Florida
17 Statutes, is amended, and subsection (8) is added to that
18 section, to read:

19

20

21

T I T L E A M E N D M E N T

22

Remove line 232 of the amendment and insert:

23

amending s. 569.002, F.S.; revising and providing

24

definitions;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 185 Gasoline Stations
SPONSOR(S): Danish
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professional Regulation Subcommittee		Butler BSB	Luczynski mj
2) Agriculture & Natural Resources Subcommittee			
3) Agriculture & Natural Resources Appropriations Subcommittee			
4) Regulatory Affairs Committee			

SUMMARY ANALYSIS

There are over 9,000 gasoline stations within Florida, of which, only about 350 offer limited full-service pumping, in part, to assist disabled persons fueling their vehicles.

The bill will require the Department of Agriculture and Consumer Services to alter their existing inspection decal to provide a location on the decal for a gasoline station to place a telephone number a person may call to request fueling assistance. The Department shall confirm during their normal inspections that the telephone number is prominently displayed on the decal for each pump.

In lieu of providing a telephone number, a station may maintain an attendant call button on at least one pump island.

The bill will preempt all local laws with regards to fueling assistance for self-service gasoline stations.

The bill requires the Department of Agriculture and Consumer Services alter their inspection decal, at an expected cost of \$10,000.

The bill has an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The mission of the Florida Department of Agriculture and Consumer Services (DACS or 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;
- 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 Bureau of Standards (bureau) within the Division of Consumer Services is responsible for conducting inspections at more than 25,000 retail and wholesale facilities, inspecting more than 260,000 commercial measuring devices. There are approximately 9,000 gasoline stations within Florida, and the bureau is required to inspect all gasoline pumps used for the retail sale of gasoline in this state.

Approximately 350 gasoline stations statewide provide both full-service and self-service fueling services. These stations, known as "limited full-service" stations, are required to provide refueling assistance to any motor vehicle displaying a proper exemption parking permit or license plate at the self-service islands and display a decal on the front of all self-service pumps stating these requirements.¹

Local governments have passed varying regulations with respect to fueling assistance for disabled persons. These regulations range from handicap decals and stickers, to requiring call buttons installed at each self-service gas station.

Effect of the Bill

The bill will require DACS to alter their inspection decals to contain the new required information. The new inspection decals will require each self-service gasoline station place a telephone number on each pump. Although the bill requires self-services gasoline stations to provide a telephone number that may be used by the operator of a vehicle to request fueling assistance, it does not require such stations to employ additional staff to provide assistance.

In the alternative, a station may maintain an attendant call button on at least one pump island, instead of placing their telephone number on each pump.

According to DACS, there are approximately 35,000 gasoline dispensers, and because this decal must be placed on each side of each dispenser, the bill will require at most 70,000 decals to implement.² The Department estimates that 100,000 decals should be produced, at an expected cost of \$10,000.³

¹ Section 526.141(5), F.S.

² Florida Department of Agriculture and Consumer Services, Agency Analysis of 2014 House Bill 185, p. 1 (Nov. 19, 2013) (on file with the Business & Professional Regulation Subcommittee).

³ *Id.*

The bill requires DACS to affix the new decal to each pump during their normally scheduled gasoline station inspections, and to confirm that the telephone number has been prominently displayed on the decal. The bill provides that all decals are to be in place by July 1, 2016, two years after this law would go into effect, to allow ample opportunity for all stations to come into compliance.

The bill will preempt and supersede all local government laws and regulations pertaining to the provision of fueling assistance for self-service gasoline stations. This would invalidate any current requirements that a local government may have passed with regards to fueling assistance for self-service gasoline stations. This preemption will also prevent a local government from passing any new law, ordinance, or regulation, or to enact additional requirements with regards to the fueling assistance requirements of self-service gasoline stations.

B. SECTION DIRECTORY:

Section 1 amends s. 526.141, F.S., requiring self-service gasoline pump inspection decals to contain certain information; providing an exception; requiring the Department of Agriculture and Consumer Services to confirm compliance by a specified date; providing for preemption of local regulations pertaining to fueling assistance for certain motor vehicle operators.

Section 2 provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill will require DACS to purchase new inspection decals at an approximate cost of \$10,000.⁴

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:

⁴ *Id.*

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to gasoline stations; amending s.
 3 526.141, F.S.; requiring self-service gasoline pump
 4 inspection decals to contain certain information;
 5 providing an exception; requiring the Department of
 6 Agriculture and Consumer Services to confirm
 7 compliance by a specified date; providing for
 8 preemption of local regulations pertaining to fueling
 9 assistance for certain motor vehicle operators;
 10 providing an effective date.

11
 12 Be It Enacted by the Legislature of the State of Florida:

13
 14 Section 1. Subsection (3) of section 526.141, Florida
 15 Statutes, is amended to read:

16 526.141 Self-service gasoline stations; attendants;
 17 regulations.—

18 (3) (a) All self-service gasoline stations shall have at
 19 least one attendant on duty while the station is open to the
 20 public. The attendant's primary function shall be the proper
 21 administration, supervision, observation, and control of the
 22 dispensing of flammable and combustible liquids used as motor
 23 fuels while such liquids are actually being dispensed. It shall
 24 be the responsibility of the attendant to prevent the dispensing
 25 of flammable and combustible liquids used as motor fuels into
 26 portable containers unless such container bears a seal of

27 approval of a nationally recognized testing agency; to control
 28 sources of ignition; and immediately to handle accidental spills
 29 and fire extinguishers if needed. The attendant on duty shall be
 30 mentally and physically capable of performing the functions and
 31 assuming the responsibility prescribed in this subsection.

32 (b)1. To better accommodate an operator of a motor vehicle
 33 who properly displays an exemption parking permit as provided in
 34 s. 316.1958 or s. 320.0848, or a license plate issued pursuant
 35 to s. 320.084, s. 320.0842, s. 320.0843, or s. 320.0845, the
 36 Department of Agriculture and Consumer Services, when inspecting
 37 a station, shall confirm that the telephone number of the
 38 station prominently appears on the inspection decal placed on
 39 each pump by the department. In lieu of having the telephone
 40 number displayed on each inspection decal, a station may
 41 maintain an attendant call button on at least one pump island.
 42 The department shall confirm that inspection decals conform with
 43 this paragraph and are in place by July 1, 2016.

44 2. This paragraph preempts and supersedes all local
 45 government laws and regulations pertaining to the provision of
 46 fueling assistance to the motor vehicle operators described in
 47 subparagraph 1. by self-service gasoline stations.

48 Section 2. This act shall take effect July 1, 2014.



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 & Professional
 2 Regulation Subcommittee
 3 Representative Danish offered the following:

Amendment (with title amendment)

Remove lines 14-47 and insert:

7 Section 1. Subsection (5) of section 526.141, Florida
 8 Statutes, is amended to read:

9 526.141 Self-service gasoline stations; attendants; 16
 10 regulations.-

11 (5) (a) Every full-service gasoline station offering self-
 12 service at a lesser cost shall require an attendant employed by
 13 the station to dispense gasoline from the self-service portion
 14 of the station to any motor vehicle properly displaying an
 15 exemption parking permit as provided in s. 316.1958 or s.
 16 320.0848 or a license plate issued pursuant to s. 320.084, s.
 17 320.0842, s. 320.0843, or s. 320.0845 when the person to whom



Amendment No. 1

18 such permit has been issued is the operator of the vehicle and
19 such service is requested. Such stations shall prominently
20 display a decal no larger than 8 square inches on the front of
21 all self-service pumps clearly stating the requirements of this
22 subsection and the penalties applicable to violations of this
23 subsection. The Department of Agriculture and Consumer Services
24 shall enforce this requirement.

25 (b)1. The Department of Agriculture and Consumer Services,
26 when inspecting a station, shall confirm that a second and
27 separate decal is affixed to each pump. The decal must be blue,
28 at least 15 square inches, and clearly display the international
29 symbol of accessibility shown in s. 320.0842, the telephone
30 number of the station, and the words "Call for Assistance." The
31 Department of Agriculture and Consumer Services shall adopt
32 rules to implement and enforce this paragraph and shall confirm
33 that the decals conform with this paragraph and are in place by
34 July 1, 2016.

35 2. This paragraph preempts and supersedes all local
36 government laws and regulations pertaining to the provision of
37 fueling assistance to the motor vehicle operators described in
38 paragraph (a) by self-service gasoline stations.

39 (c) ~~(b)~~ Violation of paragraph (a) is a misdemeanor of the
40 second degree, punishable as provided in s. 775.082 or s.
41 775.083.

42 -----
43 -----



Amendment No. 1

44

T I T L E A M E N D M E N T

45

Remove lines 3-5 and insert:

46

526.141, F.S.; requiring self-service gasoline pumps to display

47

additional inspection decal containing specified information;

48

requiring the Department of

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 425 Condominiums
SPONSOR(S): Civil Justice Subcommittee; Rodríguez
TIED BILLS: None **IDEN./SIM. BILLS:** SB 440

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	12 Y, 0 N, As CS	Cary	Bond
2) Business & Professional Regulation Subcommittee		Brown-Blake <i>MB</i>	Luczynski <i>ml</i>
3) Judiciary Committee			

SUMMARY ANALYSIS

A condominium is a form of ownership of real property created pursuant to Florida law that is comprised of units which are individually owned, but have an undivided share of access to common facilities. All unit owners are members of the condominium association, an entity responsible for the operation of the common elements owned by the unit owners which operates or maintains real property in which unit owners have use rights. The condominium association is overseen by an elected board of directors, commonly referred to as a "board of administration." Further, the association delineates condominium association bylaws, which governs the administration of the association, including, but not limited to, quorum, voting rights, and election and removal of board members.

The bill partially deregulates commercial (nonresidential) condominium associations by removing certain regulatory requirements. Areas of deregulation include board inquiries, proxy voting, board member qualifications, training and certification of board members, fire safety, mandatory nonbinding arbitration, hurricane shutters, and phase condominiums.

The bill also extends the bulk assignee and bulk buyer provisions for an additional year, from July 1, 2015, to July 1, 2016.

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

The bill has an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., which is comprised of units which are individually owned, but have an undivided share of access to common facilities.¹ A condominium is created by recording a declaration of condominium in the public records of the county in which the condominium will be located.² A declaration is similar to a constitution in that it governs the relationships among condominium unit owners and the condominium association. Specifically, a declaration of condominium may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property.³

All unit owners are members of the condominium association, an entity responsible for the operation of the common elements owned by the unit owners which operates or maintains real property in which unit owners have use rights.⁴ The condominium association is overseen by an elected board of directors, commonly referred to as a "board of administration."⁵

Further, the association enacts condominium association bylaws, which govern the administration of the association, including, but not limited to, quorum, voting rights, and election and removal of board members.⁶

A condominium association may be classified as residential, nonresidential (commercial), mixed-use, or timeshare.

- A residential condominium is defined as a condominium consisting of two or more units, any of which are intended for use as a private temporary or permanent residence, except that a condominium is not a residential condominium if the use for which the units are intended is primarily commercial or industrial and not more than three units are intended to be used for private residence, and are intended to be used as housing for maintenance, managerial, janitorial, or other operational staff of the condominium. With respect to a condominium that is not a timeshare condominium, a residential unit includes a unit intended as a private temporary or permanent residence as well as a unit not intended for commercial or industrial use.⁷
- A condominium which contains both commercial and residential units is a mixed-use condominium.
- A timeshare condominium association is one in which the majority of condominium units are used for timeshares.
- A nonresidential condominium is a condominium that is not included in any of the other categories of condominiums. Examples of nonresidential condominium associations include small office condominiums and small retail centers.

¹ Section 718.103(11), F.S.

² Section 718.104(2), F.S.

³ Section 718.104(5), F.S.

⁴ Section 718.103(2), F.S.

⁵ Section 718.103(4), F.S.

⁶ Section 718.112, F.S.

⁷ Section 718.103(23), F.S.

Effect of the Bill

Board Inquiries

Current law requires a condo board to respond in writing within 30 days to a written inquiry that is sent by certified mail from a unit owner. The board's response must either give a substantive response to the inquirer, notify the inquirer that a legal opinion has been requested, or notify the inquirer that advice has been requested from the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation (hereinafter "Division"). If the board requests advice from the Division, the board must provide a substantive response to the inquirer within 10 days of receiving the response from the Division.⁸

The bill amends s. 718.112(2)(a)2., F.S., to exempt a nonresidential condominium board from the requirement to either give a substantive response to the inquirer, notify the inquirer that a legal opinion has been requested, or notify the inquirer that advice has been requested from the Division. The bill also exempts nonresidential condominium boards from the requirement to respond with a substantive response within 10 days of receiving a response from the Division. In effect, the bill exempts nonresidential condominium boards from any response requirement to an inquiry provided by a unit owner.

Proxy Voting

Current law generally does not allow condominium unit owners to vote by general proxy. However, general and limited proxies may be used to establish a quorum. Limited proxies may be used for a few specific purposes:

- To waive or reduce reserves;
- For votes taken to waive financial reporting requirements;
- For votes taken to amend the declaration;
- For votes taken to amend the articles of incorporation or bylaws; and
- For any other matter for which ch. 718 requires or allows.⁹

A proxy is only effective for the specific meeting for which it was given and is valid for only 90 days after the first meeting for which it was given. Proxies are revocable at any time by the unit owner.¹⁰

There is a general exemption for a timeshare condominium with respect to the proxy-voting limitations.¹¹ Furthermore, an association of 10 or fewer units may provide for different voting and election procedures in its bylaws, which may be by a proxy specifically delineating the different voting and election procedures, which in turn may provide for elections to be conducted by limited or general proxy.¹²

The bill amends s. 718.112(2)(b)2., F.S., to allow proxy voting in a nonresidential condominium association. The bill also amends s. 718.112(2)(d)10., F.S., to provide that a nonresidential condominium has the same exemption to proxy-voting limitations as a timeshare condominium.

Board of Directors

Current law generally requires a board member's term in office to expire at the annual meeting, however a condominium may allow for 2-year terms if allowed by the bylaws or articles of

⁸ Section 718.112(2)(a)2., F.S.

⁹ Section 718.112(2)(b)2., F.S.

¹⁰ Section 718.112(2)(b)3., F.S.

¹¹ Section 718.112(2)(d)10., F.S.

¹² Section 718.112(2)(d), F.S.

incorporation.¹³ Coowners of a unit may not both serve as members of the board at the same time unless they own more than one unit or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. A candidate for the board must give written notice of his or her intent to be a candidate to the association at least 40 days before a scheduled election and must be eligible to serve on the board at the time of the deadline for submitting a notice of intent to run in order to be listed as a candidate.¹⁴

The bill amends s. 718.112(2)(d)2., F.S., to exempt nonresidential condominiums from the board membership term requirements. A board member in a nonresidential condominium may serve a term of longer than one year (or two years, if allowed by the bylaws or articles of incorporation), and the term is not required to expire at the annual meeting. The bill also allows coowners of a unit in a nonresidential condominium to serve simultaneously without restriction. Finally, a candidate for board membership in a nonresidential condominium would not need to be eligible to serve as a board member at the time of the deadline for submitting a notice of intent to run.

Training and Certification

Current law requires that with 90 days of being elected or appointed, a newly elected or appointed director of a condominium association must certify in writing that he or she has read the association's declaration of condominium, articles of incorporation, bylaws, and current written policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the association's members. Alternatively, he or she may submit a certificate of having satisfactorily completed Division-approved educational curriculum. A director who fails to timely file such certification is suspended from service on the board until he or she does so.¹⁵

The bill amends s. 718.112(2)(d)4.b., F.S., to exempt a newly-elected or newly-appointed director of a nonresidential condominium from the requirement to certify that he or she has completed the educational curriculum or that he or she has read the association's declaration of condominium, articles of incorporation, bylaws, and current written policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the association's members.

Arbitration

Current law requires that a condominium's bylaws must provide for mandatory nonbinding arbitration conducted by the Division as provided for in s. 718.1255, F.S.¹⁶ Arbitration requires a \$50 filing fee and must precede litigation.¹⁷ This mandatory arbitration in residential condominiums is generally used to settle disputes filed between residents of residential condominiums.

The bill amends s. 718.112(2)(k), F.S., to exempt a nonresidential condominium's bylaws from containing a provision for mandatory nonbinding arbitration. The bill also amends s. 718.1255, F.S., to exempt nonresidential condominiums from mandatory nonbinding arbitration.

Fire Safety

Current law requires bylaws to contain a provision that a certificate of compliance from a licensed electrical contractor or electrician may be accepted by the board as evidence of compliance of the

¹³ There are exceptions to the general rule when: (1) the condominium is a timeshare; (2) the board member is on a staggered term that does not expire until a later meeting; (3) if all the members' terms would expire but there are not candidates.

¹⁴ Section 718.112(2)(d)2., F.S.

¹⁵ Section 718.112(2)(d)4.b., F.S.

¹⁶ Section 718.112(2)(k), F.S.

¹⁷ Section 718.1255(4)(a), F.S.

condominium units with the applicable fire and life safety code. An association, condominium, or unit owner is not required to retrofit common elements, association property, or units of a residential condominium to meet current codes in a building that has been certified for occupancy by the applicable government entity if the unit owners vote to forego retrofitting by majority vote. Local governments may not require retrofitting with a fire sprinkler system before the end of 2019.

The bill amends s. 718.112(2)(l), F.S., providing that an association, residential condominium, or unit owner is not required to retrofit the common elements, association property, or units of a residential condominium to meet current codes if the unit owners vote to forego the retrofitting by majority vote. The current law and the bill both only apply to residential condominiums; therefore, the amendment does not appear to change the meaning of the provision.

Additionally, s. 718.112(2)(l)4, F.S., is amended to provide that only residential condominiums may vote to forego the retrofitting of any improvements required by s. 553.509(1), F.S.

Hurricane Shutters

Current law requires each condominium board to adopt hurricane shutter specifications. Upon approval by a majority of voting interests, the board may also install hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection.¹⁸

The bill amends s. 718.113(5), to only require hurricane shutter specifications in a residential condominium.

Insurance

Current law provides that for the purpose of property and casualty insurance risk classification, condominiums must be classed as residential property.¹⁹

The bill amends s. 718.1256, F.S., to specify that only residential condominiums must be classed as residential property for insurance purposes.

Phase Condominiums

Current law allows a developer to develop a condominium in phases if the original declaration of condominium, or an amendment to that declaration, provides for and describes in detail all anticipated phases and the impact that the completion of subsequent phases will have upon the initial phase. The time period for completion of the proposed phases cannot exceed seven years from the date of the recording of the declaration, unless unit owners vote to approve an extension of up to an additional three years. If the phases are not added within seven years from the date of the recording of the declaration, or up to 10 years if an extension has been approved, the right to add additional phases expires.²⁰

Current law also requires the declaration of condominium to describe the land which may become part of the condominium and the land on which each phase is to be built. The plot plan may be modified by the developer as to unit or building types to the extent that such modifications are described in the declaration.²¹

The declaration or amendment to the declaration must also include:

¹⁸ Section 718.113(5), F.S.

¹⁹ Section 718.1256, F.S.

²⁰ Section 718.403(1), F.S.

²¹ Section 718.403(2), F.S.

- The minimum and maximum numbers and general size of units to be included in each phase;²²
- Each unit's percentage of ownership in the common areas;²³
- The recreational areas and facilities which will be owned as common elements by all unit owners;²⁴
- The membership vote and ownership in the association attributable to each unit in each phase and the results if any phase or phases are not developed;²⁵ and
- Whether or not timeshare estates will or may be created with respect to units in any phase and the attributes of such estates.²⁶

The bill reenacts s. 718.403(1), F.S., to resolve a conflict from the 2013 session, where two bills amended this section. The bill also amends s. 718.403(2), F.S., to only require residential condominiums to describe unit or building type changes to the plot plan in the declaration, and adds a new s. 718.403(9), F.S., to provide that a declaration of condominium for a nonresidential condominium does not need to describe:

- The minimum and maximum numbers and general size of units to be included in each phase;
- Each unit's percentage of ownership in the common areas;
- The recreational areas and facilities which will be owned as common elements by all unit owners;
- The membership vote and ownership in the association attributable to each unit in each phase and the results if any phase or phases are not developed; and
- Whether or not timeshare estates will or may be created with respect to units in any phase and the attributes of such estates.

Bulk Assignees and Bulk Buyer

In 2010, the Legislature passed the Distressed Condominium Relief Act in order to relieve developers, lenders, unit owners, and condominium associations from certain provisions of the Florida Condominium Act. The Act was intended to relieve specific parties from certain liabilities, so as to enable economic opportunities for successor purchasers of distressed condominiums.²⁷

Specifically, the Act created categories of "bulk buyers" and "bulk assignees." A bulk assignee is a person who acquires more than seven condominium parcels as provided in s. 718.703, F.S., and receives an assignment of some or all of the rights of the developer under specified recording documents.²⁸

Similarly, a bulk buyer is a person who acquires more than seven condominium parcels, but who does not receive an assignment of developer rights other than the right to: conduct sales, leasing, and marketing activities within the condominium; be exempt from payment of working capital contributions; and be exempt from rights of first refusal.²⁹

Because the Act was created in reaction to the "massive downturn in the condominium market which has occurred throughout the state," it was not intended to be open-ended. Rather, the intent of the Legislature was to enact the relief only for "a specific and defined period."³⁰

²² Section 718.403(2)(b), F.S.

²³ Section 718.403(2)(c), F.S.

²⁴ Section 718.403(2)(d), F.S.

²⁵ Section 718.403(2)(e), F.S.

²⁶ Section 718.403(2)(f), F.S.

²⁷ Chapter 2010-174, L.O.F.

²⁸ Section 718.703(1), F.S.

²⁹ Section 718.703(2), F.S.

³⁰ Section 718.702, F.S.

Originally, the time limitation for classification as a bulk assignee or bulk buyer was until July 1, 2012.³¹ In 2012, the Legislature extended the time limitation to July 1, 2015.³² This bill amends s. 718.707, F.S., to extend the Distressed Condominium Relief Act to July 1, 2016.

B. SECTION DIRECTORY:

Section 1 amends s. 718.112, F.S., relating to bylaws of a condominium.

Section 2 amends s. 718.113, F.S., relating to maintenance, limitation upon improvement, display of flag, hurricane shutters and protection, and display of religious decorations.

Section 3 amends s. 718.1255, F.S., relating to alternative dispute resolution, voluntary mediation, mandatory nonbinding arbitration, and legislative findings.

Section 4 amends s. 718.1256, F.S., relating to condominiums and residential property.

Section 5 amends s. 718.403, F.S., relating to phase condominiums.

Section 6 amends s. 718.707, F.S., relating to time limitation for classification as bulk assignee or bulk buyer.

Section 7 provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

³¹ Chapter 2010-174, L.O.F.

³² Chapter 2012-61, L.O.F.

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 5, 2014, the Civil Justice Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The first amendment reworded a provision for clarity but did not provide a substantive change. The second amendment reworded certain provisions for clarity and added new sections to exempt nonresidential condominiums from hurricane shutter requirements, mandatory nonbinding arbitration, insurance risk classification, and phase condominium requirements. The amendment also extends the Distressed Condominium Relief Act until July 1, 2016. This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

27 | 718.112 Bylaws.—

28 | (2) REQUIRED PROVISIONS.—The bylaws shall provide for the
 29 | following and, if they do not do so, shall be deemed to include
 30 | the following:

31 | (a) Administration.—

32 | 1. The form of administration of the association shall be
 33 | described indicating the title of the officers and board of
 34 | administration and specifying the powers, duties, manner of
 35 | selection and removal, and compensation, if any, of officers and
 36 | boards. In the absence of such a provision, the board of
 37 | administration shall be composed of five members, except in the
 38 | case of a condominium which has five or fewer units, in which
 39 | case in a not-for-profit corporation the board shall consist of
 40 | not fewer than three members. In the absence of provisions to
 41 | the contrary in the bylaws, the board of administration shall
 42 | have a president, a secretary, and a treasurer, who shall
 43 | perform the duties of such officers customarily performed by
 44 | officers of corporations. Unless prohibited in the bylaws, the
 45 | board of administration may appoint other officers and grant
 46 | them the duties it deems appropriate. Unless otherwise provided
 47 | in the bylaws, the officers shall serve without compensation and
 48 | at the pleasure of the board of administration. Unless otherwise
 49 | provided in the bylaws, the members of the board shall serve
 50 | without compensation.

51 | 2. When a unit owner of a residential condominium files a
 52 | written inquiry by certified mail with the board of

53 administration, the board shall respond in writing to the unit
 54 owner within 30 days after ~~of~~ receipt of the inquiry. The
 55 board's response shall either give a substantive response to the
 56 inquirer, notify the inquirer that a legal opinion has been
 57 requested, or notify the inquirer that advice has been requested
 58 from the division. If the board requests advice from the
 59 division, the board shall, within 10 days after ~~of~~ its receipt
 60 of the advice, provide in writing a substantive response to the
 61 inquirer. If a legal opinion is requested, the board shall,
 62 within 60 days after the receipt of the inquiry, provide in
 63 writing a substantive response to the inquiry. The failure to
 64 provide a substantive response to the inquiry as provided herein
 65 precludes the board from recovering attorney ~~attorney's~~ fees and
 66 costs in any subsequent litigation, administrative proceeding,
 67 or arbitration arising out of the inquiry. The association may
 68 through its board of administration adopt reasonable rules and
 69 regulations regarding the frequency and manner of responding to
 70 unit owner inquiries, one of which may be that the association
 71 is only obligated to respond to one written inquiry per unit in
 72 any given 30-day period. In such a case, any additional inquiry
 73 or inquiries must be responded to in the subsequent 30-day
 74 period, or periods, as applicable.

75 (b) Quorum; voting requirements; proxies.—

76 1. Unless a lower number is provided in the bylaws, the
 77 percentage of voting interests required to constitute a quorum
 78 at a meeting of the members is a majority of the voting

79 interests. Unless otherwise provided in this chapter or in the
 80 declaration, articles of incorporation, or bylaws, and except as
 81 provided in subparagraph (d)4., decisions shall be made by a
 82 majority of the voting interests represented at a meeting at
 83 which a quorum is present.

84 2. Except as specifically otherwise provided herein, unit
 85 owners in a residential condominium may not vote by general
 86 proxy, but may vote by limited proxies substantially conforming
 87 to a limited proxy form adopted by the division. A voting
 88 interest or consent right allocated to a unit owned by the
 89 association may not be exercised or considered for any purpose,
 90 whether for a quorum, an election, or otherwise. Limited proxies
 91 and general proxies may be used to establish a quorum. Limited
 92 proxies shall be used for votes taken to waive or reduce
 93 reserves in accordance with subparagraph (f)2.; for votes taken
 94 to waive the financial reporting requirements of s. 718.111(13);
 95 for votes taken to amend the declaration pursuant to s. 718.110;
 96 for votes taken to amend the articles of incorporation or bylaws
 97 pursuant to this section; and for any other matter for which
 98 this chapter requires or permits a vote of the unit owners.
 99 Except as provided in paragraph (d), a proxy, limited or
 100 general, may not be used in the election of board members in a
 101 residential condominium. General proxies may be used for other
 102 matters for which limited proxies are not required, and may be
 103 used in voting for nonsubstantive changes to items for which a
 104 limited proxy is required and given. Notwithstanding this

105 | subparagraph, unit owners may vote in person at unit owner
 106 | meetings. This subparagraph does not limit the use of general
 107 | proxies or require the use of limited proxies for any agenda
 108 | item or election at any meeting of a timeshare condominium
 109 | association or a nonresidential condominium association.

110 | 3. A ~~Any~~ proxy given is effective only for the specific
 111 | meeting for which originally given and any lawfully adjourned
 112 | meetings thereof. A proxy is not valid longer than 90 days after
 113 | the date of the first meeting for which it was given. Each ~~Every~~
 114 | proxy is revocable at any time at the pleasure of the unit owner
 115 | executing it.

116 | 4. A member of the board of administration or a committee
 117 | may submit in writing his or her agreement or disagreement with
 118 | any action taken at a meeting that the member did not attend.
 119 | This agreement or disagreement may not be used as a vote for or
 120 | against the action taken or to create a quorum.

121 | 5. If any of the board or committee members meet by
 122 | telephone conference, those board or committee members may be
 123 | counted toward obtaining a quorum and may vote by telephone. A
 124 | telephone speaker must be used so that the conversation of those
 125 | members may be heard by the board or committee members attending
 126 | in person as well as by any unit owners present at a meeting.

127 | (d) Unit owner meetings.—

128 | 1. An annual meeting of the unit owners shall be held at
 129 | the location provided in the association bylaws and, if the
 130 | bylaws are silent as to the location, the meeting shall be held

131 | within 45 miles of the condominium property. However, such
 132 | distance requirement does not apply to an association governing
 133 | a timeshare condominium.

134 | 2. Unless the bylaws provide otherwise, a vacancy on the
 135 | board caused by the expiration of a director's term shall be
 136 | filled by electing a new board member, and the election must be
 137 | by secret ballot. An election is not required if the number of
 138 | vacancies equals or exceeds the number of candidates. For
 139 | purposes of this paragraph, the term "candidate" means an
 140 | eligible person who has timely submitted the written notice, as
 141 | described in sub-subparagraph 4.a., of his or her intention to
 142 | become a candidate. Except in a timeshare or nonresidential
 143 | condominium, or if the staggered term of a board member does not
 144 | expire until a later annual meeting, or if all members' terms
 145 | would otherwise expire but there are no candidates, the terms of
 146 | all board members expire at the annual meeting, and such members
 147 | may stand for reelection unless prohibited by the bylaws. If the
 148 | bylaws or articles of incorporation permit terms of no more than
 149 | 2 years, the association board members may serve 2-year terms.
 150 | If the number of board members whose terms expire at the annual
 151 | meeting equals or exceeds the number of candidates, the
 152 | candidates become members of the board effective upon the
 153 | adjournment of the annual meeting. Unless the bylaws provide
 154 | otherwise, any remaining vacancies shall be filled by the
 155 | affirmative vote of the majority of the directors making up the
 156 | newly constituted board even if the directors constitute less

157 | than a quorum or there is only one director. In a residential
 158 | condominium association of more than 10 units or in a
 159 | residential condominium association that does not include
 160 | timeshare units or timeshare interests, coowners of a unit may
 161 | not serve as members of the board of directors at the same time
 162 | unless they own more than one unit or unless there are not
 163 | enough eligible candidates to fill the vacancies on the board at
 164 | the time of the vacancy. A ~~Any~~ unit owner in a residential
 165 | condominium desiring to be a candidate for board membership must
 166 | comply with sub-subparagraph 4.a. and must be eligible to be a
 167 | candidate to serve on the board of directors at the time of the
 168 | deadline for submitting a notice of intent to run in order to
 169 | have his or her name listed as a proper candidate on the ballot
 170 | or to serve on the board. A person who has been suspended or
 171 | removed by the division under this chapter, or who is delinquent
 172 | in the payment of any monetary obligation due to the
 173 | association, is not eligible to be a candidate for board
 174 | membership and may not be listed on the ballot. A person who has
 175 | been convicted of any felony in this state or in a United States
 176 | District or Territorial Court, or who has been convicted of any
 177 | offense in another jurisdiction which would be considered a
 178 | felony if committed in this state, is not eligible for board
 179 | membership unless such felon's civil rights have been restored
 180 | for at least 5 years as of the date such person seeks election
 181 | to the board. The validity of an action by the board is not
 182 | affected if it is later determined that a board member is

183 ineligible for board membership due to having been convicted of
 184 a felony. This subparagraph does not limit the term of a member
 185 of the board of a nonresidential condominium.

186 3. The bylaws must provide the method of calling meetings
 187 of unit owners, including annual meetings. Written notice must
 188 include an agenda, must be mailed, hand delivered, or
 189 electronically transmitted to each unit owner at least 14 days
 190 before the annual meeting, and must be posted in a conspicuous
 191 place on the condominium property at least 14 continuous days
 192 before the annual meeting. Upon notice to the unit owners, the
 193 board shall, by duly adopted rule, designate a specific location
 194 on the condominium property or association property where all
 195 notices of unit owner meetings shall be posted. This requirement
 196 does not apply if there is no condominium property or
 197 association property for posting notices. In lieu of, or in
 198 addition to, the physical posting of meeting notices, the
 199 association may, by reasonable rule, adopt a procedure for
 200 conspicuously posting and repeatedly broadcasting the notice and
 201 the agenda on a closed-circuit cable television system serving
 202 the condominium association. However, if broadcast notice is
 203 used in lieu of a notice posted physically on the condominium
 204 property, the notice and agenda must be broadcast at least four
 205 times every broadcast hour of each day that a posted notice is
 206 otherwise required under this section. If broadcast notice is
 207 provided, the notice and agenda must be broadcast in a manner
 208 and for a sufficient continuous length of time so as to allow an

209 average reader to observe the notice and read and comprehend the
 210 entire content of the notice and the agenda. Unless a unit owner
 211 waives in writing the right to receive notice of the annual
 212 meeting, such notice must be hand delivered, mailed, or
 213 electronically transmitted to each unit owner. Notice for
 214 meetings and notice for all other purposes must be mailed to
 215 each unit owner at the address last furnished to the association
 216 by the unit owner, or hand delivered to each unit owner.
 217 However, if a unit is owned by more than one person, the
 218 association must provide notice to the address that the
 219 developer identifies for that purpose and thereafter as one or
 220 more of the owners of the unit advise the association in
 221 writing, or if no address is given or the owners of the unit do
 222 not agree, to the address provided on the deed of record. An
 223 officer of the association, or the manager or other person
 224 providing notice of the association meeting, must provide an
 225 affidavit or United States Postal Service certificate of
 226 mailing, to be included in the official records of the
 227 association affirming that the notice was mailed or hand
 228 delivered in accordance with this provision.

229 4. The members of the board of a residential condominium
 230 shall be elected by written ballot or voting machine. Proxies
 231 may not be used in electing the board in general elections or
 232 elections to fill vacancies caused by recall, resignation, or
 233 otherwise, unless otherwise provided in this chapter. This
 234 subparagraph does not apply to an association governing a

235 timeshare condominium.

236 a. At least 60 days before a scheduled election, the

237 association shall mail, deliver, or electronically transmit, by

238 separate association mailing or included in another association

239 mailing, delivery, or transmission, including regularly

240 published newsletters, to each unit owner entitled to a vote, a

241 first notice of the date of the election. A ~~Any~~ unit owner or

242 other eligible person desiring to be a candidate for the board

243 must give written notice of his or her intent to be a candidate

244 to the association at least 40 days before a scheduled election.

245 Together with the written notice and agenda as set forth in

246 subparagraph 3., the association shall mail, deliver, or

247 electronically transmit a second notice of the election to all

248 unit owners entitled to vote, together with a ballot that lists

249 all candidates. Upon request of a candidate, an information

250 sheet, no larger than 8 1/2 inches by 11 inches, which must be

251 furnished by the candidate at least 35 days before the election,

252 must be included with the mailing, delivery, or transmission of

253 the ballot, with the costs of mailing, delivery, or electronic

254 transmission and copying to be borne by the association. The

255 association is not liable for the contents of the information

256 sheets prepared by the candidates. In order to reduce costs, the

257 association may print or duplicate the information sheets on

258 both sides of the paper. The division shall by rule establish

259 voting procedures consistent with this sub-subparagraph,

260 including rules establishing procedures for giving notice by

261 | electronic transmission and rules providing for the secrecy of
 262 | ballots. Elections shall be decided by a plurality of ballots
 263 | cast. There is no quorum requirement; however, at least 20
 264 | percent of the eligible voters must cast a ballot in order to
 265 | have a valid election. A unit owner may not permit any other
 266 | person to vote his or her ballot, and any ballots improperly
 267 | cast are invalid. A unit owner who violates this provision may
 268 | be fined by the association in accordance with s. 718.303. A
 269 | unit owner who needs assistance in casting the ballot for the
 270 | reasons stated in s. 101.051 may obtain such assistance. The
 271 | regular election must occur on the date of the annual meeting.
 272 | Notwithstanding this sub-subparagraph, an election is not
 273 | required unless more candidates file notices of intent to run or
 274 | are nominated than board vacancies exist.

275 | b. Within 90 days after being elected or appointed to the
 276 | board of an association of a residential condominium, each newly
 277 | elected or appointed director shall certify in writing to the
 278 | secretary of the association that he or she has read the
 279 | association's declaration of condominium, articles of
 280 | incorporation, bylaws, and current written policies; that he or
 281 | she will work to uphold such documents and policies to the best
 282 | of his or her ability; and that he or she will faithfully
 283 | discharge his or her fiduciary responsibility to the
 284 | association's members. In lieu of this written certification,
 285 | within 90 days after being elected or appointed to the board,
 286 | the newly elected or appointed director may submit a certificate

287 of having satisfactorily completed the educational curriculum
 288 administered by a division-approved condominium education
 289 provider within 1 year before or 90 days after the date of
 290 election or appointment. The written certification or
 291 educational certificate is valid and does not have to be
 292 resubmitted as long as the director serves on the board without
 293 interruption. A director of an association of a residential
 294 condominium who fails to timely file the written certification
 295 or educational certificate is suspended from service on the
 296 board until he or she complies with this sub-subparagraph. The
 297 board may temporarily fill the vacancy during the period of
 298 suspension. The secretary shall cause the association to retain
 299 a director's written certification or educational certificate
 300 for inspection by the members for 5 years after a director's
 301 election or the duration of the director's uninterrupted tenure,
 302 whichever is longer. Failure to have such written certification
 303 or educational certificate on file does not affect the validity
 304 of any board action.

305 c. Any challenge to the election process must be commenced
 306 within 60 days after the election results are announced.

307 5. Any approval by unit owners called for by this chapter
 308 or the applicable declaration or bylaws, including, but not
 309 limited to, the approval requirement in s. 718.111(8), must be
 310 made at a duly noticed meeting of unit owners and is subject to
 311 all requirements of this chapter or the applicable condominium
 312 documents relating to unit owner decisionmaking, except that

313 unit owners may take action by written agreement, without
 314 meetings, on matters for which action by written agreement
 315 without meetings is expressly allowed by the applicable bylaws
 316 or declaration or any law that provides for such action.

317 6. Unit owners may waive notice of specific meetings if
 318 allowed by the applicable bylaws or declaration or any law. If
 319 authorized by the bylaws, notice of meetings of the board of
 320 administration, unit owner meetings, except unit owner meetings
 321 called to recall board members under paragraph (j), and
 322 committee meetings may be given by electronic transmission to
 323 unit owners who consent to receive notice by electronic
 324 transmission.

325 7. Unit owners have the right to participate in meetings
 326 of unit owners with reference to all designated agenda items.
 327 However, the association may adopt reasonable rules governing
 328 the frequency, duration, and manner of unit owner participation.

329 8. A unit owner may tape record or videotape a meeting of
 330 the unit owners subject to reasonable rules adopted by the
 331 division.

332 9. Unless otherwise provided in the bylaws, any vacancy
 333 occurring on the board before the expiration of a term may be
 334 filled by the affirmative vote of the majority of the remaining
 335 directors, even if the remaining directors constitute less than
 336 a quorum, or by the sole remaining director. In the alternative,
 337 a board may hold an election to fill the vacancy, in which case
 338 the election procedures must conform to sub-subparagraph 4.a.

339 unless the association governs 10 units or fewer and has opted
 340 out of the statutory election process, in which case the bylaws
 341 of the association control. Unless otherwise provided in the
 342 bylaws, a board member appointed or elected under this section
 343 shall fill the vacancy for the unexpired term of the seat being
 344 filled. Filling vacancies created by recall is governed by
 345 paragraph (j) and rules adopted by the division.

346 10. This chapter does not limit the use of general or
 347 limited proxies, require the use of general or limited proxies,
 348 or require the use of a written ballot or voting machine for any
 349 agenda item or election at any meeting of a timeshare
 350 condominium association or nonresidential condominium
 351 association.

352
 353 Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a., an
 354 association of 10 or fewer units may, by affirmative vote of a
 355 majority of the total voting interests, provide for different
 356 voting and election procedures in its bylaws, which may be by a
 357 proxy specifically delineating the different voting and election
 358 procedures. The different voting and election procedures may
 359 provide for elections to be conducted by limited or general
 360 proxy.

361 (k) Arbitration.—There shall be a provision for mandatory
 362 nonbinding arbitration as provided for in s. 718.1255 for any
 363 residential condominium.

364 (l) Certificate of compliance.— A provision that a

365 certificate of compliance from a licensed electrical contractor
 366 or electrician may be accepted by the association's board as
 367 evidence of compliance of the condominium units with the
 368 applicable fire and life safety code must be included.
 369 Notwithstanding chapter 633 or of any other code, statute,
 370 ordinance, administrative rule, or regulation, or any
 371 interpretation of the foregoing, an association, residential
 372 condominium, or unit owner is not obligated to retrofit the
 373 common elements, association property, or units of a residential
 374 condominium with a fire sprinkler system in a building that has
 375 been certified for occupancy by the applicable governmental
 376 entity if the unit owners have voted to forego such retrofitting
 377 by the affirmative vote of a majority of all voting interests in
 378 the affected condominium. The local authority having
 379 jurisdiction may not require completion of retrofitting with a
 380 fire sprinkler system before January 1, 2020 ~~the end of 2019~~. By
 381 December 31, 2016, a residential condominium ~~an~~ association that
 382 is not in compliance with the requirements for a fire sprinkler
 383 system and has not voted to forego retrofitting of such a system
 384 must initiate an application for a building permit for the
 385 required installation with the local government having
 386 jurisdiction demonstrating that the association will become
 387 compliant by December 31, 2019.

388 1. A vote to forego retrofitting may be obtained by
 389 limited proxy or by a ballot personally cast at a duly called
 390 membership meeting, or by execution of a written consent by the

391 member, and is effective upon recording a certificate attesting
 392 to such vote in the public records of the county where the
 393 condominium is located. The association shall mail or hand
 394 deliver to each unit owner written notice at least 14 days
 395 before the membership meeting in which the vote to forego
 396 retrofitting of the required fire sprinkler system is to take
 397 place. Within 30 days after the association's opt-out vote,
 398 notice of the results of the opt-out vote must be mailed or hand
 399 delivered to all unit owners. Evidence of compliance with this
 400 notice requirement must be made by affidavit executed by the
 401 person providing the notice and filed among the official records
 402 of the association. After notice is provided to each owner, a
 403 copy must be provided by the current owner to a new owner before
 404 closing and by a unit owner to a renter before signing a lease.

405 2. If there has been a previous vote to forego
 406 retrofitting, a vote to require retrofitting may be obtained at
 407 a special meeting of the unit owners called by a petition of at
 408 least 10 percent of the voting interests. Such a vote may only
 409 be called once every 3 years. Notice shall be provided as
 410 required for any regularly called meeting of the unit owners,
 411 and must state the purpose of the meeting. Electronic
 412 transmission may not be used to provide notice of a meeting
 413 called in whole or in part for this purpose.

414 3. As part of the information collected annually from
 415 condominiums, the division shall require condominium
 416 associations to report the membership vote and recording of a

417 certificate under this subsection and, if retrofitting has been
 418 undertaken, the per-unit cost of such work. The division shall
 419 annually report to the Division of State Fire Marshal of the
 420 Department of Financial Services the number of condominiums that
 421 have elected to forego retrofitting.

422 4. Notwithstanding s. 553.509, a residential ~~an~~
 423 association may not be obligated to, and may forego the
 424 retrofitting of, any improvements required by s. 553.509(2) upon
 425 an affirmative vote of a majority of the voting interests in the
 426 affected condominium.

427 Section 2. Subsection (5) of section 718.113, Florida
 428 Statutes, is amended to read:

429 718.113 Maintenance; limitation upon improvement; display
 430 of flag; hurricane shutters and protection; display of religious
 431 decorations.—

432 (5) Each board of administration of a residential
 433 condominium shall adopt hurricane shutter specifications for
 434 each building within each condominium operated by the
 435 association which shall include color, style, and other factors
 436 deemed relevant by the board. All specifications adopted by the
 437 board must comply with the applicable building code.

438 (a) The board may, subject to s. 718.3026 and the approval
 439 of a majority of voting interests of the residential
 440 condominium, install hurricane shutters, impact glass, code-
 441 compliant windows or doors, or other types of code-compliant
 442 hurricane protection that comply with or exceed the applicable

443 building code. However, a vote of the owners is not required if
 444 the maintenance, repair, and replacement of hurricane shutters,
 445 impact glass, code-compliant windows or doors, or other types of
 446 code-compliant hurricane protection are the responsibility of
 447 the association pursuant to the declaration of condominium. If
 448 hurricane protection or laminated glass or window film
 449 architecturally designed to function as hurricane protection
 450 that complies with or exceeds the current applicable building
 451 code has been previously installed, the board may not install
 452 hurricane shutters, impact glass, code-compliant windows or
 453 doors, or other types of code-compliant hurricane protection
 454 except upon approval by a majority vote of the voting interests.

455 (b) The association is responsible for the maintenance,
 456 repair, and replacement of the hurricane shutters, impact glass,
 457 code-compliant windows or doors, or other types of code-
 458 compliant hurricane protection authorized by this subsection if
 459 such property is the responsibility of the association pursuant
 460 to the declaration of condominium. If the hurricane shutters,
 461 impact glass, code-compliant windows or doors, or other types of
 462 code-compliant hurricane protection are the responsibility of
 463 the unit owners pursuant to the declaration of condominium, the
 464 maintenance, repair, and replacement of such items are the
 465 responsibility of the unit owner.

466 (c) The board may operate shutters, impact glass, code-
 467 compliant windows or doors, or other types of code-compliant
 468 hurricane protection installed pursuant to this subsection

469 without permission of the unit owners only if such operation is
 470 necessary to preserve and protect the condominium property and
 471 association property. The installation, replacement, operation,
 472 repair, and maintenance of such shutters, impact glass, code-
 473 compliant windows or doors, or other types of code-compliant
 474 hurricane protection in accordance with the procedures set forth
 475 in this paragraph are not a material alteration to the common
 476 elements or association property within the meaning of this
 477 section.

478 (d) Notwithstanding any other provision in the residential
 479 condominium documents, if approval is required by the documents,
 480 a board may not refuse to approve the installation or
 481 replacement of hurricane shutters, impact glass, code-compliant
 482 windows or doors, or other types of code-compliant hurricane
 483 protection by a unit owner conforming to the specifications
 484 adopted by the board.

485 Section 3. Subsection (6) is added to section 718.1255,
 486 Florida Statutes, to read:

487 718.1255 Alternative dispute resolution; voluntary
 488 mediation; mandatory nonbinding arbitration; legislative
 489 findings.—

490 (6) APPLICABILITY.—This section does not apply to a
 491 nonresidential condominium unless otherwise specifically
 492 provided for in the declaration of a nonresidential condominium.

493 Section 4. Section 718.1256, Florida Statutes, is amended
 494 to read:

495 718.1256 Condominiums as residential property.—For the
 496 purpose of property and casualty insurance risk classification,
 497 residential condominiums shall be classed as residential
 498 property.

499 Section 5. Subsection (1) of section 718.403, Florida
 500 Statutes, is reenacted, paragraph (a) of subsection (2) is
 501 amended, and subsection (9) is added to that section, to read:

502 718.403 Phase condominiums.—

503 (1) Notwithstanding the provisions of s. 718.110, a
 504 developer may develop a condominium in phases, if the original
 505 declaration of condominium submitting the initial phase to
 506 condominium ownership or an amendment to the declaration which
 507 has been approved by all of the unit owners and unit mortgagees
 508 provides for and describes in detail all anticipated phases; the
 509 impact, if any, which the completion of subsequent phases would
 510 have upon the initial phase; and the time period within which
 511 all phases must be added to the condominium and comply with the
 512 requirements of this section and at the end of which the right
 513 to add additional phases expires.

514 (a) All phases must be added to the condominium within 7
 515 years after the date of the recording of the certificate of a
 516 surveyor and mapper pursuant to s. 718.104(4)(e) or the
 517 recording of an instrument that transfers title to a unit in the
 518 condominium which is not accompanied by a recorded assignment of
 519 developer rights in favor of the grantee of such unit, whichever
 520 occurs first, unless the unit owners vote to approve an

521 amendment extending the 7-year period pursuant to paragraph (b).

522 (b) An amendment to extend the 7-year period shall require
 523 the approval of the owners necessary to amend the declaration of
 524 condominium pursuant to s. 718.110(1)(a). An extension of the 7-
 525 year period may be submitted for approval only during the last 3
 526 years of the 7-year period.

527 (c) An amendment must describe the time period within
 528 which all phases must be added to the condominium, and such time
 529 period may not exceed 10 years from the date of the recording of
 530 the certificate of a surveyor and mapper pursuant to s.
 531 718.104(4)(e) or the recording of an instrument that transfers
 532 title to a unit in the condominium which is not accompanied by a
 533 recorded assignment of developer rights in favor of the grantee
 534 of such unit, whichever occurs first.

535 (d) An amendment that extends the 7-year period pursuant
 536 to this section is not subject to the requirements of s.
 537 718.110(4).

538 (2) The original declaration of condominium, or an
 539 amendment to the declaration, which amendment has been approved
 540 by all unit owners and unit mortgagees and the developer, shall
 541 describe:

542 (a) The land which may become part of the condominium and
 543 the land on which each phase is to be built. The descriptions
 544 shall include metes and bounds or other legal descriptions of
 545 the land for each phase, plot plans, and surveys. Plot plans,
 546 attached as an exhibit, must show the approximate location of

547 | all existing and proposed buildings and improvements that may
 548 | ultimately be contained within the condominium. The plot plan
 549 | may be modified by the developer as to unit or building types
 550 | but, in a residential condominium, to the extent that such
 551 | modifications must be ~~changes are~~ described in the declaration.
 552 | If provided in the declaration, the developer may make
 553 | nonmaterial changes in the legal description of a phase.

554 | (9) Paragraphs (2)(b)-(f) and subsection (8) do not apply
 555 | to nonresidential condominiums.

556 | Section 6. Section 718.707, Florida Statutes, is amended
 557 | to read:

558 | 718.707 Time limitation for classification as bulk
 559 | assignee or bulk buyer.—A person acquiring condominium parcels
 560 | may not be classified as a bulk assignee or bulk buyer unless
 561 | the condominium parcels were acquired on or after July 1, 2010,
 562 | but before July 1, 2016 ~~2015~~. The date of such acquisition shall
 563 | be determined by the date of recording a deed or other
 564 | instrument of conveyance for such parcels in the public records
 565 | of the county in which the condominium is located, or by the
 566 | date of issuing a certificate of title in a foreclosure
 567 | proceeding with respect to such condominium parcels.

568 | Section 7. This act shall take effect July 1, 2014.



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 & Professional
 2 Regulation Subcommittee
 3 Representative Roberson, K. offered the following:

Amendment (with title amendment)

Remove lines 493-498

T I T L E A M E N D M E N T

Remove lines 11-14 and insert:

residential condominiums; amending s. 718.403, F.S.; limiting

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 523 Applications for Concealed Weapons or Firearms Licenses
SPONSOR(S): Grant
TIED BILLS: HB 525 **IDEN./SIM. BILLS:** SB 544

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professional Regulation Subcommittee		Brown-Blake <i>KB</i>	Luczynski <i>ML</i>
2) Agriculture & Natural Resources Appropriations Subcommittee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

The Department of Agriculture and Consumer Services (Department) is responsible for issuing licenses to carry concealed weapons or concealed firearms to those who qualify.¹ Carrying concealed weapons or firearms without first obtaining a license could be a crime pursuant to s. 790.01, F.S. Currently, applicants for licensure to carry concealed weapons or firearms may apply in person at one of the Department's eight regional offices or submit an application by mail.

The bill authorizes the Department to appoint tax collectors for the purpose of accepting applications for concealed weapons or firearms licenses or renewals. In order to be considered by the Department, tax collectors must submit a request to the Department to accept applications for concealed weapons or firearms licenses. Upon approval of the tax collector's qualifications by the Department, the Division of Licensing then has the discretion to enter into a Memorandum of Understanding (MOU) with the tax collector.

Under this MOU, tax collectors will be able to accept application and payment for licensure to carry concealed weapons or firearms, and remit the payment and application to the Department for processing. The bill provides that the tax collector may retain \$22 for each new application and \$12 for each renewal application. It remains the Department's responsibility to process the applications and issue concealed weapons and firearms licenses to qualified applicants.

All personal identifying information provided for the license or renewal that is contained in a tax collector's records as a result of the MOU is given confidential and exempt status by the linked bill, HB 525.

The bill makes no changes to eligibility criteria or license application requirements.

The bill has an effective date of July 1, 2014.

¹ Section 790.06(1), F.S.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Issuance of Concealed Weapons or Firearms Licenses

The Department of Agriculture and Consumer Services (Department) is responsible for issuing licenses to carry concealed weapons or concealed firearms to those who qualify.² Carrying a concealed weapon without first obtaining a license could be a crime pursuant to s. 790.01, F.S. A concealed weapon or concealed firearm is defined as a handgun, electronic weapon or device, tear gas gun, knife, or billie.³

Concealed Weapons or Firearms License Application Requirements

In order to obtain a concealed weapons or firearms license, applicants must make application and meet the following general requirements:

- Is a citizen or permanent resident alien of the United States; or is a consular security official of a foreign government with diplomatic relations with the United States.
- Is at least 21 years old.
- Can physically handle a weapon safely.
- Is not a convicted felon.
- Has not been convicted of a crime under ch. 893, F.S., or been committed for the abuse of a controlled substance within a 3-year period immediately preceding the application date.
- Does not chronically and habitually use alcoholic beverages or other substances to the extent that his or her normal faculties are impaired.
- Demonstrates competence with a firearm by completing a firearm training course or presents evidence of equivalent experience with a firearm through participation in organized shooting competition or military service; or is or has previously been licensed to carry a firearm in Florida.
- Has not been adjudicated an incapacitated person under s. 744.331, F.S.
- Has not been committed to a mental institution under ch. 394, F.S.
- Has not had adjudication of guilt withheld or imposition of sentence suspended on any felony or misdemeanor crime of domestic violence unless three years have elapsed since probation or any other conditions set by the court have been fulfilled.
- Is not currently under a domestic violence injunction.
- Is not prohibited from purchasing or possessing a firearm by any other provision of Florida or federal law.⁴

To obtain a concealed weapons or firearms license, a person must complete, under oath, an application that includes:

- The name, address, place and date of birth, race, and occupation of the applicant.
- A full frontal view color photograph of the applicant which must be taken within the preceding 30 days.
- A statement that the applicant has been furnished with a copy of ch. 790, F.S., relating to weapons and firearms and is knowledgeable of its provisions.

² Section 790.06(1), F.S.

³ *Id.*

⁴ Section 790.06(2), F.S.

- A warning that the application is executed under oath with penalties for falsifying or substituting false documents.
- A statement that the applicant desires concealed weapons or firearms license as a means of lawful self-defense.
- A full set of fingerprints.
- Documented proof of completion of a firearms safety and training course.
- A nonrefundable license fee no greater than \$70 for a new license or no greater than \$60 for a renewal.⁵

There is an additional \$42.00 fee for processing the fingerprints, which comprises \$16.50 for the FBI national background check, \$15 for the FDLE Florida background check, and \$10.50 for the Department to cover LiveScan electronic fingerprint scanner machine maintenance and personnel.⁶ In addition, sheriff's offices are statutorily authorized to collect \$5 for fingerprinting services.⁷

Section 790.06(6)(c), F.S., requires the Department to either issue the license or deny its issuance and notify the applicant within 90 days of receiving a completed application. The most common reasons for delay and the Department's response to those issues are as follows:

- An incomplete application. The Department will notify the applicant by letter of any deficiencies request the missing information or documentation.
- The fingerprints are insufficiently legible to complete a proper background check. The Department will request a second fingerprint submission as required by law. If the second fingerprint submission is also deemed illegible, the Department can then ask the FBI to conduct a name-based background check.
- The background check results reflect a potentially disqualifying crime without a final disposition. The Department will request court documents indicating the final disposition.⁸

In order to prevent some of these issues, the Department has made a "Fast Track Processing" system available to applicants in eight regional offices. During an appointment, the applicant can fill out and submit the application, have their fingerprints scanned electronically, have their picture taken and make their payment. Staff reviews the application for completeness at the regional office before it is submitted to the Department's Division of Licensing for final processing.

Renewal concealed weapons or firearms licenses require less documentation and can be completed much faster either via a regional office or by mail. If a renewal is done in one of the eight regional offices, with few exceptions, the limited processing work can be done onsite and the renewal license is issued to the waiting applicant.

Concealed weapons or firearms license application submissions have steadily increased over the last 14 years. During fiscal year 1999-2000, the Department received 28,618 applications for initial licensure and 73,821 applications for licensure renewal.⁹ During fiscal year 2012-2013, the Department received 204,288 new license applications and 60,293 applications for license renewal.¹⁰

⁵ Section 790.06(4)-(5), F.S.

⁶ Email from Grace Lovett, Office of Legislative Affairs, Department of Agriculture and Consumer Services, RE: Website from FDLE, regarding fingerprint fee collected with carrying concealed weapons and firearms applications, February 12, 2014 (on file with the Business & Professional Regulation Subcommittee).

⁷ Section 790.06(6)(b), F.S.

⁸ *Id.*

⁹ Florida Department of Agriculture and Consumer Services, Concealed Weapon or Firearm Licensed Reports, Applications and Dispositions by County, July 01, 1999-June 30, 2000, available at http://www.freshfromflorida.com/content/download/7497/118839/07011999_06302000_cw_annual.pdf (last viewed February 10, 2014).

¹⁰ Florida Department of Agriculture and Consumer Services, Concealed Weapon or Firearm Licensed Reports, Applications and Dispositions by County, July 01, 2012-June 30, 2013, available at

During the same time period, the Department issued 192,026 new concealed weapons or firearms licenses and 59,856 renewals.¹¹ As of the end of FY 2012-2013, there were 1,098,458 valid Florida concealed weapons or firearms licenses.¹²

Applications for licensure to carry concealed weapons or firearms may be submitted in person or mailed to one of the Department's eight regional offices.¹³ These regional offices are located in the following cities:

- Doral
- Fort Walton Beach
- Jacksonville
- Orlando
- Punta Gorda
- Tallahassee
- Tampa
- West Palm Beach¹⁴

Tax Collector Authority

Article VIII, section 1(d) of the Florida Constitution provides that Tax Collectors are elected County Officers, except when provided by county charter or special law approved by the vote of the electors of the county.¹⁵ The tax collector is the county officer charged with the collection of ad valorem taxes levied by the county, the school board, any special taxing districts within the county, and all municipalities within the county.¹⁶ Tax collections are supervised by the Department of Revenue.¹⁷

Several state agencies and departments are currently authorized to enter into agreements with tax collectors for various purposes. Some examples that are similar to the arrangement with the Department contemplated by the bill include:

- The Department of State may appoint a county tax collector as an agent to accept applications for licenses or license renewals or other similar registrations.¹⁸
- The Department of Highway Safety and Motor Vehicles (DHSMV) authorizes tax collectors to act as agents of the department in matters of motor vehicle registration. DHSMV has statutory authority to install The Florida Real Time Vehicle Information System in the tax collectors offices to facilitate the agency relationship.¹⁹

http://www.freshfromflorida.com/content/download/7484/118761/07012012_06302013_cw_annual.pdf (last viewed February 10, 2014).

¹¹ Id.

¹² Florida Department of Agriculture and Consumer Services, Number of Valid Florida Concealed Weapon Licenses as Reported at the End of Each Fiscal year (June 30) Since Program Inception in October 1987, *available at* http://www.freshfromflorida.com/content/download/7504/118881/NumberOfValidCWLicenses_FiscalYearEndSince1987-1988.pdf (last viewed February 10, 2014).

¹³ Florida Department of Agriculture and Consumer Services, Concealed Weapon License Application website, *available at* <http://www.freshfromflorida.com/Divisions-Offices/Licensing/Concealed-Weapon-License/Concealed-Weapon-License-Application> (last viewed February 12, 2014).

¹⁴ Florida Department of Agriculture and Consumer Services, Regional Office Locations website, *available at* <http://www.freshfromflorida.com/Divisions-Offices/Licensing/Regional-Offices/Regional-Office-Locations> (last viewed February 12, 2014).

¹⁵ FLA. CONST. art. VIII, s. 1(d).

¹⁶ Section 192.001(4), F.S.

¹⁷ Section 197.603, F.S.

¹⁸ Section 288.037, F.S.

¹⁹ Section 320.03, F.S.

- DHSMV also has a statutory mandate to enter interagency agreements with tax collectors to issue driver licenses, identification cards, and vessel registrations.²⁰
- The tax collectors may sell licenses for game hunting and fishing, as authorized by statute and the Fish and Wildlife Conservation Commission.²¹
- The Department of Business and Professional Regulation (DBPR) may enter into an agreement with county tax collectors to act as the department's agent to accept applications for licenses or renewals of licenses to practice professions that fall within DBPR jurisdiction.²²

Effect of the Bill

The bill creates s. 790.063, F.S., which authorizes the Department to appoint elected tax collectors for the purpose of accepting and forwarding to the Department applications for concealed weapons or firearms licenses or renewals on behalf of the Division of Licensing (Division).

In order to be considered by the Department, tax collectors must submit a request to the Division to accept applications for concealed weapons or firearms licenses. The Division has the discretion to enter into a Memorandum of Understanding (MOU) with the tax collector. The Department also has the authority to rescind the MOU for any reason at any time.

All personal identifying information provided for the license or renewal that is contained in a tax collector's records as a result of the MOU is given confidential and exempt status by the linked bill, HB 525.

Appointed tax collectors may not maintain a list of persons who apply for or receive a new or renewal concealed weapons or firearms license. Maintaining such a list makes the person subject to the penalty provisions of s. 790.335, F.S.

A tax collector appointed under the provisions of the bill is authorized to retain \$22 of the fees accepted with the initial license application and \$12 of the fees accepted with the renewal application. These fees are a part of the fees already provided for in s. 790.06(5), F.S., and are not an additional fee in the bill language. License fees collected by the tax collector are to be remitted to the Department weekly.

The bill authorizes tax collectors approved for appointment to administer fingerprints for license applicants. Persons who are not appointed by the Department are prohibited from handling applications for any fee or compensation.

The bill creates a second degree misdemeanor for willful violations of s. 790.063, F.S. The bill does not change eligibility criteria or license application requirements.

B. SECTION DIRECTORY:

Section 1 amends s. 790.06(5), F.S., to permit the tax collectors to receive applications for a license to carry concealed weapons or firearms.

Section 2 amends s. 790.0601, F.S., to prohibit tax collectors or their employees to disclose identifying information received from an individual that has applied for or received a license to carry concealed weapons or firearms.

Section 3 creates s. 790.063, F.S., authorizing the Department of Agriculture and Consumer Services to appoint tax collectors to accept applications for licensure to carry concealed weapons or firearms.

²⁰ Section 322.135, F.S., s. 328.73, F.S.

²¹ Section 379.352(4), F.S.

²² Section 455.213(1), F.S.

Section 4 provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Department estimates an indeterminate amount of additional revenue will be generated and paid into the Division of Licensing Trust Fund due to a possible increase in applications for licensure to carry concealed weapons or firearms at tax collector's offices.

2. Expenditures:

The Department indicates that the bill will require an appropriation of \$707,608 recurring and \$105,503 in nonrecurring funds which includes 11 full-time equivalent positions with associated salary to provide infrastructure costs to cover training and support for tax collectors participating in the program, to purchase necessary equipment, and to process the anticipated increase in licensure applications.²³

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Department estimates an indeterminate amount of additional revenue will be generated and for local governments due to the \$22 fee retained by tax collectors accepting applications for licensure to carry concealed weapons or firearms. The Department is unable to estimate the number of applications that will be received by the tax collectors' offices.

2. Expenditures:

Tax collectors will be responsible for obtaining a minimum of two personal computers, a camera and document image scanner, and other equipment costing a total of approximately \$3000 for a minimum set-up in order to be able to accept applications for licensure to carry concealed weapons or firearms. Each tax collector that is accepted by the Department shall be responsible for this cost. An estimated 30 total counties have indicated their interest in participating in the program. If each tax collector that has indicated interest is approved, the total costs for local expenditures will be approximately \$90,000.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The language provides that the \$22 fee the tax collector may retain shall come from the existing fees required for licensure application. Therefore, the private sector will not be subject to additional fees. However, making the application process for licensure more convenient may increase the number of individuals applying for licensure. Local private companies provide the training courses required for initial licensure. If the convenience of applying at a tax collector's office increases applications, the local private companies that provide the training courses could experience an increase in revenue due to more individuals taking the classes.

D. FISCAL COMMENTS:

None.

III. COMMENTS

²³ Email from Grace Lovette, Office of Legislative Affairs, Department of Agriculture and Consumer Services, RE: Estimate for amendment to include appropriations, February 11, 2013 (on file with the Business and Professional Regulation Subcommittee).

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 117 through 119 of the bill states that "From the fees collected by a tax collector pursuant to this section, the tax collector may retain \$22 for each new application and \$12 for each renewal." The section referred to is s. 790.063, F.S., which is created by the bill. Section 790.063, F.S., as created by the bill, does not state any fees that are to be collected by the tax collector from which the \$22 or \$12 may be retained. The language refers to the licensure fee of \$70 and renewal fee of \$60 set forth in s. 790.06(5)(b), F.S. This discrepancy has been brought to the attention of the Department, which has indicated they intend to amend the language to reference the correct statute.

Additionally, The Department indicated that the \$22 and the \$12 fees to be retained by the tax collector were intended to be convenience fees in addition to the standard \$70 and \$60 licensure or renewal fees. The bill indicates that the \$22 is to come from the \$70 licensure fee, and the \$12 is to come from the \$60 renewal fee. The Department has indicated that they intend to amend the language to reflect the intended fee structure.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to applications for concealed weapons
 3 or firearms licenses; amending s. 790.06, F.S.;
 4 authorizing approved tax collectors to accept
 5 applications for licenses to carry concealed weapons
 6 or firearms; amending s. 790.0601, F.S.; prohibiting
 7 tax collectors and their employees from disclosing
 8 identifying information received in applications for
 9 licenses to carry concealed weapons or firearms;
 10 creating s. 790.063, F.S.; providing for tax
 11 collectors to apply and be authorized to accept
 12 applications for licenses to carry concealed weapons
 13 or firearms; providing for memoranda of understanding
 14 between approved tax collectors and the Department of
 15 Agriculture and Consumer Services; providing that
 16 certain information received by tax collectors is
 17 confidential as if received by the department;
 18 providing for remission of revenue to the department;
 19 providing for retention of specified fees by tax
 20 collectors; prohibiting tax collectors from
 21 maintaining certain lists; prohibiting persons from
 22 receiving compensation for handling such applications
 23 unless authorized; providing criminal penalties;
 24 providing an effective date.
 25
 26 Be It Enacted by the Legislature of the State of Florida:

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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Section 1. Subsection (5) of section 790.06, Florida Statutes, is amended to read:

790.06 License to carry concealed weapon or firearm.—

(5) The applicant shall submit to the Department of Agriculture and Consumer Services or an approved tax collector pursuant to s. 790.063:

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

(b) A nonrefundable license fee not to exceed \$70, if he or she has not previously been issued a statewide license, or a nonrefundable license fee not to exceed \$60 for renewal of a statewide license. Costs for processing the set of fingerprints as required in paragraph (c) shall be borne by the applicant. However, an individual holding an active certification from the Criminal Justice Standards and Training Commission as a "law enforcement officer," "correctional officer," or "correctional probation officer" as defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9) is exempt from the licensing requirements of this section. If any individual holding an active certification from the Criminal Justice Standards and Training Commission as a "law enforcement officer," a "correctional officer," or a "correctional probation officer" as defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9) wishes to receive a concealed weapons or firearms license, such person is exempt from the background investigation and all background investigation fees,

53 but shall pay the current license fees regularly required to be
 54 paid by nonexempt applicants. Further, a law enforcement
 55 officer, a correctional officer, or a correctional probation
 56 officer as defined in s. 943.10(1), (2), or (3) is exempt from
 57 the required fees and background investigation for a period of 1
 58 year subsequent to the date of retirement of said officer as a
 59 law enforcement officer, a correctional officer, or a
 60 correctional probation officer.

61 (c) A full set of fingerprints of the applicant
 62 administered by a law enforcement agency or the Division of
 63 Licensing of the Department of Agriculture and Consumer
 64 Services.

65 (d) A photocopy of a certificate or an affidavit or
 66 document as described in paragraph (2)(h).

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

70 Section 2. Paragraph (c) of subsection (2) of section
 71 790.0601, Florida Statutes, is amended to read:

72 790.0601 Public records exemption for concealed weapons.—

73 (2) Information made confidential and exempt by this
 74 section shall be disclosed:

75 (c) Upon request by a law enforcement agency in connection
 76 with the performance of lawful duties, which shall include
 77 access to any automated database containing such information
 78 maintained by the Department of Agriculture and Consumer

79 Services. Notwithstanding this paragraph, tax collectors and
 80 their employees may not disclose any identifying information
 81 received by them pursuant to s. 790.063 from an individual who
 82 has applied for or received a license to carry a concealed
 83 weapon or firearm pursuant to s. 790.06.

84 Section 3. Section 790.063, Florida Statutes, is created
 85 to read:

86 790.063 Appointment of tax collectors to accept
 87 applications for concealed weapon or firearm licenses; fees;
 88 penalties.-

89 (1) The Department of Agriculture and Consumer Services
 90 may appoint tax collectors, as defined in s. 1(d) of Art. VIII
 91 of the State Constitution, to accept applications on the
 92 department's behalf for concealed weapon or firearm licenses.
 93 Such appointment shall be for specified locations that will best
 94 serve the public interest and convenience in applying for these
 95 licenses. An authorized tax collector may accept applications
 96 for new licenses and renewals.

97 (2) A tax collector must submit a written request to
 98 accept applications for concealed weapon or firearm licenses to
 99 the department stating the tax collector's contact name,
 100 address, telephone number, locations within the county that will
 101 accept applications, and other information as requested by the
 102 department.

103 (3) The department, upon receipt of a written request by a
 104 tax collector, shall review the request and deny the request or,

105 if it accepts, enter into a memorandum of understanding with the
 106 tax collector to accept concealed weapon or firearm applications
 107 on behalf of the department.

108 (4) The department may rescind a memorandum of
 109 understanding for any reason at any time.

110 (5) All personal identifying information that is provided
 111 pursuant to s. 790.06 and is contained in the records of a tax
 112 collector appointed under this section is confidential as
 113 provided in s. 790.0601.

114 (6) Tax collectors shall remit the license revenue weekly
 115 to the Department of Agriculture and Consumer Services for
 116 deposit in the Division of Licensing Trust Fund.

117 (7) From the fees collected by a tax collector pursuant to
 118 this section, the tax collector may retain \$22 for each new
 119 application and \$12 for each renewal.

120 (8) A tax collector may not maintain a list or record of
 121 concealed weapon or firearm licensees or applicants. A violation
 122 of this subsection is subject to s. 790.335.

123 (9) A person may not handle concealed weapon or firearm
 124 applications for a fee or compensation of any kind unless he or
 125 she has been appointed by the department.

126 (10) A person who willfully violates this section commits
 127 a misdemeanor of the second degree, punishable as provided in s.
 128 775.082 or s. 775.083.

129 Section 4. This act shall take effect July 1, 2014.



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 & Professional
 2 Regulation Subcommittee

3 Representative Grant offered the following:

Amendment (with title amendment)

6 Remove everything after the enacting clause and insert:

7 Section 1. Subsection (5) of section 790.06, Florida
 8 Statutes, is amended to read:

9 790.06 License to carry concealed weapon or firearm.-

10 (5) The applicant shall submit to the Department of
 11 Agriculture and Consumer Services or an approved tax collector
 12 pursuant to s. 790.0625:

13 (a) A completed application as described in subsection
 14 (4).

15 (b) A nonrefundable license fee of up to ~~not to exceed~~ \$70₇
 16 if he or she has not previously been issued a statewide license₇
 17 or of up to ~~a nonrefundable license fee not to exceed~~ \$60 for



Amendment No. 1

18 renewal of a statewide license. The cost of ~~Costs for~~ processing
19 ~~the set of~~ fingerprints as required in paragraph (c) is ~~shall be~~
20 borne by the applicant. However, an individual holding an active
21 certification from the Criminal Justice Standards and Training
22 Commission as a "law enforcement officer," "correctional
23 officer," or "correctional probation officer" as defined in s.
24 943.10(1), (2), (3), (6), (7), (8), or (9) is exempt from the
25 licensing requirements of this section. If such ~~any~~ individual
26 ~~holding an active certification from the Criminal Justice~~
27 ~~Standards and Training Commission as a "law enforcement~~
28 ~~officer," a "correctional officer," or a "correctional probation~~
29 ~~officer" as defined in s. 943.10(1), (2), (3), (6), (7), (8), or~~
30 ~~(9)~~ wishes to receive a concealed weapons or firearms license,
31 he or she ~~such person~~ is exempt from the background
32 investigation and all background investigation fees, but must
33 ~~shall~~ pay the current license fees regularly required to be paid
34 by nonexempt applicants. Further, a law enforcement officer, a
35 correctional officer, or a correctional probation officer as
36 defined in s. 943.10(1), (2), or (3) is exempt from the required
37 fees and background investigation for a period of 1 year after
38 his or her ~~subsequent to the date of retirement of said officer~~
39 ~~as a law enforcement officer, a correctional officer, or a~~
40 ~~correctional probation officer.~~

41 (c) A full set of fingerprints of the applicant
42 administered by a law enforcement agency or the Division of



Amendment No. 1

43 Licensing of the Department of Agriculture and Consumer Services
44 or an approved tax collector pursuant to s. 790.0625.

45 (d) A photocopy of a certificate, ~~or an affidavit,~~ or
46 document as described in paragraph (2)(h).

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

50 Section 2. Section 790.0625, Florida Statutes, is created
51 to read:

52 790.0625 Appointment of tax collectors to accept
53 applications for a concealed weapon or firearm license; fees;
54 penalties.-

55 (1) As used in this section, the term:

56 (a) "Department" means the Department of Agriculture and
57 Consumer Services.

58 (b) "Division" means the Division of Licensing of the
59 Department of Agriculture and Consumer Services.

60 (2) The department, at its discretion, may appoint tax
61 collectors, as defined in s. 1(d) of Art. VIII of the State
62 Constitution, to accept applications on behalf of the division
63 for concealed weapon or firearm licenses. Such appointment shall
64 be for specified locations that will best serve the public
65 interest and convenience in applying for these licenses.

66 (3) A tax collector seeking to be appointed to accept
67 applications for new or renewal concealed weapon or firearm
68 licenses must submit a written request to the division stating



Amendment No. 1

69 his or her name, address, telephone number, each location within
70 the county at which the tax collector wishes to accept
71 applications, and other information as required by the division.

72 (a) Upon receipt of a written request, the division shall
73 review it and at its discretion may decline to enter into a
74 memorandum of understanding or, if approved, enter into a
75 memorandum of understanding with the tax collector to accept
76 applications for new or renewal concealed weapon or firearm
77 licenses on behalf of the department.

78 (b) The department or the division may rescind a
79 memorandum of understanding for any reason at any time.

80 (4) All personal identifying information that is provided
81 pursuant to s. 790.06 and contained in the records of a tax
82 collector appointed under this section is confidential and
83 exempt as provided in s. 790.0601.

84 (5) A tax collector appointed under this section may
85 collect and retain a convenience fee of \$22 for each new
86 application and \$12 for each renewal and shall remit weekly to
87 the department the license fees pursuant to s. 790.06 for
88 deposit in the Division of Licensing Trust Fund.

89 (6) (a) A tax collector appointed under this section may
90 not maintain a list or record of persons who apply for or are
91 granted a new or renewal license to carry a concealed weapon or
92 firearm. A violation of this paragraph is subject to s. 790.335.



Amendment No. 1

93 | (b) A person may not handle an application for a concealed
94 | weapon or firearm for a fee or compensation of any kind unless
95 | he or she has been appointed by the department to do so.

96 | (7) A person who willfully violates this section commits a
97 | misdemeanor of the second degree, punishable as provided in s.
98 | 775.082 or s. 775.083.

99 | Section 3. For fiscal year 2014-15, there is appropriated
100 | to the Department of Agriculture and Consumer Services the sums
101 | of \$707,608 in recurring and \$105,503 in nonrecurring funds from
102 | the Division of Licensing Trust Fund, and 11 full-time
103 | equivalent positions with associated salary rate of 295,751 are
104 | authorized, for the purpose of implementing this act.

105 | Section 4. This act shall take effect July 1, 2014.

106 | -----
107 | **T I T L E A M E N D M E N T**

108 | Remove everything before the enacting clause and insert:

109 | A bill to be entitled

110 | An act relating to licensure to carry a concealed
111 | weapon or firearm; amending s. 790.06, F.S.;
112 | authorizing an applicant for a license to carry a
113 | concealed weapon or firearm to submit the application
114 | to an appointed tax collector; creating s. 790.0625,
115 | F.S.; defining terms; authorizing the Department of
116 | Agriculture and Consumer Services to appoint tax
117 | collectors to accept applications for new or renewal
118 |



Amendment No. 1

119 licenses to carry a concealed weapon or firearm on
120 behalf of the Division of Licensing of the Department
121 of Agriculture and Consumer Services; requiring a tax
122 collector seeking appointment to submit a written
123 request to the division; providing requirements for
124 the request; requiring the division and an appointed
125 tax collector to enter into a memorandum of
126 understanding; authorizing the department or the
127 division to rescind a memorandum of understanding at
128 any time; providing that certain personal identifying
129 information of applicants for licensure is
130 confidential and exempt; establishing license fees for
131 new and renewal applications; requiring an appointed
132 tax collector to remit fees to the department;
133 prohibiting a tax collector from maintaining a list or
134 record of concealed weapon or firearm licensees or
135 applicants; prohibiting a person from processing a
136 concealed weapon or firearm application for a fee or
137 compensation unless he or she has been appointed by
138 the department to do so; providing for criminal
139 penalties; providing an appropriation and authorizing
140 positions; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 525 Pub. Rec./Personal Identifying Information/License to Carry a Concealed Weapon or Firearm
SPONSOR(S): Grant
TIED BILLS: HB 523 **IDEN./SIM. BILLS:** SB 546

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professional Regulation Subcommittee		Brown-Blake KBB	Luczynski m
2) Government Operations Subcommittee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

HB 525 expands an exist public records exemption for certain personal identifying information submitted by applicants for licensure to carry a concealed weapon or firearm when the application is submitted to a tax collector rather than the Department of Agriculture and Consumer Services. The addition to the exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2019, unless reviewed and saved from repeal by the Legislature.

The bill contains a statement of public necessity as required by the Florida Constitution.

Because this bill expands a public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for passage.

The bill shall take effect at the same time that HB 523 is adopted and becomes law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Public Records Laws

The Florida Constitution provides every person 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 of persons acting on their behalf.¹ The records of the legislative, executive, and judicial branches are specifically included.²

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act³ guarantees every person's right to inspect and copy any state or local government public record⁴ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁵

Only the Legislature may create an exemption to public records requirements.⁶ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.⁷ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions⁸ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.⁹

The Open Government Sunset Review Act¹⁰ requires a newly created or expanded public records exemption to be repealed on October 2nd of the fifth year after enactment, unless reviewed and reenacted by the Legislature.¹¹ It further provides that a public records exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet the public purpose it serves.¹²

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ Chapter 119, F.S.

⁴ Section 119.011(12), F.S., defines "public records" 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." Section 119.011(2), F.S., defines "agency" 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 Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

⁵ Section 119.07(1)(a), F.S.

⁶ FLA. CONST. art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances (*see WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see Attorney General Opinion 85-62*, August 1, 1985).

⁷ FLA. CONST. art. I, s. 24(c).

⁸ The bill may, however, contain multiple exemptions that relate to one subject.

⁹ FLA. CONST. art. I, s. 24(c).

¹⁰ Section 119.15, F.S.

¹¹ Section 119.15(3), F.S.

¹² Section 119.15(6)(b), F.S.

Concealed Weapon or Firearm Licensure

The Department of Agriculture and Consumer Services (Department) is responsible for issuing licenses to carry concealed weapons or concealed firearms to those who qualify.¹³ Carrying a concealed weapon without first obtaining a license could be a crime pursuant to s. 790.01, F.S. A concealed weapon or concealed firearm is defined as a handgun, electronic weapon or device, tear gas gun, knife, or billie.¹⁴

In order to obtain a concealed weapon license, applicants must make application and meet the following general requirements:

- Is a citizen or permanent resident alien of the United States; or is a consular security official of a foreign government with diplomatic relations with the United States.
- Is at least 21 years old.
- Can physically handle a weapon safely.
- Is not a convicted felon.
- Has not been convicted of a crime under ch. 893, F.S., or been committed for the abuse of a controlled substance within a 3-year period immediately preceding the application date.
- Does not chronically and habitually use alcoholic beverages or other substances to the extent that his or her normal faculties are impaired.
- Demonstrates competence with a firearm by completing a firearm training course or presents evidence of equivalent experience with a firearm through participation in organized shooting competition or military service; or is or has previously been licensed to carry a firearm in Florida.
- Has not been adjudicated an incapacitated person under s. 744.331, F.S.
- Has not been committed to a mental institution under ch. 394, F.S.
- Has not had adjudication of guilt withheld or imposition of sentence suspended on any felony or misdemeanor crime of domestic violence unless three years have elapsed since probation or any other conditions set by the court have been fulfilled.
- Is not currently under a domestic violence injunction.
- Is not prohibited from purchasing or possessing a firearm by any other provision of Florida or federal law.¹⁵

To obtain a concealed weapons license, a person must complete, under oath, an application that includes:

- The name, address, place and date of birth, race, and occupation of the applicant.
- A full frontal view color photograph of the applicant which must be taken within the preceding 30 days.
- A statement that the applicant has been furnished with a copy of ch. 790, F.S., relating to weapons and firearms and is knowledgeable of its provisions.
- A warning that the application is executed under oath with penalties for falsifying or substituting false documents.
- A statement that the applicant desires a concealed weapon or firearms license as a means of lawful self-defense.
- A full set of fingerprints.
- Documented proof of completion of a firearms safety and training course.
- A nonrefundable license fee no greater than \$70 for a new license or no greater than \$60 for a renewal.¹⁶

¹³ Section 790.06(1), F.S.

¹⁴ *Id.*

¹⁵ Section 790.06(2), F.S.

¹⁶ Section 790.06(4)-(5), F.S.

Concealed weapon license application submissions have steadily increased over the last 14 years. During fiscal year 1999-2000, the Department received 28,618 applications for initial licensure and 73,821 applications for licensure renewal.¹⁷ During fiscal year 2012-2013, the Department received 204,288 new license applications and 60,293 applications for license renewal.¹⁸ During the same time period, the Department issued 192,026 new concealed weapon licenses and 59,856 renewals.¹⁹ As of the end of FY 2012-2013, there were 1,098,458 valid Florida concealed weapon licenses.²⁰

Current Exemptions Relating to Concealed Weapon Licensure Application Information

Section 790.0601, F.S., provides that personal identifying information of an individual who has applied for or received a license to carry a concealed weapon or firearm pursuant to s. 790.06, F.S., held by the Division of Licensing of the Department (Division), is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. The exemption applies to any information held by the Division before, on, or after the effective date of the exemption.²¹ The exempt information shall be disclosed:

- With the express written consent of the applicant or licensee or his or her legally authorized representative;
- By court order upon a showing of good cause; or
- Upon request by a law enforcement agency in connection with the performance of lawful duties, which shall include access to any automated database containing such information maintained by the Department.²²

In Chapter 2006-102, Laws of Florida, in which the exemption was created, the Legislature found that an identifiable public purpose existed for the creation of the exemption under review, and that it is no more broad than necessary to meet the public purpose it serves. In Section 2 of the 2006 chapter law, the statement of public purpose, invokes personal safety issues tied to the Department divulging the personal information of concealed weapons permit applicants and holders.

Specifically, the statement speaks of the contradiction between a person carrying a concealed firearm or weapon and making public that individual's personally identifying information. The inference that can be drawn from the statement of public purpose is that it is a matter of personal safety that an individual who carries a concealed firearm or weapon keep the weapon's presence out of the public view or scrutiny, and that public access to the individual's identity circumvents the "concealment" purpose of the concealed weapon permit.

The public records exemption created in s. 790.0601, F.S., was reenacted in 2011 pursuant to the Open Government Sunset Review Act.²³

¹⁷ Florida Department of Agriculture and Consumer Services, Concealed Weapon or Firearm Licensed Reports, Applications and Dispositions by County, July 01, 1999-June 30, 2000, *available at* http://www.freshfromflorida.com/content/download/7497/118839/07011999_06302000_cw_annual.pdf (last viewed February 10, 2014).

¹⁸ Florida Department of Agriculture and Consumer Services, Concealed Weapon or Firearm Licensed Reports, Applications and Dispositions by County, July 01, 2012-June 30, 2013, *available at* http://www.freshfromflorida.com/content/download/7484/118761/07012012_06302013_cw_annual.pdf (last viewed February 10, 2014).

¹⁹ *Id.*

²⁰ Florida Department of Agriculture and Consumer Services, Number of Valid Florida Concealed Weapon Licenses as Reported at the End of Each Fiscal year (June 30) Since Program Inception in October 1987, *available at* http://www.freshfromflorida.com/content/download/7504/118881/NumberOfValidCWLicenses_FiscalYearEndSince1987-1988.pdf (last viewed February 10, 2014).

²¹ Section 790.0601(1), F.S.

²² Section 790.0601(2), F.S.

²³ Ch. 2011-136. L.O.F.

House Bill 523 is linked to House Bill 525

Linked HB 523 creates s. 790.063, F.S., which authorizes the Department to appoint elected county tax collectors for the purpose of accepting and forwarding to the Department applications for concealed weapon or firearm licenses or renewals on behalf of the Division. These applications request personal identifying information that under current law is exempt from public records due to the aforementioned exemption once submitted to the Department.

In order to be considered by the Department, tax collectors must submit a request to the Division to accept applications for concealed weapon or firearm licenses. The Division has the discretion to enter into a Memorandum of Understanding (MOU) with the tax collector. The Department has the authority to rescind the MOU for any reason at any time.

Regardless of the passage of HB 523, appointed tax collectors may not maintain a list of persons who own firearms. Maintaining such a list makes the person in violation of the provisions of s. 790.335(2), F.S.

Any personal identifying information provided for the license or renewal that is contained in a tax collector's records as a result of the MOU arrangement with the Department does not currently have confidential and exempt status. However, if the same application is submitted to the Department at one of its eight regional offices, the personal identifying information is confidential and exempt.

Effect of the Bill

The bill expands the confidential and exempt status of the personal identifying information on an application for licensure to carry a concealed weapon or firearm submitted to tax collectors. In addition, the bill provides for an Open Government Sunset Review of the exemption and repeal on October 2, 2019, if the exemption is not reenacted.

The Legislature declares, through the bill, that personal identifying information of an individual who has applied for a license to carry a concealed weapon which is held by a tax collector needs to be made confidential and exempt from public records requirements. The bill includes a statement of public necessity, which finds that:

The knowledge that an individual has applied for a license to carry a concealed weapon or firearm may logically lead to the conclusion that he or she is carrying a concealed weapon or firearm. This defeats the purpose of carrying a concealed weapon or firearm. The Legislature has found in past legislative sessions and has expressed in s. 790.335(1)(a)3., Florida Statutes, that a record of legally owned firearms or law-abiding firearm owners is "an instrument that can be used as a means to profile innocent citizens and to harass and abuse American citizens based solely on their choice to own firearms and exercise their Second Amendment right to keep and bear arms as guaranteed under the United States Constitution." Release of personal identifying information of an individual who has applied for a license to carry a concealed weapon or firearm could be used to harass an innocent individual based solely on his or her exercised right to carry a concealed weapon or firearm.

The exemption expanded by this bill applies to personal identifying information held by a tax collector appointed by the Department to receive that information from a person who is applying through the tax collector to the Department for a concealed weapon or firearm license or renewal. It applies to such information held by the tax collector before, on, or after the effective date of the bill.

B. SECTION DIRECTORY:

Section 1 amends s. 790.0601, F.S., creating an exemption from public records requirements for certain personal identifying information held by the tax collector when an individual applies for a license to carry a concealed weapon or firearm pursuant to s. 790.06, F.S.

Section 2 provides the Legislative statement of public necessity for the public records exemption.

Section 3 provides the act shall take effect at the same time that HB 523 is adopted and becomes law.

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:

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:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 790.0601, F.S.; creating an exemption from public
 4 records requirements for certain personal identifying
 5 information held by the tax collector when an
 6 individual applies for a license to carry a concealed
 7 weapon or firearm pursuant to s. 790.06, F.S.;
 8 providing for retroactive application of the
 9 exemption; providing for disclosure of such
 10 information under specified conditions; providing for
 11 review and repeal of the exemption; providing a
 12 statement of public necessity; providing a conditional
 13 effective date.

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

16
 17 Section 1. Section 790.0601, Florida Statutes, is amended
 18 to read:

19 790.0601 Public records exemption for concealed weapons.—

20 (1) Personal identifying information of an individual who
 21 has applied for or received a license to carry a concealed
 22 weapon or firearm pursuant to s. 790.06 held by the Division of
 23 Licensing of the Department of Agriculture and Consumer Services
 24 is confidential and exempt from s. 119.07(1) and s. 24(a), Art.
 25 I of the State Constitution. This exemption applies to such
 26 information held by the division before, on, or after the

27 effective date of this section.

28 (2) Personal identifying information of an individual who
 29 has applied for a license to carry a concealed weapon or firearm
 30 pursuant to s. 790.063 which is held by a tax collector
 31 appointed by the Department of Agriculture and Consumer Services
 32 to receive applications and fees is confidential and exempt from
 33 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.
 34 This exemption applies to such information held by the tax
 35 collector before, on, or after the effective date of this
 36 subsection.

37 (3)(2) Information made confidential and exempt by this
 38 section shall be disclosed:

39 (a) With the express written consent of the applicant or
 40 licensee or his or her legally authorized representative.

41 (b) By court order upon a showing of good cause.

42 (c) Upon request by a law enforcement agency in connection
 43 with the performance of lawful duties, which shall include
 44 access to any automated database containing such information
 45 maintained by the Department of Agriculture and Consumer
 46 Services.

47 (4) Subsection (2) is subject to the Open Government
 48 Sunset Review Act in accordance with s. 119.15 and shall stand
 49 repealed on October 2, 2019, unless reviewed and saved from
 50 repeal through reenactment by the Legislature.

51 Section 2. (1) The Legislature finds that, with certain
 52 exceptions, it is a public necessity that personal identifying

53 information of an individual who has applied for a license to
54 carry a concealed weapon or firearm which is held by a tax
55 collector be made confidential and exempt from public records
56 requirements. The carrying of a concealed weapon or firearm in
57 this state by members of the general public requires an
58 individual to file an application containing personal
59 identifying information. The Legislature has made the Department
60 of Agriculture and Consumer Services the responsible agency for
61 collecting this information and issuing the concealed weapon or
62 firearm license. The collected information must include a
63 statement from the applicant that he or she seeks a concealed
64 weapon or firearm license as a means of lawful self-defense.

65 (2) There has been substantial demand for the concealed
66 weapon or firearm license. The availability of additional
67 licensure locations would benefit individuals who require self-
68 protection.

69 (3) The potential addition of licensure locations raises
70 issues of confidentiality. The knowledge that an individual has
71 applied for a license to carry a concealed weapon or firearm may
72 logically lead to the conclusion that he or she is carrying a
73 concealed weapon or firearm. This defeats the purpose of
74 carrying a concealed weapon or firearm. The Legislature has
75 found in past legislative sessions and has expressed in s.
76 790.335(1)(a)3., Florida Statutes, that a record of legally
77 owned firearms or law-abiding firearm owners is "an instrument
78 that can be used as a means to profile innocent citizens and to

79 harass and abuse American citizens based solely on their choice
80 to own firearms and exercise their Second Amendment right to
81 keep and bear arms as guaranteed under the United States
82 Constitution." Release of personal identifying information of an
83 individual who has applied for a license to carry a concealed
84 weapon or firearm could be used to harass an innocent individual
85 based solely on his or her exercised right to carry a concealed
86 weapon or firearm. Therefore, the Legislature finds that the
87 personal identifying information of an individual who has
88 applied for a license to carry a concealed weapon or firearm
89 pursuant to chapter 790, Florida Statutes, must be held
90 confidential and exempt from public records requirements.

91 Section 3. This act shall take effect on the same date
92 that HB 523 or similar legislation takes effect, if such
93 legislation is adopted in the same legislative session or an
94 extension thereof and becomes a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 629 Charities
SPONSOR(S): Boyd and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 638

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professional Regulation Subcommittee		Butler BSB	Luczynski NJ
2) Appropriations Committee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

The bill amends current law to provide increased oversight of charitable organizations and sponsors, professional fundraising consultants, and professional solicitors. Generally, the bill:

Charitable Organizations and Sponsors

- Authorizes DACS to enter a disqualification order for certain charities not meeting disbursement requirements, which disqualifies the charity from receiving sales or lease tax exemptions;
- Clarifies the requirements related to financial statements;
- Requires charities to adopt conflict of interest policies; and
- Requires supplemental financial disclosures and quarterly statements for certain charities.

Professional Solicitors

- Creates a new, annual license for officers, directors, trustees, and owners of a professional solicitor and any employee of the solicitor conducting telephone solicitations;
- The license fee shall be \$100; and there is a \$10 fee for application updates for processing material changes to an initial or renewal license;
- Requires professional solicitation businesses to include additional application information, such as all the telephone numbers the solicitor will use and a copy of any script, presentation, or sales literature used;
- Requires professional solicitors to include additional information in the notice required before beginning a solicitation campaign, such as a statement of the minimum percentage of gross receipts from contributions that will be remitted to the charity, if any; and
- Prohibits a professional solicitor from failing to remit to a charity the disclosed guaranteed minimum percentage of gross receipts from the solicitation campaign.

Donation Collection Receptacles

- Requires collection receptacles operated by charities to display a permanent sign that provides the name, address, telephone number, and registration number of the charity; and
- Requires collection receptacles operated by for-profit businesses to display a permanent sign on the receptacle that provides the organization's name, address, and telephone number, and a statement that clarifies the donation receptacle is for a for-profit business.

Prohibited Acts and Penalties

- Prohibits a person from submitting false, misleading, or inaccurate information in connection with the planning, conduct, or execution of any solicitation or charitable or sponsor sales promotion regardless of whether the person knows it is false, misleading, or inaccurate;
- Generally, increases from \$1,000 to \$5,000 the fine DACS may levy for violations and makes the fine applicable to s. 501(c)(3) organizations; and
- Authorizes a fine up to \$10,000 for a violation that involves fraud or deception.

The bill also updates the definition of "religious institution" to bring it in line with federal tax laws, and it appropriates \$175,000 in non-recurring funds to DACS to implement this bill.

The bill has an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The mission of the Florida Department of Agriculture and Consumer Services (DACS or 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;
- 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 bill includes modifications to regulatory and consumer activities under the jurisdiction of DACS and, specifically, the Division of Consumer Services (division). A charitable organization or sponsor must be registered with the Department before soliciting for charitable contributions, unless otherwise exempt. The Department of Revenue grants charitable organizations tax exemptions on leases and a sales tax exemption based on their exemption from federal income tax by the Internal Revenue Service (IRS).

In Florida, the solicitation of contributions by charitable organizations and sponsors is regulated by the Solicitation of Contributions Act (the SCA), codified in ch. 496, F.S. As of February 4, 2014, there are over 17,000 charitable organizations and sponsors, 367 professional fundraising consultants, and 129 professional solicitors registered in Florida.¹ Of those 129 professional solicitors, about 50 are headquartered outside Florida.

The SCA contains basic registration, financial disclosure, and notification requirements for charitable organizations and sponsors, fundraising consultants, and solicitors. Recent news reports suggest current regulations under the SCA may be insufficient to effectively monitor and regulate these entities to ensure they are fulfilling their purpose as charitable entities.²

1. Charitable Organizations and Sponsors³

Registration Statements

Currently, under s. 495.405, F.S., any charitable organization or sponsor⁴ that intends to solicit donations in Florida must annually register with DACS and pay a registration fee⁵ before soliciting donations.⁶

¹ Email from Grace Lovett, Office of Legislative Affairs, Department of Agriculture and Consumer Services, FW: Registered Charities, Professional Fundraising Consultants, and Professional Solicitors in Florida, February 13, 2014 (on file with the Business & Professional Regulation Subcommittee)(there is no public listing on these numbers as they must be generated from the Department's internal database and are subject to change).

² Kendall Taggart and Kris Hundley, *America's Worst Charities*, TAMPA BAY TIMES AND THE CENTER FOR INVESTIGATIVE REPORTING, Several related articles published June 6, 2013, June 7, 2013, June 13, 2013, and Nov. 13, 2013, available at <http://www.tampabay.com/topics/specials/worst-charities.page> (last visited Feb 13, 2014).

³ A "sponsor" is "a group or person which is or holds itself out to be soliciting contributions by the use of any name which implies that the group or person is in any way affiliated with or organized for the benefit of emergency service employees or law enforcement officers and which is not a charitable organization." s. 496.404(21), F.S. For a sponsor to solicit contributions in this state, it must be a membership organization that, among other things, has a membership that consists of at least 10 percent or 100 members, whichever is less, who are employed as law enforcement officers or emergency services employees. s. 496.426, F.S.

Registration includes a financial report,⁷ a statement of the purpose of the charity, how donations will be used, names of individuals in charge of solicitation activities, and proof of federal tax exempt status. The charity must also identify any professional solicitors and fundraising consultants the charity will use, along with the terms of the arrangements for compensation to be paid to the consultant and solicitor. The registration must include a statement related to the charity's activity in other states, including whether the charity is authorized to operate in another state; whether the charity's registration has been denied, suspended, or revoked in another state; and whether the charity or any person associated with the charity has been subject to any adverse administrative actions or criminal convictions in any state.⁸

Each affiliate of a parent charity required to register under s. 496.405, F.S., must either file a separate registration and financial report or provide the information to the parent organization to file a consolidated registration. The consolidated registration must include financial reports for the parent organization and each of its Florida affiliates. However, if all contributions received by the affiliates are remitted directly into a single account with the parent organization, the parent organization may submit one consolidated financial report.⁹

A charity must renew its registration annually; if any information submitted on the original registration statement changes, the charity must update that information on its renewal registration. DACS may extend the time for filing an annual renewal statement or financial report for up to 60 days, during which time the charity's previous registration remains in effect. However, a charity's registration may not continue in effect after the date the charity should have filed its financial report. The charity may not file its renewal statement until it has filed its financial report.¹⁰ Failure to file a renewal statement by the date on which the statement and financial report were due may result in a late filing fee of \$25 per month.¹¹

After receiving a registration statement, DACS has 15 business days to approve, deny, or notify the charity that it must provide additional information. If, after 15 days, no additional information is requested, and DACS has not approved or denied the registration, it is deemed approved. If additional information is requested, DACS has 15 days after the information is received to either approve or deny the registration.¹²

Fundraising Restrictions for Individuals with Criminal Records

Under s. 496.405(8), F.S., charities are prohibited from allowing any of its officers, directors, trustees, or employees to solicit contributions on behalf of the charity if he or she has, within the last 10 years, been convicted of or pled guilty to any felony or any crime involving fraud, theft, larceny, embezzlement, fraudulent conversion, misappropriation of property, or any crime arising from the conduct of a solicitation for a charity, or has been enjoined from violating any law relating to a charitable solicitation.

Conflict of Interest Transactions

Chapter 496, F.S., does not regulate conflict of interest transactions involving charities.

⁴ As used in this analysis, the term "charity" or "charities" refers to both charitable organizations and sponsors, unless otherwise indicated.

⁵ The registration fee varies from \$10 to \$400 based on the amount of contributions received by the charity. s. 496.405(4), F.S.

⁶ Section 496.405(1)(a), (c), F.S. Certain small charities are exempt from the registration and financial reporting requirements in ss. 496.405 and 496.407, F.S.

⁷ The information that must be included in the financial report is identified in s. 496.407, F.S.

⁸ Section 496.405(2), F.S.

⁹ *Id.* at (3).

¹⁰ *Id.* at (1).

¹¹ *Id.* at (4)(b).

¹² *Id.* at (7).

Financial Statements

Under s. 496.407, F.S., a charity that is required to register with DACS must file an annual financial report for the preceding year with the Department. The report must include the following: a balance sheet; a statement of support, revenue, and expenses; identification of any charities, professional fundraising consultants, professional solicitors, and commercial co-venturers used and the amounts received from each of them; and a statement of functional expenses that must include program expenses, management and general expenses, and fundraising costs.¹³ A charity may choose to include a financial report that has been audited by an independent certified public accountant (CPA) or an audit with an opinion by an independent CPA. In lieu of the financial report a charity may submit a copy of its IRS Form 990 or Form 990-EZ.

Notice Statements

Section 496.411(3), F.S., requires every charity that is required to register under s. 496.405, F.S., to conspicuously display the following statement in capital letters on every printed solicitation, written confirmation, receipt, or reminder of a contribution: "A copy of the official registration and financial information may be obtained from the Division of Consumer Services by calling toll-free within the state. Registration does not imply endorsement, approval, or recommendation by the state." The statement must also include a toll-free number for DACS.

Tax-Exempt Status and Disqualifying Events

Organizations that are exempt from federal income tax under s. 501(c)(3) of the Internal Revenue Code, such as charities, are exempt from Florida's sales and use tax.¹⁴ To receive an exemption, the organization must submit to the Florida Department of Revenue (DOR) a copy of the Internal Revenue Service's (the IRS) letter determining the organizations 501(c)(3) status.¹⁵ After receiving the IRS determination letter and making a determination that the organization is actively engaged in an exempt endeavor, DOR issues a certificate of exemption to the organization. Under current law, DACS is not part of determining whether a charity operating in Florida should be exempt from sales tax. Specifically, DACS does not have authority to disqualify a charity from receiving any sales tax exemption based on the charity's allocation of expenses to accomplish the charity's stated purpose.

2. Professional Fundraising Consultants

Registration Statements

Professional fundraising consultants are required to annually register and pay a \$300 fee to DACS pursuant to s. 496.409, F.S., before operating in Florida.¹⁶ In addition to name and address information, the registration must also indicate whether any of the owners, directors, officers, or employees of the consultant are related to any other directors, officers, owners, or employees, any charity under contract to the consultant, or any supplier or vendor providing goods or services to any charity under contract with the consultant. Additionally, the registration must indicate and explain whether the consultant or any of its officers, directors, trustees, or employees have been convicted or pled guilty within the past 10 years to any felony or a crime involving fraud, theft, larceny, embezzlement, fraudulent conversion, or misappropriation of property, or any crime arising from the conduct of a solicitation for a charity. Finally, the registration must indicate and explain whether the consultant or any of its officers, directors, trustees, or employees have been enjoined from violating any law relating to a charitable solicitation.¹⁷

¹³ "Fundraising costs" are defined in s. 496.404, F.S., as "those costs incurred in inducing others to make contributions to a charitable organization or sponsor for which the contributors will receive no direct economic benefit. Fundraising costs include, but are not limited to, salaries, rent, acquiring and obtaining mailing lists, printing, mailing, and all direct and indirect costs of soliciting, as well as the cost of unsolicited merchandise sent to encourage contributions." However prior to this bill, ch. 496, F.S., does not define "program expenses" or "management and general expenses."

¹⁴ Section 212.08(7)(p), F.S.

¹⁵ Section 212.084, F.S.

¹⁶ Section 496.409(1), (3), F.S.

¹⁷ *Id.* at (2).

After receiving the registration statement, DACS has 15 business days to either approve the registration or notify the consultant that the registration requirements are not satisfied. If, after 15 days DACS has not notified the consultant, the registration is deemed approved.¹⁸

In addition to the registration requirement, every agreement between a fundraising consultant and a charity must be in writing and signed by two authorized officials of the charity and must be filed with DACS at least five days before the consultant begins providing services.¹⁹

Restrictions on Individuals with Criminal Records

Under s. 495.409(9), F.S., a person may not act as a professional fundraising consultant, and a professional fundraising consultant may not employ any person, if, within the last 10 years, the person has been convicted of or pled guilty to any crime involving fraud, theft, larceny, embezzlement, fraudulent conversion, or misappropriation of property, or any crime arising from the conduct of a solicitation for a charity, or has been enjoined from violating any law relating to a charitable solicitation.²⁰

3. Professional Solicitor

Registration Statements

Section 496.410, F.S., requires professional solicitors to annually register and pay a \$300 fee to DACS before operating in Florida.²¹ Information that must be provided for registration includes the address of the business, the names and addresses of owners, officers, and directors, and the names of anyone in charge of any solicitation activity. The registration must also indicate whether any of the owners, directors, officers, or employees of the solicitor are related to any other directors, officers, owners, or employees of the solicitor, any charity under contract to the solicitor, or any supplier or vendor providing goods or services to any charity under contract with the solicitor. Additionally, the registration must indicate and explain whether the solicitor or any of its officers, directors, trustees, or employees or agents involved in solicitation have been convicted or pled guilty within the past 10 years to any felony or a crime involving fraud, theft, larceny, embezzlement, fraudulent conversion, misappropriation of property, or any crime arising from the conduct of a solicitation for a charity. Finally, the registration must indicate and explain, if applicable, whether the solicitor or any of its officers, directors, trustees, or employees or agents involved in solicitation have been enjoined from violating any law relating to a charitable solicitation.²²

After receiving the registration statement, DACS has 15 business days to either approve the registration or notify the solicitor that the registration requirements are not satisfied. If, after 15 days DACS has not notified the solicitor, the registration is deemed approved.²³

In addition to being required to register, solicitors must also file a solicitation notice with DACS at least 15 days before beginning a solicitation campaign or event.²⁴ Section 496.410(6), F.S., requires the notice to include a description of the solicitation campaign; each location and telephone number from which the solicitation will be conducted; the name and address of each person responsible for supervising the campaign; a statement as to whether the solicitor will have custody of donations; the account information for each account where receipts from the campaign are to be deposited; a description of the charity for which the campaign is being carried; the fundraising methods to be used; and copy of the contract between the solicitor and charity.

¹⁸ *Id.* at (6).

¹⁹ *Id.* at (4).

²⁰ Section 496.409(9), F.S.

²¹ "A professional solicitor that is a partnership or corporation may register for and pay a single fee on behalf of all of its partners, members, officers, directors, agents, and employees." s. 496.410(3), F.S. Additionally, professional solicitors are required to maintain a \$50,000 bond. *Id.* at (4).

²² Section 496.410 (2), F.S.

²³ *Id.* at (5).

²⁴ *Id.* at (6).

Restrictions on Individuals with Criminal Records

Under s. 496.410(14), F.S., a person may not act as a professional solicitor, and a solicitor may not employ any person, who has been convicted or pled guilty within the last 10 years to a felony involving fraud, theft, larceny, embezzlement, fraudulent conversion, or misappropriation of property, or any crime arising from the conduct of a solicitation for a charity, or has been enjoined from violating any law relating to a charitable solicitation.

Licensure of Professional Solicitors

Beyond the registration and notice provisions for professional solicitors in s. 496.410, F.S., current law does not require solicitors or their employees to be licensed to operate in Florida.

Notice Statements and Requested Information

Section 496.412(1), F.S., requires that in the course of requesting a donation, a solicitor must clearly disclose the name of the solicitor, the name and state of the principal place of business of the charity, and a description of how the contributions raised by the solicitation will be used. Like charities, solicitors are also required to conspicuously state the following in capital letters on every written solicitation, written confirmation, receipt, or reminder of a contribution: "A copy of the official registration and financial information may be obtained from the Division of Consumer Services by calling toll-free within the state. Registration does not imply endorsement, approval, or recommendation by the state." The statement must include a toll-free number for DACS.²⁵

Additionally, if a person being solicited requests the percentage of the gross revenue that the charity will receive from the solicitation campaign or requests the percentage of the contribution which may be tax-deductible, the solicitor must provide the requested information in writing within 14 days of the request.²⁶

4. Collection Receptacles Used for Donations

Some charities utilize collection receptacles located in parking lots or along roads as a place for people to donate clothing and other goods. Recent reports indicate that for-profit businesses have begun using collection receptacles that look similar to those used by charities.²⁷ The businesses use the receptacles to collect clothes and sell them at a profit. Current law does not regulate the use of collection receptacles either by charities or by for-profit businesses.²⁸

5. Prohibited Acts and Penalties

Section 496.415, F.S., contains a list of seventeen acts that are prohibited for any person when done in connection with any solicitation or charity sales promotion. Examples of prohibited acts include: violating any of the requirements in ch. 496, F.S.; knowingly submitting false, misleading, or inaccurate information in a document that is filed with DACS, provided to the public, or offered in response to a request or investigation by DACS, the Department of Legal Affairs, or the state attorney; and representing that a charity will receive a fixed or estimated percentage of the gross revenue from a solicitation campaign greater than that identified in filings with the Department, or that a charity will

²⁵ Section 496.412(1)(c), F.S.

²⁶ *Id.* at (1)(d)-(e).

²⁷ See Evan Williams, *Recycling companies co-opt the look of charity for profit*, FORT MYERS FLORIDA WEEKLY, Jan. 23, 2013, available at http://fortmyers.floridaweekly.com/news/2013-01-23/Top_News/Recycling_companies_coopt_the_look_of_charity_for_.html (last visited Feb 13, 2014).

²⁸ In response to the rapid increase in the number of collection receptacles used by for-profit businesses, some Florida cities have enacted restrictions on their use. See Ariel Barkhurst, *Deerfield Beach passed a law allowing nonprofit clothing bins*, SUN SENTINEL, Feb. 22, 2013, available at http://articles.sun-sentinel.com/2013-02-22/news/fl-deerfield-donation-bins-20130218_1_donation-bins-salvation-army-commissioner-bill-ganz (last visited Jan. 30, 2014); Heather Carney, *Miramar cracks down on clothing donations bins*, SUN SENTINEL, Nov. 11, 2013, available at http://articles.sun-sentinel.com/2013-11-11/news/fl-miramar-regulates-clothing-donations-bins-20131110_1_for-profit-bins-reuse-clothes-donations (last visited Jan. 30, 2014).

receive an actual or estimated dollar amount or percentage of goods or services purchased or used in the charity sales promotion that is greater than that agreed to with a vendor.

Civil and Criminal Penalties

Any violation of ch. 496, F.S., including engaging in any of the prohibited acts identified in s. 496.415, F.S., is a violation of the Florida Deceptive and Unfair Practices Act²⁹ and may also result in a civil action by DACS.³⁰ Additionally, any willful and knowing violation of ch. 496, F.S., is a third-degree felony punishable by up to five years in prison and a fine of up to \$5,000, and any subsequent conviction is a second-degree felony punishable by up to 15 years in prison and a fine of up to \$10,000.³¹

Administrative Penalties

Currently, under s. 496.419, F.S., after DACS has investigated and found that a person or entity has violated ch. 496, F.S., it can enter an order imposing a range of administrative penalties, including imposing an administrative fine up to \$1,000 for each act or omission. However, for s. 501(c)(3) organizations, the maximum penalty is limited to \$500 per violation.

B. SECTION DIRECTORY:

The following includes the Effect of the Bill.

The bill amends several aspects of charities, professional fundraising consultants and professional solicitors.

1. Charitable Organizations and Sponsors

Registration Statements (Section 4)

The bill amends the registration requirements of charities to require that any changes to the information in a charity's registration statement related to the charity's activity in other states, including criminal, administrative, or other actions against the charity, must be reported to DACS within 10 days of the change occurring. If the charity discloses any information related to criminal, administrative, or other actions against the charity in its initial registration statement or annual renewal statement, the bill gives DACS additional time to process the applications under the processing time limits in ch. 120, F.S.³² Additionally, if a charity fails to disclose any information related to criminal, administrative, or other actions against the charity, its registration will be automatically suspended until the charity submits the required information related to those actions to DACS.

The bill also requires that the consolidated financial statements filed by charities with affiliates must reflect the activities of each affiliate, including all contributions received by each entity, all payments made to each entity, and all administrative fees assessed to each entity.

The bill repeals DACS' authority to extend the time for filing an annual renewal statement or financial statement. The bill also provides that a charity's registration will expire with no further action required by DACS if the charity fails to timely file its renewal statement or it fails to provide a financial statement within the extension periods under s. 496.407, F.S. Additionally, DACS will have the authority to deny or revoke a charity's registration if the charity or any of its officers, directors, or trustees, has agreed with another state to cease soliciting contributions within that state or has been ordered by any court or agency to cease contributions in any state.

²⁹ Chapter 501, part II, F.S.; Section 496.416, F.S.

³⁰ Section 496.420, F.S.

³¹ Section 496.417, F.S.

³² The time limits for processing a registration under ch. 120, F.S., are longer than those in ch. 496, F.S. For example, under ch. 120, F.S., an agency has 30 days to request additional information from an application, and the agency has 90 days after receipt of a completed application to approve or deny a registration.

Lastly, the bill requires a charity to immediately notify DACS in writing when it ceases solicitation activities or participation in charitable sales promotions in Florida.

Fundraising Restrictions for Individuals with Criminal Records (Section 4)

The bill further amends s. 496.405(8), F.S., to clarify that in addition to the charity, no officer, director, trustee, or employee of the charity may allow any of its officers, directors, trustees, or employees to solicit contributions on behalf of the charity if he or she has a criminal history as described above. The bill also clarifies that the applicable criminal history includes crimes or events that occurred in other states and any misdemeanor in another state that constitutes a disqualifying felony in Florida.

Conflict of Interest Transactions (Section 5)

The bill requires a charity's board of directors, or a board committee, to adopt a policy regarding conflict of interest transactions. A "conflict of interest" is defined as a transaction between a charity and another party in which a director, officer, or trustee of the charity has a direct or indirect interest. The term includes the sale, lease, or exchange of property to or from the charity; the lending to or borrowing of money from the charity; and the payment for services provided to or from the charity.

Financial Statements (Section 6)

The bill changes the name of the financial reporting document required by DACS from "financial report" to "financial statement."³³ The bill clarifies and adds new information that must be included in the required financial statement. Specifically, the financial statement must include a statement of functional expenses that must include program service costs, management and general costs, and fundraising costs.³⁴ "Management and general costs" are defined in the bill as all costs of a charity that are not identifiable with a single program or fundraising activity but which are necessary to conducting the charity's programs and activities and necessary to the charity's existence. The term includes expenses for business management, salaries, and overhead. "Program service costs" are defined in the bill to mean all expenses incurred primarily to accomplish the charity's purposes; however, the term does not include fundraising costs.

The bill also limits the option for charities to submit a copy of its IRS Form 990 or Form 990-EZ in lieu of a financial statement to only those charities that receive less than \$500,000 in annual contributions. The bill also repeals the option for charities to include an audited financial report and replaces it with a requirement that financial statements be audited or reviewed. The type of audit or review required varies based on the amount of annual contributions received by the charity:

- Charities that receive less than \$500,000 in annual contributions, an audit or review is optional;
- Charities that receive at least \$500,000 but less than \$1 million in annual contributions, the financial statement must be reviewed or audited by an independent CPA; and,
- Charities that receive \$1 million or more in annual contributions, the financial statement must be audited by an independent CPA.

The bill also requires that audits must be performed in accordance with generally accepted auditing standards and that reviews must be performed in accordance with the Statements on Standards for Accounting and Review Services of the American Institute of Certified Public Accountants. Audited and reviewed financial statements must be accompanied by a report signed and prepared by the CPA that performed the audit or review.

The Department is authorized by the bill, upon a showing of good cause, to extend the time for filing a financial statement up to 180 days or to require that an audit or review be conducted for any financial statement submitted by a charity.

³³ Section 4 of the bill amends s. 496.405, F.S., to update the phrase "financial report" to "financial statement" to reflect the changes made to s. 496.407, F.S., in Section 6 of the bill.

³⁴ Definitions of "program service costs" and "management and general costs" are added to s. 496.404, F.S., in Section 3 of the bill.

Supplemental Financial Disclosure (Section 7)

Charities with more than \$1 million in total revenue that spent less than 25 percent of the charity's total annual functional expenses on program service costs in the preceding fiscal year are required to file a supplemental financial disclosure in addition to the financial statement required under s. 496.407, F.S. The supplemental financial disclosure must be filed within 30 days of receiving a request by DACS to provide such information and must include:

- Dollar amount and percent of revenue and contributions spent on:
 - Salaries
 - Fundraising Expenses
 - Travel Expenses
 - Overhead and Other Expenses
- Employees or consultants who earned or were paid more than \$100,000;
- Service providers who were paid \$100,000 or more and a description of the services provided;
- The amount and percentage of total revenue and charitable contributions allocated to programs;
- Details of economic or business transactions between the charity and related parties including, but not limited to, officers, immediate family members, and specified controlled entities.³⁵

Solicitation Related to a Disaster or Crisis (Section 8)

The bill provides requirements for charitable organizations or sponsors that solicit contributions in response to certain events, defined as a "Crisis" or a "Disaster."

The bill defines "Crisis" to mean:

[A]n event that garners widespread national or global media coverage due to an actual or perceived threat of harm to an individual, a group, or a community.

The bill defines "Disaster" to mean:

[A] natural, technological, or civil event, including, but not limited to, an explosion, chemical spill, earthquake, tsunami, landslide, volcanic activity, avalanche, wildfire, tornado, hurricane, drought, or flood, which affects one or more countries and causes damage of sufficient severity and magnitude to result in:

- (a) An official declaration of a state of emergency; or
- (b) An official request for international assistance.

A crisis is the type of event that would not require an official declaration of a state of emergency or an official request for international assistance, but would still be of such national importance that charities would likely solicit contributions to assist those affected by the event. The crisis definition is intended to capture events such as the Sandy Hook Tragedy, or the Boston Bombing, neither event having an official declaration that would be considered a disaster under the bill.

Charities that solicit donations related to a specific disaster or crisis and receive at least \$100,000 in donations in response to such solicitations are required to file quarterly disaster relief statements with DACS. The quarterly statement must detail the donations received and how the funds were expended. A charity must file the first quarterly statement three months after it has received at least \$100,000 in donations following commencement of solicitations for the specific disaster or crisis, and the charity must continue to file quarterly statements until the quarter after all donations raised in response to the solicitation are expended.

³⁵ The term "immediate family" is defined in Section 7 of the bill to mean a parent, spouse, child, sibling, ancestor, descendant, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law.

Notice Statements (Section 12)

Charities that are exempt from registration under s. 496.406(1)(d), F.S.³⁶, are required to provide a notice statement. Additionally, the notice statement must be included with all solicitations and confirmations regardless of form. The notice statement must also include a DACS website address where registration information can be obtained. If the solicitation is done through a website, the notice statement must be conspicuously displayed on the webpage where donations are requested.

Tax-Exempt Status and Disqualifying Events (Sections 1, 2, and 18)

The bill gives DACS the authority to disqualify a charity under certain circumstances from receiving a sales tax exemption. DACS may issue the disqualification order if it determines, based upon the average of functional expenses and program service costs for the three most recent years, that the charity has failed to expend at least 25 percent of its total annual functional expenses on program service costs. DACS may decline to issue a disqualification order if the charity establishes that payments were made to affiliates that should be considered in calculating the program service costs, that revenue was accumulated for a specific program purpose consistent with the representations it made in solicitations, or any other mitigating circumstances. Additionally, charities that are not required to register under ch. 496, F.S., or have been in existence less than four years are exempt from the disqualification provisions of s. 496.430, F.S.

A disqualification order must remain in effect for at least one year and until DACS receives sufficient evidence from the charity that demonstrates it expends at least 25 percent of its total annual functional expenses on program service costs. The charity may not submit such evidence to DACS earlier than 1 year after the disqualification order becomes final and may not submit such information to DACS more than once a year. DACS must also consider any financial statement that was submitted by the charity pursuant to s. 496.407, F.S., after the disqualification order became final.

DACS must submit a disqualification order to DOR within 30 days after the order becomes final, and DOR must revoke or refuse to grant a sales tax exemption certificate within 30 days after receiving the final order. A final disqualification order is conclusive as to the charity's entitlement to any sales tax exemption, and a charity may not appeal the revocation or denial of a sales tax exemption certificate by DOR if the revocation or denial is based upon a final disqualification order from DACS. A charity may appeal a disqualification order from DACS by requesting a hearing within 21 days of being notified the order has been issued. The hearing will be conducted pursuant to ch. 120, F.S.

The bill mandates that if a charity is subject to a final disqualification order issued by DACS, the charity is excluded from the sales and use tax exemption for s. 501(c)(3) organizations. A revocation or denial of a tax exempt certificate by DOR may only be challenged under ch. 120, F.S., as to whether a disqualification order is in effect. If a charitable organization wishes to challenge the validity of a disqualification order issued by DACS, it must do so pursuant to the procedures under s. 496.430(2), F.S.

Religious Institutions (Section 3)

The definition of "religious institution" is updated by the bill to include any separate group or corporation that is an integral part of a religious institution so long as the religious institution is a s. 501(c)(3) organization, is exempt from filing an annual tax return under 26 U.S.C. s. 6033,³⁷ and is primarily supported by funds from its own membership or congregation. This provision brings the definition of "religious institution" into line with federal law.

³⁶ The bill as written refers to s. 496.406(2)(d), F.S. According to DACS this is an error, and will be fixed in a forthcoming amendment.

³⁷ 26 U.S.C. § 6033 regulates which organizations are exempt from filing income tax returns, including churches and religious organizations.

2. Professional Fundraising Consultants

Registration Statements (Section 9)

The bill provides registration requirements for professional fundraising consultants. Professional fundraising consultants who enter into agreements with charities may do so only if the charity has complied with ch. 496, F.S. If the consultant discloses in its initial registration or renewal application any information related to criminal, administrative, or other actions against the consultant, its officers, directors, trustees, or employees, the bill gives DACS additional time to process the application under the processing time limits in ch. 120, F.S.

If a consultant fails to disclose any information related to criminal, administrative, or other actions against the consultant, its officers, directors, trustees, or employees, its registration will be automatically suspended until the consultant submits required information to DACS.

DACS will also have the authority to deny or revoke a consultant's registration if the consultant or any of its officers, directors, or trustees, has had the right to solicit contributions revoked in any state, has entered into an agreement with any state to cease soliciting contributions within that state, or has been ordered by any court or agency to cease soliciting contributions.

Restrictions on Individuals with Criminal Records (Section 9)

In addition to the consultant, no officer, director, trustee, or employee of the consultant may employ anyone with a criminal history as described above. The bill also clarifies that the applicable criminal history includes crimes or events that occurred in other states.

3. Professional Solicitor

Registration Statements (Section 10)

When registering with the Department, professional solicitors must include the following additional information in its registration:

- a list of all telephone numbers the solicitor will use to solicit contributions;
- the address associated with each telephone number;
- any fictitious names associated with such addresses;
- a copy of any script, outline, or presentation used by the solicitor;
- a copy of sales information or literature provided to a donor or potential donor.

The bill also amends s. 496.410(3), F.S., providing that a solicitor's registration and fee is not on behalf of all of the solicitor's partners, members, officers, directors, agents, and employees. Instead of falling under the solicitor's registration, these individuals will now be required to obtain a solicitor's license under the newly created s. 496.4101, F.S., only if they conduct telephonic solicitations.

If a solicitor discloses in its initial registration or renewal application any information related to criminal, administrative, or other actions against the solicitor, its officers, directors, trustees, or employees or agents, the bill gives DACS additional time to process the application under the processing time limits in ch. 120, F.S.

If a solicitor fails to disclose any information related to criminal, administrative, or other actions against the solicitor, its officers, directors, trustees, employees, or agents, its registration will be automatically suspended until the solicitor submits the required information to DACS. DACS will also have the authority to deny or revoke a solicitor's registration if the solicitor or any of its officers, directors, trustees, or agents has had the right to solicit contributions revoked in any state, has entered into an agreement with any state to cease soliciting contributions within that state, or has been ordered by any court or agency to cease soliciting contributions.

The bill requires professional solicitors to include the following additional information in the solicitation notice required under s. 496.410(6), F.S., before beginning a solicitation campaign:

- A statement of the guaranteed minimum percentage of the gross receipts from contributions which will be remitted to the charity, if any, or, if the solicitation involves the sale of goods, services, or tickets to a fundraising event, the percentage of the purchase price which will be remitted to the charity;
- The percentage of a contribution that may be tax-deductible;
- A statement as to whether any owner, director, officer, trustee, or employee of a professional solicitor is related to:
 - Another officer, director, owner, trustee, or employee of the solicitor;
 - An officer, director, owner, trustee, or employee of a charity under contract with the solicitor; or,
 - Any supplier or vendor providing goods or services to a charity under contract with the solicitor.
- The beginning and ending dates of the campaign;
- A copy of any script, outline, or presentation used by the solicitor;
- A copy of sales information or literature provided to a donor or potential donor.

The bill provides that professional solicitors who enter into agreements with charities may do so only if the charity has complied with ch. 496, F.S.

Restrictions on Individuals with Criminal Records (Section 10)

The restriction that applies to professional fundraising consultants also applies to professional solicitors that in addition to the solicitor, no officer, director, trustee, or employee of the solicitor may employ anyone with a criminal history as described above. The bill also clarifies that the applicable criminal history includes crimes or events that occurred in other states and any misdemeanor in another state that constitutes a disqualifying felony in Florida.

Licensure of Professional Solicitors Conducting Telephone Solicitations (Section 11)

The bill establishes a licensing scheme for professional solicitors. Each officer, director, trustee, or owner of a professional solicitor and any employee of a professional solicitor conducting telephonic solicitations is required to obtain a solicitor license from DACS. A license can be obtained by paying a \$100 application fee and completing an application that includes the following information:

- The name, address, date of birth, and identification number of a government-issued ID of the applicant;
- Indicate whether the applicant has been convicted of or pled guilty in any state to any crime within the last 10 years involving fraud, theft, larceny, embezzlement, fraudulent conversion, or misappropriation of property, or any crime arising from the conduct of a solicitation for a charitable organization or sponsor, or has been enjoined from violating any law relating to a charitable solicitation;
- Indicate whether the applicant is involved in pending litigation in any state or has had entered against her or him an injunction, a temporary restraining order, a final judgment or order, or any similar document, in any civil or administrative action involving fraud, theft, larceny, embezzlement, fraudulent conversion, or misappropriation of property.

Applicants must also submit a set of fingerprints along with payment of a fee equal to the federal and state fingerprint processing costs for a criminal background check. DACS must adopt rules that allow applicants to temporarily engage in solicitation activities while the solicitor license is being processed.

Any material change to the information submitted in the licensing application must be reported to DACS within 10 days of the change along with payment of a \$10 fee.³⁸ A license must be renewed annually; a license automatically expires if it is not renewed. The annual renewal fee is \$100. All fees, less administrative costs, will be deposited into the General Inspection Trust Fund.

³⁸ The \$10 change fee is the same for telemarketers under s. 501.609(2), F.S.

The bill also makes it a violation of ch. 496, F.S., to provide inaccurate or incomplete information in the initial or renewal application for a solicitor license; for any person to fail to maintain a license; and for a solicitor to allow, require, permit, or authorize an employee without an active license to conduct telephonic solicitations.

Additionally, DACS may deny or revoke a solicitor's license if the solicitor has had the right to solicit contributions revoked in any state, has entered into an agreement with any state to cease soliciting contributions, or is subject to any disqualification specified in s. 496.410(14), F.S., which relates to the solicitor's criminal history.

Notice Statements and Requested Information (Section 13)

Notice statements used by solicitors are expanded by this bill to all solicitations rather than only on written solicitations and confirmations. The notice statement must also include a DACS website where registration information can be obtained. If the solicitation is done through a website, the notice statement must be conspicuously displayed on the webpage where donations are requested.

The bill also provides an alternate to the written response required when a person being solicited requests the percentage of the gross revenue that the charity will receive from the solicitation campaign or requests the percentage of the contribution which may be tax-deductible as a charitable contribution. The solicitor may immediately notify the person that the information is available on DACS' website or by calling the division's toll-free number.

4. Collection Receptacles Used for Donations (Section 14)

The bill creates regulation for the use of collection receptacles and defines a "collection receptacle" as:

[A] receptacle used to collect donated clothing, household items, or other goods for resale.

The bill requires all collection receptacles to display a permanent sign on each side of the receptacle. The information on the sign must be printed in letters that are at least three inches in height and no less than one-half inch in width, in a color that contrasts with the color of the receptacle. For receptacles used by a charity required to register under ch. 496, F.S., the sign must provide the name, address, telephone number, and registration number of the charity.

For receptacles placed by an organization not required to register under ch. 496, F.S., the sign must include the name, telephone number, and address of the business and the statement:

This is not a charity. Donations made here support a for-profit business and are not tax deductible.

The bill also requires a charity using a collection receptacle to provide a donor with documentation of its tax-exempt status and registration, if requested.

5. Prohibited Acts and Penalties

Prohibited Acts (Section 15)

A person is prohibited by this bill from submitting false, misleading, or inaccurate information in a document that is filed with DACS, provided to the public, or offered in response to a request or investigation by DACS, the Department of Legal Affairs, or the state attorney regardless of whether the person knows he or she is submitting false, misleading, or inaccurate information. The bill also prohibits a person from failing to remit to a charity the disclosed guaranteed minimum percentage of gross receipts from contributions as indicated with its agreement with a charity, or, if the solicitation involved

the sale of goods, services, or tickets to a fundraising event, the percentage of the purchase price as agreed to in the agreement.

Administrative Penalties (Section 16)

Administrative fines DACS may levy are increased to \$5,000 for each act or omission and makes this fine applicable to s. 501(c)(3) organizations. The bill limits the fine for 501(c)(3) organizations that fail to register under s. 496.405, F.S., or file an exemption under s. 496.406(2), F.S., to \$500 per violation. DACS may also levy a fine up to \$10,000 for any violation of ch. 496, F.S. that involves fraud or deception.

Suspension of Registration (Section 17)

The Department must immediately suspend the registration or the processing of a registration of any organization if DACS receives written notification and verification by law enforcement, a court, a state attorney, or the Florida Department of Law Enforcement, that the registrant, applicant, or any officer or director of the registrant or applicant is charged with a crime involving fraud, theft, larceny, embezzlement, or fraudulent conversion or misappropriation of property or any crime arising from the conduct of a solicitation for a charitable organization or sponsor. The suspension will remain in effect until final disposition of the case or removal or resignation of the officer or director.

Section 19 amends s. 741.0305, F.S., to correct a cross-reference due to the amendments to s. 496.404, F.S., in section 3 of the bill.

Section 20 appropriates \$175,000 in non-recurring funds from the General Inspection Trust Fund to DACS to the Contracted Services appropriation category to implement this act. Funds unexpended or unencumbered from the appropriation as of June 30, 2015, will revert and be appropriated for the same purpose in FY 2015-2016.

Section 21 provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill creates a \$100 application fee for a professional solicitor license and a \$10 fee to report material changes. DACS estimates that the \$100 application and renewal fee for a professional solicitor license will result in an estimated recurring revenue increase of \$250,000 annually.³⁹ DACS did not estimate the revenue impact from the fee charged for fingerprinting applicants for a professional solicitor license or the \$10 change fee.

The impact of losing sales tax exempt status by a charity is unknown at this time.

The bill has not been evaluated by the Revenue Estimating Conference.

DACS states that it expects annual revenues of an additional \$112,000 due to the increase in administrative fines from \$1,000 to \$5,000. DACS did not provide information related to revenue impacts for the \$10,000 fine or for fines from increased criminal prosecutions or FDUTPA actions. See Tax/Fee Issues.

The impact of this bill on the Department of Legal Affairs or state attorney offices has not been determined; however, it may increase caseloads for these agencies.

The Criminal Justice Impact Conference has not yet determined the impact of this bill on prison beds.

³⁹ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2014 House Bill #629, p. 1 (February 5, 2014) (on file with the Business & Professional Regulation Subcommittee).

2. Expenditures:

DACS anticipates the additional regulations and licensing required in the bill will necessitate the hiring of two Regulatory Consultant FTEs and the development of new software in the Division of Consumer Services.⁴⁰ Similarly, DACS anticipates the bill will result in an additional 500 cases that will be referred to the department's Office of Agriculture Law Enforcement (OALE) for regulatory investigation.⁴¹ To meet the increased workload, OALE estimates it will require two additional Senior Financial Investigator FTEs as well as vehicles for each investigator.⁴²

According to DACS, the implementation of this bill will require \$235,352 in total recurring costs, and additional \$239,357 in nonrecurring costs during Fiscal Year 2014 – 2015, and recurring non-operating costs in the amount of \$37,817. This brings the total cost for Fiscal Year 2014 – 2015 to \$512,526, with \$273,169 recurring through Fiscal Year 2015 – 2016 and beyond.⁴³

The new licensing scheme for professional solicitors will likely have an indeterminate expense for the Department for rulemaking. These expenses may be offset by the fact that many of the professional solicitor amendments mirror similar regulations on telemarketers.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Charities may likely incur increased administrative and record keeping costs to comply with the provisions of the bill including the updated requirements for reporting, notice, registration, financial statement, auditing and review, and establishment of a conflict of interest policy. Similarly, some charities that raise funds in response to a specific disaster or crisis will incur additional administrative costs associated with filing quarterly relief statements. Additionally, charities and for-profit entities may incur increased costs to comply with the signage requirement for collection receptacles.

Professional fundraising consultants may incur minimal administrative and record keeping costs to comply with the updated registration and reporting requirements.

Officers, directors, trustees, or owners of a professional solicitor and any employee of a solicitor conducting telephonic solicitations will have to annually apply and pay a \$100 fee for a solicitors license. As part of the application process, they will also have to pay an estimated \$31.50 fingerprinting fee.⁴⁴ Additionally, solicitors may likely incur increased administrative and record keeping costs to comply with the updated reporting and disclosure requirements, to comply with updated financial statement requirements, and to comply with the updated notice statement requirements.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Florida Department of Law Enforcement, Criminal History Record Checks / Background Checks Fact Sheet, *available at* <https://www.fdle.state.fl.us/Content/getdoc/1acc7c3e-dac7-45d4-8739-0d221749d8ce/FAQ.aspx#6> (last visited Feb. 15, 2014) (this website details the current cost for fingerprinting and background checks; however, the bill does not set a specific rate that the Department must charge, and if the state or federal fingerprinting fees rise, this will case the fingerprinting fees here to rise as well).

Charities, consultants, and solicitors may also incur greater costs due to any fines levied by DACS and any violations prosecuted by the Department of Legal Affairs or state attorney offices.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable.

2. Other:

Potential Unconstitutional Delegation

In **Section 18**, the bill gives the Department the authority to issue an order to disqualify a charity from receiving a sales tax exemption issued by DOR should the Department find that the charity fails to expend at least 25 percent of its total annual functional expenses on program service costs. The language in the bill states the Department “*may*” do so, without giving sufficient guidelines on what factors the Department should use to weigh its decision.

The Legislature must promulgate standards sufficient to guide administrative agencies in the performance of their duties. *Florida Dep’t. of State, Div. of Elections v. Martin*, 916 So.2d 763 (Fla. 2005); *Avatar Dev. Corp. v. State*, 723 So.2d 199 (Fla. 1998). In *Askew v. Cross Key Waterways*, 372 So.2d 913 (Fla. 1978), the Florida Supreme Court explained what safeguards were required to support a proper delegation of power. Merely requiring an agency to make complex decisions or weigh complex factors, the court explained, did “not . . . mean that unbridled discretion . . . [had] been conferred on it.” *Id.* at 921 (*quoting CEEED* 43 Cal. App.3d at 327).

Without guidance on how the Department should decide on which charities should or should not be subject to a disqualifying order, this would likely be an unconstitutional delegation. The language should be updated to either provide an appropriate amount of complex factors the Department should weigh when determining whether to subject a charity to a disqualifying order, or amend the wording to remove any discretion over whether to issue a disqualifying order should a charity fail to expend at least 25 percent of its total annual functional expenses on program service costs.⁴⁵

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill does not require the Department provide notice that an event that triggers the increased reporting requirements for a “crisis” or “disaster.” This may not provide adequate notice to a charity to know that they are subject to an increased reporting requirement.⁴⁶

As mentioned in footnote 36, line 1238 contains an incorrect cross-reference.⁴⁷

⁴⁵ The Department has indicated that they would correct this issue with an amendment.

⁴⁶ *Id.*

⁴⁷ *Id.*

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to charities; amending s. 212.08,
 3 F.S.; excluding charitable organizations or sponsors
 4 disqualified by the Department of Agriculture and
 5 Consumer Services from receiving certain tax
 6 exemptions; amending s. 212.084, F.S.; requiring the
 7 Department of Revenue to revoke or deny a sales tax
 8 exemption to charitable organizations or sponsors
 9 disqualified by the department; providing for a
 10 limited appeal of the denial or revocation of the
 11 sales tax exemption; amending s. 496.404, F.S.;
 12 defining terms; redefining the term "religious
 13 institution"; amending s. 496.405, F.S.; revising the
 14 timeframe within which a charitable organization or
 15 sponsor must report changes to certain information
 16 provided to the department on an initial or renewal
 17 registration statement; providing for the automatic
 18 expiration of a registration for failure to file a
 19 renewal or financial statement by a certain date;
 20 repealing a requirement that the renewal statement be
 21 filed subsequent to the financial statement; repealing
 22 authorization to extend the time to file a renewal
 23 statement; specifying the information that must be
 24 submitted by a parent organization on a consolidated
 25 financial statement; extending the time allowed for
 26 the department to review certain initial or renewal

27 registration statements; providing that failure of a
 28 charitable organization or sponsor to make certain
 29 disclosures in a registration statement results in the
 30 automatic suspension of an active registration for a
 31 specified period; prohibiting the officers, directors,
 32 trustees, or employees of a charitable organization or
 33 sponsor from allowing certain persons to solicit
 34 contributions on behalf of the charitable organization
 35 or sponsor; specifying that the prohibition against
 36 certain persons soliciting contributions on behalf of
 37 a charitable organization or sponsor due to the
 38 commission of certain felonies includes those felonies
 39 committed in any state as well as any misdemeanor in
 40 another state which constitutes a disqualifying felony
 41 in this state; authorizing the department to deny or
 42 revoke the registration of a charitable organization
 43 or sponsor under certain circumstances; requiring a
 44 charitable organization or sponsor that has ended
 45 solicitation activities in this state to notify the
 46 department in writing; making technical changes;
 47 creating s. 496.4055, F.S.; defining the term
 48 "conflict of interest transaction"; requiring the
 49 board of directors of a charitable organization or
 50 sponsor, or an authorized committee thereof, to adopt
 51 a policy regarding conflict of interest transactions;
 52 amending s. 496.407, F.S.; requiring that the

53 financial statements of certain charitable
 54 organizations or sponsors be audited or reviewed;
 55 specifying requirements and standards for the audit or
 56 review of a financial statement; restricting the use
 57 of an existing alternative to the required annual
 58 financial statement to certain charities; authorizing
 59 the department to require an audit or review of any
 60 financial statement and to extend the time to file a
 61 financial statement under certain circumstances;
 62 providing that the registration of a charitable
 63 organization or sponsor be suspended upon its failure
 64 to file a financial statement within an extension
 65 period; making technical changes; creating s.
 66 496.4071, F.S.; requiring certain charitable
 67 organizations or sponsors to report specified
 68 supplemental financial information to the department
 69 by a certain date; creating s. 496.4072, F.S.;
 70 requiring certain charitable organizations or sponsors
 71 who solicit contributions for a specific disaster
 72 relief effort to submit quarterly financial statements
 73 to the department; specifying information to be
 74 included in the quarterly financial statement and the
 75 length of the required reporting period; amending ss.
 76 496.409 and 496.410, F.S.; prohibiting a professional
 77 fundraising consultant or professional solicitor from
 78 entering into a contract or agreement with a

79 | charitable organization or sponsor that has not
 80 | complied with certain requirements; extending the time
 81 | that the department may review initial or renewal
 82 | registration statements of professional fundraising
 83 | consultants or professional solicitors which contain
 84 | certain disclosures; providing that the failure of a
 85 | professional fundraising consultant or professional
 86 | solicitor to make certain disclosures in an initial or
 87 | renewal registration statement results in automatic
 88 | suspension of an active registration; prohibiting the
 89 | officers, trustees, directors, or employees of a
 90 | professional fundraising consultant or a professional
 91 | solicitor from allowing certain persons to solicit
 92 | contributions on behalf of the professional
 93 | fundraising consultant or professional solicitor;
 94 | specifying that the prohibition against acting as a
 95 | professional solicitor or the employment of certain
 96 | persons by a professional solicitor due to the
 97 | commission of certain felonies includes those felonies
 98 | committed in any state as well as any misdemeanor in
 99 | another state which constitutes a disqualifying felony
 100 | in this state; authorizing the department to deny or
 101 | revoke the registration of a professional fundraising
 102 | consultant or professional solicitor under certain
 103 | circumstances; revising required information in the
 104 | initial or renewal application of a professional

105 | solicitor; repealing a provision authorizing the
 106 | payment of a single registration fee for certain
 107 | professional solicitors; requiring a professional
 108 | solicitor to provide additional specified information
 109 | to the department in a solicitation notice; creating
 110 | s. 496.4101, F.S.; requiring each officer, director,
 111 | trustee, or owner of a professional solicitor and any
 112 | employee of a professional solicitor that conducts
 113 | telephone solicitations to obtain a solicitor license
 114 | from the department; specifying application
 115 | information and the application procedure for a
 116 | solicitor license; requiring each applicant for a
 117 | solicitor license to submit a complete set of his or
 118 | her fingerprints and a fee for fingerprint processing
 119 | to the department; requiring that the applicant's
 120 | fingerprints be taken by a law enforcement officer or
 121 | approved provider; requiring the department to submit
 122 | the applicant's fingerprints to the Department of Law
 123 | Enforcement for a criminal history background check;
 124 | requiring the Department of Law Enforcement to report
 125 | findings of the criminal history background check to
 126 | the department within a specified period; requiring
 127 | that a solicitor license be renewed annually or expire
 128 | automatically upon nonrenewal; requiring that an
 129 | applicant for a solicitor license pay certain
 130 | licensing fees; providing that licensing fees be

131 deposited into the General Inspection Trust Fund;
 132 requiring that an applicant for a solicitor license
 133 report changes in information submitted to the
 134 department in a specified manner along with a
 135 processing fee; specifying violations; requiring the
 136 department to adopt rules allowing certain persons to
 137 engage in solicitation activities without a solicitor
 138 license for a specified period; authorizing the
 139 department to deny or revoke a solicitor license under
 140 specified circumstances; amending ss. 496.411 and
 141 496.412, F.S.; expanding and revising required
 142 solicitation disclosures of charitable organizations,
 143 sponsors, and professional solicitors; requiring that
 144 certain exempt charitable organizations or sponsors
 145 also provide such solicitation disclosures; requiring
 146 that such solicitation disclosures be placed online
 147 under certain circumstances; creating s. 496.4121,
 148 F.S.; defining the term "collection receptacle";
 149 requiring that collection receptacles display
 150 permanent signs or labels; specifying requirements for
 151 the physical appearance of such labels or signs and
 152 information displayed thereon; requiring that a
 153 charitable organization or sponsor using a collection
 154 receptacle provide certain information to a donor upon
 155 request; amending s. 496.415, F.S.; providing that the
 156 submission of false, misleading, or inaccurate

157 information in a document connected with a
 158 solicitation or sales promotion is unlawful; providing
 159 that the failure to remit specified funds to a
 160 charitable organization or sponsor is unlawful;
 161 amending s. 496.419, F.S.; increasing administrative
 162 fines for violations of the Solicitation of
 163 Contributions Act; creating s. 496.4191, F.S.;
 164 requiring the department to immediately suspend a
 165 registration or processing of an application for
 166 registration for a specified period if the registrant,
 167 applicant, or any officer or director thereof is
 168 criminally charged with certain offenses; creating s.
 169 496.430, F.S.; authorizing the department to
 170 disqualify a charitable organization or sponsor from
 171 receiving a sales tax exemption under specified
 172 circumstances; providing that a charitable
 173 organization or sponsor may appeal a disqualification
 174 order; specifying appeal procedure; providing
 175 exceptions; providing that a disqualification order
 176 remains effective for a specified period; specifying
 177 the procedure to lift a disqualification order;
 178 requiring the department to provide a final
 179 disqualification order to the Department of Revenue
 180 within a specified period; providing that a final
 181 disqualification order is conclusive as to a
 182 charitable organization or sponsor's right to a sales

183 tax exemption; requiring the Department of Revenue to
 184 revoke or deny a sales tax exemption to a charitable
 185 organization or sponsor subject to a final
 186 disqualification order within a specified period;
 187 providing for a limited appeal of the revocation or
 188 denial of the sales tax exemption; providing
 189 applicability; amending s. 741.0305, F.S.; conforming
 190 a cross-reference; making an appropriation; providing
 191 an effective date.

192

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

194

195 Section 1. Paragraph (p) of subsection (7) of section
 196 212.08, Florida Statutes, is amended to read:

197 212.08 Sales, rental, use, consumption, distribution, and
 198 storage tax; specified exemptions.—The sale at retail, the
 199 rental, the use, the consumption, the distribution, and the
 200 storage to be used or consumed in this state of the following
 201 are hereby specifically exempt from the tax imposed by this
 202 chapter.

203 (7) MISCELLANEOUS EXEMPTIONS.—Exemptions provided to any
 204 entity by this chapter do not inure to any transaction that is
 205 otherwise taxable under this chapter when payment is made by a
 206 representative or employee of the entity by any means,
 207 including, but not limited to, cash, check, or credit card, even
 208 when that representative or employee is subsequently reimbursed

209 by the entity. In addition, exemptions provided to any entity by
 210 this subsection do not inure to any transaction that is
 211 otherwise taxable under this chapter unless the entity has
 212 obtained a sales tax exemption certificate from the department
 213 or the entity obtains or provides other documentation as
 214 required by the department. Eligible purchases or leases made
 215 with such a certificate must be in strict compliance with this
 216 subsection and departmental rules, and any person who makes an
 217 exempt purchase with a certificate that is not in strict
 218 compliance with this subsection and the rules is liable for and
 219 shall pay the tax. The department may adopt rules to administer
 220 this subsection.

221 (p) *Section 501(c)(3) organizations.*—Also exempt from the
 222 tax imposed by this chapter are sales or leases to organizations
 223 determined by the Internal Revenue Service to be currently
 224 exempt from federal income tax pursuant to s. 501(c)(3) of the
 225 Internal Revenue Code of 1986, as amended, if ~~when~~ such leases
 226 or purchases are used in carrying on their customary nonprofit
 227 activities, unless such organizations are subject to a final
 228 disqualification order issued by the Department of Agriculture
 229 and Consumer Services pursuant to s. 496.430.

230 Section 2. Subsection (3) of section 212.084, Florida
 231 Statutes, is amended, and subsection (7) is added to that
 232 section, to read:

233 212.084 Review of exemption certificates; reissuance;
 234 specified expiration date; temporary exemption certificates.—

235 (3) After review is completed and it has been determined
 236 that an institution, organization, or individual is actively
 237 engaged in a bona fide exempt endeavor and is not subject to a
 238 final disqualification order issued by the Department of
 239 Agriculture and Consumer Services pursuant to s. 496.430, the
 240 department shall reissue an exemption certificate to the entity.
 241 However, each certificate so reissued is valid for 5 consecutive
 242 years, at which time the review and reissuance procedure
 243 provided by this section apply again. If the department
 244 determines that an entity no longer qualifies for an exemption,
 245 it shall revoke the tax exemption certificate of the entity.

246 (7) The department shall revoke or refuse to grant a sales
 247 tax exemption certificate to an institution, organization, or
 248 individual that is the subject of a final disqualification order
 249 issued by the Department of Agriculture and Consumer Services
 250 pursuant to s. 496.430. A revocation or denial under this
 251 subsection is subject to challenge under chapter 120 only as to
 252 whether a disqualification order is in effect. The institution,
 253 organization, or individual must appeal or challenge the
 254 validity of the disqualification order pursuant to s.
 255 496.430(2).

256 Section 3. Section 496.404, Florida Statutes, is amended
 257 to read:

258 496.404 Definitions.—As used in ss. 496.401-496.424, the
 259 term:

260 (1) "Charitable organization" means a ~~any~~ person who is or

261 holds herself or himself out to be established for any
 262 benevolent, educational, philanthropic, humane, scientific,
 263 artistic, patriotic, social welfare or advocacy, public health,
 264 environmental conservation, civic, or other eleemosynary
 265 purpose, or a ~~any~~ person who in any manner employs a charitable
 266 appeal as the basis for any solicitation or an appeal that
 267 suggests that there is a charitable purpose to any solicitation.
 268 The term ~~It~~ includes a chapter, branch, area office, or similar
 269 affiliate soliciting contributions within the state for a
 270 charitable organization that ~~which~~ has its principal place of
 271 business outside the state.

272 (2) "Charitable purpose" means any benevolent,
 273 philanthropic, patriotic, educational, humane, scientific,
 274 artistic, public health, social welfare or advocacy,
 275 environmental conservation, civic, or other eleemosynary
 276 objective.

277 (3) "Charitable sales promotion" means an advertising or
 278 sales campaign conducted by a commercial co-venturer which
 279 represents that the purchase or use of goods or services offered
 280 by the commercial co-venturer ~~are to~~ benefit a charitable
 281 organization. The provision of advertising services to a
 282 charitable organization does not, in itself, constitute a
 283 charitable sales promotion.

284 (4) "Commercial co-venturer" means a ~~any~~ person who, for
 285 profit, regularly and primarily is engaged in trade or commerce
 286 other than in connection with solicitation of contributions and

287 who conducts a charitable sales promotion or a sponsor sales
 288 promotion.

289 (5) "Contribution" means the promise, pledge, or grant of
 290 any money or property, financial assistance, or any other thing
 291 of value in response to a solicitation. The term "Contribution"
 292 includes, in the case of a charitable organization or sponsor
 293 offering goods and services to the public, the difference
 294 between the direct cost of the goods and services to the
 295 charitable organization or sponsor and the price at which the
 296 charitable organization or sponsor or any person acting on
 297 behalf of the charitable organization or sponsor resells those
 298 goods or services to the public. The term "Contribution" does
 299 not include bona fide fees, dues, or assessments paid by
 300 members, if provided that membership is not conferred solely as
 301 consideration for making a contribution in response to a
 302 solicitation; ~~or~~ "Contribution" also does not include funds
 303 obtained by a charitable organization or sponsor pursuant to
 304 government grants or contracts; funds, ~~or~~ obtained as an
 305 allocation from a United Way organization that is duly
 306 registered with the department; or funds received from an
 307 organization that is exempt from federal income taxation under
 308 s. 501(a) of the Internal Revenue Code and described in s.
 309 501(c) of the Internal Revenue Code which ~~that~~ is duly
 310 registered with the department.

311 (6) "Crisis" means an event that garners widespread
 312 national or global media coverage due to an actual or perceived

313 threat of harm to an individual, a group, or a community.

314 ~~(7)(6)~~ "Department" means the Department of Agriculture
315 and Consumer Services.

316 (8) "Disaster" means a natural, technological, or civil
317 event, including, but not limited to, an explosion, chemical
318 spill, earthquake, tsunami, landslide, volcanic activity,
319 avalanche, wildfire, tornado, hurricane, drought, or flood,
320 which affects one or more countries and causes damage of
321 sufficient severity and magnitude to result in:

322 (a) An official declaration of a state of emergency; or

323 (b) An official request for international assistance.

324 ~~(9)(7)~~ "Division" means the Division of Consumer Services
325 of the Department of Agriculture and Consumer Services.

326 ~~(10)(8)~~ "Educational institutions" means those
327 institutions and organizations described in s. 212.08(7)(cc)8.a.
328 The term includes private nonprofit organizations, the purpose
329 of which is to raise funds for schools teaching grades
330 kindergarten through grade 12, colleges, and universities,
331 including any nonprofit newspaper of free or paid circulation
332 primarily on university or college campuses which holds a
333 current exemption from federal income tax under s. 501(c)(3) of
334 the Internal Revenue Code, any educational television network or
335 system established pursuant to s. 1001.25 or s. 1001.26, and any
336 nonprofit television or radio station that is a part of such
337 network or system and that holds a current exemption from
338 federal income tax under s. 501(c)(3) of the Internal Revenue

339 Code. The term also includes a nonprofit educational cable
 340 consortium that holds a current exemption from federal income
 341 tax under s. 501(c)(3) of the Internal Revenue Code, whose
 342 primary purpose is the delivery of educational and instructional
 343 cable television programming and whose members are composed
 344 exclusively of educational organizations that hold a valid
 345 consumer certificate of exemption and that are either an
 346 educational institution as defined in this subsection or
 347 qualified as a nonprofit organization pursuant to s. 501(c)(3)
 348 of the Internal Revenue Code.

349 (11)~~(9)~~ "Emergency service employee" means an ~~any~~ employee
 350 who is a firefighter, as defined in s. 633.102, or ambulance
 351 driver, emergency medical technician, or paramedic, as defined
 352 in s. 401.23.

353 (12)~~(10)~~ "Federated fundraising organization" means a
 354 federation of independent charitable organizations that ~~which~~
 355 have voluntarily joined together, including, but not limited to,
 356 a united way or community chest, for purposes of raising and
 357 distributing contributions for and among themselves and where
 358 membership does not confer operating authority and control of
 359 the individual organization upon the federated group
 360 organization.

361 (13)~~(11)~~ "Fundraising costs" means those costs incurred in
 362 inducing others to make contributions to a charitable
 363 organization or sponsor for which the contributors will receive
 364 no direct economic benefit. Fundraising costs include, but are

365 not limited to, salaries, rent, acquiring and obtaining mailing
 366 lists, printing, mailing, and all direct and indirect costs of
 367 soliciting, as well as the cost of unsolicited merchandise sent
 368 to encourage contributions.

369 (14)~~(12)~~ "Law enforcement officer" means a ~~any~~ person who
 370 is elected, appointed, or employed by any municipality or the
 371 state or any political subdivision thereof and:

372 (a) Who is vested with authority to bear arms and make
 373 arrests and whose primary responsibility is the prevention and
 374 detection of crime or the enforcement of the criminal, traffic,
 375 or highway laws of the state; or

376 (b) Whose responsibility includes supervision, protection,
 377 care, custody, or control of inmates within a correctional
 378 institution.

379 (15) "Management and general costs" means all such costs
 380 of a charitable organization or sponsor which are not
 381 identifiable with a single program or fundraising activity but
 382 which are indispensable to the conduct of such programs and
 383 activities and the charitable organization's or sponsor's
 384 existence. The term includes, but is not limited to, expenses
 385 for:

- 386 (a) The overall direction of the organization.
- 387 (b) Business management.
- 388 (c) General recordkeeping.
- 389 (d) Budgeting.
- 390 (e) Financial reporting and related expenses.

391 | (f) Salaries.

392 | (g) Rent.

393 | (h) Supplies.

394 | (i) Equipment.

395 | (j) General overhead.

396 | (16)~~(13)~~ "Membership" means the relationship of a person
 397 | to an organization which ~~that~~ entitles her or him to the
 398 | privileges, professional standing, honors, or other direct
 399 | benefit of the organization in addition to the right to vote,
 400 | elect officers, and hold office in the organization.

401 | (17)~~(14)~~ "Owner" means a ~~any~~ person who has a direct or
 402 | indirect interest in any professional fundraising consultant or
 403 | professional solicitor.

404 | (18)~~(15)~~ "Parent organization" means that part of a
 405 | charitable organization or sponsor which coordinates,
 406 | supervises, or exercises control over policy, fundraising, and
 407 | expenditures or assists or advises one or more of the
 408 | organization's chapters, branches, or affiliates in this state.

409 | (19)~~(16)~~ "Person" means an ~~any~~ individual, organization,
 410 | trust, foundation, group, association, entity, partnership,
 411 | corporation, society, or any combination thereof ~~of them~~.

412 | (20)~~(17)~~ "Professional fundraising consultant" means a ~~any~~
 413 | person who is retained by a charitable organization or sponsor
 414 | for a fixed fee or rate under a written agreement to plan,
 415 | manage, conduct, carry on, advise, consult, or prepare material
 416 | for a solicitation of contributions in this state, but who does

417 | not solicit contributions or employ, procure, or engage any
 418 | compensated person to solicit contributions and who does not at
 419 | any time have custody or control of contributions. A bona fide
 420 | volunteer or bona fide employee or salaried officer of a
 421 | charitable organization or sponsor maintaining a permanent
 422 | establishment in this state is not a professional fundraising
 423 | consultant. An attorney, investment counselor, or banker who
 424 | advises an individual, corporation, or association to make a
 425 | charitable contribution is not a professional fundraising
 426 | consultant as the result of such advice.

427 | (21)~~(18)~~ "Professional solicitor" means a ~~any~~ person who,
 428 | for compensation, performs for a charitable organization or
 429 | sponsor any service in connection with which contributions are
 430 | or will be solicited in this state by the compensated person or
 431 | by any person it employs, procures, or otherwise engages,
 432 | directly or indirectly, to solicit contributions, or a person
 433 | who plans, conducts, manages, carries on, advises, consults,
 434 | ~~whether~~ directly or indirectly, in connection with the
 435 | solicitation of contributions for or on behalf of a charitable
 436 | organization or sponsor, but who does not qualify as a
 437 | professional fundraising consultant. A bona fide volunteer or
 438 | bona fide employee or salaried officer of a charitable
 439 | organization or sponsor maintaining a permanent establishment in
 440 | this state is not a professional solicitor. An attorney,
 441 | investment counselor, or banker who advises an individual,
 442 | corporation, or association to make a charitable contribution is

443 not a professional solicitor as the result of such advice.

444 (22) "Program service costs" means all expenses incurred
 445 primarily to accomplish the charitable organization or sponsor's
 446 stated purposes. The term does not include fundraising costs.

447 (23)-(19) "Religious institution" means any church,
 448 ecclesiastical or denominational organization, or established
 449 physical place for worship in this state at which nonprofit
 450 religious services and activities are regularly conducted and
 451 carried on, and includes those bona fide religious groups which
 452 do not maintain specific places of worship. The term "Religious
 453 institution" also includes any separate group or corporation
 454 that which forms an integral part of a religious institution
 455 that which is exempt from federal income tax under the
 456 provisions of s. 501(c)(3) of the Internal Revenue Code, that is
 457 or qualifies as being exempt from filing an annual tax return
 458 under the provisions of 26 U.S.C. s. 6033, and that which is not
 459 primarily supported by funds solicited outside its own
 460 membership or congregation.

461 (24)-(20) "Solicitation" means a request, directly or
 462 indirectly, for money, property, financial assistance, or any
 463 other thing of value on the plea or representation that such
 464 money, property, financial assistance, or other thing of value
 465 or a portion of it will be used for a charitable or sponsor
 466 purpose or will benefit a charitable organization or sponsor.
 467 The term "Solicitation" includes, but is not limited to, the
 468 following methods of requesting or securing the promise, pledge,

469 or grant of money, property, financial assistance, or any other
 470 thing of value:

471 (a) Making any oral or written request;

472 (b) Making any announcement to the press, on radio or
 473 television, by telephone or telegraph, or by any other
 474 communication device concerning an appeal or campaign by or for
 475 any charitable organization or sponsor or for any charitable or
 476 sponsor purpose;

477 (c) Distributing, circulating, posting, or publishing any
 478 handbill, written advertisement, or other publication that
 479 directly or by implication seeks to obtain any contribution; or

480 (d) Selling or offering or attempting to sell any
 481 advertisement, advertising space, book, card, coupon, chance,
 482 device, magazine, membership, merchandise, subscription,
 483 sponsorship, flower, admission, ticket, food, or other service
 484 or tangible good, item, or thing of value, or any right of any
 485 description in connection with which any appeal is made for any
 486 charitable organization or sponsor or charitable or sponsor
 487 purpose, or when the name of any charitable organization or
 488 sponsor is used or referred to in any such appeal as an
 489 inducement or reason for making the sale or when, in connection
 490 with the sale or offer or attempt to sell, any statement is made
 491 that all or part of the proceeds from the sale will be used for
 492 any charitable or sponsor purpose or will benefit any charitable
 493 organization or sponsor.

494

495 A solicitation is considered as having taken place whether or
 496 not the person making the solicitation receives any
 497 contribution. A solicitation does not occur when a person
 498 applies for a grant or an award to the government or to an
 499 organization that is exempt from federal income taxation under
 500 s. 501(a) of the Internal Revenue Code and described in s.
 501 501(c) of the Internal Revenue Code and is duly registered with
 502 the department.

503 (25)~~(21)~~ "Sponsor" means a group or person that ~~which~~ is
 504 or holds itself out to be soliciting contributions by the use of
 505 any name that ~~which~~ implies that the group or person is in any
 506 way affiliated with or organized for the benefit of emergency
 507 service employees or law enforcement officers and the group or
 508 person ~~which~~ is not a charitable organization. The term includes
 509 a chapter, branch, or affiliate that ~~which~~ has its principal
 510 place of business outside the state, if such chapter, branch, or
 511 affiliate solicits or holds itself out to be soliciting
 512 contributions in this state.

513 (26)~~(22)~~ "Sponsor purpose" means any program or endeavor
 514 performed to benefit emergency service employees or law
 515 enforcement officers.

516 (27)~~(23)~~ "Sponsor sales promotion" means an advertising or
 517 sales campaign conducted by a commercial co-venturer who
 518 represents that the purchase or use of goods or services offered
 519 by the commercial co-venturer will be used for a sponsor purpose
 520 or donated to a sponsor. The provision of advertising services

521 to a sponsor does not, in itself, constitute a sponsor sales
 522 promotion.

523 Section 4. Subsection (1), paragraphs (a) and (g) of
 524 subsection (2), subsection (3), paragraph (b) of subsection (4),
 525 and subsections (7) and (8) of section 496.405, Florida
 526 Statutes, are amended, and subsections (9) and (10) are added to
 527 that section, to read:

528 496.405 Registration statements by charitable
 529 organizations and sponsors.—

530 (1) ~~(a)~~ A charitable organization or sponsor, unless
 531 exempted pursuant to s. 496.406, which intends to solicit
 532 contributions in this state by any means or have funds solicited
 533 on its behalf by any other person, charitable organization,
 534 sponsor, commercial co-venturer, or professional solicitor, or
 535 that participates in a charitable sales promotion or sponsor
 536 sales promotion, must, before ~~prior to~~ engaging in any of these
 537 activities, file an initial registration statement, and a
 538 renewal statement annually thereafter, with the department.

539 ~~(a)(b)~~ Except as provided in paragraph (b), any changes in
 540 the information submitted on the initial registration statement
 541 or the last renewal statement must be updated annually on a
 542 renewal statement provided by the department on or before the
 543 date that marks 1 year after the date the department approved
 544 the initial registration statement as provided in this section.
 545 The department shall annually provide a renewal statement to
 546 each registrant by mail or by electronic mail at least 30 days

547 before the renewal date.

548 (b) Any changes to the information submitted to the
 549 department pursuant to paragraph (2)(d) on the initial
 550 registration statement or the last renewal statement must be
 551 reported to the department on a form prescribed by the
 552 department within 10 days after the change occurs.

553 (c) A charitable organization or sponsor that is required
 554 to file an initial registration statement or annual renewal
 555 statement may not, before ~~prior to~~ approval of its statement by
 556 the department in accordance with subsection (7), solicit
 557 contributions or have contributions solicited on its behalf by
 558 any other person, charitable organization, sponsor, commercial
 559 co-venturer, or professional solicitor, or participate in a
 560 charitable sales promotion or sponsor sales promotion.

561 ~~(d) For good cause shown, the department may extend the~~
 562 ~~time for the filing of an annual renewal statement or financial~~
 563 ~~report for a period not to exceed 60 days, during which time the~~
 564 ~~previous registration remains in effect.~~

565 ~~(d)(e) In no event shall~~ The registration of a charitable
 566 organization or sponsor may not continue in effect and shall
 567 expire without further action of the department:

568 1. After the date the charitable organization or sponsor
 569 should have filed, but failed to file, its renewal statement
 570 ~~financial report~~ in accordance with this section.

571 2. For failure to provide a financial statement within any
 572 extension period provided under and s. 496.407. The organization

573 ~~may not file a renewal statement until it has filed the required~~
 574 ~~financial report with the department.~~

575 (2) The initial registration statement must be submitted
 576 on a form prescribed by the department, signed by an authorized
 577 official of the charitable organization or sponsor who shall
 578 certify that the registration statement is true and correct, and
 579 include the following information or material:

580 (a) A copy of the financial statement ~~report~~ or Internal
 581 Revenue Service Form 990 and all attached schedules or Internal
 582 Revenue Service Form 990-EZ and Schedule O required under s.
 583 496.407 for the immediately preceding fiscal year. A newly
 584 organized charitable organization or sponsor with no financial
 585 history must file a budget for the current fiscal year.

586 (g) The following information must be filed with the
 587 initial registration statement and must be updated when any
 588 change occurs in the information that was previously filed with
 589 the initial registration statement:

590 1. The principal street address and telephone number of
 591 the charitable organization or sponsor and the street address
 592 and telephone numbers of any offices in this state or, if the
 593 charitable organization or sponsor does not maintain an office
 594 in this state, the name, street address, and telephone number of
 595 the person who ~~that~~ has custody of its financial records. The
 596 parent organization that files a consolidated registration
 597 statement on behalf of its chapters, branches, or affiliates
 598 must additionally provide the street addresses and telephone

599 numbers of all such locations in this state.

600 2. The names and street addresses of the officers,
 601 directors, trustees, and the principal salaried executive
 602 personnel.

603 3. The date when the charitable organization's or
 604 sponsor's fiscal year ends.

605 4. A list or description of the major program activities.

606 5. The names, street addresses, and telephone numbers of
 607 the individuals or officers who have final responsibility for
 608 the custody of the contributions and who will be responsible for
 609 the final distribution of the contributions.

610 (3) Each chapter, branch, or affiliate of a parent
 611 organization that is required to register under this section
 612 must ~~either~~ file a separate registration statement and financial
 613 statement report or ~~must~~ report the required information to its
 614 parent organization, which shall then file, on a form prescribed
 615 by the department, a consolidated registration statement for the
 616 parent organization and its Florida chapters, branches, and
 617 affiliates. A consolidated registration statement filed by a
 618 parent organization must include or be accompanied by financial
 619 statements reports as specified in s. 496.407 for the parent
 620 organization and each of its Florida chapters, branches, and
 621 affiliates that solicited or received contributions during the
 622 preceding fiscal year. However, if all contributions received by
 623 chapters, branches, or affiliates are remitted directly into a
 624 depository account that ~~which~~ feeds directly into the parent

625 organization's centralized accounting system from which all
 626 disbursements are made, the parent organization may submit one
 627 consolidated financial statement ~~report~~ on a form prescribed by
 628 the department. The consolidated financial statement must
 629 reflect the activities of each chapter, branch, or affiliate of
 630 the parent organization, including all contributions received in
 631 the name of each chapter, branch, or affiliate; all payments
 632 made to each chapter, branch, or affiliate; and all
 633 administrative fees assessed to each chapter, branch, or
 634 affiliate.

635 (4)

636 (b) A charitable organization or sponsor that ~~which~~ fails
 637 to file a registration statement by the due date may be assessed
 638 an additional fee for such late filing. The late filing fee is
 639 ~~shall be~~ \$25 for each month or part of a month after the date on
 640 which the annual renewal statement was ~~and financial report were~~
 641 due to be filed with the department.

642 (7)(a) The department must examine each initial
 643 registration statement or annual renewal statement and the
 644 supporting documents filed by a charitable organization or
 645 sponsor and shall determine whether the registration
 646 requirements are satisfied. Within 15 business ~~working~~ days
 647 after its receipt of a statement, the department must examine
 648 the statement, notify the applicant of any apparent errors or
 649 omissions, and request any additional information the department
 650 is allowed by law to require. Failure to correct an error or

651 omission or to supply additional information is not grounds for
 652 denial of the initial registration or annual renewal statement
 653 unless the department has notified the applicant within such
 654 period of 15 business days ~~the 15-working-day period~~. The
 655 department must approve or deny each statement, or must notify
 656 the applicant that the activity for which she or he seeks
 657 registration is exempt from the registration requirement, within
 658 15 business ~~working~~ days after receipt of the initial
 659 registration or annual renewal statement or the requested
 660 additional information or correction of errors or omissions. Any
 661 statement that is not approved or denied within 15 business
 662 ~~working~~ days after receipt of the requested additional
 663 information or correction of errors or omissions is approved.
 664 Within 7 business ~~working~~ days after receipt of a notification
 665 that the registration requirements are not satisfied, the
 666 charitable organization or sponsor may request a hearing. The
 667 hearing must be held within 7 business ~~working~~ days after
 668 receipt of the request, and any recommended order, if one is
 669 issued, must be rendered within 3 business ~~working~~ days of the
 670 hearing. The final order must then be issued within 2 business
 671 ~~working~~ days after the recommended order. If a recommended order
 672 is not issued, the final order must be issued within 5 business
 673 ~~working~~ days after the hearing. The proceedings must be
 674 conducted in accordance with chapter 120, except that the time
 675 limits and provisions set forth in this subsection prevail to
 676 the extent of any conflict.

677 (b) If a charitable organization or sponsor discloses
 678 information specified in subparagraphs (2)(d)2.-7. in the
 679 initial registration statement or annual renewal statement, the
 680 time limits of this subsection are waived, and the department
 681 shall process such initial registration statement or annual
 682 renewal statement in accordance with the time limits in chapter
 683 120. The registration of a charitable organization or sponsor
 684 shall be automatically suspended for failure to disclose any
 685 information specified in subparagraphs (2)(d)2.-7. until such
 686 time as the required information is submitted to the department.

687 (8) A ~~Ne~~ charitable organization or sponsor, or any
 688 officer, director, trustee, or employee thereof, may not shall
 689 knowingly allow any officer, director, trustee, or employee of
 690 the charitable organization or sponsor ~~of its officers,~~
 691 ~~directors, trustees, or employees~~ to solicit contributions on
 692 behalf of such charitable organization or sponsor if such
 693 officer, director, trustee, or employee has, in any state,
 694 regardless of adjudication, been convicted of, or found guilty
 695 of, or pled guilty or nolo contendere to, or has been
 696 incarcerated within the last 10 years as a result of having
 697 previously been convicted of, or found guilty of, or pled guilty
 698 or nolo contendere to, any felony within the last 10 years or
 699 any crime within the last 10 years involving fraud, theft,
 700 larceny, embezzlement, fraudulent conversion, misappropriation
 701 of property, or any crime arising from the conduct of a
 702 solicitation for a charitable organization or sponsor, or has

703 | been enjoined, in any state, from violating any law relating to
 704 | a charitable solicitation. The prohibitions in this subsection
 705 | also apply to any misdemeanor in another state which constitutes
 706 | a disqualifying felony in this state.

707 | (9) The department may deny or revoke the registration of
 708 | a charitable organization or sponsor if the charitable
 709 | organization or sponsor, or any officer, director, or trustee
 710 | thereof, has had the right to solicit contributions revoked in
 711 | any state, has entered into an agreement with any state to cease
 712 | soliciting contributions within that state, or has been ordered
 713 | by any court or governmental agency to cease soliciting
 714 | contributions within any state.

715 | (10) A charitable organization or sponsor registered under
 716 | this section which ends solicitation activities or participation
 717 | in charitable sales promotions in this state shall immediately
 718 | notify the department in writing of the date such activities
 719 | ceased.

720 | Section 5. Section 496.4055, Florida Statutes, is created
 721 | to read:

722 | 496.4055 Charitable organization or sponsor board duties.-

723 | (1) As used in this section, the term "conflict of
 724 | interest transaction" means a transaction between a charitable
 725 | organization or sponsor and another party in which a director,
 726 | officer, or trustee of the charitable organization or sponsor
 727 | has a direct or indirect interest. The term includes, but is not
 728 | limited to, the sale, lease, or exchange of property to or from

729 the charitable organization or sponsor; the lending of moneys to
 730 or borrowing of moneys from the charitable organization or
 731 sponsor; and the payment of compensation for services provided
 732 to or from the charitable organization or sponsor.

733 (2) The board of directors, or an authorized committee
 734 thereof, of a charitable organization or sponsor required to
 735 register with the department under this chapter shall adopt a
 736 policy regarding conflict of interest transactions.

737 Section 6. Section 496.407, Florida Statutes, is amended
 738 to read:

739 496.407 Financial statement ~~report~~.—

740 (1) A charitable organization or sponsor that is required
 741 to initially register or annually renew registration must file
 742 an annual financial statement ~~report~~ for the immediately
 743 preceding fiscal year on ~~upon~~ a form prescribed by the
 744 department.

745 (a) The statement ~~report~~ must include the following:

746 1. ~~(a)~~ A balance sheet.

747 2. ~~(b)~~ A statement of support, revenue and expenses, and
 748 any change in the fund balance.

749 3. ~~(c)~~ The names and addresses of the charitable
 750 organizations or sponsors, professional fundraising consultant,
 751 professional solicitors, and commercial co-venturers used, if
 752 any, and the amounts received from each of them, if any.

753 4. ~~(d)~~ A statement of functional expenses that must
 754 include, but not be limited to, expenses in the following

755 categories:

756 ~~a.1.~~ Program service costs.

757 ~~b.2.~~ Management and general costs.

758 ~~c.3.~~ Fundraising costs.

759 (b) The financial statement must be audited or reviewed as
 760 follows:

761 1. For a charitable organization or sponsor that receives
 762 less than \$500,000 in annual contributions, a compilation,
 763 audit, or review of the financial statement is optional.

764 2. For a charitable organization or sponsor that receives
 765 at least \$500,000 but less than \$1 million in annual
 766 contributions, the financial statement shall be reviewed or
 767 audited by an independent certified public accountant.

768 3. For a charitable organization or sponsor that receives
 769 \$1 million or more in annual contributions, the financial
 770 statement shall be audited by an independent certified public
 771 accountant.

772 (c) Audits and reviews shall be performed in accordance
 773 with the following standards:

774 1. Audits shall be performed in accordance with generally
 775 accepted auditing standards, including the Statements on
 776 Auditing Standards of the American Institute of Certified Public
 777 Accountants.

778 2. Reviews shall be performed in accordance with the
 779 Statements on Standards for Accounting and Review Services of
 780 the American Institute of Certified Public Accountants.

781 (d) Audited and reviewed financial statements must be
 782 accompanied by a report signed and prepared by the independent
 783 certified public accountant performing such audit or review.

784 (2) In lieu of the financial statement ~~report~~ described in
 785 subsection (1), a charitable organization or sponsor that
 786 receives less than \$500,000 in annual contributions may submit a
 787 copy of its Internal Revenue Service Form 990 and all attached
 788 schedules filed for the preceding fiscal year, or a copy of its
 789 Internal Revenue Service Form 990-EZ and Schedule O filed for
 790 the preceding fiscal year.

791 (3) Upon a showing of good cause, the department may:

792 (a) Extend the time for the filing of a financial
 793 statement required under this section by up to 180 days, during
 794 which time the previous registration shall remain active. The
 795 registration shall be automatically suspended for failure to
 796 file the financial statement within the extension period.

797 (b) Require that an audit or review be conducted for any
 798 financial statement submitted by any charitable organization or
 799 sponsor. A charitable organization or sponsor may elect to also
 800 ~~include a financial report that has been audited by an~~
 801 ~~independent certified public accountant or an audit with opinion~~
 802 ~~by an independent certified public accountant. In the event that~~
 803 ~~a charitable organization or sponsor elects to file an audited~~
 804 ~~financial report, this optional filing must be noted in the~~
 805 ~~department's annual report submitted pursuant to s. 496.423.~~

806 Section 7. Section 496.4071, Florida Statutes, is created

807 to read:

808 496.4071 Supplemental financial disclosure.-

809 (1) If, for the immediately preceding fiscal year, a
 810 charitable organization or sponsor had more than \$1 million in
 811 total revenue and spent less than 25 percent of the
 812 organization's total annual functional expenses on program
 813 service costs, in addition to any financial statement required
 814 under s. 496.407, the charitable organization or sponsor shall
 815 file the following supplemental financial information on a form
 816 prescribed by the department:

817 (a) The dollar amount and the percentage of total revenue
 818 and charitable contributions allocated to funding each of the
 819 following administrative functions:

820 1. Total salaries of all persons employed by the
 821 charitable organization or sponsor.

822 2. Fundraising.

823 3. Travel expenses.

824 4. Overhead and other expenses related to managing and
 825 administering the charitable organization or sponsor.

826 (b) The name of and specific sum earned by or paid to all
 827 employees or consultants who earned or were paid more than
 828 \$100,000 during the immediately preceding fiscal year.

829 (c) The name of and specific sum paid to all service
 830 providers who were paid \$100,000 or more during the immediately
 831 preceding fiscal year and a brief description of the services
 832 provided.

833 (d) The dollar amount and percentage of total revenue and
 834 charitable contributions allocated to programs.

835 (e) The details of any economic or business transactions
 836 between the charitable organization or sponsor and an officer,
 837 trustee, or director of the charitable organization or sponsor;
 838 the immediate family of an officer, trustee, or director of the
 839 charitable organization or sponsor; any entity controlled by an
 840 officer, trustee, or director of the charitable organization or
 841 sponsor; any entity controlled by the immediate family of an
 842 officer, trustee, or director of the charitable organization or
 843 sponsor; any entity that employed or engaged for consultation an
 844 officer, trustee, or director of the charitable organization or
 845 sponsor; and any entity that employed or engaged for
 846 consultation the immediate family of an officer, trustee, or
 847 director of the charitable organization or sponsor. As used in
 848 this paragraph, the term "immediate family" means a parent,
 849 spouse, child, sibling, ancestor, descendant, brother-in-law,
 850 sister-in-law, son-in-law, daughter-in-law, mother-in-law, or
 851 father-in-law.

852 (2) The supplemental financial information required under
 853 subsection (1) must be filed with the department by the
 854 charitable organization or sponsor within 30 days after
 855 receiving a request for such information from the department.

856 Section 8. Section 496.4072, Florida Statutes, is created
 857 to read:

858 496.4072 Financial statements for specific disaster relief

859 solicitations.-

860 (1) A charitable organization or sponsor that solicits
 861 contributions in this state for a charitable purpose related to
 862 a specific disaster or crisis and receives at least \$100,000 in
 863 contributions in response to such solicitation shall file
 864 quarterly disaster relief financial statements with the
 865 department on a form prescribed by the department. The quarterly
 866 statements must detail the contributions secured as a result of
 867 the solicitation and the manner in which such contributions were
 868 expended.

869 (2) The first quarterly statement shall be filed on the
 870 last day of the third month following the accrual of at least
 871 \$100,000 in contributions after the commencement of
 872 solicitations for the specific disaster or crisis. The
 873 charitable organization or sponsor shall continue to file
 874 quarterly statements with the department until the quarter after
 875 all contributions raised in response to the solicitation are
 876 expended.

877 Section 9. Subsections (4), (6), and (9) of section
 878 496.409, Florida Statutes, are amended, and subsection (10) is
 879 added to that section, to read:

880 496.409 Registration and duties of professional
 881 fundraising consultant.-

882 (4) A professional fundraising consultant may enter into a
 883 contract or agreement with a charitable organization or sponsor
 884 only if the charitable organization or sponsor has complied with

885 all applicable provisions of this chapter. A ~~Every~~ contract or
 886 agreement between a professional fundraising consultant and a
 887 charitable organization or sponsor must be in writing, signed by
 888 two authorized officials of the charitable organization or
 889 sponsor, and filed by the professional fundraising consultant
 890 with the department at least 5 days before ~~prior to~~ the
 891 performance of any material service by the professional
 892 fundraising consultant. Solicitation under the contract or
 893 agreement may not begin before the filing of the contract or
 894 agreement.

895 (6) (a) The department shall examine each registration
 896 statement and all supporting documents filed by a professional
 897 fundraising consultant and determine whether the registration
 898 requirements are satisfied. If the department determines that
 899 the registration requirements are not satisfied, the department
 900 must notify the professional fundraising consultant within 15
 901 business working days after its receipt of the registration
 902 statement; otherwise the registration statement is approved.
 903 Within 7 business working days after receipt of a notification
 904 that the registration requirements are not satisfied, the
 905 applicant may request a hearing. The hearing must be held within
 906 7 business working days after receipt of the request, and any
 907 recommended order, if one is issued, must be rendered within 3
 908 business working days after the hearing. The final order must
 909 then be issued within 2 business working days after the
 910 recommended order. If there is no recommended order, the final

911 order must be issued within 5 business ~~working~~ days after the
 912 hearing. The proceedings must be conducted in accordance with
 913 chapter 120, except that the time limits and provisions ~~set~~
 914 ~~forth~~ in this subsection prevail to the extent of any conflict.

915 (b) If a professional fundraising consultant discloses
 916 information specified in paragraphs (2)(e)-(g) in the initial
 917 application for registration or renewal application, the
 918 processing time limits of this subsection are waived and the
 919 department shall process the initial application for
 920 registration or the renewal application in accordance with the
 921 time limits in chapter 120. The registration of a professional
 922 consultant shall be automatically suspended for failure to
 923 disclose any information specified in paragraphs (2)(e)-(g)
 924 until such time as the required information is submitted to the
 925 department.

926 (9) A ~~No~~ person may not act as a professional fundraising
 927 consultant, and a ~~no~~ professional fundraising consultant, or any
 928 officer, director, trustee, or employee thereof, may not ~~shall~~
 929 knowingly employ any officer, trustee, director, or employee, if
 930 such person has, in any state, regardless of adjudication, been
 931 convicted of, or found guilty of, or pled guilty or nolo
 932 contendere to, or has been incarcerated within the last 10 years
 933 as a result of having previously been convicted of, or found
 934 guilty of, or pled guilty or nolo contendere to, any crime
 935 within the last 10 years involving fraud, theft, larceny,
 936 embezzlement, fraudulent conversion, or misappropriation of

937 | property, or any crime arising from the conduct of a
 938 | solicitation for a charitable organization or sponsor, or has
 939 | been enjoined in any state from violating any law relating to a
 940 | charitable solicitation.

941 | (10) The department may deny or revoke the registration of
 942 | a professional fundraising consultant if the professional
 943 | fundraising consultant, or any of its officers, directors, or
 944 | trustees, has had the right to solicit contributions revoked in
 945 | any state, has entered into an agreement with any state to cease
 946 | soliciting contributions within that state, or has been ordered
 947 | by any court or governmental agency to cease soliciting
 948 | contributions within any state.

949 | Section 10. Present subsections (3), (5), (7), (14), and
 950 | (15) of section 496.410, Florida Statutes, are amended,
 951 | paragraphs (j), (k), and (l) are added to subsection (2) of that
 952 | section, paragraphs (i) through (n) are added to subsection (6)
 953 | of that section, and a new subsection (15) is added to that
 954 | section, to read:

955 | 496.410 Registration and duties of professional
 956 | solicitors.-

957 | (2) Applications for registration or renewal of
 958 | registration must be submitted on a form prescribed by rule of
 959 | the department, signed by an authorized official of the
 960 | professional solicitor who shall certify that the report is true
 961 | and correct, and must include the following information:

962 | (j) A list of all telephone numbers the applicant will use

963 to solicit contributions as well as the actual physical address
 964 associated with each telephone number and any fictitious names
 965 associated with such address.

966 (k) A copy of any script, outline, or presentation used by
 967 the applicant to solicit contributions or, if such solicitation
 968 aids are not used, written confirmation thereof.

969 (l) A copy of sales information or literature provided to
 970 a donor or potential donor by the applicant in connection with a
 971 solicitation.

972 (3) The application for registration must be accompanied
 973 by a fee of \$300. ~~A professional solicitor that is a partnership~~
 974 ~~or corporation may register for and pay a single fee on behalf~~
 975 ~~of all of its partners, members, officers, directors, agents,~~
 976 ~~and employees. In that case,~~ The names and street addresses of
 977 all the officers, employees, and agents of the professional
 978 solicitor and all other persons with whom the professional
 979 solicitor has contracted to work under its direction, including
 980 solicitors, must be listed in the application or furnished to
 981 the department within 5 days after the date of employment or
 982 contractual arrangement. Each registration is valid for 1 year
 983 and. ~~The registration~~ may be renewed for an additional 1-year
 984 period upon application to the department and payment of the
 985 registration fee.

986 (5) (a) The department must examine each registration
 987 statement and supporting documents filed by a professional
 988 solicitor. If the department determines that the registration

989 requirements are not satisfied, the department must notify the
 990 professional solicitor within 15 business ~~working~~ days after its
 991 receipt of the registration statement; otherwise the
 992 registration statement is approved. Within 7 business ~~working~~
 993 days after receipt of a notification that the registration
 994 requirements are not satisfied, the applicant may request a
 995 hearing. The hearing must be held within 7 business ~~working~~ days
 996 after receipt of the request, and any recommended order, if one
 997 is issued, must be rendered within 3 business ~~working~~ days after
 998 the hearing. The final order must then be issued within 2
 999 business ~~working~~ days after the recommended order. If there is
 1000 no recommended order, the final order must be issued within 5
 1001 business ~~working~~ days after the hearing. The proceedings must be
 1002 conducted in accordance with chapter 120, except that the time
 1003 limits and provisions ~~set forth~~ in this subsection prevail to
 1004 the extent of any conflict.

1005 (b) If a professional solicitor makes a disclosure
 1006 specified in paragraphs (2)(f)-(h) in the initial application
 1007 for registration or the renewal application, the processing time
 1008 limits of this subsection are waived and the department shall
 1009 process the initial application for registration or renewal
 1010 application in accordance with the time limits in chapter 120.
 1011 The registration of a professional solicitor shall be
 1012 automatically suspended for failure to disclose any information
 1013 specified in paragraphs (2)(f)-(h) until such time as the
 1014 required information is submitted to the department.

1015 (6) No less than 15 days before commencing any
 1016 solicitation campaign or event, the professional solicitor must
 1017 file with the department a solicitation notice on a form
 1018 prescribed by the department. The notice must be signed and
 1019 sworn to by the contracting officer of the professional
 1020 solicitor and must include:

1021 (i) A statement of the guaranteed minimum percentage of
 1022 the gross receipts from contributions which will be remitted to
 1023 the charitable organization or sponsor, if any, or, if the
 1024 solicitation involves the sale of goods, services, or tickets to
 1025 a fundraising event, the percentage of the purchase price which
 1026 will be remitted to the charitable organization or sponsor, if
 1027 any.

1028 (j) The percentage of a contribution which may be deducted
 1029 as a charitable contribution under federal income tax laws.

1030 (k) A statement as to whether any owner, director,
 1031 officer, trustee, or employee of the professional solicitor is
 1032 related as a parent, spouse, child, sibling, ancestor,
 1033 descendant, brother-in-law, sister-in-law, son-in-law, daughter-
 1034 in-law, mother-in-law, or father-in-law to:

1035 1. Another officer, director, owner, trustee, or employee
 1036 of the professional solicitor.

1037 2. Any officer, director, owner, trustee, or employee of a
 1038 charitable organization or sponsor under contract to the
 1039 professional solicitor.

1040 3. Any supplier or vendor providing goods or services to a

1041 charitable organization or sponsor under contract to the
 1042 professional solicitor.

1043 (l) The beginning and ending dates of the solicitation
 1044 campaign.

1045 (m) A copy of any script, outline, or presentation used by
 1046 the professional solicitor to solicit contributions for the
 1047 solicitation campaign. If such aids are not used, written
 1048 confirmation thereof.

1049 (n) A copy of sales information or literature provided to
 1050 a donor or potential donor by the professional solicitor in
 1051 connection with the solicitation campaign.

1052 (7) A professional solicitor may enter into a contract or
 1053 agreement with a charitable organization or sponsor only if the
 1054 charitable organization or sponsor has complied with all
 1055 applicable provisions of this chapter. A ~~Each~~ contract or
 1056 agreement between a professional solicitor and a charitable
 1057 organization or sponsor for each solicitation campaign must be
 1058 in writing, signed by two authorized officials of the charitable
 1059 organization or sponsor, one of whom must be a member of the
 1060 organization's governing body and one of whom must be the
 1061 authorized contracting officer for the professional solicitor,
 1062 and contain all of the following provisions:

1063 (a) A statement of the charitable or sponsor purpose and
 1064 program for which the solicitation campaign is being conducted.

1065 (b) A statement of the respective obligations of the
 1066 professional solicitor and the charitable organization or

1067 sponsor.

1068 (c) A statement of the guaranteed minimum percentage of
 1069 the gross receipts from contributions which will be remitted to
 1070 the charitable organization or sponsor, if any, or, if the
 1071 solicitation involves the sale of goods, services, or tickets to
 1072 a fundraising event, the percentage of the purchase price which
 1073 will be remitted to the charitable organization or sponsor, if
 1074 any. Any stated percentage shall exclude any amount which the
 1075 charitable organization or sponsor is to pay as fundraising
 1076 costs.

1077 (d) A statement of the percentage of the gross revenue
 1078 which the professional solicitor will be compensated. If the
 1079 compensation of the professional solicitor is not contingent
 1080 upon the number of contributions or the amount of revenue
 1081 received, his or her compensation shall be expressed as a
 1082 reasonable estimate of the percentage of the gross revenue, and
 1083 the contract must clearly disclose the assumptions upon which
 1084 the estimate is based. The stated assumptions must be based upon
 1085 all of the relevant facts known to the professional solicitor
 1086 regarding the solicitation to be conducted by the professional
 1087 solicitor.

1088 (e) The effective and termination dates of the contract.

1089 (14) A ~~Ne~~ person may not act as a professional solicitor,
 1090 and a ~~ne~~ professional solicitor, or any officer, director,
 1091 trustee, or employee thereof, may not shall, to solicit for
 1092 compensation, knowingly employ any officer, trustee, director,

1093 | employee, or any person with a controlling interest therein, who
 1094 | has, in any state, regardless of adjudication, been convicted
 1095 | of, or found guilty of, or pled guilty or nolo contendere to, or
 1096 | has been incarcerated within the last 10 years as a result of
 1097 | having previously been convicted of, or found guilty of, or pled
 1098 | guilty or nolo contendere to, a felony within the last 10 years
 1099 | involving fraud, theft, larceny, embezzlement, fraudulent
 1100 | conversion, or misappropriation of property, or any crime
 1101 | arising from the conduct of a solicitation for a charitable
 1102 | organization or sponsor, or has been enjoined in any state from
 1103 | violating any law relating to a charitable solicitation. The
 1104 | prohibitions in this subsection also apply to any misdemeanor in
 1105 | another state which constitutes a disqualifying felony in this
 1106 | state.

1107 | (15) The department may deny or revoke the registration of
 1108 | a professional solicitor if the professional solicitor, or any
 1109 | of its officers, directors, trustees, or agents, has had the
 1110 | right to solicit contributions revoked in any state, has entered
 1111 | into an agreement with any state to cease soliciting
 1112 | contributions within that state, or has been ordered by any
 1113 | court or governmental agency to cease soliciting contributions
 1114 | within any state.

1115 | (16)~~(15)~~ All registration fees must be paid to the
 1116 | department and deposited into the General Inspection Trust Fund.

1117 | Section 11. Section 496.4101, Florida Statutes, is created
 1118 | to read:

1119 496.4101 Licensure of professional solicitors and certain
 1120 employees thereof.-

1121 (1) Each officer, director, trustee, or owner of a
 1122 professional solicitor and any employee of a professional
 1123 solicitor conducting telephonic solicitations must, before
 1124 engaging in solicitation activities, obtain a solicitor license
 1125 from the department.

1126 (2) Persons required to obtain a solicitor license under
 1127 subsection (1) shall submit to the department, in such form as
 1128 the department prescribes, an application for a solicitor
 1129 license. The application must include the following information:

1130 (a) The true name, date of birth, unique identification
 1131 number of a driver license or other valid form of
 1132 identification, and home address of the applicant.

1133 (b) If the applicant, in any state, regardless of
 1134 adjudication, has previously been convicted of, or found guilty
 1135 of, or pled guilty or nolo contendere to, or has been
 1136 incarcerated within the last 10 years as a result of having
 1137 previously been convicted of, or found guilty of, or pled guilty
 1138 or nolo contendere to, any crime within the last 10 years
 1139 involving fraud, theft, larceny, embezzlement, fraudulent
 1140 conversion, or misappropriation of property, or any crime
 1141 arising from the conduct of a solicitation for a charitable
 1142 organization or sponsor, or has been enjoined, in any state,
 1143 from violating any law relating to a charitable solicitation.

1144 (c) If the applicant, in any state, is involved in pending

1145 litigation or has had entered against her or him an injunction,
 1146 a temporary restraining order, or a final judgment or order,
 1147 including a stipulated judgment or order, an assurance of
 1148 voluntary compliance, cease and desist, or any similar document,
 1149 in any civil or administrative action involving fraud, theft,
 1150 larceny, embezzlement, fraudulent conversion, or
 1151 misappropriation of property, or has been enjoined from
 1152 violating any law relating to a charitable solicitation.

1153 (3) Each applicant shall submit a complete set of his or
 1154 her fingerprints with the initial application for a solicitor
 1155 license and a fee equal to the federal and state costs for
 1156 fingerprint processing.

1157 (a) The applicant's fingerprints must be taken by an
 1158 authorized law enforcement officer or fingerprinting service
 1159 provider approved by the Department of Law Enforcement.

1160 (b) The department shall forward the complete set of
 1161 fingerprints to the Department of Law Enforcement to be
 1162 processed for state and federal criminal justice information as
 1163 defined in s. 943.045. The Department of Law Enforcement shall
 1164 report the findings of the state and national criminal history
 1165 background check to the department within 30 days after the
 1166 fingerprints are submitted to the Department of Law Enforcement
 1167 for criminal justice information.

1168 (4) A solicitor license must be renewed annually by the
 1169 submission of a renewal application. A solicitor license that is
 1170 not renewed expires without further action by the department.

1171 (5) Each applicant for a solicitor license shall remit a
 1172 license fee of \$100 to the department at the time the initial
 1173 application is filed with the department and an annual renewal
 1174 fee of \$100 thereafter. All fees collected, less the cost of
 1175 administration, shall be deposited into the General Inspection
 1176 Trust Fund.

1177 (6) Any material change to the information submitted to
 1178 the department in the initial application or renewal application
 1179 for a solicitor license shall be reported to the department by
 1180 the applicant or licensee within 10 days after the change
 1181 occurs. The applicant or licensee shall also submit a fee in the
 1182 amount of \$10 for processing the change to the initial or
 1183 renewal application.

1184 (7) It is a violation of this chapter:

1185 (a) For an applicant to provide inaccurate or incomplete
 1186 information to the department in the initial or renewal
 1187 application for a solicitor license.

1188 (b) For any person specified in subsection (1) to fail to
 1189 maintain a solicitor license as required by this section.

1190 (c) For a professional solicitor to allow, require,
 1191 permit, or authorize an employee without an active solicitor
 1192 license issued under this section to conduct telephonic
 1193 solicitations.

1194 (8) The department shall adopt rules that allow certain
 1195 applicants to engage in solicitation activities on an interim
 1196 basis until such time as a solicitor license is granted or

1197 denied.

1198 (9) The department may deny or revoke any solicitor
 1199 license if the applicant or licensee has had the right to
 1200 solicit contributions revoked in any state, has entered into an
 1201 agreement with any state to cease soliciting contributions
 1202 within that state, has been ordered by any court or governmental
 1203 agency to cease soliciting contributions within any state, or is
 1204 subject to any disqualification specified in s. 496.410(14).

1205 Section 12. Subsections (2) and (3) of section 496.411,
 1206 Florida Statutes, are amended to read:

1207 496.411 Disclosure requirements and duties of charitable
 1208 organizations and sponsors.—

1209 (2) A charitable organization or sponsor soliciting in
 1210 this state must include all of the following disclosures at the
 1211 point of solicitation:

1212 (a) The name of the charitable organization or sponsor and
 1213 state of the principal place of business of the charitable
 1214 organization or sponsor;

1215 (b) A description of the purpose or purposes for which the
 1216 solicitation is being made;

1217 (c) Upon request, the name and either the address or
 1218 telephone number of a representative to whom inquiries could be
 1219 addressed;

1220 (d) Upon request, the amount of the contribution which may
 1221 be deducted as a charitable contribution under federal income
 1222 tax laws;

1223 (e) Upon request, the source from which a written
 1224 financial statement may be obtained. Such financial statement
 1225 must be for the immediate preceding ~~past~~ fiscal year and must be
 1226 consistent with the annual financial statement ~~report~~ filed
 1227 under s. 496.407. The written financial statement must be
 1228 provided within 14 days after the request and must state the
 1229 purpose for which funds are raised, the total amount of all
 1230 contributions raised, the total costs and expenses incurred in
 1231 raising contributions, the total amount of contributions
 1232 dedicated to the stated purpose or disbursed for the stated
 1233 purpose, and whether the services of another person or
 1234 organization have been contracted to conduct solicitation
 1235 activities.

1236 (3) Every charitable organization or sponsor that ~~which~~ is
 1237 required to register under s. 496.405 or is exempt under s.
 1238 496.406(2)(d) shall ~~must~~ conspicuously display ~~in capital~~
 1239 ~~letters~~ the following statement on every ~~printed~~ solicitation,
 1240 ~~written~~ confirmation, receipt, or reminder of a contribution:

1241
 1242 "A COPY OF THE OFFICIAL REGISTRATION AND FINANCIAL
 1243 INFORMATION MAY BE OBTAINED FROM THE DIVISION OF
 1244 CONSUMER SERVICES BY CALLING TOLL-FREE WITHIN THE
 1245 STATE. REGISTRATION DOES NOT IMPLY ENDORSEMENT,
 1246 APPROVAL, OR RECOMMENDATION BY THE STATE."

1247
 1248 The statement must include a toll-free number and website for

1249 the division which ~~that~~ can be used to obtain the registration
 1250 information. If ~~When~~ the solicitation consists of more than one
 1251 piece, the statement must be displayed prominently in the
 1252 solicitation materials. If the solicitation occurs through a
 1253 website, the statement must be conspicuously displayed on the
 1254 webpage where donations are requested.

1255 Section 13. Subsection (1) of section 496.412, Florida
 1256 Statutes, is amended to read:

1257 496.412 Disclosure requirements and duties of professional
 1258 solicitors.—

1259 (1) A professional solicitor must comply with and be
 1260 responsible for complying or causing compliance with the
 1261 following disclosures:

1262 (a) Before ~~Prior to~~ orally requesting a contribution, or
 1263 contemporaneously with a written request for a contribution, a
 1264 professional solicitor must clearly disclose:

1265 1. The name of the professional solicitor as on file with
 1266 the department.

1267 2. If the individual acting on behalf of the professional
 1268 solicitor identifies himself or herself by name, the
 1269 individual's legal name.

1270 3. The name and state of the principal place of business
 1271 of the charitable organization or sponsor and a description of
 1272 how the contributions raised by the solicitation will be used
 1273 for a charitable or sponsor purpose; or, if there is no
 1274 charitable organization or sponsor, a description as to how the

1275 contributions raised by the solicitation will be used for a
 1276 charitable or sponsor purpose.

1277 (b) In the case of a solicitation campaign conducted
 1278 orally, whether by telephone or otherwise, any written
 1279 confirmation, receipt, or reminder sent to any person who has
 1280 contributed or has pledged to contribute, shall include a clear
 1281 disclosure of the information required by paragraph (a).

1282 (c) In addition to the information required by paragraph
 1283 (a), any written confirmation, receipt, or reminder of
 1284 contribution made pursuant to an oral solicitation and any
 1285 ~~written~~ solicitation shall conspicuously state ~~in capital~~
 1286 ~~letters:~~

1287
 1288 "A COPY OF THE OFFICIAL REGISTRATION AND FINANCIAL
 1289 INFORMATION MAY BE OBTAINED FROM THE DIVISION OF
 1290 CONSUMER SERVICES BY CALLING TOLL-FREE WITHIN THE
 1291 STATE. REGISTRATION DOES NOT IMPLY ENDORSEMENT,
 1292 APPROVAL, OR RECOMMENDATION BY THE STATE."
 1293

1294 The statement must include a toll-free number and website for
 1295 the division which ~~that~~ can be used to obtain the registration
 1296 information. If ~~When~~ the solicitation consists of more than one
 1297 piece, the statement must be displayed prominently in the
 1298 solicitation materials. If the solicitation occurs on a website,
 1299 the statement must be conspicuously displayed on the webpage
 1300 where donations are requested.

1301 (d) If requested by the person being solicited, the
 1302 professional solicitor shall inform that person in writing,
 1303 within 14 days after ~~of~~ the request, of the fixed percentage of
 1304 the gross revenue or the reasonable estimate of the percentage
 1305 of the gross revenue that the charitable organization or sponsor
 1306 will receive as a benefit from the solicitation campaign or
 1307 shall immediately notify the person being solicited that the
 1308 information is available on the department's website or by
 1309 calling the division's toll-free number.

1310 (e) If requested by the person being solicited, the
 1311 professional solicitor shall inform that person in writing,
 1312 within 14 days after ~~of~~ the request, of the percentage of the
 1313 contribution which may be deducted as a charitable contribution
 1314 under federal income tax laws or shall immediately notify the
 1315 person being solicited that the information is available on the
 1316 department's website or by calling the division's toll-free
 1317 number.

1318 Section 14. Section 496.4121, Florida Statutes, is created
 1319 to read:

1320 496.4121 Collection receptacles used for donations.-

1321 (1) As used in this section, the term "collection
 1322 receptacle" means a receptacle used to collect donated clothing,
 1323 household items, or other goods for resale.

1324 (2) A collection receptacle must display a permanent sign
 1325 or label on each side which contains the following information
 1326 printed in letters that are at least 3 inches in height and no

1327 less than one-half inch in width, in a color that contrasts with
 1328 the color of the collection receptacle:

1329 (a) For collection receptacles used by a person required
 1330 to register under this chapter, the name, business address,
 1331 telephone number, and registration number of the charitable
 1332 organization or sponsor for whom the solicitation is made.

1333 (b) For collection receptacles placed or maintained in
 1334 public view by a person not required to register under this
 1335 chapter, the name, telephone number, and physical address of the
 1336 business conducting the solicitation and the statement: "This is
 1337 not a charity. Donations made here support a for-profit business
 1338 and are not tax deductible."

1339 (3) Upon request, a charitable organization or sponsor
 1340 using a collection receptacle must provide the donor with
 1341 documentation of its tax-exempt status and the registration
 1342 issued under this chapter.

1343 Section 15. Subsection (2) of section 496.415, Florida
 1344 Statutes, is amended, and subsection (18) is added to that
 1345 section, to read:

1346 496.415 Prohibited acts.—It is unlawful for any person in
 1347 connection with the planning, conduct, or execution of any
 1348 solicitation or charitable or sponsor sales promotion to:

1349 (2) ~~Knowingly~~ Submit false, misleading, or inaccurate
 1350 information in a document that is filed with the department,
 1351 provided to the public, or offered in response to a request or
 1352 investigation by the department, the Department of Legal

1353 Affairs, or the state attorney.

1354 (18) Fail to remit to a charitable organization or sponsor
 1355 the disclosed guaranteed minimum percentage of gross receipts
 1356 from contributions as required under s. 496.410(7)(c) or, if the
 1357 solicitation involved the sale of goods, services, or tickets to
 1358 a fundraising event, the percentage of the purchase price as
 1359 agreed in the contract or agreement as required under this
 1360 chapter.

1361 Section 16. Subsection (5) of section 496.419, Florida
 1362 Statutes, is amended to read:

1363 496.419 Powers of the department.—

1364 (5) Upon a finding as set forth in subsection (4), the
 1365 department may enter an order doing one or more of the
 1366 following:

1367 (a) Issuing a notice of noncompliance pursuant to s.
 1368 120.695;

1369 (b) Issuing a cease and desist order that directs that the
 1370 person cease and desist specified fundraising activities;

1371 (c) Refusing to register or canceling or suspending a
 1372 registration;

1373 (d) Placing the registrant on probation for a period of
 1374 time, subject to such conditions as the department may specify;

1375 (e) Canceling an exemption granted under s. 496.406; ~~and~~

1376 (f) Except as provided in paragraph (g), imposing an
 1377 administrative fine not to exceed \$5,000 ~~\$1,000~~ for each act or
 1378 omission that ~~which~~ constitutes a violation of ss. 496.401-

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1379 496.424 or s. 496.426 or a rule or order. With respect to a s.
 1380 501(c)(3) organization, the penalty imposed pursuant to this
 1381 subsection may ~~shall~~ not exceed \$500 per violation for failure
 1382 to register under s. 496.405 or file for an exemption under s.
 1383 496.406(2). The penalty shall be the entire amount per violation
 1384 and is not ~~to be interpreted as~~ a daily penalty; and

1385 (g) Imposing an administrative fine not to exceed \$10,000
 1386 for a violation of this chapter that involves fraud or
 1387 deception.

1388 Section 17. Section 496.4191, Florida Statutes, is created
 1389 to read:

1390 496.4191 Additional penalty; immediate suspension.—Upon
 1391 notification and subsequent written verification by a law
 1392 enforcement agency, a court, a state attorney, or the Florida
 1393 Department of Law Enforcement, the department shall immediately
 1394 suspend a registration or the processing of an application for a
 1395 registration if the registrant, applicant, or any officer or
 1396 director of the registrant or applicant is formally charged with
 1397 a crime involving fraud, theft, larceny, embezzlement, or
 1398 fraudulent conversion or misappropriation of property or any
 1399 crime arising from the conduct of a solicitation for a
 1400 charitable organization or sponsor until final disposition of
 1401 the case or removal or resignation of that officer or director.

1402 Section 18. Section 496.430, Florida Statutes, is created
 1403 to read:

1404 496.430 Disqualification for certain tax exemptions.—

1405 (1) The department may issue an order to disqualify a
 1406 charitable organization or sponsor from receiving any sales tax
 1407 exemption if the department finds, based upon the average of
 1408 functional expenses and program service costs provided to the
 1409 department pursuant to s. 496.407 for the 3 most recent fiscal
 1410 years, that the charitable organization or sponsor has failed to
 1411 expend at least 25 percent of its total annual functional
 1412 expenses on program service costs.

1413 (2) A charitable organization or sponsor may appeal a
 1414 disqualification order by requesting a hearing within 21 days
 1415 after notification from the department that it has issued a
 1416 disqualification order under this section. The hearing must be
 1417 conducted in accordance with chapter 120.

1418 (3) Notwithstanding a finding under subsection (1) that a
 1419 charitable organization or sponsor has failed to expend at least
 1420 25 percent of its total annual functional expenses on program
 1421 service costs, the department may decline to issue a
 1422 disqualification order if the charitable organization or sponsor
 1423 establishes:

1424 (a) That payments were made to affiliates which should be
 1425 considered in calculating the program service costs;

1426 (b) That revenue was accumulated for a specific program
 1427 purpose consistent with representations in solicitations; or

1428 (c) Such other mitigating circumstances as are defined by
 1429 rule of the department.

1430 (4) A disqualification order issued by the department

1431 pursuant to this section is effective for at least 1 year after
 1432 such order becomes final and shall remain effective until such
 1433 time as the department receives sufficient evidence from the
 1434 disqualified charitable organization or sponsor which
 1435 demonstrates it expends at least 25 percent of its total annual
 1436 functional expenses on program service costs.

1437 (a) The charitable organization or sponsor may not submit
 1438 such evidence to the department sooner than 1 year after the
 1439 disqualification order becomes final and may not submit such
 1440 information more than once each year for consideration by the
 1441 department.

1442 (b) The department shall also consider any financial
 1443 statement that was submitted by the charitable organization or
 1444 sponsor to the department pursuant to s. 496.407 after the
 1445 disqualification order became final.

1446 (5) The department shall provide a disqualification order
 1447 to the Department of Revenue within 30 days after such order
 1448 becomes final. A final disqualification order is conclusive as
 1449 to the charitable organization's or sponsor's entitlement to any
 1450 sales tax exemption. The Department of Revenue shall revoke or
 1451 refuse to grant a sales tax exemption certificate to a
 1452 charitable organization or sponsor subject to a final
 1453 disqualification order within 30 days after receiving such
 1454 disqualification order. A charitable organization or sponsor may
 1455 not appeal or challenge the revocation or denial of a sales tax
 1456 exemption certificate by the Department of Revenue if such

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1457 revocation or denial is based upon a final disqualification
 1458 order issued pursuant to this section.

1459 (6) This section does not apply to a charitable
 1460 organization or sponsor that:

1461 (a) Is not required to register under this chapter with
 1462 the department; or

1463 (b) Has been in existence for less than 4 years.

1464 Section 19. Paragraph (a) of subsection (3) of section
 1465 741.0305, Florida Statutes, is amended to read:

1466 741.0305 Marriage fee reduction for completion of
 1467 premarital preparation course.—

1468 (3)(a) All individuals electing to participate in a
 1469 premarital preparation course shall choose from the following
 1470 list of qualified instructors:

- 1471 1. A psychologist licensed under chapter 490.
- 1472 2. A clinical social worker licensed under chapter 491.
- 1473 3. A marriage and family therapist licensed under chapter
 1474 491.
- 1475 4. A mental health counselor licensed under chapter 491.
- 1476 5. An official representative of a religious institution
 1477 which is recognized under s. 496.404(23) ~~496.404(19)~~, if the
 1478 representative has relevant training.

1479 6. Any other provider designated by a judicial circuit,
 1480 including, but not limited to, school counselors who are
 1481 certified to offer such courses. Each judicial circuit may
 1482 establish a roster of area course providers, including those who

1483 offer the course on a sliding fee scale or for free.
 1484 Section 20. For the 2014-2015 fiscal year, the sum of
 1485 \$175,000 in nonrecurring funds is appropriated from the General
 1486 Inspection Trust Fund of the Department of Agriculture and
 1487 Consumer Services to the Contracted Services appropriation
 1488 category for the purpose of implementing this act. Funds
 1489 remaining unexpended or unencumbered from this appropriation as
 1490 of June 30, 2015, shall revert and be reappropriated for the
 1491 same purpose in the 2015-2016 fiscal year.
 1492 Section 21. This act shall take effect July 1, 2014.



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 & Professional
 2 Regulation Subcommittee

3 Representative Boyd offered the following:

4
 5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Paragraph (p) of subsection (7) of section
 8 212.08, Florida Statutes, is amended to read:

9 212.08 Sales, rental, use, consumption, distribution, and
 10 storage tax; specified exemptions.—The sale at retail, the
 11 rental, the use, the consumption, the distribution, and the
 12 storage to be used or consumed in this state of the following
 13 are hereby specifically exempt from the tax imposed by this
 14 chapter.

15 (7) MISCELLANEOUS EXEMPTIONS.—Exemptions provided to any
 16 entity by this chapter do not inure to any transaction that is
 17 otherwise taxable under this chapter when payment is made by a



Amendment No. 1

18 representative or employee of the entity by any means,
19 including, but not limited to, cash, check, or credit card, even
20 when that representative or employee is subsequently reimbursed
21 by the entity. In addition, exemptions provided to any entity by
22 this subsection do not inure to any transaction that is
23 otherwise taxable under this chapter unless the entity has
24 obtained a sales tax exemption certificate from the department
25 or the entity obtains or provides other documentation as
26 required by the department. Eligible purchases or leases made
27 with such a certificate must be in strict compliance with this
28 subsection and departmental rules, and any person who makes an
29 exempt purchase with a certificate that is not in strict
30 compliance with this subsection and the rules is liable for and
31 shall pay the tax. The department may adopt rules to administer
32 this subsection.

33 (p) *Section 501(c)(3) organizations.*—Also exempt from the
34 tax imposed by this chapter are sales or leases to organizations
35 determined by the Internal Revenue Service to be currently
36 exempt from federal income tax pursuant to s. 501(c)(3) of the
37 Internal Revenue Code of 1986, as amended, if when such leases
38 or purchases are used in carrying on their customary nonprofit
39 activities, unless such organizations are subject to a final
40 disqualification order issued by the Department of Agriculture
41 and Consumer Services pursuant to s. 496.430.

42 Section 2. Subsection (3) of section 212.084, Florida
43 Statutes, is amended, and subsection (7) is added to that



Amendment No. 1

44 section, to read:

45 212.084 Review of exemption certificates; reissuance;
46 specified expiration date; temporary exemption certificates.-

47 (3) After review is completed and it has been determined
48 that an institution, organization, or individual is actively
49 engaged in a bona fide exempt endeavor and is not subject to a
50 final disqualification order issued by the Department of
51 Agriculture and Consumer Services pursuant to s. 496.430, the
52 department shall reissue an exemption certificate to the entity.
53 However, each certificate so reissued is valid for 5 consecutive
54 years, at which time the review and reissuance procedure
55 provided by this section apply again. If the department
56 determines that an entity no longer qualifies for an exemption,
57 it shall revoke the tax exemption certificate of the entity.

58 (7) The department shall revoke or refuse to grant a sales
59 tax exemption certificate to an institution, organization, or
60 individual that is the subject of a final disqualification order
61 issued by the Department of Agriculture and Consumer Services
62 pursuant to s. 496.430. A revocation or denial under this
63 subsection is subject to challenge under chapter 120 only as to
64 whether a disqualification order is in effect. The institution,
65 organization, or individual must appeal or challenge the
66 validity of the disqualification order pursuant to s.
67 496.430(2).

68 Section 3. Section 496.403, Florida Statutes, is amended
69 to read:

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70 496.403 Application.—Sections 496.401-496.424 do not apply
71 to bona fide religious institutions, educational institutions,
72 blood establishments as defined in s. 381.06014(1)(a), and state
73 agencies or other government entities or persons or
74 organizations who solicit or act as professional fundraising
75 consultants solely on ~~their~~ behalf of those entities. Sections
76 496.401-496.424 do not apply to political contributions
77 solicited in accordance with the election laws of this state.

78 Section 4. Section 496.404, Florida Statutes, is amended
79 to read:

80 496.404 Definitions.—As used in ss. 496.401-496.424, the
81 term:

82 (1) "Charitable organization" means a any person who is or
83 holds herself or himself out to be established for any
84 benevolent, educational, philanthropic, humane, scientific,
85 artistic, patriotic, social welfare or advocacy, public health,
86 environmental conservation, civic, or other eleemosynary
87 purpose, or a any person who in any manner employs a charitable
88 appeal as the basis for any solicitation or an appeal that
89 suggests that there is a charitable purpose to any solicitation.
90 The term ~~It~~ includes a chapter, branch, area office, or similar
91 affiliate soliciting contributions within the state for a
92 charitable organization that ~~which~~ has its principal place of
93 business outside the state.

94 (2) "Charitable purpose" means any benevolent,
95 philanthropic, patriotic, educational, humane, scientific,



Amendment No. 1

96 artistic, public health, social welfare or advocacy,
97 environmental conservation, civic, or other eleemosynary
98 objective.

99 (3) "Charitable sales promotion" means an advertising or
100 sales campaign conducted by a commercial co-venturer which
101 represents that the purchase or use of goods or services offered
102 by the commercial co-venturer ~~are to~~ benefit a charitable
103 organization. The provision of advertising services to a
104 charitable organization does not, in itself, constitute a
105 charitable sales promotion.

106 (4) "Commercial co-venturer" means a ~~any~~ person who, for
107 profit, regularly and primarily is engaged in trade or commerce
108 other than in connection with solicitation of contributions and
109 who conducts a charitable sales promotion or a sponsor sales
110 promotion.

111 (5) "Contribution" means the promise, pledge, or grant of
112 any money or property, financial assistance, or any other thing
113 of value in response to a solicitation. The term "Contribution"
114 includes, in the case of a charitable organization or sponsor
115 offering goods and services to the public, the difference
116 between the direct cost of the goods and services to the
117 charitable organization or sponsor and the price at which the
118 charitable organization or sponsor or any person acting on
119 behalf of the charitable organization or sponsor resells those
120 goods or services to the public. The term "Contribution" does
121 not include:

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122 (a) Bona fide fees, dues, or assessments paid by members,
123 if provided that membership is not conferred solely as
124 consideration for making a contribution in response to a
125 solicitation;

126 (b) "Contribution" also does not include Funds obtained by
127 a charitable organization or sponsor pursuant to government
128 grants or contracts;

129 (c) Funds, or obtained as an allocation from a United Way
130 organization that is duly registered with the department; or

131 (d) Funds received from an organization duly registered
132 with the department that is exempt from federal income taxation
133 under s. 501(a) of the Internal Revenue Code and described in s.
134 501(c) of the Internal Revenue Code that is duly registered with
135 the department.

136 (6) "Crisis" means an event that garners widespread
137 national or global media coverage due to an actual or perceived
138 threat of harm to an individual, a group, or a community.

139 (7)-(6) "Department" means the Department of Agriculture
140 and Consumer Services.

141 (8) "Disaster" means a natural, technological, or civil
142 event, including, but not limited to, an explosion, chemical
143 spill, earthquake, tsunami, landslide, volcanic activity,
144 avalanche, wildfire, tornado, hurricane, drought, or flood,
145 which affects one or more countries and causes damage of
146 sufficient severity and magnitude to result in:

147 (a) An official declaration of a state of emergency; or



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148 (b) An official request for international assistance.

149 ~~(9)(7)~~ "Division" means the Division of Consumer Services
150 of the Department of Agriculture and Consumer Services.

151 ~~(10)(8)~~ "Educational institutions" means those
152 institutions and organizations described in s. 212.08(7)(cc)8.a.
153 The term includes private nonprofit organizations, the purpose
154 of which is to raise funds for schools teaching grades
155 kindergarten through grade 12, colleges, and universities,
156 including any nonprofit newspaper of free or paid circulation
157 primarily on university or college campuses which holds a
158 current exemption from federal income tax under s. 501(c)(3) of
159 the Internal Revenue Code, any educational television network or
160 system established pursuant to s. 1001.25 or s. 1001.26, and any
161 nonprofit television or radio station that is a part of such
162 network or system and that holds a current exemption from
163 federal income tax under s. 501(c)(3) of the Internal Revenue
164 Code. The term also includes a nonprofit educational cable
165 consortium that holds a current exemption from federal income
166 tax under s. 501(c)(3) of the Internal Revenue Code, whose
167 primary purpose is the delivery of educational and instructional
168 cable television programming and whose members are composed
169 exclusively of educational organizations that hold a valid
170 consumer certificate of exemption and that are either an
171 educational institution as defined in this subsection or
172 qualified as a nonprofit organization pursuant to s. 501(c)(3)
173 of the Internal Revenue Code.

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174 ~~(11)(9)~~ "Emergency service employee" means an ~~any~~ employee
175 who is a firefighter, as defined in s. 633.102, or ambulance
176 driver, emergency medical technician, or paramedic, as defined
177 in s. 401.23.

178 ~~(12)(10)~~ "Federated fundraising organization" means a
179 federation of independent charitable organizations that ~~which~~
180 have voluntarily joined together, including, but not limited to,
181 a united way or community chest, for purposes of raising and
182 distributing contributions for and among themselves and where
183 membership does not confer operating authority and control of
184 the individual organization upon the federated group
185 organization.

186 ~~(13)(11)~~ "Fundraising costs" means those costs incurred in
187 inducing others to make contributions to a charitable
188 organization or sponsor for which the contributors will receive
189 no direct economic benefit. Fundraising costs include, but are
190 not limited to, salaries, rent, acquiring and obtaining mailing
191 lists, printing, mailing, and all direct and indirect costs of
192 soliciting, as well as the cost of unsolicited merchandise sent
193 to encourage contributions.

194 ~~(14)(12)~~ "Law enforcement officer" means a ~~any~~ person who
195 is elected, appointed, or employed by any municipality or the
196 state or any political subdivision thereof and:

197 (a) Who is vested with authority to bear arms and make
198 arrests and whose primary responsibility is the prevention and



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199 detection of crime or the enforcement of the criminal, traffic,
200 or highway laws of the state; or

201 (b) Whose responsibility includes supervision, protection,
202 care, custody, or control of inmates within a correctional
203 institution.

204 (15) "Management and general costs" means all such costs
205 of a charitable organization or sponsor which are not
206 identifiable with a single program or fundraising activity but
207 which are indispensable to the conduct of such programs and
208 activities and the charitable organization's or sponsor's
209 existence.

210 ~~(16)~~(13) "Membership" means the relationship of a person
211 to an organization which ~~that~~ entitles her or him to the
212 privileges, professional standing, honors, or other direct
213 benefit of the organization in addition to the right to vote,
214 elect officers, and hold office in the organization.

215 ~~(17)~~(14) "Owner" means a any person who has a direct or
216 indirect interest in any professional fundraising consultant or
217 professional solicitor.

218 ~~(18)~~(15) "Parent organization" means that part of a
219 charitable organization or sponsor which coordinates,
220 supervises, or exercises control over policy, fundraising, and
221 expenditures or assists or advises one or more of the
222 organization's chapters, branches, or affiliates in this state.



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223 (19)~~(16)~~ "Person" means an ~~any~~ individual, organization,
224 trust, foundation, group, association, entity, partnership,
225 corporation, society, or any combination thereof ~~of them~~.

226 (20)~~(17)~~ "Professional fundraising consultant" means a ~~any~~
227 person who is retained by a charitable organization or sponsor
228 for a fixed fee or rate under a written agreement to plan,
229 manage, conduct, carry on, advise, consult, or prepare material
230 for a solicitation of contributions in this state, but who does
231 not solicit contributions or employ, procure, or engage any
232 compensated person to solicit contributions and who does not at
233 any time have custody or control of contributions. A bona fide
234 volunteer or bona fide employee or salaried officer of a
235 charitable organization or sponsor maintaining a permanent
236 establishment in this state is not a professional fundraising
237 consultant. An attorney, investment counselor, or banker who
238 advises an individual, corporation, or association to make a
239 charitable contribution is not a professional fundraising
240 consultant as the result of such advice.

241 (21)~~(18)~~ "Professional solicitor" means a ~~any~~ person who,
242 for compensation, performs for a charitable organization or
243 sponsor any service in connection with which contributions are
244 or will be solicited in, or from a location in, this state by
245 the compensated person or by any person it employs, procures, or
246 otherwise engages, directly or indirectly, to solicit
247 contributions, or a person who plans, conducts, manages, carries
248 on, advises, consults, ~~whether~~ directly or indirectly, in



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249 connection with the solicitation of contributions for or on
250 behalf of a charitable organization or sponsor, but who does not
251 qualify as a professional fundraising consultant. A bona fide
252 volunteer or bona fide employee or salaried officer of a
253 charitable organization or sponsor maintaining a permanent
254 establishment in this state is not a professional solicitor. An
255 attorney, investment counselor, or banker who advises an
256 individual, corporation, or association to make a charitable
257 contribution is not a professional solicitor as the result of
258 such advice.

259 (22) "Program service costs" means all expenses incurred
260 primarily to accomplish the charitable organization's or
261 sponsor's stated purposes. The term does not include fundraising
262 costs.

263 (23)-(19) "Religious institution" means any church,
264 ecclesiastical or denominational organization, or established
265 physical place for worship in this state at which nonprofit
266 religious services and activities are regularly conducted and
267 carried on, and includes those bona fide religious groups which
268 do not maintain specific places of worship. The term "Religious
269 institution" also includes any separate group or corporation
270 that which forms an integral part of a religious institution
271 that which is exempt from federal income tax under the
272 provisions of s. 501(c)(3) of the Internal Revenue Code. The
273 term also includes any religious institution recognized by the
274 Department of Revenue under s. 212.08(7)(m)2. and any religious



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275 organization described in s. 501(c)(3) of the Internal Revenue
276 Code that is exempt from federal income tax under s. 501(a) of
277 the Internal Revenue Code and exempt from filing an annual Form
278 990, 990-EZ, or 990-N under 26 U.S.C. s. 6033, and which is not
279 primarily supported by funds solicited outside its own
280 membership or congregation.

281 (24)~~(20)~~ "Solicitation" means a request, directly or
282 indirectly, for money, property, financial assistance, or any
283 other thing of value on the plea or representation that such
284 money, property, financial assistance, or other thing of value
285 or a portion of it will be used for a charitable or sponsor
286 purpose or will benefit a charitable organization or sponsor.
287 The term "Solicitation" includes, but is not limited to, the
288 following methods of requesting or securing the promise, pledge,
289 or grant of money, property, financial assistance, or any other
290 thing of value:

291 (a) Making any oral or written request;

292 (b) Making any announcement to the press, on radio or
293 television, by telephone or telegraph, or by any other
294 communication device concerning an appeal or campaign by or for
295 any charitable organization or sponsor or for any charitable or
296 sponsor purpose;

297 (c) Distributing, circulating, posting, or publishing any
298 handbill, written advertisement, or other publication that
299 directly or by implication seeks to obtain any contribution; or



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300 (d) Selling or offering or attempting to sell any
301 advertisement, advertising space, book, card, coupon, chance,
302 device, magazine, membership, merchandise, subscription,
303 sponsorship, flower, admission, ticket, food, or other service
304 or tangible good, item, or thing of value, or any right of any
305 description in connection with which any appeal is made for any
306 charitable organization or sponsor or charitable or sponsor
307 purpose, or when the name of any charitable organization or
308 sponsor is used or referred to in any such appeal as an
309 inducement or reason for making the sale or when, in connection
310 with the sale or offer or attempt to sell, any statement is made
311 that all or part of the proceeds from the sale will be used for
312 any charitable or sponsor purpose or will benefit any charitable
313 organization or sponsor.

314

315 A solicitation is considered as having taken place whether or
316 not the person making the solicitation receives any
317 contribution. A solicitation does not occur when a person
318 applies for a grant or an award to the government or to an
319 organization that is exempt from federal income taxation under
320 s. 501(a) of the Internal Revenue Code and described in s.
321 501(c) of the Internal Revenue Code and is duly registered with
322 the department.

323 ~~(25)(21)~~ "Sponsor" means a group or person that ~~which~~ is
324 or holds itself out to be soliciting contributions by the use of
325 any name that ~~which~~ implies that the group or person is in any



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326 way affiliated with or organized for the benefit of emergency
327 service employees or law enforcement officers and the group or
328 person ~~which~~ is not a charitable organization. The term includes
329 a chapter, branch, or affiliate that ~~which~~ has its principal
330 place of business outside the state, if such chapter, branch, or
331 affiliate solicits or holds itself out to be soliciting
332 contributions in this state.

333 ~~(26)~~~~(22)~~ "Sponsor purpose" means any program or endeavor
334 performed to benefit emergency service employees or law
335 enforcement officers.

336 ~~(27)~~~~(23)~~ "Sponsor sales promotion" means an advertising or
337 sales campaign conducted by a commercial co-venturer who
338 represents that the purchase or use of goods or services offered
339 by the commercial co-venturer will be used for a sponsor purpose
340 or donated to a sponsor. The provision of advertising services
341 to a sponsor does not, in itself, constitute a sponsor sales
342 promotion.

343 Section 5. Subsection (1), paragraphs (a) and (g) of
344 subsection (2), subsection (3), paragraph (b) of subsection (4),
345 and subsections (7) and (8) of section 496.405, Florida
346 Statutes, are amended, and subsections (9) and (10) are added to
347 that section, to read:

348 496.405 Registration statements by charitable
349 organizations and sponsors.-

350 ~~(1)(a)~~ A charitable organization or sponsor, unless
351 exempted pursuant to s. 496.406, which intends to solicit



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352 contributions in this state by any means or have funds solicited
353 on its behalf by any other person, charitable organization,
354 sponsor, commercial co-venturer, or professional solicitor, or
355 that participates in a charitable sales promotion or sponsor
356 sales promotion, must, before ~~prior to~~ engaging in any of these
357 activities, file an initial registration statement, and a
358 renewal statement annually thereafter, with the department.

359 (a) (b) Except as provided in paragraph (b), any changes in
360 the information submitted on the initial registration statement
361 or the last renewal statement must be updated annually on a
362 renewal statement provided by the department on or before the
363 date that marks 1 year after the date the department approved
364 the initial registration statement as provided in this section.
365 The department shall annually provide a renewal statement to
366 each registrant by mail or by electronic mail at least 30 days
367 before the renewal date.

368 (b) Any changes to the information submitted to the
369 department pursuant to paragraph (2) (d) on the initial
370 registration statement or the last renewal statement must be
371 reported to the department on a form prescribed by the
372 department within 10 days after the change occurs.

373 (c) A charitable organization or sponsor that is required
374 to file an initial registration statement or annual renewal
375 statement may not, before ~~prior to~~ approval of its statement by
376 the department in accordance with subsection (7), solicit
377 contributions or have contributions solicited on its behalf by



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378 any other person, charitable organization, sponsor, commercial
379 co-venturer, or professional solicitor, or participate in a
380 charitable sales promotion or sponsor sales promotion.

381 ~~(d) For good cause shown, the department may extend the~~
382 ~~time for the filing of an annual renewal statement or financial~~
383 ~~report for a period not to exceed 60 days, during which time the~~
384 ~~previous registration remains in effect.~~

385 ~~(d)(e) In no event shall~~ The registration of a charitable
386 organization or sponsor may not continue in effect and shall
387 expire without further action of the department:

388 1. After the date the charitable organization or sponsor
389 should have filed, but failed to file, its renewal statement
390 financial report in accordance with this section.

391 2. For failure to provide a financial statement within any
392 extension period provided under and s. 496.407. The organization
393 may not file a renewal statement until it has filed the required
394 financial report with the department.

395 (2) The initial registration statement must be submitted
396 on a form prescribed by the department, signed by an authorized
397 official of the charitable organization or sponsor who shall
398 certify that the registration statement is true and correct, and
399 include the following information or material:

400 (a) A copy of the financial statement ~~report~~ or Internal
401 Revenue Service Form 990 and all attached schedules or Internal
402 Revenue Service Form 990-EZ and Schedule O required under s.
403 496.407 for the immediately preceding fiscal year. A newly



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404 organized charitable organization or sponsor with no financial
405 history must file a budget for the current fiscal year.

406 (g) The following information must be filed with the
407 initial registration statement and must be updated when any
408 change occurs in the information that was previously filed with
409 the initial registration statement:

410 1. The principal street address and telephone number of
411 the charitable organization or sponsor and the street address
412 and telephone numbers of any offices in this state or, if the
413 charitable organization or sponsor does not maintain an office
414 in this state, the name, street address, and telephone number of
415 the person who ~~that~~ has custody of its financial records. The
416 parent organization that files a consolidated registration
417 statement on behalf of its chapters, branches, or affiliates
418 must additionally provide the street addresses and telephone
419 numbers of all such locations in this state.

420 2. The names and street addresses of the officers,
421 directors, trustees, and the principal salaried executive
422 personnel.

423 3. The date when the charitable organization's or
424 sponsor's fiscal year ends.

425 4. A list or description of the major program activities.

426 5. The names, street addresses, and telephone numbers of
427 the individuals or officers who have final responsibility for
428 the custody of the contributions and who will be responsible for
429 the final distribution of the contributions.



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430 (3) Each chapter, branch, or affiliate of a parent
431 organization that is required to register under this section
432 must ~~either~~ file a separate registration statement and financial
433 statement report or ~~must~~ report the required information to its
434 parent organization, which shall then file, on a form prescribed
435 by the department, a consolidated registration statement for the
436 parent organization and its Florida chapters, branches, and
437 affiliates. A consolidated registration statement filed by a
438 parent organization must include or be accompanied by financial
439 statements reports as specified in s. 496.407 for the parent
440 organization and each of its Florida chapters, branches, and
441 affiliates that solicited or received contributions during the
442 preceding fiscal year. However, if all contributions received by
443 chapters, branches, or affiliates are remitted directly into a
444 depository account that ~~which~~ feeds directly into the parent
445 organization's centralized accounting system from which all
446 disbursements are made, the parent organization may submit one
447 consolidated financial statement report on a form prescribed by
448 the department. The consolidated financial statement must
449 reflect the activities of each chapter, branch, or affiliate of
450 the parent organization, including all contributions received in
451 the name of each chapter, branch, or affiliate; all payments
452 made to each chapter, branch, or affiliate; and all
453 administrative fees assessed to each chapter, branch, or
454 affiliate.

455 (4)

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456 (b) A charitable organization or sponsor ~~that~~ which fails
457 to file a registration statement by the due date may be assessed
458 an additional fee for such late filing. The late filing fee is
459 ~~shall be~~ \$25 for each month or part of a month after the date on
460 which the annual renewal statement was ~~and financial report were~~
461 due to be filed with the department.

462 (7) (a) The department must examine each initial
463 registration statement or annual renewal statement and the
464 supporting documents filed by a charitable organization or
465 sponsor and shall determine whether the registration
466 requirements are satisfied. Within 15 business working days
467 after its receipt of a statement, the department must examine
468 the statement, notify the applicant of any apparent errors or
469 omissions, and request any additional information the department
470 is allowed by law to require. Failure to correct an error or
471 omission or to supply additional information is not grounds for
472 denial of the initial registration or annual renewal statement
473 unless the department has notified the applicant within such
474 period of 15 business days ~~the 15 working day period~~. The
475 department must approve or deny each statement, or must notify
476 the applicant that the activity for which she or he seeks
477 registration is exempt from the registration requirement, within
478 15 business working days after receipt of the initial
479 registration or annual renewal statement or the requested
480 additional information or correction of errors or omissions. Any
481 statement that is not approved or denied within 15 business

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482 ~~working~~ days after receipt of the requested additional
483 information or correction of errors or omissions is approved.
484 Within 7 business ~~working~~ days after receipt of a notification
485 that the registration requirements are not satisfied, the
486 charitable organization or sponsor may request a hearing. The
487 hearing must be held within 7 business ~~working~~ days after
488 receipt of the request, and any recommended order, if one is
489 issued, must be rendered within 3 business ~~working~~ days after of
490 the hearing. The final order must then be issued within 2
491 business ~~working~~ days after the recommended order. If a
492 recommended order is not issued, the final order must be issued
493 within 5 business ~~working~~ days after the hearing. The
494 proceedings must be conducted in accordance with chapter 120,
495 except that the time limits and provisions set forth in this
496 subsection prevail to the extent of any conflict.

497 (b) If a charitable organization or sponsor discloses
498 information specified in subparagraphs (2)(d)2.-7. in the
499 initial registration statement or annual renewal statement, the
500 time limits of this subsection are waived, and the department
501 shall process such initial registration statement or annual
502 renewal statement in accordance with the time limits in chapter
503 120. The registration of a charitable organization or sponsor
504 shall be automatically suspended for failure to disclose any
505 information specified in subparagraphs (2)(d)2.-7. until such
506 time as the required information is submitted to the department.



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507 (8) A ~~No~~ charitable organization or sponsor, or any
508 officer, director, trustee, or employee thereof, may not ~~shall~~
509 knowingly allow any officer, director, trustee, or employee of
510 the charitable organization or sponsor ~~of its officers,~~
511 directors, trustees, or employees to solicit contributions on
512 behalf of such charitable organization or sponsor if such
513 officer, director, trustee, or employee has, in any state,
514 regardless of adjudication, been convicted of, or found guilty
515 of, or pled guilty or nolo contendere to, or has been
516 incarcerated within the last 10 years as a result of having
517 previously been convicted of, or found guilty of, or pled guilty
518 or nolo contendere to, any felony within the last 10 years or
519 any crime within the last 10 years involving fraud, theft,
520 larceny, embezzlement, fraudulent conversion, misappropriation
521 of property, or any crime arising from the conduct of a
522 solicitation for a charitable organization or sponsor, or has
523 been enjoined, in any state, from violating any law relating to
524 a charitable solicitation. The prohibitions in this subsection
525 also apply to any misdemeanor in another state which constitutes
526 a disqualifying felony in this state.

527 (9) The department may deny or revoke the registration of
528 a charitable organization or sponsor if the charitable
529 organization or sponsor, or any officer, director, or trustee
530 thereof, has had the right to solicit contributions revoked in
531 any state, has entered into an agreement with any state to cease
532 soliciting contributions within that state, or has been ordered



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533 by any court or governmental agency to cease soliciting
534 contributions within any state.

535 (10) A charitable organization or sponsor registered under
536 this section which ends solicitation activities or participation
537 in charitable sales promotions in this state shall immediately
538 notify the department in writing of the date such activities
539 ceased.

540 Section 6. Section 496.4055, Florida Statutes, is created
541 to read:

542 496.4055 Charitable organization or sponsor board duties.-

543 (1) As used in this section, the term "conflict of
544 interest transaction" means a transaction between a charitable
545 organization or sponsor and another party in which a director,
546 officer, or trustee of the charitable organization or sponsor
547 has a direct or indirect financial interest. The term includes,
548 but is not limited to, the sale, lease, or exchange of property
549 to or from the charitable organization or sponsor; the lending
550 of moneys to or borrowing of moneys from the charitable
551 organization or sponsor; and the payment of compensation for
552 services provided to or from the charitable organization or
553 sponsor.

554 (2) The board of directors, or an authorized committee
555 thereof, of a charitable organization or sponsor required to
556 register with the department under s. 496.405 shall adopt a
557 policy regarding conflict of interest transactions. The policy
558 shall require annual certification of compliance with the policy



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559 by all directors, officers, and employees of the charitable
560 organization. A copy of the annual certification shall be
561 submitted to the department with the annual registration
562 statement required by s. 496.405.

563 Section 7. Section 496.407, Florida Statutes, is amended
564 to read:

565 496.407 Financial statement report.-

566 (1) A charitable organization or sponsor that is required
567 to initially register or annually renew registration must file
568 an annual financial statement report for the immediately
569 preceding fiscal year on ~~upon~~ a form prescribed by the
570 department.

571 (a) The statement report must include the following:

572 1. ~~(a)~~ A balance sheet.

573 2. ~~(b)~~ A statement of support, revenue and expenses, and
574 any change in the fund balance.

575 3. ~~(c)~~ The names and addresses of the charitable
576 organizations or sponsors, professional fundraising consultant,
577 professional solicitors, and commercial co-venturers used, if
578 any, and the amounts received from each of them, if any.

579 4. ~~(d)~~ A statement of functional expenses that must
580 include, but not be limited to, expenses in the following
581 categories:

582 a. ~~1.~~ Program service costs.

583 b. ~~2.~~ Management and general costs.

584 c. ~~3.~~ Fundraising costs.

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585 (b) The financial statement must be audited or reviewed as
586 follows:

587 1. For a charitable organization or sponsor that receives
588 less than \$500,000 in annual contributions, a compilation,
589 audit, or review of the financial statement is optional.

590 2. For a charitable organization or sponsor that receives
591 at least \$500,000 but less than \$1 million in annual
592 contributions, the financial statement shall be reviewed or
593 audited by an independent certified public accountant.

594 3. For a charitable organization or sponsor that receives
595 \$1 million or more in annual contributions, the financial
596 statement shall be audited by an independent certified public
597 accountant.

598 (c) Audits and reviews shall be prepared in accordance
599 with the following standards:

600 1. Audits shall be prepared by an independent certified
601 public account in accordance with generally accepted auditing
602 standards, including the Statements on Auditing Standards.

603 2. Reviews shall be prepared by an independent certified
604 public accountant in accordance with the Statements on Standards
605 for Accounting and Review Services.

606 (d) Audited and reviewed financial statements must be
607 accompanied by a report signed and prepared by the independent
608 certified public accountant performing such audit or review.

609 (2) In lieu of the financial ~~statement~~ ~~report~~ described in
610 subsection (1), a charitable organization or sponsor that

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611 receives less than \$500,000 in annual contributions may submit a
612 copy of its Internal Revenue Service Form 990 and all attached
613 schedules filed for the preceding fiscal year, or a copy of its
614 Internal Revenue Service Form 990-EZ and Schedule O filed for
615 the preceding fiscal year.

616 (3) Upon a showing of good cause by a charitable
617 organization or sponsor, the department may extend the time for
618 the filing of a financial statement required under this section
619 by up to 180 days, during which time the previous registration
620 shall remain active. The registration shall be automatically
621 suspended for failure to file the financial statement within the
622 extension period.

623 (4) The department may require that an audit or review be
624 conducted for any financial statement submitted by any
625 charitable organization or sponsor. A charitable organization or
626 sponsor may elect to also include a financial report that has
627 been audited by an independent certified public accountant or an
628 audit with opinion by an independent certified public
629 accountant. In the event that a charitable organization or
630 sponsor elects to file an audited financial report, this
631 optional filing must be noted in the department's annual report
632 submitted pursuant to s. 496.423.

633 Section 8. Section 496.4071, Florida Statutes, is created
634 to read:

635 496.4071 Supplemental financial disclosure.-



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636 (1) If, for the immediately preceding fiscal year, a
637 charitable organization or sponsor had more than \$1 million in
638 total revenue and spent less than 25 percent of the
639 organization's total annual functional expenses on program
640 service costs, in addition to any financial statement required
641 under s. 496.407, the charitable organization or sponsor shall
642 file the following supplemental financial information on a form
643 prescribed by the department:

644 (a) The dollar amount and the percentage of total revenue
645 and charitable contributions allocated to funding each of the
646 following administrative functions:

647 1. Total salaries of all persons employed by the
648 charitable organization or sponsor.

649 2. Fundraising, including any contributions received from
650 a professional solicitor's campaign.

651 3. Amounts paid to professional solicitors, including the
652 names of such professional solicitors.

653 4. Travel expenses.

654 5. Overhead and other expenses related to managing and
655 administering the charitable organization or sponsor.

656 (b) The name of and specific sum earned by or paid to all
657 employees or consultants who earned or were paid more than
658 \$100,000 during the immediately preceding fiscal year.

659 (c) The name of and specific sum paid to all service
660 providers who were paid \$100,000 or more during the immediately



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661 preceding fiscal year and a brief description of the services
662 provided.

663 (d) The dollar amount and percentage of total revenue and
664 charitable contributions allocated to programs.

665 (e) The details of any economic or business transactions
666 between the charitable organization or sponsor and an officer,
667 trustee, or director of the charitable organization or sponsor;
668 the immediate family of an officer, trustee, or director of the
669 charitable organization or sponsor; any entity controlled by an
670 officer, trustee, or director of the charitable organization or
671 sponsor; any entity controlled by the immediate family of an
672 officer, trustee, or director of the charitable organization or
673 sponsor; any entity that employed or engaged for consultation an
674 officer, trustee, or director of the charitable organization or
675 sponsor; and any entity that employed or engaged for
676 consultation the immediate family of an officer, trustee, or
677 director of the charitable organization or sponsor. As used in
678 this paragraph, the term "immediate family" means a parent,
679 spouse, child, sibling, grandparent, grandchild, brother-in-law,
680 sister-in-law, son-in-law, daughter-in-law, mother-in-law, or
681 father-in-law.

682 (2) The supplemental financial information required under
683 subsection (1) must be filed with the department by the
684 charitable organization or sponsor within 30 days after
685 receiving a request for such information from the department.



Amendment No. 1

686 Section 9. Section 496.4072, Florida Statutes, is created
687 to read:

688 496.4072 Financial statements for specific disaster relief
689 solicitations.-

690 (1) A charitable organization or sponsor that solicits
691 contributions in this state for a charitable purpose related to
692 a specific disaster or crisis and receives at least \$100,000 in
693 contributions in response to such solicitation shall file
694 quarterly disaster relief financial statements with the
695 department on a form prescribed by the department. The quarterly
696 statements must detail the contributions secured as a result of
697 the solicitation and the manner in which such contributions were
698 expended. The department shall post notice on its website of the
699 disasters and crises subject to the additional reporting
700 requirements in this section within 10 days after the disaster
701 or crisis.

702 (2) The first quarterly statement shall be filed on the
703 last day of the third month following the accrual of at least
704 \$100,000 in contributions after the commencement of
705 solicitations for the specific disaster or crisis. The
706 charitable organization or sponsor shall continue to file
707 quarterly statements with the department until the quarter after
708 all contributions raised in response to the solicitation are
709 expended.



Amendment No. 1

710 Section 10. Subsections (4), (6), and (9) of section
711 496.409, Florida Statutes, are amended, and subsection (10) is
712 added to that section, to read:

713 496.409 Registration and duties of professional
714 fundraising consultant.—

715 (4) A professional fundraising consultant may enter into a
716 contract or agreement with a charitable organization or sponsor
717 only if the charitable organization or sponsor has complied with
718 all applicable provisions of this chapter. A ~~Every~~ contract or
719 agreement between a professional fundraising consultant and a
720 charitable organization or sponsor must be in writing, signed by
721 two authorized officials of the charitable organization or
722 sponsor, and filed by the professional fundraising consultant
723 with the department at least 5 days before ~~prior to~~ the
724 performance of any material service by the professional
725 fundraising consultant. Solicitation under the contract or
726 agreement may not begin before the filing of the contract or
727 agreement.

728 (6) (a) The department shall examine each registration
729 statement and all supporting documents filed by a professional
730 fundraising consultant and determine whether the registration
731 requirements are satisfied. If the department determines that
732 the registration requirements are not satisfied, the department
733 must notify the professional fundraising consultant within 15
734 business ~~working~~ days after its receipt of the registration
735 statement; otherwise the registration statement is approved.

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736 Within 7 business ~~working~~ days after receipt of a notification
737 that the registration requirements are not satisfied, the
738 applicant may request a hearing. The hearing must be held within
739 7 business ~~working~~ days after receipt of the request, and any
740 recommended order, if one is issued, must be rendered within 3
741 business ~~working~~ days after the hearing. The final order must
742 then be issued within 2 business ~~working~~ days after the
743 recommended order. If there is no recommended order, the final
744 order must be issued within 5 business ~~working~~ days after the
745 hearing. The proceedings must be conducted in accordance with
746 chapter 120, except that the time limits and provisions ~~set~~
747 ~~forth~~ in this subsection prevail to the extent of any conflict.

748 (b) If a professional fundraising consultant discloses
749 information specified in paragraphs (2)(e)-(g) in the initial
750 application for registration or renewal application, the
751 processing time limits of this subsection are waived and the
752 department shall process the initial application for
753 registration or the renewal application in accordance with the
754 time limits in chapter 120. The registration of a professional
755 consultant shall be automatically suspended for failure to
756 disclose any information specified in paragraphs (2)(e)-(g)
757 until such time as the required information is submitted to the
758 department.

759 (9) A ~~no~~ person may not act as a professional fundraising
760 consultant, and a ~~no~~ professional fundraising consultant, or any
761 officer, director, trustee, or employee thereof, may not ~~shall~~



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762 knowingly employ any officer, trustee, director, or employee, if
763 such person has, in any state, regardless of adjudication, been
764 convicted of, or found guilty of, or pled guilty or nolo
765 contendere to, or has been incarcerated within the last 10 years
766 as a result of having previously been convicted of, or found
767 guilty of, or pled guilty or nolo contendere to, any crime
768 within the last 10 years involving fraud, theft, larceny,
769 embezzlement, fraudulent conversion, or misappropriation of
770 property, or any crime arising from the conduct of a
771 solicitation for a charitable organization or sponsor, or has
772 been enjoined in any state from violating any law relating to a
773 charitable solicitation.

774 (10) The department may deny or revoke the registration of
775 a professional fundraising consultant if the professional
776 fundraising consultant, or any of its officers, directors, or
777 trustees, has had the right to solicit contributions revoked in
778 any state, has entered into an agreement with any state to cease
779 soliciting contributions within that state, or has been ordered
780 by any court or governmental agency to cease soliciting
781 contributions within any state.

782 Section 11. Present subsections (3), (5), (7), (14), and
783 (15) of section 496.410, Florida Statutes, are amended,
784 paragraphs (j), (k), and (l) are added to subsection (2) of that
785 section, paragraphs (i) through (n) are added to subsection (6)
786 of that section, and a new subsection (15) is added to that
787 section, to read:

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788 496.410 Registration and duties of professional
789 solicitors.-

790 (2) Applications for registration or renewal of
791 registration must be submitted on a form prescribed by rule of
792 the department, signed by an authorized official of the
793 professional solicitor who shall certify that the report is true
794 and correct, and must include the following information:

795 (j) A list of all telephone numbers the applicant will use
796 to solicit contributions as well as the actual physical address
797 associated with each telephone number and any fictitious names
798 associated with such address.

799 (k) A copy of any script, outline, or presentation used by
800 the applicant to solicit contributions or, if such solicitation
801 aids are not used, written confirmation thereof.

802 (l) A copy of sales information or literature provided to
803 a donor or potential donor by the applicant in connection with a
804 solicitation.

805 (3) The application for registration must be accompanied
806 by a fee of \$300. ~~A professional solicitor that is a partnership~~
807 ~~or corporation may register for and pay a single fee on behalf~~
808 ~~of all of its partners, members, officers, directors, agents,~~
809 ~~and employees. In that case,~~ The names and street addresses of
810 all the officers, employees, and agents of the professional
811 solicitor and all other persons with whom the professional
812 solicitor has contracted to work under its direction, including
813 solicitors, must be listed in the application or furnished to

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814 the department within 5 days after the date of employment or
815 contractual arrangement. Each registration is valid for 1 year
816 ~~and. The registration~~ may be renewed for an additional 1-year
817 period upon application to the department and payment of the
818 registration fee.

819 (5) (a) The department must examine each registration
820 statement and supporting documents filed by a professional
821 solicitor. If the department determines that the registration
822 requirements are not satisfied, the department must notify the
823 professional solicitor within 15 business working days after its
824 receipt of the registration statement; otherwise the
825 registration statement is approved. Within 7 business working
826 days after receipt of a notification that the registration
827 requirements are not satisfied, the applicant may request a
828 hearing. The hearing must be held within 7 business working days
829 after receipt of the request, and any recommended order, if one
830 is issued, must be rendered within 3 business working days after
831 the hearing. The final order must then be issued within 2
832 business working days after the recommended order. If there is
833 no recommended order, the final order must be issued within 5
834 business working days after the hearing. The proceedings must be
835 conducted in accordance with chapter 120, except that the time
836 limits and provisions ~~set forth~~ in this subsection prevail to
837 the extent of any conflict.

838 (b) If a professional solicitor makes a disclosure
839 specified in paragraphs (2)(f)-(h) in the initial application

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840 for registration or the renewal application, the processing time
841 limits of this subsection are waived and the department shall
842 process the initial application for registration or renewal
843 application in accordance with the time limits in chapter 120.
844 The registration of a professional solicitor shall be
845 automatically suspended for failure to disclose any information
846 specified in paragraphs (2)(f)-(h) until such time as the
847 required information is submitted to the department.

848 (6) No less than 15 days before commencing any
849 solicitation campaign or event, the professional solicitor must
850 file with the department a solicitation notice on a form
851 prescribed by the department. The notice must be signed and
852 sworn to by the contracting officer of the professional
853 solicitor and must include:

854 (i) A statement of the guaranteed minimum percentage of
855 the gross receipts from contributions which will be remitted to
856 the charitable organization or sponsor, if any, or, if the
857 solicitation involves the sale of goods, services, or tickets to
858 a fundraising event, the percentage of the purchase price which
859 will be remitted to the charitable organization or sponsor, if
860 any.

861 (j) The percentage of a contribution which may be deducted
862 as a charitable contribution under federal income tax laws.

863 (k) A statement as to whether any owner, director,
864 officer, trustee, or employee of the professional solicitor is
865 related as a parent, spouse, child, sibling, grandparent,



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866 grandchild, brother-in-law, sister-in-law, son-in-law, daughter-
867 in-law, mother-in-law, or father-in-law to:

868 1. Another officer, director, owner, trustee, or employee
869 of the professional solicitor.

870 2. Any officer, director, owner, trustee, or employee of a
871 charitable organization or sponsor under contract to the
872 professional solicitor.

873 3. Any supplier or vendor providing goods or services to a
874 charitable organization or sponsor under contract to the
875 professional solicitor.

876 (l) The beginning and ending dates of the solicitation
877 campaign.

878 (m) A copy of any script, outline, or presentation used by
879 the professional solicitor to solicit contributions for the
880 solicitation campaign. If such aids are not used, written
881 confirmation thereof.

882 (n) A copy of sales information or literature provided to
883 a donor or potential donor by the professional solicitor in
884 connection with the solicitation campaign.

885 (7) A professional solicitor may enter into a contract or
886 agreement with a charitable organization or sponsor only if the
887 charitable organization or sponsor has complied with all
888 applicable provisions of this chapter. A Each contract or
889 agreement between a professional solicitor and a charitable
890 organization or sponsor for each solicitation campaign must be
891 in writing, signed by two authorized officials of the charitable



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892 organization or sponsor, one of whom must be a member of the
893 organization's governing body and one of whom must be the
894 authorized contracting officer for the professional solicitor,
895 and contain all of the following provisions:

896 (a) A statement of the charitable or sponsor purpose and
897 program for which the solicitation campaign is being conducted.

898 (b) A statement of the respective obligations of the
899 professional solicitor and the charitable organization or
900 sponsor.

901 (c) A statement of the guaranteed minimum percentage of
902 the gross receipts from contributions which will be remitted to
903 the charitable organization or sponsor, if any, or, if the
904 solicitation involves the sale of goods, services, or tickets to
905 a fundraising event, the percentage of the purchase price which
906 will be remitted to the charitable organization or sponsor, if
907 any. Any stated percentage shall exclude any amount which the
908 charitable organization or sponsor is to pay as fundraising
909 costs.

910 (d) A statement of the percentage of the gross revenue
911 which the professional solicitor will be compensated. If the
912 compensation of the professional solicitor is not contingent
913 upon the number of contributions or the amount of revenue
914 received, his or her compensation shall be expressed as a
915 reasonable estimate of the percentage of the gross revenue, and
916 the contract must clearly disclose the assumptions upon which
917 the estimate is based. The stated assumptions must be based upon

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918 all of the relevant facts known to the professional solicitor
919 regarding the solicitation to be conducted by the professional
920 solicitor.

921 (e) The effective and termination dates of the contract.

922 (14) A ~~Ne~~ person may not act as a professional solicitor,
923 and a ~~ne~~ professional solicitor, or any officer, director,
924 trustee, or employee thereof, may not shall, to solicit for
925 compensation, knowingly employ any officer, trustee, director,
926 employee, or any person with a controlling interest therein, who
927 has, in any state, regardless of adjudication, been convicted
928 of, or found guilty of, or pled guilty or nolo contendere to, or
929 has been incarcerated within the last 10 years as a result of
930 having previously been convicted of, or found guilty of, or pled
931 guilty or nolo contendere to, a felony within the last 10 years
932 involving fraud, theft, larceny, embezzlement, fraudulent
933 conversion, or misappropriation of property, or any crime
934 arising from the conduct of a solicitation for a charitable
935 organization or sponsor, or has been enjoined in any state from
936 violating any law relating to a charitable solicitation. The
937 prohibitions in this subsection also apply to any misdemeanor in
938 another state which constitutes a disqualifying felony in this
939 state.

940 (15) The department may deny or revoke the registration of
941 a professional solicitor if the professional solicitor, or any
942 of its officers, directors, trustees, or agents, has had the
943 right to solicit contributions revoked in any state, has entered



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944 into an agreement with any state to cease soliciting
945 contributions within that state, or has been ordered by any
946 court or governmental agency to cease soliciting contributions
947 within any state.

948 (16) ~~(15)~~ All registration fees must be paid to the
949 department and deposited into the General Inspection Trust Fund.

950 Section 12. Section 496.4101, Florida Statutes, is created
951 to read:

952 496.4101 Licensure of professional solicitors and certain
953 employees thereof.—

954 (1) Each officer, director, trustee, or owner of a
955 professional solicitor and any employee of a professional
956 solicitor conducting telephonic solicitations must, before
957 engaging in solicitation activities, obtain a solicitor license
958 from the department.

959 (2) Persons required to obtain a solicitor license under
960 subsection (1) shall submit to the department, in such form as
961 the department prescribes, an application for a solicitor
962 license. The application must include the following information:

963 (a) The true name, date of birth, unique identification
964 number of a driver license or other valid form of
965 identification, and home address of the applicant.

966 (b) If the applicant, in any state, regardless of
967 adjudication, has previously been convicted of, or found guilty
968 of, or pled guilty or nolo contendere to, or has been
969 incarcerated within the last 10 years as a result of having



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970 previously been convicted of, or found guilty of, or pled guilty
971 or nolo contendere to, any crime within the last 10 years
972 involving fraud, theft, larceny, embezzlement, fraudulent
973 conversion, or misappropriation of property, or any crime
974 arising from the conduct of a solicitation for a charitable
975 organization or sponsor, or has been enjoined, in any state,
976 from violating any law relating to a charitable solicitation.

977 (c) If the applicant, in any state, is involved in pending
978 litigation or has had entered against her or him an injunction,
979 a temporary restraining order, or a final judgment or order,
980 including a stipulated judgment or order, an assurance of
981 voluntary compliance, cease and desist, or any similar document,
982 in any civil or administrative action involving fraud, theft,
983 larceny, embezzlement, fraudulent conversion, or
984 misappropriation of property, or has been enjoined from
985 violating any law relating to a charitable solicitation.

986 (3) (a) Each applicant shall submit a complete set of his
987 or her fingerprints to an agency, entity, or vendor authorized
988 by s. 943.053(13). The fingerprints shall be forwarded to the
989 Department of Law Enforcement for state processing, and the
990 Department of Law Enforcement shall forward them to the Federal
991 Bureau of Investigation for national processing.

992 (b) Fees for state and federal fingerprint processing and
993 fingerprint retention fees shall be borne by the applicant. The
994 state cost for fingerprint processing is that authorized in s.



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995 943.053(3)(b) for records provided to persons or entities other
996 than those specified as exceptions therein.

997 (c) All fingerprints submitted to the Department of Law
998 Enforcement as required under this subsection shall be retained
999 by the Department of Law Enforcement as provided under s.
1000 943.05(2)(g) and (h) and enrolled in the Federal Bureau of
1001 Investigation's national retained print arrest notification
1002 program. Fingerprints shall not be enrolled in the national
1003 retained print arrest notification program until the Department
1004 of Law Enforcement begins participation with the Federal Bureau
1005 of Investigation. Arrest fingerprints will be searched against
1006 the retained prints by the Department of Law Enforcement and the
1007 Federal Bureau of Investigation.

1008 (d) For any renewal of the applicant's license, the
1009 department shall request the Department of Law Enforcement to
1010 forward the retained fingerprints of the applicant to the
1011 Federal Bureau of Investigation unless the applicant is enrolled
1012 in the national retained print arrest notification program
1013 described in paragraph (c). The fee for the national criminal
1014 history check will be paid as part of the renewal fee to the
1015 department and forwarded by the department to Department of Law
1016 Enforcement. If the applicant's fingerprints are retained in the
1017 national retained print arrest notification program, the
1018 applicant shall pay the state and national retention fee to the
1019 department which will forward the fee to the Department of Law
1020 Enforcement.

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1021 (e) The department shall notify the Department of Law
1022 Enforcement regarding any person whose fingerprints have been
1023 retained but who is no longer licensed under this chapter.

1024 (f) The department shall screen background results to
1025 determine if an applicant meets licensure requirements.

1026 (4) A solicitor license must be renewed annually by the
1027 submission of a renewal application. A solicitor license that is
1028 not renewed expires without further action by the department.

1029 (5) Each applicant for a solicitor license shall remit a
1030 license fee of \$100 to the department at the time the initial
1031 application is filed with the department and an annual renewal
1032 fee of \$100 thereafter. All fees collected, less the cost of
1033 administration, shall be deposited into the General Inspection
1034 Trust Fund.

1035 (6) Any material change to the information submitted to
1036 the department in the initial application or renewal application
1037 for a solicitor license shall be reported to the department by
1038 the applicant or licensee within 10 days after the change
1039 occurs. The applicant or licensee shall also remit a fee in the
1040 amount of \$10 for processing the change to the initial or
1041 renewal application.

1042 (7) It is a violation of this chapter:

1043 (a) For an applicant to provide inaccurate or incomplete
1044 information to the department in the initial or renewal
1045 application for a solicitor license.



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1046 (b) For any person specified in subsection (1) to fail to
1047 maintain a solicitor license as required by this section.

1048 (c) For a professional solicitor to allow, require,
1049 permit, or authorize an employee without an active solicitor
1050 license issued under this section to conduct telephonic
1051 solicitations.

1052 (8) The department shall adopt rules that allow certain
1053 applicants to engage in solicitation activities on an interim
1054 basis until such time as a solicitor license is granted or
1055 denied.

1056 (9) The department may deny or revoke any solicitor
1057 license if the applicant or licensee has had the right to
1058 solicit contributions revoked in any state, has entered into an
1059 agreement with any state to cease soliciting contributions
1060 within that state, has been ordered by any court or governmental
1061 agency to cease soliciting contributions within any state, or is
1062 subject to any disqualification specified in s. 496.410(14).

1063 Section 13. Subsections (2) and (3) of section 496.411,
1064 Florida Statutes, are amended to read:

1065 496.411 Disclosure requirements and duties of charitable
1066 organizations and sponsors.—

1067 (2) A charitable organization or sponsor soliciting in
1068 this state must include all of the following disclosures at the
1069 point of solicitation:



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1070 (a) The name of the charitable organization or sponsor and
1071 state of the principal place of business of the charitable
1072 organization or sponsor;

1073 (b) A description of the purpose or purposes for which the
1074 solicitation is being made;

1075 (c) Upon request, the name and either the address or
1076 telephone number of a representative to whom inquiries could be
1077 addressed;

1078 (d) Upon request, the amount of the contribution which may
1079 be deducted as a charitable contribution under federal income
1080 tax laws;

1081 (e) Upon request, the source from which a written
1082 financial statement may be obtained. Such financial statement
1083 must be for the immediate preceding ~~past~~ fiscal year and must be
1084 consistent with the annual financial statement ~~report~~ filed
1085 under s. 496.407. The written financial statement must be
1086 provided within 14 days after the request and must state the
1087 purpose for which funds are raised, the total amount of all
1088 contributions raised, the total costs and expenses incurred in
1089 raising contributions, the total amount of contributions
1090 dedicated to the stated purpose or disbursed for the stated
1091 purpose, and whether the services of another person or
1092 organization have been contracted to conduct solicitation
1093 activities.

1094 (3) Every charitable organization or sponsor that ~~which~~ is
1095 required to register under s. 496.405 or is exempt under s.



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1096 496.406(1)(d) shall ~~must~~ conspicuously display ~~in capital~~
1097 ~~letters~~ the following statement on every ~~printed~~ solicitation,
1098 ~~written~~ confirmation, receipt, or reminder of a contribution:

1099

1100 "A COPY OF THE OFFICIAL REGISTRATION AND FINANCIAL
1101 INFORMATION MAY BE OBTAINED FROM THE DIVISION OF
1102 CONSUMER SERVICES BY CALLING TOLL-FREE WITHIN THE
1103 STATE. REGISTRATION DOES NOT IMPLY ENDORSEMENT,
1104 APPROVAL, OR RECOMMENDATION BY THE STATE."

1105

1106 The statement must include a toll-free number and website for
1107 the division which ~~that~~ can be used to obtain the registration
1108 information. If ~~When~~ the solicitation consists of more than one
1109 piece, the statement must be displayed prominently in the
1110 solicitation materials. If the solicitation occurs through a
1111 website, the statement must be conspicuously displayed on the
1112 webpage where donations are requested.

1113

1114 Section 14. Subsection (1) of section 496.412, Florida
1115 Statutes, is amended to read:

1116

1117 496.412 Disclosure requirements and duties of professional
1118 solicitors.—

1119

1117 (1) A professional solicitor must comply with and be
1118 responsible for complying or causing compliance with the
1119 following disclosures:



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1120 (a) Before ~~Prior to~~ orally requesting a contribution, or
1121 contemporaneously with a written request for a contribution, a
1122 professional solicitor must clearly disclose:

1123 1. The name of the professional solicitor as on file with
1124 the department.

1125 2. If the individual acting on behalf of the professional
1126 solicitor identifies himself or herself by name, the
1127 individual's legal name.

1128 3. The name and state of the principal place of business
1129 of the charitable organization or sponsor and a description of
1130 how the contributions raised by the solicitation will be used
1131 for a charitable or sponsor purpose; or, if there is no
1132 charitable organization or sponsor, a description as to how the
1133 contributions raised by the solicitation will be used for a
1134 charitable or sponsor purpose.

1135 (b) In the case of a solicitation campaign conducted
1136 orally, whether by telephone or otherwise, any written
1137 confirmation, receipt, or reminder sent to any person who has
1138 contributed or has pledged to contribute, shall include a clear
1139 disclosure of the information required by paragraph (a).

1140 (c) In addition to the information required by paragraph
1141 (a), any written confirmation, receipt, or reminder of
1142 contribution made pursuant to an oral solicitation and any
1143 ~~written~~ solicitation shall conspicuously state ~~in capital~~
1144 ~~letters~~:

1145



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1146 "A COPY OF THE OFFICIAL REGISTRATION AND FINANCIAL
1147 INFORMATION MAY BE OBTAINED FROM THE DIVISION OF
1148 CONSUMER SERVICES BY CALLING TOLL-FREE WITHIN THE
1149 STATE. REGISTRATION DOES NOT IMPLY ENDORSEMENT,
1150 APPROVAL, OR RECOMMENDATION BY THE STATE."
1151

1152 The statement must include a toll-free number and website for
1153 the division which ~~that~~ can be used to obtain the registration
1154 information. If ~~When~~ the solicitation consists of more than one
1155 piece, the statement must be displayed prominently in the
1156 solicitation materials. If the solicitation occurs on a website,
1157 the statement must be conspicuously displayed on the webpage
1158 where donations are requested.

1159 (d) If requested by the person being solicited, the
1160 professional solicitor shall inform that person in writing,
1161 within 14 days after ~~of~~ the request, of the fixed percentage of
1162 the gross revenue or the reasonable estimate of the percentage
1163 of the gross revenue that the charitable organization or sponsor
1164 will receive as a benefit from the solicitation campaign or
1165 shall immediately notify the person being solicited that the
1166 information is available on the department's website or by
1167 calling the division's toll-free number.

1168 (e) If requested by the person being solicited, the
1169 professional solicitor shall inform that person in writing,
1170 within 14 days after ~~of~~ the request, of the percentage of the
1171 contribution which may be deducted as a charitable contribution



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1172 under federal income tax laws or shall immediately notify the
1173 person being solicited that the information is available on the
1174 department's website or by calling the division's toll-free
1175 number.

1176 Section 15. Section 496.4121, Florida Statutes, is created
1177 to read:

1178 496.4121 Collection receptacles used for donations.-

1179 (1) As used in this section, the term "collection
1180 receptacle" means a receptacle used to collect donated clothing,
1181 household items, or other goods for resale.

1182 (2) A collection receptacle must display a permanent sign
1183 or label on each side which contains the following information
1184 printed in letters that are at least 3 inches in height and no
1185 less than one-half inch in width, in a color that contrasts with
1186 the color of the collection receptacle:

1187 (a) For collection receptacles used by a person required
1188 to register under this chapter, the name, business address,
1189 telephone number, and registration number of the charitable
1190 organization or sponsor for whom the solicitation is made.

1191 (b) For collection receptacles placed or maintained in
1192 public view by a person not required to register under this
1193 chapter or by a person not claiming an exemption pursuant to
1194 496.406, the name, telephone number, and physical address of the
1195 business conducting the solicitation and the statement: "This is
1196 not a charity. Donations made here support a for-profit business
1197 and are not tax deductible."

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1198 (3) Upon request, a charitable organization or sponsor
1199 using a collection receptacle must provide the donor with
1200 documentation of its tax-exempt status and the registration
1201 issued under this chapter.

1202 Section 16. Subsection (2) of section 496.415, Florida
1203 Statutes, is amended, and subsection (18) is added to that
1204 section, to read:

1205 496.415 Prohibited acts.—It is unlawful for any person in
1206 connection with the planning, conduct, or execution of any
1207 solicitation or charitable or sponsor sales promotion to:

1208 (2) ~~Knowingly~~ Submit false, misleading, or inaccurate
1209 information in a document that is filed with the department,
1210 provided to the public, or offered in response to a request or
1211 investigation by the department, the Department of Legal
1212 Affairs, or the state attorney.

1213 (18) Fail to remit to a charitable organization or sponsor
1214 the disclosed guaranteed minimum percentage of gross receipts
1215 from contributions as required under s. 496.410(7)(c) or, if the
1216 solicitation involved the sale of goods, services, or tickets to
1217 a fundraising event, the percentage of the purchase price as
1218 agreed in the contract or agreement as required under this
1219 chapter.

1220 Section 17. Subsection (5) of section 496.419, Florida
1221 Statutes, is amended to read:

1222 496.419 Powers of the department.—



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1223 (5) Upon a finding as set forth in subsection (4), the
1224 department may enter an order doing one or more of the
1225 following:

1226 (a) Issuing a notice of noncompliance pursuant to s.
1227 120.695;

1228 (b) Issuing a cease and desist order that directs that the
1229 person cease and desist specified fundraising activities;

1230 (c) Refusing to register or canceling or suspending a
1231 registration;

1232 (d) Placing the registrant on probation for a period of
1233 time, subject to such conditions as the department may specify;

1234 (e) Canceling an exemption granted under s. 496.406; and

1235 (f) Except as provided in paragraph (g), imposing an
1236 administrative fine not to exceed \$5,000 ~~\$1,000~~ for each act or
1237 omission that which constitutes a violation of ss. 496.401-
1238 496.424 or s. 496.426 or a rule or order. With respect to a s.
1239 501(c)(3) organization, the penalty imposed pursuant to this
1240 subsection may shall not exceed \$500 per violation for failure
1241 to register under s. 496.405 or file for an exemption under s.
1242 496.406(2). The penalty shall be the entire amount per violation
1243 and is not ~~to be interpreted as a daily penalty; and~~

1244 (g) Imposing an administrative fine not to exceed \$10,000
1245 for a violation of this chapter that involves fraud or
1246 deception.

1247 Section 18. Section 496.4191, Florida Statutes, is created
1248 to read:

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1249 496.4191 Additional penalty; immediate suspension.—Upon
1250 notification and subsequent written verification by a law
1251 enforcement agency, a court, a state attorney, or the Florida
1252 Department of Law Enforcement, the department shall immediately
1253 suspend a registration or the processing of an application for a
1254 registration if the registrant, applicant, or any officer or
1255 director of the registrant or applicant is formally charged with
1256 a crime involving fraud, theft, larceny, embezzlement, or
1257 fraudulent conversion or misappropriation of property or any
1258 crime arising from the conduct of a solicitation for a
1259 charitable organization or sponsor until final disposition of
1260 the case or removal or resignation of that officer or director.

1261 Section 19. Section 496.430, Florida Statutes, is created
1262 to read:

1263 496.430 Disqualification for certain tax exemptions.—

1264 (1) The department may issue an order to disqualify a
1265 charitable organization or sponsor from receiving any sales tax
1266 exemption certificate issued by the Department of Revenue if the
1267 department finds, based upon the average of functional expenses
1268 and program service costs provided to the department pursuant to
1269 s. 496.407 for the 3 most recent fiscal years, that the
1270 charitable organization or sponsor has failed to expend at least
1271 25 percent of its total annual functional expenses on program
1272 service costs.

1273 (2) A charitable organization or sponsor may appeal a
1274 disqualification order by requesting a hearing within 21 days



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1275 after notification from the department that it has issued a
1276 disqualification order under this section. The hearing must be
1277 conducted in accordance with chapter 120.

1278 (3) Notwithstanding a finding under subsection (1) that a
1279 charitable organization or sponsor has failed to expend at least
1280 25 percent of its total annual functional expenses on program
1281 service costs, the department may decline to issue a
1282 disqualification order if the charitable organization or sponsor
1283 establishes:

1284 (a) That payments were made to affiliates which should be
1285 considered in calculating the program service costs;

1286 (b) That revenue was accumulated for a specific program
1287 purpose consistent with representations in solicitations; or

1288 (c) Such other mitigating circumstances as are defined by
1289 rule of the department.

1290 (4) A disqualification order issued by the department
1291 pursuant to this section is effective for at least 1 year after
1292 such order becomes final and shall remain effective until such
1293 time as the department receives sufficient evidence from the
1294 disqualified charitable organization or sponsor which
1295 demonstrates it expends at least 25 percent of its total annual
1296 functional expenses on program service costs.

1297 (a) The charitable organization or sponsor may not submit
1298 such evidence to the department sooner than 1 year after the
1299 disqualification order becomes final and may not submit such



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1300 information more than once each year for consideration by the
1301 department.

1302 (b) The department shall also consider any financial
1303 statement that was submitted by the charitable organization or
1304 sponsor to the department pursuant to s. 496.407 after the
1305 disqualification order became final.

1306 (5) The department shall provide a disqualification order
1307 to the Department of Revenue within 30 days after such order
1308 becomes final. A final disqualification order is conclusive as
1309 to the charitable organization's or sponsor's entitlement to any
1310 sales tax exemption. The Department of Revenue shall revoke or
1311 refuse to grant a sales tax exemption certificate to a
1312 charitable organization or sponsor subject to a final
1313 disqualification order within 30 days after receiving such
1314 disqualification order. A charitable organization or sponsor may
1315 not appeal or challenge the revocation or denial of a sales tax
1316 exemption certificate by the Department of Revenue if such
1317 revocation or denial is based upon a final disqualification
1318 order issued pursuant to this section.

1319 (6) This section does not apply to a charitable
1320 organization or sponsor that:

1321 (a) Is not required to register under this chapter with
1322 the department; or

1323 (b) Has been in existence for less than 4 years,
1324 regardless of whether the charitable organization is registered
1325 in this state.



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1326 Section 20. Paragraph (a) of subsection (3) of section
1327 741.0305, Florida Statutes, is amended to read:

1328 741.0305 Marriage fee reduction for completion of
1329 premarital preparation course.—

1330 (3)(a) All individuals electing to participate in a
1331 premarital preparation course shall choose from the following
1332 list of qualified instructors:

1333 1. A psychologist licensed under chapter 490.

1334 2. A clinical social worker licensed under chapter 491.

1335 3. A marriage and family therapist licensed under chapter
1336 491.

1337 4. A mental health counselor licensed under chapter 491.

1338 5. An official representative of a religious institution
1339 which is recognized under s. 496.404(23) ~~496.404(19)~~, if the
1340 representative has relevant training.

1341 6. Any other provider designated by a judicial circuit,
1342 including, but not limited to, school counselors who are
1343 certified to offer such courses. Each judicial circuit may
1344 establish a roster of area course providers, including those who
1345 offer the course on a sliding fee scale or for free.

1346 Section 21. Section 496.431, Florida Statutes, is created
1347 to read:

1348 496.431 Severability.—If any provision of this chapter or
1349 its application to any person or circumstance is held invalid,
1350 the invalidity does not affect other provisions or applications
1351 of this chapter which can be given effect without the invalid



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1352 provision or application, and to this end the provisions of this
1353 chapter are severable.

1354 Section 22. For the 2014-2015 fiscal year, there is
1355 appropriated to the Department of Agriculture and Consumer
1356 Services, the sums of \$235,352 in recurring and \$239,357 in
1357 nonrecurring funds from the General Inspection Trust Fund, and 4
1358 full-time equivalent positions with associated salary rate of
1359 \$143,264 are authorized for the purpose of implementing this
1360 act.

1361 Section 23. This act shall take effect July 1, 2014.

1362

1363 -----

1364

T I T L E A M E N D M E N T

1365

Remove everything before the enacting clause and insert:

1366

A bill to be entitled

1367

An act relating to charities; amending s. 212.08,

1368

F.S.; excluding charitable organizations or sponsors

1369

disqualified by the Department of Agriculture and

1370

Consumer Services from receiving certain tax

1371

exemptions; amending s. 212.084, F.S.; requiring the

1372

Department of Revenue to revoke or deny a sales tax

1373

exemption to charitable organizations or sponsors

1374

disqualified by the department; providing for a

1375

limited appeal of the denial or revocation of the

1376

sales tax exemption; amending s. 496.403, F.S.;

1377

exempting blood establishments from the Solicitation



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1378 of Contributions Act; amending s. 496.404, F.S.;

1379 revising and defining terms; amending s. 496.405,

1380 F.S.; revising the timeframe within which a charitable

1381 organization or sponsor must report changes to certain

1382 information provided to the department on an initial

1383 or renewal registration statement; providing for the

1384 automatic expiration of a registration for failure to

1385 file a renewal or financial statement by a certain

1386 date; repealing a requirement that the renewal

1387 statement be filed subsequent to the financial

1388 statement; repealing authorization to extend the time

1389 to file a renewal statement; specifying the

1390 information that must be submitted by a parent

1391 organization on a consolidated financial statement;

1392 extending the time allowed for the department to

1393 review certain initial or renewal registration

1394 statements; providing that failure of a charitable

1395 organization or sponsor to make certain disclosures in

1396 a registration statement results in the automatic

1397 suspension of an active registration for a specified

1398 period; prohibiting the officers, directors, trustees,

1399 or employees of a charitable organization or sponsor

1400 from allowing certain persons to solicit contributions

1401 on behalf of the charitable organization or sponsor;

1402 specifying that the prohibition against certain

1403 persons soliciting contributions on behalf of a

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1404 charitable organization or sponsor due to the
1405 commission of certain felonies includes those felonies
1406 committed in any state as well as any misdemeanor in
1407 another state which constitutes a disqualifying felony
1408 in this state; authorizing the department to deny or
1409 revoke the registration of a charitable organization
1410 or sponsor under certain circumstances; requiring a
1411 charitable organization or sponsor that has ended
1412 solicitation activities in this state to notify the
1413 department in writing; making technical changes;
1414 creating s. 496.4055, F.S.; defining the term
1415 "conflict of interest transaction"; requiring the
1416 board of directors of a charitable organization or
1417 sponsor, or an authorized committee thereof, to adopt
1418 a policy regarding conflict of interest transactions;
1419 amending s. 496.407, F.S.; requiring that the
1420 financial statements of certain charitable
1421 organizations or sponsors be audited or reviewed;
1422 specifying requirements and standards for the audit or
1423 review of a financial statement; restricting the use
1424 of an existing alternative to the required annual
1425 financial statement to certain charities; authorizing
1426 the department to require an audit or review of any
1427 financial statement and to extend the time to file a
1428 financial statement under certain circumstances;
1429 providing that the registration of a charitable

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1430 organization or sponsor be suspended upon its failure
1431 to file a financial statement within an extension
1432 period; making technical changes; creating s.
1433 496.4071, F.S.; requiring certain charitable
1434 organizations or sponsors to report specified
1435 supplemental financial information to the department
1436 by a certain date; creating s. 496.4072, F.S.;
1437 requiring certain charitable organizations or sponsors
1438 who solicit contributions for a specific disaster
1439 relief effort to submit quarterly financial statements
1440 to the department; specifying information to be
1441 included in the quarterly financial statement and the
1442 length of the required reporting period; amending ss.
1443 496.409 and 496.410, F.S.; prohibiting a professional
1444 fundraising consultant or professional solicitor from
1445 entering into a contract or agreement with a
1446 charitable organization or sponsor that has not
1447 complied with certain requirements; extending the time
1448 that the department may review initial or renewal
1449 registration statements of professional fundraising
1450 consultants or professional solicitors which contain
1451 certain disclosures; providing that the failure of a
1452 professional fundraising consultant or professional
1453 solicitor to make certain disclosures in an initial or
1454 renewal registration statement results in automatic
1455 suspension of an active registration; prohibiting the

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1456 officers, trustees, directors, or employees of a
1457 professional fundraising consultant or a professional
1458 solicitor from allowing certain persons to solicit
1459 contributions on behalf of the professional
1460 fundraising consultant or professional solicitor;
1461 specifying that the prohibition against acting as a
1462 professional solicitor or the employment of certain
1463 persons by a professional solicitor due to the
1464 commission of certain felonies includes those felonies
1465 committed in any state as well as any misdemeanor in
1466 another state which constitutes a disqualifying felony
1467 in this state; authorizing the department to deny or
1468 revoke the registration of a professional fundraising
1469 consultant or professional solicitor under certain
1470 circumstances; revising required information in the
1471 initial or renewal application of a professional
1472 solicitor; repealing a provision authorizing the
1473 payment of a single registration fee for certain
1474 professional solicitors; requiring a professional
1475 solicitor to provide additional specified information
1476 to the department in a solicitation notice; creating
1477 s. 496.4101, F.S.; requiring each officer, director,
1478 trustee, or owner of a professional solicitor and any
1479 employee of a professional solicitor that conducts
1480 telephone solicitations to obtain a solicitor license
1481 from the department; specifying application

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1482 information and the application procedure for a
1483 solicitor license; requiring each applicant for a
1484 solicitor license to submit a complete set of his or
1485 her fingerprints and a fee for fingerprint processing
1486 and retention to the department; requiring the
1487 department to submit the applicant's fingerprints to
1488 the Department of Law Enforcement for a criminal
1489 history background check; providing for retention of
1490 the fingerprints; requiring the department to notify
1491 the Department of Law Enforcement of individuals who
1492 are no longer licensed; requiring that a solicitor
1493 license be renewed annually or expire automatically
1494 upon nonrenewal; requiring that an applicant for a
1495 solicitor license pay certain licensing fees;
1496 providing that licensing fees be deposited into the
1497 General Inspection Trust Fund; requiring that an
1498 applicant for a solicitor license report changes in
1499 information submitted to the department in a specified
1500 manner along with a processing fee; specifying
1501 violations; requiring the department to adopt rules
1502 allowing certain persons to engage in solicitation
1503 activities without a solicitor license for a specified
1504 period; authorizing the department to deny or revoke a
1505 solicitor license under specified circumstances;
1506 amending ss. 496.411 and 496.412, F.S.; expanding and
1507 revising required solicitation disclosures of

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1508 charitable organizations, sponsors, and professional
1509 solicitors; requiring that certain exempt charitable
1510 organizations or sponsors also provide such
1511 solicitation disclosures; requiring that such
1512 solicitation disclosures be placed online under
1513 certain circumstances; creating s. 496.4121, F.S.;
1514 defining the term "collection receptacle"; requiring
1515 that collection receptacles display permanent signs or
1516 labels; specifying requirements for the physical
1517 appearance of such labels or signs and information
1518 displayed thereon; requiring that a charitable
1519 organization or sponsor using a collection receptacle
1520 provide certain information to a donor upon request;
1521 amending s. 496.415, F.S.; providing that the
1522 submission of false, misleading, or inaccurate
1523 information in a document connected with a
1524 solicitation or sales promotion is unlawful; providing
1525 that the failure to remit specified funds to a
1526 charitable organization or sponsor is unlawful;
1527 amending s. 496.419, F.S.; increasing administrative
1528 fines for violations of the Solicitation of
1529 Contributions Act; creating s. 496.4191, F.S.;
1530 requiring the department to immediately suspend a
1531 registration or processing of an application for
1532 registration for a specified period if the registrant,
1533 applicant, or any officer or director thereof is



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1534 criminally charged with certain offenses; creating s.
1535 496.430, F.S.; authorizing the department to
1536 disqualify a charitable organization or sponsor from
1537 receiving a sales tax exemption under specified
1538 circumstances; providing that a charitable
1539 organization or sponsor may appeal a disqualification
1540 order; specifying appeal procedure; providing
1541 exceptions; providing that a disqualification order
1542 remains effective for a specified period; specifying
1543 the procedure to lift a disqualification order;
1544 requiring the department to provide a final
1545 disqualification order to the Department of Revenue
1546 within a specified period; providing that a final
1547 disqualification order is conclusive as to a
1548 charitable organization or sponsor's right to a sales
1549 tax exemption; requiring the Department of Revenue to
1550 revoke or deny a sales tax exemption to a charitable
1551 organization or sponsor subject to a final
1552 disqualification order within a specified period;
1553 providing for a limited appeal of the revocation or
1554 denial of the sales tax exemption; providing
1555 applicability; amending s. 741.0305, F.S.; conforming
1556 a cross-reference; creating s. 496.431, F.S.;
1557 providing for severability; making an appropriation;
1558 providing an effective date.