
# Business & Professional Regulation Subcommittee

**Tuesday, February 4, 2014**
**1:30 PM**
**12 HOB**

# MEETING PACKET

**Will Weatherford**
**Speaker**

**Debbie Mayfield**
**Chair**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

**(AMENDED 1/31/2014 4:51:54PM)**

**Amended(1)**

## Business & Professional Regulation Subcommittee

| | |
|---|---|
| **Start Date and Time:** | Tuesday, February 04, 2014 01:30 pm |
| **End Date and Time:** | Tuesday, February 04, 2014 03:30 pm |
| **Location:** | 12 HOB |
| **Duration:** | 2.00 hrs |

**Consideration of the following bill(s):**

HB 307 Regulation Of Public Lodging Establishments & Public Food Service Establishments by Hutson, Campbell
HB 347 Commercial Parasailing by Clarke-Reed

**Consideration of the following proposed committee substitute(s):**

PCS for HB 223 -- Professional Geology

**Consideration of the following proposed committee bill(s):**

PCB BPRS 14-01 -- Department of Agriculture and Consumer Services

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 3, 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 3, 2014.

**NOTICE FINALIZED on 01/31/2014 16:51 by Ellinor.Martha**

# The Florida House of Representatives

**Regulatory Affairs Committee**

**Business & Professional Regulation Subcommittee**

**Will Weatherford**
**Speaker**

**Debbie Mayfield**
**Chair**

# AGENDA

February 4, 2014
12 House Office Building
1:30 PM – 3:30 PM

I. Call to Order & Roll Call

II. Welcoming Remarks

III. HB 307 *by Reps. Hutson and Campbell*
Regulation Of Public Lodging Establishments & Public Food Service Establishments

IV. HB 347 *by Rep. Clarke-Reed*
Commercial Parasailing

V. PCS for HB 223 *by Business & Professional Regulation Subcommittee*
Professional Geology

VI. PCB BPRS 14-01 *by Business & Professional Regulation Subcommittee*
Department of Agriculture and Consumer Services

VII. Adjournment

303 House Office Building, 402 South Monroe Street, Tallahassee, Florida 32399-1300
(850) 717-4871 Fax: (850) 413-0419

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 307 Regulation Of Public Lodging Establishments & Public Food Service Establishments
**SPONSOR(S):** Hutson and others
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 356

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

## SUMMARY ANALYSIS

In 2011, the Legislature passed CS/CS/CS/HB 883 that preempted to the state the power to regulate vacation rentals and prevented local governments from enacting any law, ordinance, or regulation that restricted or prohibited the use of vacation rentals based on classification, use, or occupancy. CS/CS/CSHB 883 exempted any local law, ordinance, or regulation enacted on or before June 1, 2011, from this preemption.

Thus, after June 1, 2011, local governments could no longer enact a local law, ordinance, or rule to ban or restrict vacation rentals and could only adopt legislation or regulations that treated vacation rentals the same as any other residential property.

This bill deletes the provision that prohibits local laws, ordinances, or regulations from restricting the use of vacation rentals, prohibiting vacation rentals, or regulating vacation rentals based solely on their classification, use, or occupancy.

The bill has no fiscal impact on state funds.

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

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Current Situation**

The Division of Hotels and Restaurants (division) within the Department of Business and Professional Regulation (department) is the state agency charged with enforcing the provisions of ch. 509, F.S., and all other applicable laws relating to the inspection and regulation of public lodging establishments and public food service establishments for the purpose of protecting the public health, safety, and welfare. The department licenses vacation rentals within the state, and has the power to inspect a licensed vacation rental.[1]

A vacation rental is defined as:

> [A]ny unit or group of units in a condominium, cooperative, or timeshare plan or any individually or collectively owned single-family, two-family, three-family, or four-family house or dwelling unit that is also a transient public lodging establishment.[2]

A transient public lodging establishment is defined as:

> [A]ny unit, group of units, dwelling, building, or group of buildings . . . which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.[3]

The department requires each vacation rental be readily available for inspection, but vacation rentals are not subject to the inspection requirement of other transient public lodging establishments and the division only inspects a vacation rental if there is a complaint.[4]

Prior to June 1, 2011, local governments held authority to regulate vacation rentals (also referred to as resort dwellings in many local laws) based on their classification as vacation rentals. Local governments could restrict or prohibit vacation rentals, up to and including banning the use of residential properties as vacation rentals.

In 2011, the Legislature passed CS/CS/CS/HB 883 which preempted vacation rental regulation to the State, and prevented local governments from enacting any new law, ordinance, or regulation that restricted or prohibited the use of vacation rentals based on classification, use, or occupancy. This legislation exempted any local law, ordinance, or regulation that was enacted by a local government on or prior to June 1, 2011.

Several municipalities created regulations specifically relating to vacation rentals prior to June 1, 2011.[5] One such ordinance prohibited owners of single-family residences in residential zones from renting their properties for periods of time of less than 30 days, although it grandfathered certain vacation

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[1] Section 509.241, F.S.
[2] Section 509.242(c), F.S.
[3] Section 509.013(4)(a)(1.), F.S.
[4] *See* Rule 61C-1.002(3), F.A.C; Section 509.032(2)(a), F.S. (stating "[p]ublic lodging units classified as vacation rentals are not subject to this [inspection] requirement but shall be made available to the division upon request").
[5] *See* City of Venice, Fla., Code of Ordinances, ch. 86, art. V, Div. 3 (2009). *See also* Monroe County Code, No. 004-1997 (2013); Bal Harbour Village Ordinance No. 2011-549 (2011).

rentals that had already obtained all applicable state and local licenses and permits.[6] This ordinance effectively prevented new vacation rentals from opening within the city.[7]

The preemption has made it difficult for municipalities who have regulations on vacation rentals predating the Legislature's action from amending those regulations without invalidating them. One town reports that despite having regulations for vacation rentals in place, the town cannot consider addressing new issues caused by vacation rentals for fear of invalidating their existing ordinances.[8] Under the current law, vacation rentals cannot be regulated in a manner that would single out a vacation rental for more onerous restrictions than residential properties.

After the passing of CS/CS/CS/HB 883 in 2011, businesses have reportedly bought foreclosed or distressed residential properties and converted them into vacation rentals. In some cases, new houses have been built or are being built for the sole purpose of being used as vacation rentals.

**Effect of the Bill**

The bill removes the state preemption of vacation rentals; thereby authorizing local governments to regulate vacation rentals in the same way that was possible before the 2011 amendments to s. 509.032(7)(b) and (c), F.S. This bill will allow local governments to enact local laws, ordinances, and regulations restricting the use of vacation rentals, prohibiting vacation rentals, or regulating vacation rentals based solely on their classification, use, or occupancy.

B. SECTION DIRECTORY:

**Section 1** amends s. 509.032, F.S., to delete paragraphs (b) and (c) of subsection (7), repealing the prohibition of enacting local laws, ordinances, or regulations that effect vacation rentals based on classification, use, or occupancy.

**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:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

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[6] §§ 86-81(d), 86-151. *See also City of Venice v. Gwynn*, 76 So. 3d 401, 403 (Fla. 2d DCA 2011).
[7] *Gwynn*, 76 So. 3d at 403 (noting the constitutionality of the Venice provision).
[8] Letter from Gary L. Smith, Mayor of Ponce Inlet, Re: Support for legislation that repeals the State preemption of the regulation of vacation rental properties in order to allow local governments to regulate such properties (Nov. 25, 2013) (on file with the Business & Professional Regulation Subcommittee).

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The direct economic impact on businesses or individuals who currently participate in the vacation rental industry in Florida is indeterminate.

A report prepared by Robinson & Cole outlines many options for local jurisdictions to apply regulations that could curtail the complained effect vacation rentals have on a community.[9] It is possible for a local government to create regulations of the vacation rental industry in a way that could have a beneficial impact on both local property values and keep the vacation rental market relatively intact.[10] In these instances, the economic impact on the private sector could be minimal.

It is also possible that a local government could prohibit vacation rentals, thus eliminating the vacation rental industry within the jurisdiction of the local government. In that case, the economic impact on the private sector could be significant.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

A local government law, ordinance, or regulation that prohibits the use of residential property as a vacation rental when previously this use was permitted could potentially raise the issue of a regulatory taking. Florida courts have traditionally held that such a regulation is constitutional, insofar, as to prevent new vacation rentals.[11] Additionally, the Supreme Court of the United States has held that zoning ordinances, for example, do not result in a taking so long as they do not extinguish a fundamental attribute of ownership and advance a legitimate state interest.[12]

This potential issue is most likely if a prohibition of vacation rentals results in the affected property having no other economic value. This case is unlikely, because even if a property is prevented from being a vacation rental, it likely will have at least some other economic value. But, so far no Florida court has reached this issue on the merits and it is unlikely that such a scenario will occur that deprives a residential property of all economic value absent its use as a vacation rental.[13] Traditionally, local governments have grandfathered non-conforming uses to avoid this issue, but there is no mandate that exists to require a local government to grandfather current vacation rentals.[14]

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[9] Robinson & Cole, *Short-Term Rental Housing Restrictions: White Paper*, pp. 7-9, National Association of Realtors (2012).
[10] *Id.* at 22-29.
[11] *See Gwynn*, 76 So. 3d at 403 (explaining that the economic test from *Penn Central Transp. Co. v. City of New York*, 438 U.S. 104 (1978), requires a weighing not just of the loss of potential rental income from short term rentals, but must weigh this against the continued value of the property as a long-term rental or sale as investment property).
[12] *See generally Penn Central*, 438 U.S. at 145.
[13] *See Neumont v. Florida*, 610 F.3d 1249, 1252 (11th Cir. 2010).
[14] *See generally Gwynn v. City of Venice*, 6 2009 CA 17007 NC (Fla. 12th Cir. Ct. 2009) (informing that although most ordinances will grandfather existing nonconforming uses, those jurisdictions are not mandated to do so).

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the regulation of public lodging establishments and public food service establishments; amending s. 509.032, F.S.; deleting the restriction preventing local laws, ordinances, or regulations from regulating the use of vacation rentals based solely on their classification, use, or occupancy; providing an effective date.

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

Section 1. Subsection (7) of section 509.032, Florida Statutes, is amended to read:

509.032 Duties.—

(7) PREEMPTION AUTHORITY.—

~~(a)~~ The regulation of public lodging establishments and public food service establishments, including, but not limited to, sanitation standards, inspections, training and testing of personnel, and matters related to the nutritional content and marketing of foods offered in such establishments, is preempted to the state. This subsection ~~paragraph~~ does not preempt the authority of a local government or local enforcement district to conduct inspections of public lodging and public food service establishments for compliance with the Florida Building Code and the Florida Fire Prevention Code, pursuant to ss. 553.80 and 633.206.



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

~~(b) A local law, ordinance, or regulation may not restrict the use of vacation rentals, prohibit vacation rentals, or regulate vacation rentals based solely on their classification, use, or occupancy. This paragraph does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011.~~

~~(c) Paragraph (b) does not apply to any local law, ordinance, or regulation exclusively relating to property valuation as a criterion for vacation rental if the local law, ordinance, or regulation is required to be approved by the state land planning agency pursuant to an area of critical state concern designation.~~

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

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 347 Commercial Parasailing
**SPONSOR(S):** Clarke-Reed
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 320

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

## SUMMARY ANALYSIS

According to the Florida Fish and Wildlife Conservation Commission (FWC), there have been 21 accidents involving parasailing, resulting in 23 injuries and 6 fatalities in the last 13 years. The primary causes of these accidents include high winds, wind gusts, equipment failure, and operator error.

The bill establishes minimum liability insurance requirements for owners or operators of commercial parasailing, requires each operator to use all available means to determine and record the weather conditions before embarking, and forbids commercial parasailing during severe weather conditions. The bill also requires United States Coast Guard licensure for each operator of a commercial parasailing vessel.

The bill provides for a criminal penalty for violations of the new commercial parasailing provisions.

The bill may have a small fiscal impact on FWC, which should be absorbed by existing resources. The bill is not anticipated to have a fiscal impact on local government. The fiscal impact on the private sector is indeterminate as the bill requires commercial parasailing operators to have liability insurance and certain communications and weather monitoring equipment that they may or may not already have in place.

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

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Current Situation**

Parasailing is a recreational activity where one or more persons are towed behind a boat while suspended under a canopy, chute, or parasail above the water. In Florida, commercial parasailing is generally conducted along the Atlantic Ocean and Gulf of Mexico coastlines, with one known exception at Walt Disney World where parasailing takes place on Bay Lake in Orange County.

There are over 200 commercial parasailing operators currently operating in the United States, over half operating in Florida.[1] Approximately 3.8 million people participate in the parasailing industry each year.[2]

Currently, the Florida Fish and Wildlife Conservation Commission (FWC) is charged with investigating parasailing accidents and cooperates with the United States Coast Guard and local law enforcement investigations. Data compiled by FWC indicates that:[3]

- From January 1, 2001, through October 30, 2013, 21 accidents involving parasail vessels have occurred in Florida, resulting in 23 injuries and 6 fatalities;
- High winds or sudden wind gusts were a contributing factor in 10 of the 21 accidents;
- Equipment failure due to the wind occurred in 6 of the 10 accidents where wind gusts were a contributing factor;
- Sudden thunderstorms caused many of the wind gusts that contributed to these accidents;
- Several factors, including equipment failure and operator error, were the cause of 11 of the 21 accidents; and,
- Equipment failure was a contributing factor in one fatality in 2012.[4]

The Parasail Safety Council, a trade association of parasailing companies, estimates approximately 73 fatalities and approximately 1700 other injuries have occurred over the span of 30 years and approximately 130 million parasailing ventures throughout the United States.[5]

In Florida, the most recent incident occurred on July 1, 2013, and resulted in critical injuries to two teenage girls who were parasailing off Panama City Beach.[6] Weather conditions caused the vessel to lose connection to and control of the parasail, resulting in the parasail drifting out of control toward shore and hitting a building, power line, and several parked cars.[7]

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[1] *See* Parasail Safety Council Website, http://www.parasail.org/ (last visited Jan. 15, 2014) (estimating 138 Florida parasailing operators); Parasail Safety Council, *Why are some Parasailing Accidents Fatal?*, http://www.parasail.org/accident-statistics.html (last visited Jan. 15, 2014) (estimating over 200 parasailing operators nationwide); *see also* Florida Fish and Wildlife Conservation Commission, Agency Legislative Analysis for SB 320: Commercial Parasailing (Dec. 4, 2013) (on file with the Business & Professional Regulation Subcommittee) (estimating over 100 parasailing operators in Florida).

[2] Parasail Safety Council, *Why are some Parasailing Accidents Fatal?*, http://www.parasail.org/accident-statistics.html (last visited Jan. 15, 2014).

[3] Florida Fish and Wildlife Conservation Commission, Agency Legislative Analysis for SB 320: Commercial Parasailing.

[4] Rafael Olmeda, *Lawsuit filed in Pompano Beach parasailing death* (June 12, 2013) *available at* http://articles.sun-sentinel.com/2013-06-12/news/fl-parasailing-death-lawsuit-20130612_1_stephen-miskell-negligence-lawsuit-sands-harbor-resort.

[5] Parasail Safety Council, *Parasailing Accident Data (1982-2012)*, http://www.parasail.org/accident-statistics.html (last visited Jan. 15, 2014).

[6] United States Coast Guard, UPDATE: Coast Guard investigates parasail accident near the Commodore Condominiums in Panama City Beach (July 18, 2013), *available at* http://www.uscgnews.com/go/doc/4007/1855061/UPDATE-Coast-Guard-investigates-parasail-accident-near-the-Commodore-Condominiums-in-Panama-City-Beach (last visited Jan. 15, 2014).

[7] Dennis Pillion, *Second girl injured in Panama City Beach parasailing accident released from Indiana hospital*, AL.com, http://blog.al.com/gulf-coast/2013/08/second_girl_injured_in_parasai.html (last visited Jan. 15, 2014).

Current Florida Regulations on Parasailing
Florida currently has few substantive regulations of parasailing.

Section 327.37, F.S., regulates parasailing to the degree that it regulates all vessels that tow persons on water skis, parasails, and aquaplanes. The requirements of s. 327.37, F.S., include:

- A person may not operate a vessel towing a person unless there is another person, in addition to the operator, in position to observe the person being towed;[8]
- Parasailing may not be conducted one-half hour before sunrise or one-half hour after sunset;[9]
- United States Coast Guard approved non-inflatable personal flotation devices must be worn by all persons engaged in parasailing;[10] and,
- A person may not operate a vessel towing a parasail or engage in parasailing within 100 feet of the marked channel of the Florida Intercostal Waterway.[11]

A violation of s. 327.37, F.S., is a noncriminal infraction and provides for a civil penalty of $50 that may be imposed in county court.

Current Federal Regulations Related to Parasailing
Parasails impact the National Airspace System and meet the legal definition of any "kite" that weighs more than five pounds and is intended to be flown at the end of a rope or cable.[12] Consequently, the Federal Aviation Administration (FAA) regulates parasailing to maintain a safe atmosphere for the flying public.[13]

Specifically, the FAA regulation on "kites" states:

> Except as provided . . . no person may operate a moored balloon or kite:
> (1) Less than 500 feet from the base of any cloud;
> (2) More than 500 feet above the surface of the earth;
> (3) From an area where the ground visibility is less than three miles; or
> (4) Within five miles of the boundary of any airport.[14]

Further, each parasail must have colored pennants or streamers every 50 feet that are visible for one mile, starting at 150 feet above the earth's surface.[15] Operating at night is disallowed under the FAA regulations unless the entire mooring line is lit to give visual warning for air navigation; however, night operation is prohibited by Florida regulation except during the half hour directly after sunset and the half hour directly before sunrise.[16]

## Effect of the Bill

The bill defines "commercial parasailing" as:

> [P]roviding or offering to provide, for consideration, any activity involving the towing of a person by a motorboat if:
> (a) One or more persons are tethered to the towing vessel;
> (b) The person or persons ascend above the water; and

[8] Section 327.37(1)(b), F.S.
[9] Section 327.37(2)(a), F.S.
[10] Section 327.37(2)(b), F.S.
[11] Section 327.37(5), F.S.
[12] 14 C.F.R. §101.1 (2013).
[13] Federal Aviation Administration, *Parasail Operations Regulated by the FAA*, Air Traffic Bulletin 2012-2, (April 2012), http://www.faa.gov/air_traffic/publications/media/ATB2012-2.pdf (last visited Jan. 23, 2014).
[14] 14 C.F.R. §101.13 (2013).
[15] 14 C.F.R. §101.17 (2013).
[16] 14 C.F.R. §101.17 (2013); *see also* Section 327.37(2)(a), F.S.

(c) The person or persons remain suspended under a canopy, chute, or parasail above the water while the vessel is underway.

The bill specifically excludes ultralight glider towing as defined in 14 C.F.R. § 103 in its definition of commercial parasailing.

The bill defines "sustained wind speed" as:

> [W]ind speed determined by averaging the observed wind speed rounded up to the nearest mile per hour over a 2-minute period.

Insurance Requirements

The bill requires that an owner or operator cannot engage in commercial parasailing unless the owner or operator first obtains and maintains liability insurance providing bodily liability coverage from an insurance carrier licensed in Florida, or approved by the Florida Office of Insurance Regulation, or an eligible surplus lines insurer. This liability insurance must provide bodily injury coverage amounts of at least $1 million per occurrence and $2 million annual aggregate.

Proof of insurance in compliance with the mandates for this bill must be available for inspection at the location where commercial parasailing is offered or provided for consideration. This proof of insurance must be available for each customer and FWC to inspect upon request.

Equipment Requirements

The bill requires that a commercial parasailing vessel must have both a functional VHF marine transceiver and a separate device capable of accessing the National Weather Service forecasts and current weather conditions.

The bill requires that the operator of a commercial parasailing vessel maintain a weather log. The operator must record all prevailing and forecasted weather conditions, and must use all available means to determine these conditions. The log must be used each time passengers are to be taken out on the water. The weather log must be available for inspection at all times at the operator's place of business.

Operational Requirements

The bill includes the following operational requirements:

- A current and valid license issued by the United States Coast Guard to the person operating the parasailing vessel which is appropriate for the number of passengers and the size of the vessel.
- Commercial parasailing is prohibited when the weather conditions include:
  - Sustained wind speeds over 20 mph;
  - Wind gusts 15 mph higher than sustained wind speeds;
  - Wind speeds during gusts exceed 25 mph;
  - Rain or heavy fog results in visibility of less than 0.5 miles; or
  - A known lightning storm comes within 7 miles of the parasailing area.

Penalties

The bill provides that a violation of the commercial parasailing provisions in the bill is a second degree misdemeanor, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S. Misdemeanors of the second degree are punishable by up to 60 days in jail and/or a fine of up to $500, at the discretion of the Court.[17]

According to industry representatives, it is standard practice to have parasailing participants sign an assumption of risk, release of liability and indemnification agreement (waiver). Florida courts generally

[17] Sections 775.082, and 775.083, F.S.

enforce such waiver agreements when they are unambiguous; however, Florida courts have held that such waivers may not serve as a release of liability in cases of *negligence per se*, that is, when the injury arises from a violation of a statute designed to protect the well-being of the person signing the waiver.[18]

Thus, injuries sustained due to violation by a person or operator of those statutory provisions in the bill designed to safeguard participants potentially could result in liability even where the participant signed a waiver agreement.

B. SECTION DIRECTORY:

**Section 1** provides that the title for the act is the "White-Miskall Act". The act is named for two women who died from parasailing accidents in Pompano Beach. Amber White, 15, died in 2007 after windy conditions caused the line connecting the parasail she and her sister were riding to break free of its vessel and they collided with a hotel roof.[19] Kathleen Miskell, 28, died in 2012 after a harness malfunction caused her to drop 200 feet into the water where she drowned.[20]

**Section 2** amends s. 327.02, F.S., to define "Commercial parasailing" and "sustained wind speed".

**Section 3** creates s. 327.375, F.S., relating to parasailing; provides an insurance mandate for the owner or operator of a commercial parasailing operation; requires a current and valid United States Coast Guard license for an operator; requires a VHF marine transceiver and weather radio; prohibits parasailing in certain wind conditions; requires maintenance of a weather log by the operator; and, provides for criminal penalties for noncompliance.

**Sections 4 to 9** amends ss. 320.08, 327.391, 328.17, 342.07, 713.78, and 715.07 to conform and correct statutory cross-references.

**Section 10** provides an effective date of October 1, 2014.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None. The Florida Fish and Wildlife Conservation Commission anticipate using existing resources to implement the requirements of this bill.[21]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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[18] *See generally deJesus v. Seaboard Coast Line R. Co.*, 281 So. 2d 198, 201 (Fla. 1973) (stating "negligence per se is a violation of any other statute which establishes a duty to take precautions to protect a particular class of persons from a particular injury or type of injury"); *Torres v. Offshore Prof'l Tour, Inc.*, 629 So. 2d 192, 194 (Fla. 3rd DCA 1993) (stating "[t]he enforcement of a release or waiver immunizing a [party] from liability for breach of a positive statutory duty designed to protect the well-being of the person executing the release, . . . would be contrary to public policy") [internal citations omitted].

[19] Carol E. Lee and Lloyd Dunkelberger, *In wake of local girl's death, lawmakers eye parasailing regulations*, Ocala Star Banner, http://www.ocala.com/article/20080302/NEWS/803020356 (last visited Jan. 15, 2014).

[20] Olmeda, *supra* note 4.

[21] Florida Fish and Wildlife Conservation Commission, Agency Legislative Analysis for SB 320: Commercial Parasailing.

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The fiscal impact on the private sector is indeterminate as the bill requires commercial parasailing operators to have liability insurance and certain communications and weather monitoring equipment that they may or may not already have in place. According to sources within the insurance and parasailing industries, the proposed insurance and operational requirements are equivalent to what they currently hold and should have no fiscal impact. Parasailing operators who do not hold insurance or do not currently have the required equipment will be required to obtain the necessary coverage and acquire the necessary equipment.[22]

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

[22] *Id.*

A bill to be entitled

An act relating to commercial parasailing; providing a short title; amending s. 327.02, F.S.; defining terms; creating s. 327.375, F.S.; requiring the operator of a vessel engaged in commercial parasailing to ensure that specified requirements are met; requiring the owner of a vessel engaged in commercial parasailing to obtain and maintain an insurance policy; providing minimum coverage requirements for the insurance policy; providing requirements for proof of insurance; specifying the insurance information that must be provided upon request; requiring the operator to have a current and valid license issued by the United States Coast Guard; prohibiting commercial parasailing unless certain equipment is present on the vessel and certain weather conditions are met; requiring that a weather log be maintained and made available for inspection; providing a criminal penalty; amending ss. 320.08, 327.391, 328.17, 342.07, 713.78, and 715.07, F.S.; conforming cross-references; providing an effective date.

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

Section 1. This act may be cited as the "White-Miskell Act."

Section 2. Section 327.02, Florida Statutes, is amended to read:

327.02 Definitions.—As used in this chapter and in chapter 328, unless the context clearly requires a different meaning, the term:

(1) "Airboat" means a vessel that is primarily designed for use in shallow waters and powered by an internal combustion engine with an airplane-type propeller mounted above the stern and used to push air across a set of rudders.

(2) "Alien" means a person who is not a citizen of the United States.

(3) "Boating accident" means a collision, accident, or casualty involving a vessel in or upon, or entering into or exiting from, the water, including capsizing, collision with another vessel or object, sinking, personal injury, death, disappearance of a ~~any~~ person from on board under circumstances that ~~which~~ indicate the possibility of death or injury, or property damage to any vessel or dock.

(4) "Canoe" means a light, narrow vessel with curved sides and with both ends pointed. A canoe-like vessel with a transom may not be excluded from the definition of a canoe if the width of its transom is less than 45 percent of the width of its beam or it has been designated as a canoe by the United States Coast Guard.

(5) "Commercial parasailing" means providing or offering to provide, for consideration, any activity involving the towing

of a person by a motorboat if:

(a) One or more persons are tethered to the towing vessel;

(b) The person or persons ascend above the water; and

(c) The person or persons remain suspended under a canopy, chute, or parasail above the water while the vessel is underway.

The term does not include ultralight glider towing conducted under rules of the Federal Aviation Administration governing ultralight vehicles as defined in 14 C.F.R. part 103.

(6) ~~(5)~~ "Commercial vessel" means:

(a) A ~~Any~~ vessel primarily engaged in the taking or landing of saltwater fish or saltwater products or freshwater fish or freshwater products, or a ~~any~~ vessel licensed pursuant to s. 379.361 from which commercial quantities of saltwater products are harvested, from within and without the waters of this state for sale ~~either~~ to the consumer or to a~~,~~ retail ~~dealer,~~ or wholesale dealer.

(b) Any other vessel, except a recreational vessel as defined in this section.

(7) ~~(6)~~ "Commission" means the Fish and Wildlife Conservation Commission.

(8) ~~(7)~~ "Dealer" means a ~~any~~ person authorized by the Department of Revenue to buy, sell, resell, or otherwise distribute vessels. Such person must ~~shall~~ have a valid sales tax certificate of registration issued by the Department of Revenue and a valid commercial or occupational license required

by any county, municipality, or political subdivision of the state in which the person operates.

(9)~~(8)~~ "Division" means the Division of Law Enforcement of the Fish and Wildlife Conservation Commission.

(10)~~(9)~~ "Documented vessel" means a vessel for which a valid certificate of documentation is outstanding pursuant to 46 C.F.R. part 67.

(11)~~(10)~~ "Floating structure" means a floating entity, with or without accommodations built thereon, which is not primarily used as a means of transportation on water but which serves purposes or provides services typically associated with a structure or other improvement to real property. The term ~~"floating structure"~~ includes, but is not limited to, an ~~each~~ entity used as a residence, place of business or office with public access; a~~,~~ hotel or motel; a~~,~~ restaurant or lounge; a~~,~~ clubhouse; a~~,~~ meeting facility; a~~,~~ storage or parking facility; or a~~,~~ mining platform, dredge, dragline, or similar facility or entity represented as such. Floating structures are expressly excluded from the definition of the term "vessel" provided in this section. Incidental movement upon water or resting partially or entirely on the bottom does ~~shall~~ not, in and of itself, preclude an entity from classification as a floating structure.

(12)~~(11)~~ "Florida Intracoastal Waterway" means the Atlantic Intracoastal Waterway, the Georgia state line north of Fernandina to Miami; the Port Canaveral lock and canal to the

Atlantic Intracoastal Waterway; the Atlantic Intracoastal Waterway, Miami to Key West; the Okeechobee Waterway, Stuart to Fort Myers; the St. Johns River, Jacksonville to Sanford; the Gulf Intracoastal Waterway, Anclote to Fort Myers; the Gulf Intracoastal Waterway, Carrabelle to Tampa Bay; Carrabelle to Anclote open bay section, ~~(~~using the Gulf of Mexico~~)~~; the Gulf Intracoastal Waterway, Carrabelle to the Alabama state line west of Pensacola; and the Apalachicola, Chattahoochee, and Flint Rivers in Florida.

(13)~~(12)~~ "Homemade vessel" means a ~~any~~ vessel built after October 31, 1972, for which a federal hull identification number is not required to be assigned by the manufacturer pursuant to federal law, or a ~~any~~ vessel constructed or assembled before ~~prior to~~ November 1, 1972, by an entity other than a licensed manufacturer for its ~~his or her~~ own use or the use of a specific person. A vessel assembled from a manufacturer's kit or constructed from an unfinished manufactured hull is ~~shall be~~ considered to be a homemade vessel if such a vessel is not required to have a hull identification number assigned by the United States Coast Guard. A rebuilt or reconstructed vessel may not ~~shall in no event~~ be construed to be a homemade vessel.

(14)~~(13)~~ "Houseboat" means a ~~any~~ vessel that ~~which~~ is used primarily as a residence for at least ~~a minimum of~~ 21 days during any 30-day period~~,~~ in a county of this state if such~~, and this~~ residential use of the vessel is to the preclusion of its ~~the~~ use ~~of the vessel~~ as a means of transportation.

(15)~~(14)~~ "Length" means the measurement from end to end over the deck parallel to the centerline, excluding sheer.

(16)~~(15)~~ "Lien" means a security interest that ~~which~~ is reserved or created by a written agreement recorded with the Department of Highway Safety and Motor Vehicles pursuant to s. 328.15 and that ~~which~~ secures payment or performance of an obligation and is generally valid against third parties.

(17)~~(16)~~ "Lienholder" means a person holding a security interest in a vessel, which interest is recorded with the Department of Highway Safety and Motor Vehicles pursuant to s. 328.15.

(18)~~(17)~~ "Live-aboard vessel" means:

(a) A ~~Any~~ vessel used solely as a residence and not for navigation;

(b) A ~~Any~~ vessel represented as a place of business or a professional or other commercial enterprise; or

(c) A ~~Any~~ vessel for which a declaration of domicile has been filed pursuant to s. 222.17.

A commercial fishing boat is expressly excluded from the term "live-aboard vessel."

(19)~~(18)~~ "Livery vessel" means a ~~any~~ vessel leased, rented, or chartered to another for consideration.

(20)~~(19)~~ "Manufactured vessel" means a ~~any~~ vessel built after October 31, 1972, for which a federal hull identification number is required pursuant to federal law, or a ~~any~~ vessel

constructed or assembled before ~~prior to~~ November 1, 1972, by a duly licensed manufacturer.

(21)~~(20)~~ "Marina" means a licensed commercial facility that ~~which~~ provides secured public moorings or dry storage for vessels on a leased basis. A commercial establishment authorized by a licensed vessel manufacturer as a dealership is ~~shall be~~ considered a marina for nonjudicial sale purposes.

(22)~~(21)~~ "Marine sanitation device" means ~~any~~ equipment, other than a toilet, for installation on board a vessel~~,~~ which is designed to receive, retain, treat, or discharge sewage, and any process to treat such sewage. Marine sanitation device Types I, II, and III shall be defined as provided in 33 C.F.R. part 159.

(23)~~(22)~~ "Marker" means a ~~any~~ channel mark or other aid to navigation, an information or regulatory mark, an isolated danger mark, a safe water mark, a special mark, an inland waters obstruction mark, or mooring buoy in, on, or over the waters of the state or the shores thereof, and includes, but is not limited to, a sign, beacon, buoy, or light.

(24)~~(23)~~ "Motorboat" means a ~~any~~ vessel equipped with machinery for propulsion, irrespective of whether the propulsion machinery is in actual operation.

(25)~~(24)~~ "Muffler" means an automotive-style sound-suppression device or system designed to effectively abate the sound of exhaust gases emitted from an internal combustion engine and prevent excessive sound when installed on such an

engine.

(26)~~(25)~~ "Navigation rules" means, for vessels on:

(a) ~~For vessels on~~ Waters outside ~~of~~ established navigational lines of demarcation as specified in 33 C.F.R. part 80, the International Navigational Rules Act of 1977, 33 U.S.C. s. 1602, as amended, including the appendix and annexes thereto, through October 1, 2012.

(b) ~~For vessels on~~ All waters not outside of such established lines of demarcation, the Inland Navigational Rules Act of 1980, 33 C.F.R. parts 83-90, as amended, through October 1, 2012.

(27)~~(26)~~ "Nonresident" means a citizen of the United States who has not established residence in this state and has not continuously resided in this state for 1 year and in one county for the 6 months immediately preceding the initiation of a vessel titling or registration action.

(28)~~(27)~~ "Operate" means to be in charge of, ~~or~~ in command of, ~~or~~ in actual physical control of a vessel upon the waters of this state, ~~or~~ to exercise control over or to have responsibility for a vessel's navigation or safety while the vessel is underway upon the waters of this state, or to control or steer a vessel being towed by another vessel upon the waters of the state.

(29)~~(28)~~ "Owner" means a person, other than a lienholder, having the property in or title to a vessel. The term includes a person entitled to the use or possession of a vessel subject to

an interest in another person which is~~,~~ reserved or created by agreement and securing payment of performance of an obligation.~~,~~ ~~but~~ The term does not include ~~excludes~~ a lessee under a lease not intended as security.

(30)~~(29)~~ "Person" means an individual, partnership, firm, corporation, association, or other entity.

(31)~~(30)~~ "Personal watercraft" means a vessel less than 16 feet in length which uses an inboard motor powering a water jet pump~~,~~ as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on the vessel, rather than in the conventional manner of sitting or standing inside the vessel.

(32)~~(31)~~ "Portable toilet" means a device consisting of a lid, seat, containment vessel, and support structure which ~~that~~ is specifically designed to receive, retain, and discharge human waste and which ~~that~~ is capable of being removed from a vessel by hand.

(33)~~(32)~~ "Prohibited activity" means ~~such~~ activity that ~~as~~ will impede or disturb navigation or creates a safety hazard on waterways of this state.

(34)~~(33)~~ "Racing shell," "rowing scull," or "racing kayak" means a manually propelled vessel that ~~which~~ is recognized by national or international racing associations for use in competitive racing and in which all occupants, with the exception of a coxswain, if one is provided, row, scull, or paddle and that ~~which~~ is not designed to carry and does not

carry any equipment not solely for competitive racing.

(35)~~(34)~~ "Recreational vessel" means a ~~any~~ vessel:

(a) Manufactured and used primarily for noncommercial purposes; or

(b) Leased, rented, or chartered to a person for his or her ~~the person's~~ noncommercial use.

(36)~~(35)~~ "Registration" means a state operating license on a vessel which is issued with an identifying number, an annual certificate of registration, and a decal designating the year for which a registration fee is paid.

(37)~~(36)~~ "Resident" means a citizen of the United States who has established residence in this state and has continuously resided in this state for 1 year and in one county for the 6 months immediately preceding the initiation of a vessel titling or registration action.

(38)~~(37)~~ "Sailboat" means a ~~any~~ vessel whose sole source of propulsion is the wind.

(39) "Sustained wind speed" means a wind speed determined by averaging the observed wind speed rounded up to the nearest mile per hour over a 2-minute period.

(40)~~(38)~~ "Unclaimed vessel" means an ~~any~~ undocumented vessel, including its machinery, rigging, and accessories, which is in the physical possession of a ~~any~~ marina, garage, or repair shop for repairs, improvements, or other work with the knowledge of the vessel owner and for which the costs of such services have been unpaid for more than ~~a period in excess of~~ 90 days

after ~~from~~ the date written notice of the completed work is given by the marina, garage, or repair shop to the vessel owner.

(41)~~(39)~~ "Vessel" is synonymous with boat as referenced in s. 1(b), Art. VII of the State Constitution and includes every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

(42)~~(40)~~ "Waters of this state" means any navigable waters of the United States within the territorial limits of this state, ~~and~~ the marginal sea adjacent to this state and the high seas when navigated as a part of a journey or ride to or from the shore of this state, and all the inland lakes, rivers, and canals under the jurisdiction of this state.

Section 3. Section 327.375, Florida Statutes, is created to read:

327.375 Commercial parasailing.—

(1) The operator of a vessel engaged in commercial parasailing shall ensure that the provisions of this section and s. 327.37 are met.

(2) The owner or operator of a vessel engaged in commercial parasailing may not offer or provide for consideration any parasailing activity unless the owner or operator first obtains and maintains in full force and effect a liability insurance policy from an insurance carrier licensed in this state or approved by the Office of Insurance Regulation or an eligible surplus lines insurer. Such policy must provide

bodily injury liability coverage in the amounts of at least $1 million per occurrence and $2 million annual aggregate. Proof of insurance must be available for inspection at the location where commercial parasailing is offered or provided for consideration, and each customer who requests such proof shall be provided with the insurance carrier's name and address and the insurance policy number.

(3) The operator of a vessel engaged in commercial parasailing must have a current and valid license issued by the United States Coast Guard authorizing the operator to carry passengers for hire. The license must be appropriate for the number of passengers carried and the displacement of the vessel. The license must be carried on the vessel and be available for inspection while engaging in commercial parasailing activities.

(4) A vessel engaged in commercial parasailing must be equipped with a functional VHF marine transceiver and a separate electronic device capable of providing access to National Weather Service forecasts and current weather conditions.

(5)(a) Commercial parasailing is prohibited if the current observed wind conditions in the area of operation include a sustained wind speed of more than 20 miles per hour; if wind gusts are 15 miles per hour higher than the sustained wind speed; if the wind speed during gusts exceeds 25 miles per hour; if rain or heavy fog results in reduced visibility of less than 0.5 mile; or if a known lightning storm comes within 7 miles of the parasailing area.

(b) The operator of the vessel engaged in commercial parasailing shall use all available means to determine prevailing and forecasted weather conditions and record this information in a weather log each time passengers are to be taken out on the water. The weather log must be available for inspection at all times at the operator's place of business.

(6) A person or operator who violates this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 4. Paragraph (d) of subsection (5) of section 320.08, Florida Statutes, is amended to read:

320.08 License taxes.—Except as otherwise provided herein, there are hereby levied and imposed annual license taxes for the operation of motor vehicles, mopeds, motorized bicycles as defined in s. 316.003(2), tri-vehicles as defined in s. 316.003, and mobile homes, as defined in s. 320.01, which shall be paid to and collected by the department or its agent upon the registration or renewal of registration of the following:

(5) SEMITRAILERS, FEES ACCORDING TO GROSS VEHICLE WEIGHT; SCHOOL BUSES; SPECIAL PURPOSE VEHICLES.—

(d) A wrecker, as defined in s. 320.01, which is used to tow a vessel as defined in s. 327.02~~(39)~~, a disabled, abandoned, stolen-recovered, or impounded motor vehicle as defined in s. 320.01, or a replacement motor vehicle as defined in s. 320.01: $41 flat, of which $11 shall be deposited into the General Revenue Fund.

Section 5. Subsection (1) of section 327.391, Florida Statutes, is amended to read:

327.391 Airboats regulated.—

(1) The exhaust of every internal combustion engine used on any airboat operated on the waters of this state shall be provided with an automotive-style factory muffler, underwater exhaust, or other manufactured device capable of adequately muffling the sound of the exhaust of the engine as described in s. 327.02(25) ~~s. 327.02(24)~~. The use of cutouts or flex pipe as the sole source of muffling is prohibited, except as provided in subsection (4). Any person who violates this subsection commits a noncriminal infraction punishable as provided in s. 327.73(1).

Section 6. Subsection (4) of section 328.17, Florida Statutes, is amended to read:

328.17 Nonjudicial sale of vessels.—

(4) A marina, as defined in s. 327.02~~(20)~~, shall have:

(a) A possessory lien upon any vessel for storage fees, dockage fees, repairs, improvements, or other work-related storage charges, and for expenses necessary for preservation of the vessel or expenses reasonably incurred in the sale or other disposition of the vessel. The possessory lien attaches ~~shall attach~~ as of the date the vessel is brought to the marina or as of the date the vessel first occupies rental space at the marina facility.

(b) A possessory lien upon any vessel in a wrecked, junked, or substantially dismantled condition~~,~~ which has been

left abandoned at a marina~~,~~ for expenses reasonably incurred in the removal and disposal of the vessel. The possessory lien attaches ~~shall attach~~ as of the date the vessel arrives at the marina or as of the date the vessel first occupies rental space at the marina facility. If the funds recovered from the sale of ~~the vessel,~~ or ~~from~~ the scrap or salvage value of the vessel~~,~~ are insufficient to cover the expenses reasonably incurred by the marina in removing and disposing of the vessel, all costs in excess of recovery shall be recoverable against the owner of the vessel. For a vessel damaged as a result of a named storm, the provisions of this paragraph shall be suspended for 60 days after ~~following~~ the date the vessel is damaged in the named storm. The operation of the provisions specified in this paragraph run concurrently with, and do not extend, the 60-day notice periods provided in subsections (5) and (7).

Section 7. Subsection (2) of section 342.07, Florida Statutes, is amended to read:

342.07 Recreational and commercial working waterfronts; legislative findings; definitions.—

(2) As used in this section, the term "recreational and commercial working waterfront" means a parcel or parcels of real property which ~~that~~ provide access for water-dependent commercial activities, including hotels and motels as defined in s. 509.242(1), or provide access for the public to the navigable waters of the state. Recreational and commercial working waterfronts require direct access to or a location on, over, or

adjacent to a navigable body of water. The term includes water-dependent facilities that are open to the public and offer public access by vessels to the waters of the state or that are support facilities for recreational, commercial, research, or governmental vessels. These facilities include public lodging establishments, docks, wharfs, lifts, wet and dry marinas, boat ramps, boat hauling and repair facilities, commercial fishing facilities, boat construction facilities, and other support structures over the water. As used in this section, the term "vessel" has the same meaning as in s. 327.02~~(39)~~. Seaports are excluded from the definition.

Section 8. Paragraph (b) of subsection (1) of section 713.78, Florida Statutes, is amended to read:

713.78 Liens for recovering, towing, or storing vehicles and vessels.—

(1) For the purposes of this section, the term:

(b) "Vessel" means every description of watercraft, barge, and airboat used or capable of being used as a means of transportation on water, other than a seaplane or a "documented vessel" as defined in s. 327.02~~(9)~~.

Section 9. Paragraph (b) of subsection (1) of section 715.07, Florida Statutes, is amended to read:

715.07 Vehicles or vessels parked on private property; towing.—

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

(b) "Vessel" means every description of watercraft, barge,

and airboat used or capable of being used as a means of transportation on water, other than a seaplane or a "documented vessel" as defined in s. 327.02~~(9)~~.

Section 10. This act shall take effect October 1, 2014.

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCS for HB 223 Professional Geology
**SPONSOR(S):** Business & Professional Regulation Subcommittee
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 404

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| Orig. Comm.: Business & Professional Regulation Subcommittee | | Brown-Blake KBB | Luczynski MJ |

## SUMMARY ANALYSIS

Currently, applicants for licensure as a professional geologist must meet educational requirements and then obtain at least 5 years of work experience prior to applying for licensure and taking the required examination. The passage rate for the fundamentals of geology part of the examination, which tests the knowledge and skills acquired from college curriculum, is approximately 50 percent.

The bill creates a geologist-in-training registration. The geologist-in-training applicant must meet the same geological coursework and background requirements as a professional geologist licensure applicant. If an applicant for registration meets the requirements and is certified by the Board of Professional Geologists as qualifying, the applicant is then able to take the fundamentals of geology part of the licensure examination. By permitting individuals to take the fundamentals of geology part of the licensure examination upon completion of the geological coursework education requirements, the passage rate for that part of the examination may increase.

The geologist-in-training registration is optional. Individuals desiring to be licensed as a geologist may still wait to take the fundamentals of geology part of the examination with the rest of the examination upon meeting all eligibility requirements, including completion of the required work experience.

The bill requires the Department of Business and Professional Regulation (Department) to register as a geologist-in-training each applicant who meets the requirements and successfully completes the fundamentals of geology part of the examination. Furthermore, the bill updates licensure requirements as professional geologists, clarifying that the applicants must obtain 5 years of work experience prior to licensure and updating the hours of coursework necessary to meet national standards.

The Department of Business and Professional Regulation indicates that it will have minimal, but indeterminate costs that can be absorbed with existing resources.

The effective date of the bill is July 1, 2014.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Current Situation**

Current Examination for Licensure As Professional Geologist

The Board of Professional Geologists (Board) was established as a board under the Division of Professions, a division of the Department of Business and Professional Regulation (Department).[1] In order to be licensed as a professional geologist by the Board, applicants must meet a number of education and experience requirements prior to obtaining passing scores on a written licensure examination, which is designed to test an applicant's qualifications to practice professional geology.[2] The Board has the authority to approve by rule the use of a national examination for a licensure examination.[3]

The Board is a member of the National Association of State Boards of Geology ("ASBOG"), which acts to serve as a connective link among the individual state geological registration licensing boards for the planning and preparation of uniform procedures and the coordination of geologic protective measures for the general public.[4] ASBOG is not a regulatory body and does not license geologists.[5] It is a national organization which provides guidance for the licensure and regulation of professional geologists. ASBOG also develops standardized written examinations for determining qualifications of applicants seeking licensure as professional geologists.[6]

The Board has adopted a standardized written test developed by ASBOG.[7] The test has two parts, specifically adopted by the Board for use as the licensure examination. The parts consist of the Fundamentals of Geology part and the Practice of Geology part.[8] The Fundamentals of Geology part of the examination emphasizes the knowledge and skills typically acquired in an academic setting and that leads to a baccalaureate degree.[9] The Practice of Geology part of the examination emphasizes skills and knowledge acquired or expanded in a practice or job setting.[10]

Licensure by Examination Requirements for Professional Geologists

Applicants for licensure as a professional geologist must first apply to take the examination for licensure. The Board must review their application to determine whether the applicant is qualified to take the examination. If the Board finds the applicant is qualified to take the examination, the Board certifies to the Department that the applicant is able to take the examination. The Department will administer the examination to each applicant that the Board certifies:[11]

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[1] Section 20.165, F.S.
[2] Section 492.105(1), F.S.
[3] Section 455.217(1)(d), F.S.
[4] National Association of State Boards of Geology, *Mission Statement*, available at http://www.asbog.org/ (last visited January 16, 2014).
[5] *Id.*
[6] *Id.*
[7] Rule 61G16-6.001(2), F.A.C.
[8] Rule 61G16-6.001(3), F.A.C.
[9] National Association of State Boards of Geology, *ASBOG Professional Geologist Candidate handbook, 4 (2013)*, available at http://www.asbog.org/Documents/1309%20Candidate%20Handbook.wpd.pdf (last visited January 16, 2014).
[10] *Id.*
[11] Section 492.105(1), F.S.

- Has completed and submitted an application form with a nonrefundable application fee and examination fee,[12] which is refundable if the applicant is found to be ineligible to take the examination.
- Is at least 18 years of age.
- Has not committed any act or offense in any jurisdiction which constitutes a basis for disciplining a professional geologist licensed pursuant to Chapter 492, F.S.
- Has graduated with a major in geology or related science acceptable by the Board from a college or university where the geological curricula has met the criteria established by an accrediting agency recognized by the United States Department of Education.
- Has completed at least 30 semester hours of geological coursework,[13] 24 of which must be at the third or fourth year or graduate level, at a college or university where the geological curricula has met the criteria established by an accrediting agency recognized by the United States Department of Education.[14]
- Has at least 7 years of professional geological work experience, which shall include minimum of 3 years of professional geological work under the supervision of a licensed geologist or professional engineer registered under Chapter 471, F.S.; or have a minimum of 5 accumulative years' experience in responsible charge of geological work.[15] This experience shall have been demonstrated by the applicant having performed the work in a responsible position as determined by the Board.[16] Applicants can substitute time obtaining an education or teaching and research work towards field work as follows:

    - Each year of undergraduate study in geological sciences shall count as ½ year experience, up to a maximum of 2 years.
    - Each year of graduate study shall count as 1 year of experience.
    - Credit for undergraduate study, graduate study, and graduate courses, individually or in any combination, shall not exceed a total of 2 years towards meeting the experience requirements.
    - Full time teaching or research is credited year for year towards meeting the 7 years requirements.

Once the applicant achieves a score of 70 percent or better for both parts of the examination,[17] the applicant is able to obtain a license as a professional geologist.

Current Examination Results

Because applicants are able to use up to 2 years of undergraduate work towards the required work experience, the typical time between graduation and being eligible to apply to take the examination is 5 years. The pass rate of applicants from Florida for the Fundamentals of Geology part of the examination is approximately 50 percent.[18] The percentage of failure increases the further applicants are removed from their education.[19] The passage-rate nationwide for the Fundamentals of Geology part

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[12] Rule 61G16-3.001, F.A.C., sets the application fee at $150.00 and the examination fee at $250.00.
[13] Rule 61G16-5.002, F.A.C., states that geological coursework comprises "the basic fundamental core program of geology" and provides a list of possible courses.
[14] The list for accrediting agencies recognized by the United States Department of Education may be found at http://www2.ed.gov/admins/finaid/accred/accreditation_pg6.html (last visited January 16, 2014).
[15] Rule 61G16-1.009(1), F.A.C., defines "responsible charge" to mean "one who is accountable for and exercises direct control and personal supervision of oneself's and others' geological work with initiative, skill and independent scientific judgment."
[16] Rule 61G16-1.009(2), F.A.C., defines "responsible position" as "a position in which one performs geological work with initiative, skill and independent judgment, under the supervision and direction of a professional geologist licensed under Chapter 492, F.S., a professional engineer licensed under Chapter 471, F.S., or other qualified professional."
[17] Rule 61G16-6.001(3), F.A.C.
[18] *2014 Department of Business and Professional Regulation Legislative Bill Analysis, HB 223*, Department of Business and Professional Regulation, (December 2013).
[19] *Id.*

of the examination for March of 2012, October of 2012, March of 2013, and October of 2013, were 57, 63, 63, and 64 percent, respectively.[20]

Geologists-in-Training

Florida does not currently have a geologist-in-training registration. In 2005, ASBOG produced The Professional Geologist Model Licensure Law (Model Law) which provided a model for the geologist-in-training registration qualifications. A number of states have adopted the aforementioned model language and provide for a geologist-in-training registration or equivalent. The qualifications that must be met prior to "enrollment" as a geologist-in-training as found in the model law include the following:

a) Graduation from a course of study in geology satisfactory to the Board from an accredited college or university, or from a program accredited by an organization recognized by the Board, of four (4) or more years and which includes at least thirty (30) semester hours or forty-five (45) quarter hours of credit in geological course work suitable to the Board, with a major in geology or geological specialty;
b) Successful passage of a national examination on the fundamentals of geology and any other jurisdictional examinations in geology as determined and prescribed by the Board; and,
c) Other requirements as may be established in rules and regulations by the Board including that said applicant for enrollment possesses a degree in geology as specified in this section prior to being allowed to sit for any examination.[21]

**Effect of the Bill**

Examination for Licensure as Professional Geologist

*Multi-Part Examination:*

The bill amends s. 492.105(1), F.S., to permit the Board to adopt a multi-part examination for licensure. The rulemaking authority under s. 492.104(2), F.S., is amended to permit the Board to adopt fees apportioned to each part of the multi-part examination. This allows the Board to split the examination fee up for each part of the examination the applicant takes.

*Fundamentals of Geology:*

The bill further amends s. 492.105(1), F.S., to include fundamentals of geology in the required topics to be examined in the required licensure examination. Currently, the Board has adopted an examination developed by ASBOG that can be split into two parts. One of the parts is a discrete part of the examination testing on the fundamentals of geology, which currently tests on the knowledge and skills typically acquired in an academic setting.[22]

Licensure Requirements for Professional Geologists

*Coursework Requirements Updated:*

The bill amends s. 492.105(1)(d)2., F.S., to update coursework requirements for licensure to include 45 quarterly hours, providing licensure parameters for applicants from colleges with a quarter-based course schedule. Furthermore, the bill removes the requirement that 24 of the 30 required semester

[20] National Association of State Boards of Geology, *FG & PG Examination Statistics*, available at http://www.asbog.org/Documents/FG%20%20PG%20Exam%20Statistics%20(Mar%202008%20-%20Oct%202013).pdf (last visited January 16, 2014).
[21] National Association of State Boards of Geology, *The Professional Geologist Model Licensure Law*, Section 22 at p. 29 (Dec 2005), available at http://www.asbog.org/Documents/Model%20Law%2012-2-05.pdf (last visited January 20, 2014).
[22] *See supra* note 9.

hours necessary to obtain licensure by examination be at the third or fourth collegiate year or graduate level coursework.

*Work Experience Requirements Updated:*

The bill amends s. 492.105(1)(e), F.S., by lowering the work experience requirement from 7 years to 5 "verified" years total and removes the ability to substitute time obtaining a graduate or undergraduate education, researching, or teaching for the required work experience. Lowering the experience requirement from 7 years to 5 years but removing the ability to obtain that experience through education results in no actual net change in the experience requirements. Currently applicants must obtain 5 years of experience following graduation with a degree in geology or related science from an accredited college or university. The bill will still require 5 years of experience following graduation with a degree in geology or related science from an accredited college or university.

The bill clarifies that work performed to meet the 5 years of work experience requirement must be verified geological work which includes one of the following:

- A minimum of 3 years of professional geological work under a licensed geologist or professional engineer; or
- A minimum of 5 accumulative years in responsible charge of geological work as determined by the Board.

The bill permits the Board to set parameters for the work that qualifies as responsible charge of geological work. This language clarifies that applicants can obtain the experience under the guidance of a licensed professional geologist or engineer. If the applicant is from a state that does not license geologists, he or she can still qualify for licensure if he or she can show experience in the geological field by being "accountable for and exercis[ing] direct control and personal supervision of oneself's and others' geological work with initiative, skill, and independent scientific judgment."[23] Finally, the bill language amends s. 492.105(e), F.S., to remove the applicant's ability to demonstrate experience by his or her having performed work in a "responsible position as determined by the Board." The effect of this removal is minimal, as the definition for "responsible position"[24] is nearly identical to that of "responsible charge" and is applied in the same manner by the Board.

Geologists-in-Training

The bill creates s. 492.1051, F.S., creating geologist-in-training registration and requirements. The geologist-in-training registration is not mandatory for all individuals wishing to eventually become licensed as a professional geologist. Rather, the creation of the geologist-in-training registration permits an applicant who chooses to, to sit for the fundamentals of geology part of the examination prior to obtaining the 5 years required work experience. The bill requires the Department to administer the fundamentals of geology part of the licensure examination for any applicant for registration as a geologist-in-training who the Board certifies:

- Has completed an application form and remitted an application fee and an examination fee.
- Has not committed an act or offense in any jurisdiction which constitutes grounds for disciplining a professional geologist.
- Has successfully completed at least 30 semester hours or 45 quarter hours of geological coursework at an accredited college or university, and, if still enrolled, has provided a letter of good standing from the college or university.

[23] Rule 61G16-1.009(1), F.A.C.
[24] Rule 61G16-1.009(2), F.A.C.

The Department is required to register all applicants who the Board certifies has passed the fundamentals of geology part of the licensure examination. Upon graduation from the college or university and completion of the professional experience set forth in s. 492.105, F.S., the geologist-in-training may then apply to take the examination for licensure as a professional geologist. However, the geologist-in-training will not be required to retake the part of the examination that tests on the fundamentals of geology. By splitting the examination into multiple parts and permitting applicants to take the part that tests on the fundamentals of geology test upon completion of education requirements, the passage rate may improve, providing applicants a better chance of becoming licensed as a professional geologist the first time they take the additional practice of geology part of the examination.

B. SECTION DIRECTORY:

**Section 1** amends s. 492.104(2), F.S., to permit the Board to apportion the examination fee for each part of a multi-part examination, and to permit the examination fee to be refunded in whole or in part if the applicant is found ineligible to take any part of the examination.

**Section 2** amends s. 492.105, F.S., to add fundamentals to required testing standards; permits the written licensure examination to be a multi-part examination; allows applicants for examination to meet educational requirements by obtaining 30 semester hours or 45 quarter hours of geological coursework; changes the experience requirement from 7 years of professional experience to 5 years of verified professional experience; clarifies that applicants may meet the experience requirements by having 5 accumulative years of verified geological work experience in responsible charge of geological work as determined by the Board; removes the ability to use time spent completing undergraduate studies, graduate studies, research, or teaching towards professional experience requirements; removes the requirement for applicants to demonstrate their ability by having performed work in a responsible position as determined by the Board.

**Section 3** creates s. 492.1051, F.S., to provide for the registration of geologists-in-training, requires applicants for registration as a geologist-in-training to apply to take a part of the examination that tests the fundamentals of geology; requires the Department to examine any applicant who the Board certifies has completed the application form, paid the application and examination fee, has not committed an offense in any jurisdiction that constitutes grounds for disciplining a professional geologist, and has completed 30 semester hours or 45 quarter hours of geological coursework at an accredited college or university; requires the Department to register any applicant that the Board has certified has passed the fundamentals of geology part of the licensure examination as a geologist-in-training; requires that a geologist-in-training wishing to become licensed as a professional geologist apply to take the licensure examination, but does not have to retake the fundamentals of geology part of the examination.

**Section 4** provides an effective date of July1, 2014.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Revenues are minimal but indeterminate based on the number of individuals applying for the geologist-in-training registration and is related to the additional application fee that must be paid prior to being certified to take the fundamentals of geology examination.

2. Expenditures:

   The Department of Business and Professional Regulation indicates that it will have minimal, but indeterminate costs that can be absorbed with existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Geologist-in training applicants will be required to pay an application and examination fee of an estimated $225.

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:

Yes. Rule 61G16-1.009, F.A.C. will need to be amended to remove the term "Responsible position" as the bill removes that language from the statute.

Furthermore, the bill adds an application fee for registration as a geologist-in-training. The Board will need to update Rule 61G16-3.001, F.A.C., to adopt this new application fee.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to professional geology; amending s. 492.104, F.S.; providing for apportionment of examination fees; amending s. 492.105, F.S.; revising examination requirements for professional geologists; creating s. 492.1051, F.S.; providing requirements for registration as a geologist-in-training; requiring geologist-in-training applicants to successfully complete the fundamentals of geology part of the licensure examination; requiring an application fee and a refundable examination fee; requiring the Department of Business and Professional Regulation to submit each completed application to the Board of Professional Geologists for certification; setting forth the criteria the board may use to certify applicants; requiring the department to register each person as a geologist-in-training whom the board certifies has successfully completed the fundamentals part of the geology examination; exempting registered geologist-in-training seeking licensure as a professional geologist from retaking the fundamentals of geology part of the examination; providing an effective date.

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

Section 1. Subsection (2) of section 492.104, Florida Statutes, is amended to read:

492.104 Rulemaking authority.—The Board of Professional Geologists has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this chapter. Every licensee shall be governed and controlled by this chapter and the rules adopted by the board. The board is authorized to set, by rule, fees for application, examination, certificate of authorization, late renewal, initial licensure, and license renewal. These fees should not exceed the cost of implementing the application, examination, initial licensure, and license renewal or other administrative process and shall be established as follows:

(2) The examination fee shall not exceed $250 and the fee may be apportioned to each part of a multi-part examination. The examination fee shall be refundable in whole or part if the applicant is found to be ineligible to take any part of the licensure examination.

Section 2. Paragraphs (d) and (e) of subsection (1) of section 492.105, Florida Statutes, are amended to read:

492.105 Licensure by examination; requirements; fees.—

(1) Any person desiring to be licensed as a professional geologist shall apply to the department to take the licensure examination. The written licensure examination shall be designed to test an applicant's qualifications to practice professional geology, and shall include such subjects as will tend to ascertain the applicant's knowledge of the fundamentals, theory,

and the practice of professional geology and may include such subjects as are taught in curricula of accredited colleges and universities. The written licensure examination may be a multi-part examination. The department shall examine each applicant who the board certifies:

(d) Has fulfilled ~~Fulfills~~ the following educational requirements at a college or university, the geological curricula of which meet the criteria established by an accrediting agency recognized by the United States Department of Education:

1. Graduation from such college or university with a major in geology or other related science acceptable to the board; and

2. Satisfactory completion of at least 30 semester hours or 45 quarter hours of geological coursework ~~courses, 24 of which must be at the third or fourth year or graduate level~~.

(e) Has at least 5 ~~7~~ years of verified professional geological work experience, which includes ~~shall include~~ a minimum of 3 years of professional geological work under the supervision of a licensed or qualified geologist or professional engineer registered under chapter 471 as qualified in the field or discipline of professional engineering work performed ~~involved~~; or has ~~have~~ a minimum of 5 accumulative years of verified geological work ~~years'~~ experience in responsible charge of geological work as determined by the board. ~~The following criteria of education and experience qualify, as specified, toward accumulation of the required 7 years of professional~~

~~geological work:~~

~~1. Each year of undergraduate study in the geological sciences shall count as 1/2 year of the experience requirement, up to a maximum of 2 years, and each year of graduate study shall count as 1 year of the experience requirement.~~

~~2. Credit for undergraduate study, graduate study, and graduate courses, individually or in any combination thereof, shall in no case exceed a total of 2 years toward meeting the requirements for at least 7 years of professional geological work.~~

~~3. Full-time teaching or research in the geological sciences at the college level shall be credited year for year toward meeting the requirement in this category.~~

~~4. The ability of the applicant shall have been demonstrated by his or her having performed the work in a responsible position as determined by the board.~~

Section 3. Section 492.1051, Florida Statutes, is created to read:

492.1051 Registered geologist-in-training; requirements.—

(1) A person desiring to register as a geologist-in-training shall apply to the department to take a discrete part of the examination required for licensure as a professional geologist in this state. This discrete part shall cover the fundamentals of geology. The department shall examine each applicant who the board certifies:

(a) Has completed the application form and remitted a

nonrefundable application fee and an examination fee that is refundable if the applicant is found to be ineligible to take the examination.

(b) Has not committed an act or offense in any jurisdiction which constitutes grounds for disciplining a professional geologist licensed under this chapter; and

(c) Has successfully completed at least 30 semester hours or 45 quarter hours of geological coursework at a college or university, the geological curricula of which meet the criteria established by an accrediting agency recognized by the United States Department of Education and, if still enrolled, has provided a letter of good academic standing from the college or university.

(2) The department shall register as a geologist-in-training each applicant who the board certifies has passed the fundamentals of geology part of the licensure examination.

(3) A registered geologist-in-training desiring to be licensed as a professional geologist shall apply to the department to take the licensure examination as prescribed in s. 492.105(1), but is not required to retake the fundamentals of geology part of the licensure examination.

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

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB BPRS 14-01 Department of Agriculture and Consumer Services
**SPONSOR(S):** Business & Professional Regulation Subcommittee
**TIED BILLS:** **IDEN./SIM. BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| Orig. Comm.: Business & Professional Regulation Subcommittee | | Butler BSB | Luczynski MJ |

## SUMMARY ANALYSIS

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

Within the Division of Licensing the bill:

- Removes the requirement of a written note when a legible set of fingerprints cannot be obtained after two unsuccessful attempts by the Federal Bureau of Investigation or the Florida Department of Law Enforcement before DACS may proceed with a name based criminal history check;
- Clarifies the proper timing requirements for licensing and recertification of Class "G" statewide firearms licensees;
- Allows licensed Class "G" licensed security officers to carry .40 caliber and .45 caliber automatic colt pistol (ACP) handguns while on duty;
- Allows security officers performing bodyguard or executive protection services in plainclothes to carry their firearm concealed while on-duty;
- Allows DACS to publish notice in Leon County and on their website when serving an administrative complaint on a concealed weapons licensee after personal service is ineffective and the address for the license is outside of Florida;
- Grants the Bureau of License Issuance within the Division of Licensing access to sealed criminal histories for applicants of a concealed weapon license to determine eligibility.

Within the Division of Consumer Services the bill:

- Unifies the security bond requirements of Health Studios, Telemarketers, Pawnbrokers, and Sellers of Travel to provide more efficient administration of DACS several bond security programs, and authorizes DACS to recover legal fees if a surety refuses a lawful demand for payment;
- Repeals DACS regulations on Commercial Weight-Loss Practices and Dance Studios;
- Redefines "telephone solicitor" to include solicitors making outbound calls to solicit charitable donations;
- Defines "novelty payment methods," which are payment methods that do not provide systematic monitoring and fraud protections for consumers, and forbids telemarketers from accepting "novelty payment methods" as a form of payment to protect consumers;
- Amends brake fluid and antifreeze registrations to expire one year after registration to distribute renewals throughout the year, instead of all registrations expiring on June 30 of each year;
- Requires DACS to enact quality and labeling standards by rule for motor oils;
- Clarifies statutory inconsistencies in DACS inspection authority relating to gasoline and oil inspections;
- Clarifies that DACS approved scales must be used in all pawnbroker transactions involving the weighing of precious metals, and increases penalties for noncompliance.

The bill is not anticipated to have a significant fiscal impact on state funds and no impact on local government. The bill has an effective date of July 1, 2014.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

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 several regulatory and consumer activities under the jurisdiction of DACS and, specifically, the Division of Consumer Services and Division of Licensing. See below, each proposed change is divided by subject, and each subject is followed by a listing of the applicable sections of the bill.

B. SECTION DIRECTORY:

The following includes the Current Situation and Effect of the Bill.

**Division of Licensing**

Private Investigative, Private Security, and Repossession Services, Chapter 493, F.S.
Chapter 493, F.S., governs Private Investigators, Private Security, and Repossession Services within Florida, and DACS licenses both the industry and individuals operating within the state. DACS regulates many facets of the private security industry, and the amendments clarify language related to DACS's regulatory function.

*Application for Private Investigation, Private Security, or Repossession License, Section 493.6108, F.S.*

Currently, when an applicant applies for any license issued by DACS pursuant to ch. 493, F.S., the applicant must submit a legible set of fingerprints that DACS uses as part of the applicant's criminal history check. When an applicant cannot supply a legible set of fingerprints after multiple attempts, DACS performs a name-based criminal history check.

In order for the Department to proceed with a name-based check, a written statement from a fingerprint technician or a licensed physician affirming that the fingerprints are the best that could be provided or that a physical condition prevents submission of a legible set of prints must be supplied by the applicant.

This bill would strike the requirement that an applicant submit a written statement signed by a fingerprint technician or a licensed physician, if an applicant is unsuccessful in providing legible fingerprints. The written statement did not provide the Department with any additional pertinent information toward issuing a license and delayed the approval process.[1]

[1] Florida Department of Agriculture and Consumer Services, Agency Analysis of Proposed 2014 Department Bill, p. 2 (Oct. 18, 2013) (on file with the Business & Professional Regulation Subcommittee).

This bill would allow the Department to immediately begin a name based criminal history record check after two unsuccessful attempts to obtain legible fingerprints.

**Section 1** amends s. 493.6108, F.S.

*Security Officers Firearm Recertification, Section 493.6113, F.S.*

HB 7023 (2013)[2] amended the statutory provisions providing for submission of proof of firearms recertification training. After the implementation of HB 7023, members of the security industry informed DACS that the language as written has created confusion of exactly when this recertification training must be completed and submitted.[3] Security officers are unsure of exactly when the firearms recertification training must take place, and when it must be delivered to DACS.

The bill amends s. 493.6113, F.S., and clarifies that a Class "G" licensee must complete 28 hours of training before they are initially licensed by DACS. After initial licensure, if a licensee fails to complete and submit 4 hours of firearm recertification before the end of each year of the license, the license will be suspended. Before a suspended license may be reinstated, the licensee must re-complete 28 hours of training, similar to the amount required before licensure.

This section of the bill makes no substantive changes. The amending language should clarify the original changes of last year's bill to better inform the security industry and Class "G" license holders of their responsibilities.

**Section 2** amends s. 493.6113, F.S.

*Security Officers, Caliber of Firearms, Section 493.6115, F.S.*

Class "G" statewide firearm licensees are currently authorized to carry a .38 caliber revolver, .38 or 9mm semiautomatic pistol, or a .357 caliber revolver with .38 caliber ammunition while performing their duties.[4]

A number of security agencies have requested and been granted waivers to allow them to carry a .40 caliber handgun or a .45 caliber automatic colt pistol (ACP) handgun. The Department has granted 74 such waivers for security agencies guarding critical infrastructure, such as deep-water ports and power plants.[5] In at least one case, the waiver request listed the primary reason for the waiver request was because all law enforcement in the area carried .40 caliber semi-automatic pistols, and interchangeability of ammunition could be crucial in an emergency situation.[6]

This bill increases the caliber of handguns that security officers licensed under ch. 493, F.S., may use while performing their duties to include .40 caliber and .45 caliber ACP handguns. The currently authorized caliber pistols were the standard among law enforcement agencies, but in the past 10-15 years many agencies have moved to either .40 caliber or .45 caliber ACP handguns.[7]

The bill brings the caliber of firearms used by security officers licensed to carry firearms by the Department into alignment with the type and caliber of firearms currently considered standard and generally carried by law enforcement agencies statewide.

**Section 3** amends s. 493.6115, F.S.

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[2] Chapter 2013-251, Laws of Fla.
[3] *Id.* at 3.
[4] Section 493.6115(6), F.S.
[5] Florida Department of Agriculture and Consumer Services, Agency Analysis of Proposed 2014 Department Bill, p. 3 (Oct. 18, 2013) (on file with the Business & Professional Regulation Subcommittee).
[6] *Id.*
[7] *Id.*

*Security Officer Uniforms, Section 493.6305, F.S.*

Section 493.6305, F.S., governs uniforms worn by security officers. Security officers currently may carry their firearm concealed while wearing plainclothes only when performing limited or temporary, special assignment duties. In practice, security officers may be required to be as incognito as possible during certain assignments, such as when performing bodyguard or executive protection services, and the current law would not allow a security officer to carry their firearm concealed, while wearing plainclothes, during these assignments.

To perform bodyguard and executive protection services in plainclothes currently, either a security officer must not carry their firearm concealed, or he or she must obtain a separate private investigator license in order to carry a concealed weapon while on duty. This additional license may not be desirable or obtainable by all current security officers due to experience requirements, and decreases employment opportunities for Class "D" security officers with a Class "G" statewide firearm license.

The bill will allow Class "D" security officers who also hold a Class "G" statewide firearms license to carry a concealed firearm while performing bodyguard or executive protection duties. The amendments will alleviate the requirement to obtain a separate private investigative license for security officers who only seek to provide bodyguard services.

**Section 4** amends s. 493.6305, F.S.

Concealed Weapon License, Chapters 570 and 943, F.S.

*Service of Process for an Administrative Complaint Regarding a Concealed Weapon License, Section 570.07, F.S.*

In 2012, s. 120.60(5) was amended to remove the requirement that should an agency attempting to revoke or withdraw a license, or enter a final order and personal service is ineffective, the agency shall publish notice in a newspaper of general circulation in Leon County if the individual has an address in some other state than this state or a foreign jurisdiction. This previous amendment was intended to remove a requirement of law and lower agency expenditures on publication by not requiring publication in Leon County. Because DACS has no alternative statutory guidance to provide reasonable notice, the Division of Licensing's publication costs have risen as a result.

Currently, for the revocation or withdrawal of a license, s. 120.60(5), F.S., requires either personal service or service through certified mail. If this service is ineffective, or the certified letter is returned undeliverable, the agency must publish notice in a newspaper published in the county of the licensee's last known address, or in a newspaper of general publication in the county that the licensee current resides.

DACS was able to reduce its cost of publication when publishing notice in Leon County for out of state licensees. Following last year's amendments, DACS, and specifically the Division of Licensing, is now required to research and locate an out of state newspaper that fits the legislative requirements and contract with that paper to publish their notice.

The amendment of s. 120.60(5), F.S., has increased DACS's publication costs to $223,000 in fiscal year 2012-2013.[8] This represents an increase of $185,000 from the publication costs of 2011-2012 of $38,000.[9] DACS also has spent considerable efforts to locate cost efficient publications throughout the United States that also adhere to statutory guidance of s. 120.60(5), F.S.

[8] Florida Department of Agriculture and Consumer Services, Agency Analysis of Proposed 2014 Department Bill, p. 2 (Oct. 18, 2013) (on file with the Business & Professional Regulation Subcommittee).
[9] *Id.*

The bill amends s. 570.07, F.S., allowing the Division of Licensing to attempt service of administrative complaints through regular mail and e-mail, in addition to certified mail, and to call the licensee's filed phone number, if available. If those methods of service prove ineffective, the bill would allow the Division to publish notice in Leon County for out-of-state addresses and must additionally publish notice on the front page of the DACS website. These provisions will meet the constitutional and statutorily mandated requirements to afford a licensee reasonable notice and should greatly reduce the publication costs expended by the Division of Licensing.

**Section 18** amends s. 570.07, F.S.

*Access to Sealed Court Records for Concealed Weapon License Applications, Section 943.059, F.S.*

To purchase a firearm in Florida, a person must be at least 18 years old, not be a convicted felon, have no history of mental illness, and no history of drug or alcohol abuse. When visiting a licensed firearms dealer to purchase a gun, a person is required to fill out a form prepared by the Florida Department of Law Enforcement (FDLE) and submit to a criminal background check, as per s. 790.065, F.S. In addition to submitting to a criminal history check, when purchasing a handgun, a person must wait 72 hours before taking possession of the handgun, unless the purchaser is trading in a handgun he or she currently owns.

If a person holds a concealed weapon license, issued by the Division of Licensing within DACS pursuant to s. 790.06, F.S., when purchasing a firearm from a licensed dealer, the dealer is not required to perform the FDLE criminal history check, and when purchasing a handgun there is no 72 hour waiting period before a purchaser may take possession.

When the Division of Licensing is examining an applicant for a concealed weapon license, the Division may reject an application if the applicant has a disqualifying criminal record. Commission of a felony pursuant to ss. 790.23 and 790.065(2)(a)(1), F.S., disqualifies a person from purchasing a firearm, regardless of whether that felony is sealed or unsealed.

Section 943.059(4)(a)(7), F.S., allows FDLE to open a sealed criminal history to determine the purchaser's eligibility during his or her criminal history check. Currently, the Division of Licensing may not open a sealed criminal history during the criminal history check to determine the eligibility of a person to obtain a concealed weapon license.

The language of s. 943.059(4), F.S., currently does not include an exemption for the Division of Licensing allowing it to consider sealed criminal history information during the criminal history check pursuant to s. 709.06, F.S., when determining a purchaser's eligibility to obtain a concealed weapon license. This has created a situation where a person may be able to obtain a concealed weapon license, despite having a disqualifying criminal record because the Division of Licensing cannot consider the contents of a sealed criminal history. Thus, this inconsistency could allow a person with a disqualifying criminal record in a sealed criminal history to obtain a concealed weapon license and to purchase a firearm from a licensed dealer.

This bill corrects the inconsistency that exists between when a person is purchasing a firearm from a licensed dealer and his or her criminal records may be unsealed for FDLE, and when a person is applying for a concealed weapon license and his or her criminal records may not be unsealed for the Division of Licensing.

This bill revises s. 943.059, F.S., to include the Bureau of License Issuance within the Division of Licensing in the list of agencies that may open a sealed criminal history for the purposes of determining eligibility of an applicant for a concealed weapon license, under s. 709.06 F.S.

**Section 19** amends s. 943.059, F.S.

## Division of Consumer Services

Bond Security Requirements of Health Studios, Telemarketers, Pawnbrokers and Sellers of Travel, Chapters 501, 539 and 559, F.S.

The Division of Consumer Services regulates several industries that have a security bond requirement. The businesses are required to keep a bond, or other form of security, on file with the Department as a form of security to satisfy possible consumer complaints.

The bill contains several revisions to the existing bond security requirements of Health Studios, Telemarketers, Pawnbrokers, and Sellers of Travel. The revisions are mostly technical in nature, with a few substantive changes, to unify the requirements of the Department and each industry to be as similar as possible. Each section was initially enacted separately and created inconsistencies in the administration of the bond programs.

The bill amends the language in several sections to:

- Require bond maintenance in accordance with the Department's regulations;
- Clarify that liability for injuries against the bond may be determined either by administrative proceeding by the Department or through a civil action in a court of competent jurisdiction;
- Clarify that claims against the bond may only be paid by order of the Department in an administrative proceeding;
- Clarify the timing of when a claim for an injury must be made;
- Allow the Department to recover legal fees should the surety fail to comply with a lawful demand of the Department for payment.

The amendments will permit the Department to administer its several bond security programs more efficiently and reliably.

**Section 5** amends s. 501.016, F.S., (relating to Health Studios), **Section 9** amends s. 501.611, F.S. (relating to Telemarketers), **Section 16** amends 539.001, F.S. (relating to Pawnbrokers), and **Section 17** amends s. 559.929, F.S., (relating to Sellers of Travel).

Repeal of Commercial Weight-Loss Practices and Dance Studios Acts, Chapter 501, F.S.

*Repeal of the Commercial Weight-Loss Practices Act, Sections 501.057 – 501.0583, F.S.*

Sections 501.057, 501.0571, 501.0573, 501.0575, 501.0577, 501.0579, 501.0581, and 501.0583, F.S., are the Commercial Weight-Loss Practices Act which regulates weight-loss providers. The Act requires providers to give customers and prospective customers written itemized statements on the fixed and estimated costs of the programs, provide a copy of the "Weight-Loss Consumer Bill of Rights", and to disclose information about the program and provider.

DACS has not received any complaints related to this act in recent years and has no nexus with the industry.[10] The Department's regulations cover some administrative aspects of the providers business, but the majority of the regulation for this industry is under the jurisdiction of the Agency for Health Care Administration (AHCA). AHCA regulates dietitian and nutritionist practices of businesses in Florida, including those provided by the commercial weight-loss industry.

This bill repeals the Commercial Weight-Loss Practices Act which DACS has determined no longer serves an appropriate regulatory purpose.

[10] Florida Department of Agriculture and Consumer Services, Agency Analysis of Proposed 2014 Department Bill p. 4 (Oct. 18, 2013) (on file with the Business & Professional Regulation Subcommittee).

**Section 6** repeals ss. 501.057, 501.0571, 501.0573, 501.0575, 50.0577, 501.0579, 501.0581, and 501.0583, F.S.

*Repeal of the Dance Studio Act, Section 501.143, F.S.*

The Dance Studio Act, s. 501.143, F.S., requires each ballroom dance studio owner to register with the Department and post a security bond with the Department if the studio requires installment contracts or advance payment greater than $250. The Department has the authority to collect registration fees and impose penalties for non-compliance.

Ballroom dance studios are currently the only studios regulated by DACS. During the last three fiscal years, the Department has received 23 complaints and resolved them to recover $23,025 for consumers.[11] This recovery was made under the Department's authority to conduct informal mediation, and not through the bond security program. There has not been a bond payout during the last three years.

The bill repeals s. 501.143, F.S., removing the requirement for ballroom dance studios to register with the Department. This repeal completely deregulates the industry in Florida. DACS will continue to handle complaints through its non-regulated complaint and mediation section.

**Section 6** repeals s. 501.143, F.S.

Telephone Solicitors and Telemarketers, Chapter 501, F.S.

*Telephone Solicitors, Section 501.059, F.S.*

Section 501.059, F.S., was amended last year to require telephone solicitors not initiate an outbound call to a consumer who has previously communicated he or she did not want to be called for charitable donations. However, the term "telephone solicitor", which is the party that is restricted from making outbound calls including those calls for charitable solicitations, is currently not defined to include a solicitor who makes only outbound calls for the purpose of charitable solicitations.

The bill amends the definition of "telephone solicitor" to clarify that a "telephone solicitor" includes those persons seeking charitable contributions on behalf of a charitable organization. This change should help to prevent these charitable organizations from evading Florida's Do Not Call requirements.

**Section 7** amends s. 501.059, F.S.

*Outlawing Telemarketers Using Novelty Payment Methods, Section 501.603, F.S.*

Traditionally, consumers have used several types of payment methods when purchasing items either over the phone from telemarketers, or online. The conventional payment methods include credit and debit cards, or other electronic fund transfer methods that use banks or other networks that systematically monitor transactions to detect fraud.

Novelty payment methods are payment methods that do not have these types of systematic monitoring and includes methods such as remotely created checks, remotely created payment orders, cash-to-cash money transfers (such as Western Union) and cash reload mechanisms (such as MoneyPak or ReloadIt). Novelty payment methods are not systematically monitored, have little to no consumer protection in the case of fraud or theft, and are used frequently in scams and other fraudulent activity.

The Federal Trade Commission (FTC) has found that "unscrupulous telemarketers rely on these payment methods because they are largely unmonitored and provide consumers with fewer protections

[11] *Id.* at 5.

against fraud."[12] The FTC's notice of proposed rulemaking cites that these changes are required to strengthen the FTC's Telemarketing Sales Rule protections, and prevent deceptive telemarketing from harming unaware consumers.[13]

This bill will ban such novelty payment methods as they are used today in telemarketing. Additionally, the bill will give the Department rulemaking authority to define new and developing novelty payment methods and to proactively limit or ban them to protect consumers. These changes will reinforce and compliment the FTC's proposed protections, and further protect consumers in Florida.

**Section 8** amends ss. 501.603, F.S., and **Section 10** amends s. 501.616, F.S.

Labeling and Registration Requirements for Motor Vehicle Products, Chapters 501, 525 and 526, F.S.

*Registration Requirements for Antifreeze and Brake Fluid, Chapters 501 and 526, F.S.*

Currently the Division of Consumer Services requires several products that are distributed within Florida to be registered with the Division before they may be sold to the public. This registration must meet guidelines established by statute and conform to the requirements of the Division of Consumer Services. Two such products that are regulated by the Division are antifreeze under s. 501.913, F.S., and brake fluid under ss. 526.50 and 526.51, F.S.

Under s. 501.913, F.S., each brand of antifreeze that is distributed within Florida must be registered with the Department no later than July 1 of each year. The registration expires each year on June 30. Section 120.60, F.S., requires an application for registration to be approved or denied within 90 days after receipt of a complete application. According to the Department's analysis, during Fiscal Year 2010-2011, applications have risen 15 percent, and the Bureau of Standards who handles these applications has had their staff reduced in size.[14]

Brake fluid registrations, pursuant to ss. 526.50 and 526.51, F.S., expire each year on June 30. The Department has noticed a similar upward trend in application submissions, with 30 percent more applications filed during Fiscal Year 2010-2011 than during the previous year.[15]

The requirements of these sections create work flow inefficiency, as the Department must process a large amount of applications during the same time of year, instead of distributing applications throughout the year. The Department has requested the statutory requirements allow registration during any time of the year, and for that registration to expire after one year.

The Department believes that distributing the application cycles throughout the year would help to more efficiently address the increasing workload of these two registrations with existing staff.

The bill amend ss. 501.913, 526.50, and 526.51, F.S., to allow registrations of antifreeze and brake fluid to expire one year from the date the registration is issued, instead of on June 30 of each year. New applicants would further have the benefit of a full year of registration before having to renew as the Department does not have a provision for pro-rating the registration fee for new applicants for registrations received after July 1.

**Section 11** amends s. 501.913, F.S., (relating to antifreeze), and **Sections 14 and 15** amend ss. 526.50 and 526.51, F.S. (relating to brake fluid).

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[12] Press Release, Federal Trade Commission, FTC Seeks Public Comment on Proposal to Ban Payment Methods Favored in Fraudulent Telemarketing Transactions (May 21, 2013) (*available at* http://www.ftc.gov/news-events/press-releases/2013/05/ftc-seeks-public-comment-proposal-ban-payment-methods-favored) (last visited Jan. 24, 2014).
[13] *Id.*
[14] Florida Department of Agriculture and Consumer Services, Agency Analysis of Proposed 2014 Department Bill p. 6 (Oct. 18, 2013) (on file with the Business & Professional Regulation Subcommittee).
[15] Id. at 6–7.

*Labeling Requirements for Liquid Fuel, Lubricating Oil, and Greases, Section 526.015, F.S.*

Under Chapter 526, F.S., a person is precluded from storing, selling, offering, or exposing for sale any liquid fuels, lubricating oils, greases, or other similar products in any manner whatsoever which may deceive the purchaser as to the nature, quality, or quantity of the products offered for sale. A previously used product that has been reclaimed, recleaned, or reconditioned is required to be clearly labeled as such. Any product that does not meet these labeling requirements as provided in ch. 526, F.S., is declared illegal, and shall be placed under a written stop-sale order.

The Society of Automotive Engineers (SAE) establishes national labeling and quality standards for liquid fuel, lubricating oil, and grease; however, the Department lacks statutory authority to implement rules to include these or other standards the Department believes are necessary to protect the public.

This bill requires motor oil products to meet labeling and quality standards established by rule of the Department before being sold in this state.

**Section 13** creates s. 526.015, F.S.

*Inspection Authority of the Department for Gasoline and Oil, Section 525.16, F.S.*

DACS regularly conducts inspections of petroleum distribution systems and analyzes samples to protect consumers. When a violation is found, the Department will issue a stop-sale order to prevent substandard petroleum from effecting consumers. The Department issued 516 stop-sale orders during the 2010-2011 Fiscal Year.[16]

The Department also regularly conducts inspections of the 9,025 retail facilities in Florida. In Fiscal Year 2010-2011, DACS issued citations for 4,946 improper calibration violations and 66,321 poorly maintained pump violations.[17] DACS also investigated 3,306 petroleum-related and pricing consumer complaints received through their consumer hotline phone number from the Department's inspection decal on petroleum dispensers.[18]

Section 525.16(1)(a), F.S., uses the terms "violation" and "offender" when determining penalties for first and successive violations by offenders. Section 525.16(1)(b), F.S., uses the term "stop-sale order" in conjunction with "violation" for determining when three years have elapsed, with no new violation, for purposes of considering a person a first-time offender for imposition of penalties.

The bill amends s. 525.16(1)(b), F.S., removing the words "stop-sale order" to clarify that persons who commit a violation after a three year period with no new violations are treated as a first-time offender for imposition of penalties.

**Section 12** amends s. 525.16, F.S.

Weights and Measures Used by Pawnbrokers, Section 539.001, F.S.
Pawnbrokers must be licensed by the Department annually and must maintain a net worth of at least $50,000 or file security with the Department. This security may be filed in the form of a bond, a letter of credit, or a certificate of deposit in an amount of $10,000 with DACS. The Department is authorized to collect licensing fees and impose penalties for non-compliance with the law.

When buying and selling precious metals by weight a pawnbroker must use a properly permitted scale, as defined in s. 531.60, F.S. When a precious metal is only being pawned though, several pawnbrokers

[16] *Id.* at 7.
[17] *Id.*
[18] *Id.*

have interpreted the current requirement as only a "descriptor", and because there is no buying or selling of the precious metal, the weight is not being recorded for "commercial purposes."

This ambiguity, and no explicit requirement that pawnbrokers use such a scale in s. 539.001, F.S., for all transactions that involve the weighing of a precious metal, has prevented Department enforcement when a minority of pawnbrokers use unpermitted scales for transactions involving the weight of a precious metal.

The bill amends s. 539.001, F.S., to clarify that all pawnbrokers must use a Department permitted scale, as described in ch. 531, F.S., in every transaction that involves the weighing of a precious metal. Further, this bill increases penalties for violation.

**Section 16** amends s. 539.001, F.S.

## 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:

Pawnbroker: Weights and Measures, s. 539.001, F.S.: The Department estimates there are less than a dozen pawnbrokers who are currently not using permitted scales. These pawnbrokers will incur an annual permit fee. The annual permit fee for one to five retail scales, with 0 to 100 pounds capacity, at one location is $40.[19]

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:

[19] Section 531.62, F.S.; Rule 5F-5.002, F.A.C.

None.

B. RULE-MAKING AUTHORITY:

Novelty Payment Method Rulemaking Authority – The bill provides rulemaking authority to further define novelty payment methods, should new types emerge following the restrictions placed on the currently defined methods.

Motor Oil Guidance – The bill requires the Department establish by rule guidelines and standards required in the labeling of motor oil offered for sale in the State.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Weights and Measures Used by Pawnbrokers, Section 539.001, F.S.:

The current amendments are partially dependent on other amendments in s. 570.400, F.S., to be done in a separate bill. The language here provides sufficient independent authority; however, should that bill not pass the Legislature or be approved by the Governor, such that this bill may be enacted without being dependent upon the other bill.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the Department of Agriculture and Consumer Services; amending s. 493.6108, F.S.; removing the requirement that an applicant for private investigative, private security, and repossession services provide a written statement by a fingerprint technician or licensed physician under certain conditions; amending s. 493.6113, F.S.; requiring licensees to submit proof of recertification training to the Department of Agriculture and Consumer Services; providing that failure to submit proof of firearm recertification training each year will result in license suspension and nonrenewal; amending s. 493.6115, F.S.; revising provisions relating to weapons and firearms that licensees may possess while performing authorized duties; amending s. 493.6305, F.S.; providing that private security licensees meeting certain requirements may carry a concealed firearm in nonuniform; amending s. 501.016, F.S.; providing criteria for pursuing claims against the bond in determination of liability; providing that claims against the bond shall be filed upon a form affidavit adopted by rule of the department; providing that such claims shall not exceed the determined liability for related injuries; providing that any consumer filing a claim against the bond shall provide

written notification to the department within 120 days of certain conditions; providing that any indebtedness by the department shall be paid by the health studio to the department within 30 days of the Order being entered, for distribution to the consumer; providing that the department may collect payment from the surety if the health studio is unable to comply; providing that the department may file an action in Circuit Court to recover payment; providing that the department shall be allowed all court costs incurred therein and also reasonable attorney fees to be fixed and collected as a part of the costs of the suit; repealing ss. 501.057, 501.0571, 501.0573, 501.0575, 501.0577, 501.0579, 501.0581, 501.0583, F.S.; relating to the Commercial Weight Loss Practices Act and s. 501.143, F.S.; relating to the Dance Studio Act; amending s. 501.059, F.S.; providing that a person may not contact a donor or potential donor who has previously communicated to that person that he or she does not wish to receive an outbound telephone call; amending s. 501.603, F.S.; defining novelty payment as any payment method that does not provide systematic monitoring to detect and deter fraud; providing definitions for such payment methods; amending s. 501.611, F.S.; revising requirements related to security under The Florida Telemarketing Act;

providing that claims against the bond shall be filed upon a form affidavit adopted by rule of the department; providing that any consumer filing a claim against the bond shall provide written notification to the department within 120 days of certain conditions; providing that any indebtedness by the department shall be paid by the telemarketer to the department within 30 days of the Order being entered, for distribution to the consumer; providing that the department may collect payment from the surety if the telemarketer is unable to comply; providing that the department may file an action in Circuit Court to recover payment; providing that the department shall be allowed all court costs incurred therein and also reasonable attorney fees to be fixed and collected as a part of the costs of the suit; amending s. 501.616, F.S.; specifying that it is unlawful for any commercial telephone seller or salesperson to accept a novelty payment; providing specific novelty payments; s. 501.913, F.S.; revising requirements related to antifreeze registration certification; amending s. 525.16, F.S.; revising requirements related to gasoline and oil inspection; creating s. 526.015, F.S.; revising lubricating oil standards and labeling requirements; providing that it is unlawful to sell or distribute lubricating oil which fail to meet any

standard or labeling requirements adopted by rule of the department; requiring the department to place a stop sale order for failure to comply with department rule; providing requirements to issue a release order; amending s. 526.50, F.S.; deleting reference to permit year; amending s. 526.51, F.S.; revising requirements related to the application for registration of brake fluid; amending s. 539.001, F.S.; revising requirements related to eligibility for licensure under The Florida Pawnbroking Act; providing that claims against the bond shall be filed upon a form affidavit adopted by rule of the department; providing that any consumer filing a claim against the bond shall provide written notification to the department within 120 days of certain conditions; providing that any indebtedness by the department shall be paid by the pawnbroker to the department within 30 days of the Order being entered, for distribution to the consumer; providing that the department may collect payment from the surety if the pawnbroker is unable to comply; providing that the department may file an action in Circuit Court to recover payment; providing that the department shall be allowed all court costs incurred therein and also reasonable attorney fees to be fixed and collected as a part of the costs of the suit; revising administrative fines and civil penalties;

requiring the front of a pawnbroker transaction form to stipulate that weight must be obtained from a device properly approved by the department; amending s. 559.929, F.S; revising security requirements for Sellers of Travel; providing that claims against the bond shall be filed upon a form affidavit adopted by rule of the department; providing that any consumer filing a claim against the bond shall provide written notification to the department within 120 days of certain conditions; providing that any indebtedness by the department shall be paid by the pawnbroker to the department within 30 days of the Order being entered, for distribution to the consumer; providing that the department may collect payment from the surety if the pawnbroker is unable to comply; providing that the department may file an action in Circuit Court to recover payment; providing that the department shall be allowed all court costs incurred therein and also reasonable attorney fees to be fixed and collected as a part of the costs of the suit; amending s. 570.07, F.S.; revising the service requirements for administrative complaints against licensees of the Division of Licensing; providing additional notice requirements if proof of service requirements are not provided to the department; amending s. 943.059, F.S.; revising exceptions related to accessing court-ordered

sealing of criminal history records; providing the Bureau of License Issuance access to such records for use in the determination of an applicant's eligibility to carry a concealed weapon or firearm; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) of section 493.6108, Florida Statutes, is amended to read:

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

(1) Except as otherwise provided, the department must investigate an applicant for a license under this chapter before it may issue the license. The investigation must include:

(a)1. An examination of fingerprint records and police records. If a criminal history record check of any applicant under this chapter is performed by means of fingerprint identification, the time limitations prescribed by s. 120.60(1) shall be tolled during the time the applicant's fingerprints are under review by the Department of Law Enforcement or the United States Department of Justice, Federal Bureau of Investigation.

2. If a legible set of fingerprints, as determined by the Department of Law Enforcement or the Federal Bureau of Investigation, cannot be obtained after two attempts, the Department of Agriculture and Consumer Services may determine

the applicant's eligibility based upon a criminal history record check under the applicant's name conducted by the Department of Law Enforcement ~~if the fingerprints are taken by a law enforcement agency or the department and the applicant submits a written statement signed by the fingerprint technician or a licensed physician stating that there is a physical condition that precludes obtaining a legible set of fingerprints or that the fingerprints taken are the best that can be obtained~~.

Section 2. Paragraph (b) of subsection (3) of section 493.6113, Florida Statutes, is amended to read:

493.6113 Renewal application for licensure.—

(3) Each licensee is responsible for renewing his or her license on or before its expiration by filing with the department an application for renewal accompanied by payment of the prescribed license fee.

(b) Each Class "G" licensee shall additionally submit proof that he or she has received during each year of the license period a minimum of 4 hours of firearms recertification training taught by a Class "K" licensee and has complied with such other health and training requirements which the department shall adopt by rule. Proof of completion of firearms recertification training shall be submitted to the department upon completion of the training. <u>If the licensee fails to complete the required 4 hours of annual training during the first year of the 2-year term of the license, the license shall be automatically suspended. The license holder must complete the</u>

minimum number of hours of range and classroom training required at the time of initial licensure and submit proof of having completed such training to the department before the license will be reinstated. If the licensee fails to complete the required annual 4 hours of training during the second year of the 2-year term of the license, the license holder must complete the minimum number of hours of range and classroom training required at the time of initial licensure and submit proof of having completed such training to the department before the license can be renewed. The department may waive the firearms training requirement if ~~If documentation of completion of the required training is not submitted by the end of the first year of the 2-year term of the license, the individual's license shall be automatically suspended until proof of the required training is submitted to the department. If documentation of completion of the required training is not submitted by the end of the second year of the 2-year term of the license, the license shall not be renewed unless the renewal applicant completes the minimum number of hours of range and classroom training required at the time of initial licensure. The department may waive the firearms training requirement if~~:

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

the licensure period;

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

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

Section 3. Subsection (6) of section 493.6115, Florida Statutes, is amended to read:

493.6115 Weapons and firearms.—

(6) In addition to any other firearm approved by the department, a licensee who has been issued a Class "G" license may carry a .38 caliber revolver; or a .380 caliber or 9 millimeter semiautomatic pistol; or a .357 caliber revolver with .38 caliber ammunition only; or a .40 caliber handgun; or a .45 ACP handgun while performing duties authorized under this chapter. No licensee may carry more than two firearms upon her or his person when performing her or his duties. A licensee may only carry a firearm of the specific type and caliber with which she or he is qualified pursuant to the firearms training referenced in subsection (8) or s. 493.6113(3)(b).

Section 4. Subsection (4) is added to section 493.6305, Florida Statutes, to read:

493.6305 Uniforms, required wear; exceptions.—

(4) Class "D" licensees who are also Class "G" licensees and who are performing bodyguard or executive protection services may carry their authorized firearm concealed while wearing plain clothes as needed to provide contracted service to the client.

Section 5. Section 501.016, Florida Statutes, is amended, to read:

501.016 Health studios; security requirements.—Each health studio that sells contracts for health studio services shall meet the following requirements:

(1) Each health studio shall maintain for each separate business location a bond issued by a surety company admitted to do business in this state. The principal sum of the bond shall be $25,000, and the bond, when required, shall be obtained before a business tax receipt may be issued under chapter 205. Upon issuance of a business tax receipt, the licensing authority shall immediately notify the department of such issuance in a manner established by the department by rule. The bond shall be in favor of the department ~~state~~ for the benefit of any person injured as a result of a violation of ss. 501.012-501.019. Liability for these injuries may be determined in an administrative proceeding of the department or through a civil action in a court of competent jurisdiction. However, claims against the bond or certificate of deposit must only be paid, in amounts not to exceed the determined liability for these

injuries, by order of the department in an administrative proceeding. The aggregate liability of the surety to all persons for all breaches of the conditions of the bonds provided herein shall in no event exceed the amount of the bond. The original surety bond required by this section shall be filed with the department on a form adopted by rule of the department.

(2) In lieu of maintaining the bond required in subsection (1), the health studio may furnish to the department on a form adopted by rule of the department:

(a) An irrevocable letter of credit from any foreign or domestic bank in the amount of $25,000; or

(b) A guaranty agreement that is secured by a certificate of deposit in the amount of $25,000.

(3) Any consumer may file a claim against the bond or other form of security which shall be made in writing to the department within 120 days after an alleged injury has occurred or is discovered to have occurred or judgment has been obtained by a court of competent jurisdiction. The claim shall be filed upon a form affidavit adopted by rule of the department. The proceedings shall be held in accordance with Chapter 120. For proceedings held in accordance with ss. 120.569 and 120.57, the department shall act only as a nominal party.

(4) Any indebtedness determined by Final Order of the department shall be paid by the health studio to the department within 30 days of the Order being entered, for distribution to the consumer. If the health studio fails to make payment within

the 30 days then the department shall make demand upon the surety, which includes an institution issuing a letter of credit or depository on a certificate of deposit. Upon failure of a surety to comply with a demand for payment pursuant to a Final Order, the department may file an action in Circuit Court to recover payment, not to exceed the amount of the bond or other form of security, pursuant to s. 120.69. If the department is successful and the court affirms the department's demand for payment from the surety, the department shall be allowed all court costs incurred therein and also reasonable attorney fees to be fixed and collected as a part of the costs of the suit.

The original letter of credit or certificate of deposit submitted in lieu of the bond shall be filed with the department. The department shall decide whether the security furnished in lieu of bond by the health studio is in compliance with the requirements of this section.

(5) ~~(3)~~ A health studio which sells contracts for future health studio services and which collects direct payment on a monthly basis for those services shall be exempt from the security requirements of subsections (1) and (2) provided that any service fee charged is a reasonable and fair service fee. The number of monthly payments in such a contract shall be equal to the number of months in the contract. The contract shall conform to all the requirements for future health studio

services contracts as specified in ss. 501.012-501.019 and shall specify in the terms of the contract the charges to be assessed for those health studio services.

(6) ~~(4)~~ If the health studio furnishes the department with evidence satisfactory to the department that the aggregate dollar amount of all current outstanding contracts of the health studio is less than $5,000, the department may, at its discretion, reduce the principal amount of the surety bond or other sufficient financial responsibility required in subsections (1) and (2) to a sum of not less than $10,000. However, at any time the aggregate dollar amount of such contracts exceeds $5,000, the health studio shall so notify the department and shall thereupon provide the bond or other documentation as required in subsections (1) and (2). Health studios whose bonds have been reduced must provide the department with an annually updated list of members. Failure to file an annual report will result in the department raising the security requirement to $25,000.

(7) ~~(5)~~ Each health studio shall furnish the department with a copy of the escrow account which would contain all funds received for future consumer services, whether by contract or otherwise, sold prior to the business location's full operation and specify a date certain for opening, if such an escrow account is established.

(8) ~~(6)~~ Subsections (1) and (2) shall not apply to a health studio that has been operating continuously under the same

ownership and control for the most recent 5-year period in compliance with ss. 501.012-501.019 and the rules adopted thereunder and that has not had any civil, criminal, or administrative adjudication against it by any state or federal agency; and that has a satisfactory consumer complaint history. As used in this subsection, the term "satisfactory consumer complaint history" means that no unresolved consumer complaints regarding the health studio are on file with the department. A consumer complaint is unresolved if a health studio has not responded to the department's efforts to mediate the complaint or if there has been an adjudication that the health studio has violated ss. 501.012-501.019 or the rules adopted thereunder. Such exemption extends to all current and future business locations of an exempt health studio.

(9) ~~(7)~~ A business, otherwise defined as a health studio, which sells a single contract of 30 days or less to any member without any option for renewal or any other condition which establishes any right in the member beyond the term of such contract is exempt from the provisions of this section. This exemption shall not apply if the business offers any other health studio contract of whatever duration at any time during or prior to the existence of such single contract of 30 days or less.

(10) ~~(8)~~ Except in the case of a natural disaster or an act of God, a health studio that is exempt from the requirements of subsections (1) and (2), but that has no business locations open

for 14 consecutive days, waives its exemption and is considered to be a new health studio for the purposes of ss. 501.012-501.019.

Section 6. Sections 501.057, 501.0571, 501.0573, 501.0575, 501.0577, 501.0579, 501.0581, 501,0583, and 501.143 Florida Statutes, are repealed.

Section 7. Subsection (5) of section 501.059, Florida Statutes, is amended to read:

501.059 Telephone solicitation.—

(5) A telephone solicitor or person may not initiate an outbound telephone call to a consumer or donor or potential donor who has previously communicated to the telephone solicitor or person that he or she does not wish to receive an outbound telephone call:

(a) Made by or on behalf of the seller whose goods or services are being offered; or

(b) Made on behalf of a charitable organization for which a charitable contribution is being solicited.

Section 8. Subsection (12) of section 501.603, Florida Statutes, is added to that section, to read:

501.603 Definitions.—As used in this part, unless the context otherwise requires, the term:

(12) "Novelty Payment" refers to any payment method that does not provide systematic monitoring to detect and deter fraud including, but not limited to:

(a) A "remotely created check" which means a check that is

not created by the paying bank and that does not bear a signature applied, or purported to be applied, by the person on whose account the check is drawn.

(b) A "remotely created payment order" which means a payment instruction or order drawn on a person's account that is initiated or created by the payee and that does not bear a signature applied, or purported to be applied, by the person on whose account the order is drawn, and which is cleared through the check clearing system.

(c) A "cash-to-cash money transfer" which means the electronic transfer of the value of cash received from one person to another person in a different location that is sent by a money transfer provider and received in the form of cash. For purposes of this definition, money transfer provider means any person or financial institution that provides cash-to-cash money transfers for a person in the normal course of its business, whether or not the person holds an account with such person or financial institution.

(d) A "cash reload mechanism" which makes it possible to convert cash into an electronic form that a person can use to add money to a general-use prepaid card or an online account with a payment intermediary. For purposes of this definition, a cash reload mechanism (1) is purchased by a person on a prepaid basis, (2) enables access to the funds via an authorization code or other security measure, and (3) is not itself a general-use prepaid card.

Section 9. Subsections (2), (3), and (4) of section 501.611, Florida Statutes, are amended, and subsections (5) and (6) are added to that section, to read:

501.611 Security.—

(2) The amount of the bond, letter of credit, or certificate of deposit must be a minimum of $50,000, and the bond, letter of credit, or certificate of deposit shall be in favor of the department for the use and benefit of any purchaser who is injured by the fraud, misrepresentation, breach of contract, financial failure, or violation of any provision of this part by the applicant ~~must be conditioned upon compliance by the applicant with the provisions of this part~~. The department may, at its discretion, establish a bond of a greater amount to ensure the general welfare of the public and the interests of the telemarketing industry.

(3) The bond shall be posted with the department and shall remain in force throughout the period of licensure with the department on a form adopted by rule of the department.

(4) The department or any governmental agency, on behalf of any injured purchaser or any purchaser herself or himself who is injured by ~~the bankruptcy of~~ the applicant ~~or her or his breach of any agreement entered into in her or his capacity as a licensee~~, may bring and maintain an action to recover against the bond, letter of credit, or certificate of deposit.

(5) Any purchaser may file a claim against the bond or other form of security which shall be made in writing to the

department within 120 days after an alleged injury has occurred or is discovered to have occurred or judgment has been obtained by a court of competent jurisdiction. The claim shall be filed upon a form affidavit adopted by rule of the department. The proceedings shall be held in accordance with Chapter 120. For proceedings held in accordance with ss. 120.569 and 120.57, the department shall act only as a nominal party.

(6) Any indebtedness determined by Final Order of the Department shall be paid by the commercial telephone seller to the department within 30 days of the Order being entered, for distribution to the purchaser. If the commercial telephone seller fails to make payment within the 30 days then the department shall make demand upon the surety, which includes an institution issuing a letter of credit or depository on a certificate of deposit. Upon failure of a surety to comply with a demand for payment pursuant to a Final Order, the department may file an action in Circuit Court to recover payment, not to exceed the amount of the bond or other form of security, pursuant to s. 120.69. If the department is successful and the court affirms the department's demand for payment from the surety, the department shall be allowed all court costs incurred therein and also reasonable attorney fees to be fixed and collected as a part of the costs of the suit.

Section 10. Subsection (1) of section 501.616, Florida Statutes, is amended to read:

501.616 Unlawful acts and practices.—

(1) It shall be unlawful for any commercial telephone seller or salesperson to accept a novelty payment, directly or indirectly, which shall include but not be limited to a cash-to-cash money transfer, cash reload mechanism, remotely created check, remotely created payment order or any novelty payment as defined by rule of the Department as payment for goods or services offered or sold through telemarketing ~~It shall be unlawful for any commercial telephone seller or salesperson to require that payment be by credit card authorization or otherwise to announce a preference for that method of payment~~.

Section 11. Subsection (1) of section 501.913, Florida Statutes, is amended to read:

501.913 Registration.—

(1) Each brand of antifreeze to be distributed in this state shall be registered with the department before distribution. The person whose name appears on the label, the manufacturer, or the packager shall make application to the department on forms provided by the department annually ~~no later than July 1 of each year~~. The registration certificate shall expire one year from the date of issue. The registrant assumes, by application to register the brand, full responsibility for the registration, quality, and quantity of the product sold, offered, or exposed for sale in this state. If a registered brand is not in production for distribution in this state and to ensure any remaining product that is still available for sale in the state is properly registered, the registrant must submit a

notarized affidavit on company letterhead to the department certifying that:

(a) The stated brand is no longer in production;

(b) The stated brand will not be distributed in this state; and

(c) All existing product of the stated brand will be removed by the registrant from the state within 30 days after expiration of the registration or the registrant will reregister the brand for two subsequent registration periods.

If production resumes, the brand must be reregistered before it is distributed in this state.

Section 12. Subsection (1) of section 525.16, Florida Statutes, is amended to read:

525.16 Administrative fine; penalties; prosecution of cases by state attorney.—

(1)(a) The department may enter an order imposing one or more of the following penalties against any person who violates any of the provisions of this chapter or the rules adopted under this chapter or impedes, obstructs, or hinders the department in the performance of its duty in connection with the provisions of this chapter:

1. Issuance of a warning letter.

2. Imposition of an administrative fine of not more than $1,000 per violation for a first-time offender. For a second-time or repeat offender, or any person who is shown to have

willfully and intentionally violated any provision of this chapter, the administrative fine shall not exceed $5,000 per violation. When imposing any fine under this section, the department shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the violator benefited from by noncompliance, whether the violation was committed willfully, and the compliance record of the violator.

3. Revocation or suspension of any registration issued by the department.

(b) If, 3 years after the date ~~day of issuance~~ of the last ~~stop-sale order for a~~ violation under this chapter, no new violation has occurred at the same location during the proprietorship of the same person, all previous fines shall be disregarded when administering a fine for the next violation.

Section 13. Section 526.015, Florida Statutes, is created to read:

526.015 .—Lubricating oil standards and labeling requirements.—

(1) It is unlawful to sell or distribute, or offer for sale or distribution, any lubricating oil which fails to meet any standard or labeling requirement adopted by rule of the department.

(2) Any product which fails to meet any standard or labeling requirement adopted by rule shall be placed under a stop-sale order by the department and the lot identified and

tagged by the department to prohibit sale of said product.

(3) It shall be unlawful to sell, distribute, or offer for sale or distribution, any product that has been placed under stop-sale order.

(4) If the product is made to conform to standards and labeling requirements or is removed from the premises in a manner approved by the department, the department shall issue a release order.

Section 14. Section 526.50, Florida Statutes, is amended to read:

526.50 Definition of terms.—As used in this part:

(1) "Brake fluid" means the fluid intended for use as the liquid medium through which force is transmitted in the hydraulic brake system of a vehicle operated upon the highways.

(2) "Department" means the Department of Agriculture and Consumer Services.

(3) "Sell" includes give, distribute, barter, exchange, trade, keep for sale, offer for sale or expose for sale, in any of their variant forms.

(4) "Labeling" includes all written, printed or graphic representations, in any form whatsoever, imprinted upon or affixed to any container of brake fluid.

(5) "Container" means any receptacle in which brake fluid is immediately contained when sold, but does not mean a carton or wrapping in which a number of such receptacles are shipped or stored or a tank car or truck.

(6) ~~"Permit year" means a period of 12 months commencing July 1 and ending on the next succeeding June 30.~~

~~(7)~~ "Registrant" means any manufacturer, packer, distributor, seller, or other person who has registered a brake fluid with the department.

(7)~~(8)~~ "Brand" means the product name appearing on the label of a container of brake fluid.

(8)~~(9)~~ "Formula" means the name of the chemical mixture or composition of the brake fluid product.

Section 15. Subsection (1) of section 526.51, Florida Statutes, is amended to read:

526.51 Registration; renewal and fees; departmental expenses; cancellation or refusal to issue or renew.—

(1)(a) Application for registration of each brand of brake fluid shall be made on forms supplied by the department. The applicant shall give his or her name and address and the brand name of the brake fluid, state that he or she owns the brand name and has complete control over the product sold thereunder in this state, and provide the name and address of the resident agent in this state. If the applicant does not own the brand name but wishes to register the product with the department, a notarized affidavit that gives the applicant full authorization to register the brand name and that is signed by the owner of the brand name must accompany the application for registration. The affidavit must include all affected brand names, the owner's company or corporate name and address, the applicant's company

or corporate name and address, and a statement from the owner authorizing the applicant to register the product with the department. The owner of the brand name shall maintain complete control over each product sold under that brand name in this state. All first-time applications for a brand and formula combination must be accompanied by a certified report from an independent testing laboratory, setting forth the analysis of the brake fluid which shows its quality to be not less than the specifications established by the department for brake fluids. A sample of not less than 24 fluid ounces of brake fluid shall be submitted, in a container or containers, with labels representing exactly how the containers of brake fluid will be labeled when sold, and the sample and container shall be analyzed and inspected by the department in order that compliance with the department's specifications and labeling requirements may be verified. Upon approval of the application, the department shall register the brand name of the brake fluid and issue to the applicant a permit authorizing the registrant to sell the brake fluid in this state which shall be effective for a period of 12 months commencing on the date the permit was issued and expiring 12 months from that day ~~during the permit year specified in the permit~~.

(b) Each applicant shall pay a fee of $100 with each application. A permit may be renewed by application to the department, accompanied by a renewal fee of $50 on or before the expiration of the previously issued permit ~~last day of the~~

~~permit year immediately preceding the permit year for which application is made for renewal of registration~~. To reregister a previously registered brand and formula combination, an applicant must submit a completed application and all materials as required in this section to the department before the expiration of the previously issued permit ~~first day of the permit year~~. A brand and formula combination for which a completed application and all materials required in this section are not received before expiration of the previously issued permit ~~the first day of the permit year~~ may not be registered with the department until a completed application and all materials required in this section have been received and approved. If the brand and formula combination was previously registered with the department and a fee, application, or materials required in this section are received after expiration of the previously issued permit ~~the first day of the permit year~~, a penalty of $25 accrues, which shall be added to the fee. Renewals shall be accepted only on brake fluids that have no change in formula, composition, or brand name. Any change in formula, composition, or brand name of any brake fluid constitutes a new product that must be registered in accordance with this part.

(c) In order to ensure that any remaining product still available for sale in this state is properly registered, if a registered brand and formula combination is no longer in production for distribution in this state, the registrant must

submit a notarized affidavit on company letterhead to the department certifying that:

1. The stated brand and formula combination is no longer in production;

2. The stated brand and formula combination will not be distributed in this state; and

3. All existing product of the stated brand and formula combination will be removed by the registrant from the state within 30 days after the expiration of the registration or that the registrant will reregister the brand and formula combination for two subsequent years ~~registration periods~~.

If production resumes, the brand and formula combination must be reregistered before it is again distributed in this state.

Section 16. Paragraph (a) of subsection (4), paragraphs (b) and (d) of subsection (7), and paragraph (b) of subsection (8) of section 539.001, Florida Statutes, are amended to read:

539.001 The Florida Pawnbroking Act.—

(4) ELIGIBILITY FOR LICENSE.—

(a) To be eligible for a pawnbroker's license, an applicant must:

1. Be of good moral character;

2. Have a net worth of at least $50,000 or file with the agency a bond issued by a surety company qualified to do business in this state in the amount of $10,000 for each license. In lieu of the bond required in this section, the

applicant may establish a certificate of deposit or an irrevocable letter of credit in a Florida banking institution in the amount of the bond. The original bond, certificate of deposit, or letter of credit shall be filed with the agency <u>on a form adopted by rule of the agency</u>, and the agency shall be the beneficiary to said document. The bond, certificate of deposit, or letter of credit shall be in favor of the agency for the use and benefit of any consumer who is injured by the fraud, misrepresentation, breach of contract, financial failure, or violation of any provision of this section by the pawnbroker. Such liability may be enforced either by proceeding in an administrative action or by filing a judicial suit at law in a court of competent jurisdiction. However, in such court suit, the bond, certificate of deposit, or letter of credit posted with the agency shall not be amenable or subject to any judgment or other legal process issuing out of or from such court in connection with such lawsuit, but such bond, certificate of deposit, or letter of credit shall be amenable to and enforceable only by and through administrative proceedings before the agency. It is the intent of the Legislature that such bond, certificate of deposit, or letter of credit shall be applicable and liable only for the payment of claims duly adjudicated by order of the agency. The bond, certificate of deposit, or letter of credit shall be payable on a pro rata basis as determined by the agency, but the aggregate amount may not exceed the amount of the bond, certificate of deposit, or

letter of credit. Any consumer may file a claim against the bond or other form of security which shall be made in writing to the agency within 120 days after an alleged injury has occurred or is discovered to have occurred or judgment has been obtained by a court of competent jurisdiction. The claim shall be filed upon a form affidavit adopted by rule of the agency. The proceedings shall be held in accordance with Chapter 120. For proceedings held in accordance with ss. 120.569 and 120.57, the agency shall act only as a nominal party. Any indebtedness determined by Final Order of the agency shall be paid by the pawnbroker to the agency within 30 days of the Order being entered, for distribution to the consumer. If the pawnbroker fails to make payment within the 30 days then the agency shall make demand upon the surety, which includes an institution issuing a letter of credit or depository on a certificate of deposit. Upon failure of a surety to comply with a demand for payment pursuant to a Final Order, the agency may file an action in Circuit Court to recover payment, not to exceed the amount of the bond or other form of security, pursuant to s. 120.69. If the agency is successful and the court affirms the agency's demand for payment from the surety, the agency shall be allowed all court costs incurred therein and also reasonable attorney fees to be fixed and collected as a part of the costs of the suit;

3. Not have been convicted of, or found guilty of, or pled guilty or nolo contendere to, or not have been incarcerated within the last 10 years as a result of having previously been

convicted of, or found guilty of, or pled guilty or nolo contendere to, regardless of adjudication, a felony within the last 10 years and not be acting as a beneficial owner for someone who has been convicted of, or found guilty of, or pled guilty or nolo contendere to, regardless of adjudication, a felony within the last 10 years; and

4. Not have been convicted of, or found guilty of, or pled guilty or nolo contendere to, or not have been incarcerated within the last 10 years as a result of having previously been convicted of, or found guilty of, or pled guilty or nolo contendere to, regardless of adjudication, a crime that involves theft, larceny, dealing in stolen property, receiving stolen property, burglary, embezzlement, obtaining property by false pretenses, possession of altered property, or any other fraudulent or dishonest dealing within the last 10 years, and not be acting as a beneficial owner for someone who has been convicted, of, or found guilty of, or pled guilty or nolo contendere to, or has been incarcerated within the last 10 years as a result of having previously been convicted of, or found guilty of, or pled guilty or nolo contendere to, regardless of adjudication, a crime that involves theft, larceny, dealing in stolen property, receiving stolen property, burglary, embezzlement, obtaining property by false pretenses, possession of altered property, or any other fraudulent or dishonest dealing within the last 10 years.

(7) ORDERS IMPOSING PENALTIES.—

(b) Upon a finding as set forth in paragraph (a), the agency may enter an order doing one or more of the following:

1. Issuing a notice of noncompliance pursuant to s. 120.695.

2. Imposing an administrative fine not to exceed the greater of $5,000 or the maximum fine allowed under s. 570.400 in the Class II category for each act which constitutes a violation of this section or a rule or an order.

3. Directing that the pawnbroker cease and desist specified activities.

4. Refusing to license or revoking or suspending a license.

5. Placing the licensee on probation for a period of time, subject to such conditions as the agency may specify.

(d)1. When the agency, if a violation of this section occurs, has reasonable cause to believe that a person is operating in violation of this section, the agency may bring a civil action in the appropriate court for temporary or permanent injunctive relief and may seek other appropriate civil relief, including a civil penalty not to exceed the greater of $5,000 or the maximum fine allowed under s. 570.400 in the Class II category for each violation, restitution and damages for injured customers, court costs, and reasonable attorney's fees.

2. The agency may terminate any investigation or action upon agreement by the offender to pay a stipulated civil penalty, to make restitution or pay damages to customers, or to

satisfy any other relief authorized herein and requested by the agency.

(8) PAWNBROKER TRANSACTION FORM.—

(b) The front of the pawnbroker transaction form must include:

1. The name and address of the pawnshop.

2. A complete and accurate description of the pledged goods or purchased goods, including the following information, if applicable:

a. Brand name.

b. Model number.

c. Manufacturer's serial number.

d. Size.

e. Color, as apparent to the untrained eye.

f. Precious metal type, weight, and content, if known. Any Weight must be obtained from a device properly approved by the Department of Agriculture and Consumer Services, and in compliance with s. 531.39, 531.40, and any other appropriate provision of Chapter 531.

g. Gemstone description, including the number of stones.

h. In the case of firearms, the type of action, caliber or gauge, number of barrels, barrel length, and finish.

i. Any other unique identifying marks, numbers, names, or letters.

Notwithstanding sub-subparagraphs a.-i., in the case of multiple

items of a similar nature delivered together in one transaction which do not bear serial or model numbers and which do not include precious metal or gemstones, such as musical or video recordings, books, and hand tools, the description of the items is adequate if it contains the quantity of items and a description of the type of items delivered.

3. The name, address, home telephone number, place of employment, date of birth, physical description, and right thumbprint of the pledgor or seller.

4. The date and time of the transaction.

5. The type of identification accepted from the pledgor or seller, including the issuing agency and the identification number.

6. In the case of a pawn:

a. The amount of money advanced, which must be designated as the amount financed;

b. The maturity date of the pawn, which must be 30 days after the date of the pawn;

c. The default date of the pawn and the amount due on the default date;

d. The total pawn service charge payable on the maturity date, which must be designated as the finance charge;

e. The amount financed plus the finance charge that must be paid to redeem the pledged goods on the maturity date, which must be designated as the total of payments;

f. The annual percentage rate, computed according to the

regulations adopted by the Federal Reserve Board under the federal Truth in Lending Act; and

g. The front or back of the pawnbroker transaction form must include a statement that:

(I) Any personal property pledged to a pawnbroker within this state which is not redeemed within 30 days following the maturity date of the pawn, if the 30th day is not a business day, then the following business day, is automatically forfeited to the pawnbroker, and absolute right, title, and interest in and to the property vests in and is deemed conveyed to the pawnbroker by operation of law, and no further notice is necessary;

(II) The pledgor is not obligated to redeem the pledged goods; and

(III) If the pawnbroker transaction form is lost, destroyed, or stolen, the pledgor must immediately advise the issuing pawnbroker in writing by certified or registered mail, return receipt requested, or in person evidenced by a signed receipt.

(IV) A pawn may be extended upon mutual agreement of the parties.

7. In the case of a purchase, the amount of money paid for the goods or the monetary value assigned to the goods in connection with the transaction.

8. A statement that the pledgor or seller of the item represents and warrants that it is not stolen, that it has no

liens or encumbrances against it, and that the pledgor or seller is the rightful owner of the goods and has the right to enter into the transaction.

Any person who knowingly gives false verification of ownership or gives a false or altered identification and who receives money from a pawnbroker for goods sold or pledged commits:

a. If the value of the money received is less than $300, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

b. If the value of the money received is $300 or more, a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 17. Section 559.929, Florida Statutes, is amended to read:

559.929 Security requirements.—

(1) An application must be accompanied by a performance bond in an amount set by the department under paragraph (a), paragraph (b), or paragraph (c). The surety on such bond shall be a surety company authorized to do business in the state.

(a) Each seller of travel that certifies its business activities under s. 559.9285(1)(a) shall provide a performance bond in an amount not to exceed $25,000, or in the amount of $50,000 if the seller of travel is offering vacation certificates.

(b) Each seller of travel that certifies its business activities under s. 559.9285(1)(b) shall provide a performance

bond in an amount not to exceed $100,000, or in the amount of $150,000 if the seller of travel is offering vacation certificates.

(c) Each seller of travel that certifies its business activities under s. 559.9285(1)(c) shall provide a performance bond in an amount not to exceed $250,000, or in the amount of $300,000 if the seller of travel is offering vacation certificates.

(2) The bond shall be in favor of the department <u>on a form adopted by rule of the department</u> for the use and benefit of any traveler who is injured by the fraud, misrepresentation, breach of contract, financial failure, or violation of any provision of this part by the seller of travel. Such liability may be enforced either by proceeding in an administrative action as specified in subsection (3) or by filing a judicial suit at law in a court of competent jurisdiction. However, in such court suit the bond posted with the department shall not be amenable or subject to any judgment or other legal process issuing out of or from such court in connection with such lawsuit, but such bond shall be amenable to and enforceable only by and through administrative proceedings before the department. It is the intent of the Legislature that such bond shall be applicable and liable only for the payment of claims duly adjudicated by order of the department. The bond shall be open to successive claims, but the aggregate amount may not exceed the amount of the bond. In addition to the foregoing, a bond provided by a registrant or

applicant for registration which certifies its business activities under s. 559.9285(1)(b) or (c) shall be in favor of the department, with payment in the following order of priority:

(a) All expenses for prosecuting the registrant or applicant in any administrative or civil action under this part, including fees for attorneys and other professionals, court costs or other costs of the proceedings, and all other expenses incidental to the action.

(b) All costs and expenses of investigation prior to the commencement of an administrative or civil action under this part.

(c) Any unpaid administrative fine imposed by final order or any unpaid civil penalty imposed by final judgment under this part.

(d) Damages or compensation for any traveler injured as provided in this subsection.

(3) Any traveler may file a claim against the bond which shall be made in writing to the department within 120 days after an alleged injury has occurred or is discovered to have occurred or judgment has been obtained by a court of competent jurisdiction. The claim shall be filed upon a form affidavit adopted by rule of the department. The proceedings shall be held in accordance with Chapter 120. For ~~The~~ proceedings ~~shall be~~ held in accordance with ss. 120.569 and 120.57, the department shall act only as a nominal party.

(4) Any indebtedness determined by Final Order of the

Department shall be paid by the seller of travel to the department within 30 days of the Order being entered, for distribution to the traveler. If the seller of travel fails to make payment within the 30 days then the department shall make demand upon the surety, which includes an institution issuing a letter of credit or depository on a certificate of deposit. Upon failure of a surety to comply with a demand for payment pursuant to a Final Order, the department may file an action in Circuit Court to recover payment, not to exceed the amount of the bond or other form of security, pursuant to s. 120.69. If the department is successful and the court affirms the department's demand for payment from the surety, the department shall be allowed all court costs incurred therein and also reasonable attorney fees to be fixed and collected as a part of the costs of the suit.

(5) ~~(4)~~ In any situation in which the seller of travel is currently the subject of an administrative, civil, or criminal action by the department, the Department of Legal Affairs, or the state attorney concerning compliance with this part, the right to proceed against the bond as provided in subsection (3) shall be suspended until after any enforcement action becomes final.

(6) ~~(5)~~ The department may waive the bond requirement on an annual basis if the seller of travel has had 5 or more consecutive years of experience as a seller of travel in Florida in compliance with this part, has not had any civil, criminal,

or administrative action instituted against the seller of travel in the vacation and travel business by any governmental agency or any action involving fraud, theft, misappropriation of property, violation of any statute pertaining to business or commerce with any terrorist state, or moral turpitude, and has a satisfactory consumer complaint history with the department, and certifies its business activities under s. 559.9285. Such waiver may be revoked if the seller of travel violates any provision of this part. A seller of travel that certifies its business activities under s. 559.9285(1)(b) or (c) is not entitled to the waiver provided in this subsection.

Section 18. Subsection (43) is added to section 570.07, Florida Statutes, to read:

570.07 Department of Agriculture and Consumer Services; functions, powers, and duties.—The department shall have and exercise the following functions, powers, and duties:

(43) (a) Notwithstanding any provision of law, when an administrative complaint is served on a licensee of the Division of Licensing pursuant to s. 790.06, the division shall provide service by regular mail to the licensee's last known address of record, by certified mail to the last known address of record, and, if possible, by e-mail.

(b) If service, as provided in paragraph (a), does not provide the division with proof of service and the individual has an address on file with the division in some other state than this state or in a foreign territory or country, the

division shall call, if available, the last known telephone number of record, shall publish notice in a newspaper of general circulation in Leon County, and shall cause a short, plain notice to the license to be posted on the front page of the Department of Agriculture and Consumer Services website.

Section 19. Subsection (4) of section 943.059, Florida Statutes, is amended to read:

943.059 Court-ordered sealing of criminal history records.—The courts of this state shall continue to have jurisdiction over their own procedures, including the maintenance, sealing, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to seal the criminal history record of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice agency to seal a criminal history record until the person seeking to seal a criminal history record has applied for and received a certificate of eligibility for sealing pursuant to subsection (2). A criminal history record that relates to a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in s. 907.041, or any violation

specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, without regard to whether that offense alone is sufficient to require such registration, or for registration as a sexual offender pursuant to s. 943.0435, may not be sealed, without regard to whether adjudication was withheld, if the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed or pled guilty or nolo contendere to committing the offense as a delinquent act. The court may only order sealing of a criminal history record pertaining to one arrest or one incident of alleged criminal activity, except as provided in this section. The court may, at its sole discretion, order the sealing of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the sealing of records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not seal any record pertaining to such additional arrests if the order to seal does not articulate the intention of the court to seal records pertaining to more than one arrest. This section does not prevent the court from ordering the sealing of only a portion of a criminal history record pertaining to one arrest or one incident of alleged criminal activity. Notwithstanding any law to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to sealing, correction, or confidential handling of

criminal history records or information derived therefrom. This section does not confer any right to the sealing of any criminal history record, and any request for sealing a criminal history record may be denied at the sole discretion of the court.

(4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal history record of a minor or an adult which is ordered sealed by a court of competent jurisdiction pursuant to this section is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and is available only to the person who is the subject of the record, to the subject's attorney, to criminal justice agencies for their respective criminal justice purposes, which include conducting a criminal history background check for approval of firearms purchases or transfers as authorized by state or federal law, to judges in the state courts system for the purpose of assisting them in their case-related decisionmaking responsibilities, as set forth in s. 943.053(5), or to those entities set forth in subparagraphs (a)1., 4., 5., 6., and 8. ~~, and 8.~~ for their respective licensing, access authorization, and employment purposes.

(a) The subject of a criminal history record sealed under this section or under other provisions of law, including former s. 893.14, former s. 901.33, and former s. 943.058, may lawfully deny or fail to acknowledge the arrests covered by the sealed record, except when the subject of the record:

1. Is a candidate for employment with a criminal justice

agency;

2. Is a defendant in a criminal prosecution;

3. Concurrently or subsequently petitions for relief under this section, s. 943.0583, or s. 943.0585;

4. Is a candidate for admission to The Florida Bar;

5. Is seeking to be employed or licensed by or to contract with the Department of Children and Families, the Division of Vocational Rehabilitation within the Department of Education, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the disabled, or the elderly;

6. Is seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities; or

7. Is attempting to purchase a firearm from a licensed importer, licensed manufacturer, or licensed dealer and is subject to a criminal history check under state or federal law; or.

8. Is seeking to be licensed by the Bureau of License Issuance of the Division of Licensing within the Department of Agriculture and Consumer Services to carry a concealed weapon or

concealed firearm. This exception may only apply for use in the determination of an applicant's eligibility in accordance with s. 790.06.

(b) Subject to the exceptions in paragraph (a), a person who has been granted a sealing under this section, former s. 893.14, former s. 901.33, or former s. 943.058 may not be held under any provision of law of this state to commit perjury or to be otherwise liable for giving a false statement by reason of such person's failure to recite or acknowledge a sealed criminal history record.

(c) Information relating to the existence of a sealed criminal record provided in accordance with the provisions of paragraph (a) is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except that the department shall disclose the sealed criminal history record to the entities set forth in subparagraphs (a)1., 4., 5., 6., and 8., ~~and 8.~~ for their respective licensing, access authorization, and employment purposes. It is unlawful for any employee of an entity set forth in subparagraph (a)1., subparagraph (a)4., subparagraph (a)5., subparagraph (a)6., or subparagraph (a)8. ~~, or subparagraph (a)8.~~ to disclose information relating to the existence of a sealed criminal history record of a person seeking employment, access authorization, or licensure with such entity or contractor, except to the person to whom the criminal history record relates or to persons having direct responsibility for employment,

access authorization, or licensure decisions. Any person who violates the provisions of this paragraph commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 20. This act shall take effect July 1, 2014.