

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 995 Consumer Licensing
SPONSOR(S): Business & Professions Subcommittee; Trumbull
TIED BILLS: HB 997 **IDEN./SIM. BILLS:** SB 1444

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	13 Y, 0 N, As CS	Butler	Luczynski
2) Appropriations Committee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

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

Within the Division of Consumer Services, the bill:

- Provides that the Department shall waive the initial license fee for veterans and their spouses for license applications submitted within 60 months of the veteran's discharge from a branch of the United States Armed Forces for certain professions and business entities majority owned by veterans or their spouses;
- Removes language within Florida's Telemarketing Act related to a "mail drop," and clarifies that telemarketing applicants must have an actual physical location for telemarketing operations within Florida.
- Transfers the enforcement of the "Commercial Weight-Loss Practices Act," which provides consumer information, to the Department of Health whom currently substantively regulate dietetics, nutritional practices and other weight-loss related professions; and,
- Provides an exemption from the inspection requirements for water-related amusement rides at facilities not open to the general public, if:
 - The ride is an incidental amenity operated by a licensed lodging or food service establishment;
 - The ride is an incidental amenity at a private, membership-only facility; or,
 - The ride is located at a nonprofit charitable permanent facility.
- Provides that owner or manager of an amusement ride may use an inspection form approved by the Department instead of the Department's generalized inspection form.

Within the Division of Licensing, the bill:

- Requires the Department to participate in FDLE's Applicant Fingerprint Retention and Notification Program and requires security, private investigation and recovery industry licensees to submit fingerprints and pay retention fees for the state and federal fingerprint retention programs;
- Removes the residency requirement for security industry licensure;
- Provides that the qualifying training required for concealed weapon license holders in Florida must include a live fire demonstration by the trainee in the physical presence of the trainer;
- Replaces notice by publication requirements with a requirement to send notice by regular mail for the suspension or revocation of concealed weapons licenses if the licensee cannot be personally served or notice by certified mail is returned undeliverable;
- Removes the notarization requirement for concealed weapon license renewals and requires applications be submitted under oath and under penalty of perjury; and,
- Provides that approved tax collectors may print and furnish a renewal license to a concealed weapon license holder who submits a renewal application at the tax collector's office.

The bill will have a significant fiscal impact on state funds, see **II. Fiscal Analysis & Economic Impact Statement** for more information.

The bill has an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The mission of the Florida Department of Agriculture and Consumer Services (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 Department's jurisdiction, specifically the Division of Consumer Services and Division of Licensing. 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 Consumer Services

Military Veteran Fees

There are more than 231,000 veterans of the Afghanistan and Iraq wars that currently live in Florida.¹ One of the greatest challenges facing returning veterans is finding gainful employment in a profession.

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

The Department regulates several industries under its Division of Consumer Services, including surveyors and mappers, health studios, telemarketing, intrastate movers, sellers of liquefied petroleum gasoline, pawn broking, motor vehicle repair, and sellers of travel. The Department has received inquiries from individuals who have heard of the waivers offered by the Department of Business and Professional Regulation and the Department of Health asking if similar waivers are available for industries under the Division of Consumer Services.

The bill provides that the Department shall waive the initial license fees for veterans and their spouses for license applications submitted within 60 months of the veteran's discharge from any branch of the United States Armed Services for the following industries and professions: surveyors and mappers (s. 472.015, F.S.), health studios (s. 501.015, F.S.), telemarketing (ss. 501.605 & 501.607, F.S.), intrastate movers (s. 507.03, F.S.), sellers of liquefied petroleum gasoline (s. 527.02, F.S.), pawn broking (s. 539.001, F.S.), motor vehicle repair (s. 559.904, F.S.), and sellers of travel (s. 559.928, F.S.).

¹ Florida Department of Agriculture and Consumer Services, Agency Analysis of House Bill 955, p. 3 (Mar. 3, 2015).

Furthermore, initial license fees will be waived for business entities where a veteran or their spouse is the majority owner in the above industries.

Section 1 amends s. 472.015, F.S. (surveyors and mappers), **Section 8** amends s. 501.015, F.S. (health studios), **Section 11** amends s. 501.605, F.S. (telemarketing), **Section 12** amends s. 501.607, F.S. (telemarketing), **Section 13** amends s. 507.03, F.S. (intrastate movers), **Section 14** amends s. 527.02, F.S. (liquefied petroleum gasoline), **Section 15** amends s. 539.001, F.S. (pawnbrokers), **Section 16** amends s. 559.904, F.S. (motor vehicle repair), and **Section 17** amends s. 559.928, F.S. (sellers of travel).

Telemarketing

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

Applicants must have an actual physical location for telemarketing operation under s 501.605, F.S., to become "commercial telephone sellers." A mail drop cannot be the actual physical location of the business.

The bill revises s. 501.605, F.S., to remove an inconsistency in current law asking whether a location is a "mail drop," and should have no effect on the industry.

Section 11 amends s. 501.605, F.S.

Commercial Weight-Loss Practices Act

Currently, the Department is charged with enforcing the "Commercial Weight-Loss Practices Act." This Act requires weight-loss providers to provide consumers with a Weight Loss Consumer Bill of Rights, disclose information about the provider and program, and provide itemized statements.

The Department believes that it has no substantive nexus with this industry, which primarily includes medical staff and weight loss centers that are staffed by dietitians and nutritionists.² Dietetics, nutrition practices, and other weight-loss professions are regulated by Department of Health, which has experience and expertise related to the weight loss industry.

The Department has previously attempted to repeal this section, but amended the repeal out of their Department bill in 2014 after discussing concerns with opponents.³ The Florida Dietetic Association has an interest in the enforcement of this Act and the Department reports working with the Association to increase consumer awareness about the Act by including information in the consumer calendar and e-newsletters.⁴ However, given the limited expertise, the Department does not believe they are able to enforce this program to the level that the Association desires.

This bill transfers enforcement of the Act to the Department of Health (DOH). The Department believes that this transfer will result in a more efficient use of state resources as DOH has primary jurisdiction over dietitians and nutritionists.

Section 9 amends s. 501.0581, F.S. (civil remedies), and **Section 10** amends s. 501.0583, F.S. (penalties and enforcement)

Safety Standards for Amusement Rides

² Florida Department of Agriculture and Consumer Services, Agency Analysis of House Bill 955, p. 5 (Mar. 3, 2015).

³ See generally, PCB BPRS 14-01(2014) and HB 7051 (2014)(a version of these bills passed without the "Commercial Weight-Loss Practices Act" repeal language and was enrolled as Chapter 2014-147, Laws of Fla.).

⁴ Florida Department of Agriculture and Consumer Services, Agency Analysis of House Bill 955, p. 5 (Mar. 3, 2015).

The Bureau of Fair Rides Inspection (Bureau) of the Department protects citizens and visitors of Florida through their amusement ride inspection program. The Bureau is assigned to carry out the inspection and investigation mandates of s. 616.242, F.S., and enforcement of adopted rules, regulations and codes for amusement rides. The Bureau has statewide responsibility to inspect all amusement rides in the state, except for certain large parks which have more than 1,000 employees and have full time inspectors on staff.

The Department has previously removed inspection requirements for private facilities such as residential community centers not open to the general public, and this bill seeks to clarify and expand that exemption to include lodging or food service establishments under Chapter 509, F.S.

The Department believes that the inspection of water-related amusement rides which are incidental amenities of a licensed lodging or food service establishment and regulated by the Department of Business and Professional Regulation is unnecessary. The Department currently does not monitor waterslides at hotels that are not open to the public and do not allow day rates.

This bill also exempts a facility operating as a charitable entity licensed under Chapter 496, F.S., which is not open to the general public. Although the Department licenses these companies, the Department states that only two companies would be covered by this exemption, and these companies are not open to the general public.

Finally the bill exempts a private, membership-only facility if the amusement ride is an incidental amenity and the facility is not open to the general public, is not primarily engaged in providing amusement, pleasure, thrills, or excitement, and does not offer day rates.

This bill also allows the use of manufacturer inspection forms to be submitted to the Department in lieu of the Department's form if the manufacturer's form is approved by the Department. Currently, fair ride owners have to fill out a Department form for inspections and for training of employees. These forms are not customized to any specific ride. As a result, fair ride owners frequently fill out the Department form in addition to a form provided by the manufacturer that is specific to the ride being inspected.⁵

The Department believes that use of manufacturer's inspection forms will lead to more detailed and thorough inspections which will enhance public safety. Fair ride owners must submit their new forms for approval. Once approved, documentation will be kept on file to ensure that management is only using pre-approved forms that have, at a minimum, the same information that is required on the Department's forms. Those who prefer to may continue to use the Department's generic inspection and training forms.

Section 18 amends s. 616.242, F.S.

Division of Licensing

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

⁵ Florida Department of Agriculture and Consumer Services, Agency Analysis of House Bill 955, p. 5 (Mar. 3, 2015).

Licensee Fingerprint Retention

An individual who wishes to work in the private investigation, recovery, or security industries that are regulated by the Department under Chapter 493, F.S., must provide a set of fingerprints and submit to a criminal history background check. After a person has been licensed, the Department is mandated by s. 493.6118, F.S., to continually monitor weekly criminal arrests and match reports furnished by the Florida Department of Law Enforcement (FDLE) to ensure that licensees remain eligible for licensure during the term of the license. The current process is very time consuming, based only on name-search criteria, and does not guarantee accurate identification.

When a match is found, the Division of Licensing must manually review the demographic information of the arrested person with the demographic information of the matched licensee. Further, the Department is only able to receive match reports from FDLE of arrests that occur in Florida.

The bill requires the Department to participate in FDLE's Applicant Fingerprint Retention and Notification Program (AFRNP) and allows for retention of applicant fingerprints within FDLE's Biometric Identification System (BIS).

A component of the Federal Bureau of Investigation's (FBI) Next Generation Identification (NGI) project includes retaining fingerprints at the national level. In order for entities to participate in the federal program, fingerprints must be retained at the state level and subsequently enrolled through the state program into the FBI's program.

Participation at the statewide level would require payment of an annual fee of \$6.00 for each year that a license is valid. Participation in the fingerprint retention program sponsored by the FBI would require payment of a \$13.00 fee at the time of initial application that would cover the cost of fingerprint retention for as long as a license is valid.

Fingerprint retention technology would completely automate the manual practice of matching arrest records with licensees. Moreover, participation in the fingerprint retention program at the federal level ensures that fingerprint based arrests of licensees in any jurisdiction in the United States would immediately be delivered to the Department. The Department is required to inform the agency that employs the licensee of any arrest, and may take action against the license if appropriate.

Licensees, whose licenses expire prior to January 2016, are currently not required to re-submit their fingerprints or pay the processing and retention fees that are set out in this bill. The bill will require renewal licensees to re-submit their fingerprints and pay the processing and retention fees to be enrolled in the federal and statewide automated biometric identification system if they have not already done so during initial licensure. These licensees will only have to submit fingerprints and pay both processing fees upon the first renewal; all subsequent renewals will only require the licensee to pay statewide retention fees.

Section 2 amends s. 493.6105, F.S. (initial licensure), **Section 4** amends s. 493.6108, F.S. (FDLE retention), **Section 5** amends s. 493.6113, F.S. (renewal), **Section 6** amends s. 493.6115, F.S. (conforming changes), **Section 7** amends s. 493.6118, F.S. (conforming changes).

Residency Requirements

When applying for a private security, private investigative, and repossession license under s. 493.6106, F.S., there is currently a 90-day state residency requirement for a legal resident aliens seeking licensure that is no longer required under Federal law.

The Department of Justice amended regulations of the Bureau of Alcohol, Tobacco, Firearms, and Explosives by removing the 90-day residency requirement for aliens lawfully present in the United States to purchase or acquire firearms in 2012. Deleting the 90-day residency requirement that still exists in Florida law for legal resident aliens will make Florida law consistent with Federal law.

Section 3 amends s. 493.6106, F.S.

Concealed Weapon Licensing Law

Live Fire Requirements

When providing the qualifying training for the Florida concealed weapon license, s. 790.06, F.S., states that a firearms trainer “must maintain records certifying that he or she observed the student safely handle and discharge a firearm,” however the language is unclear as to whether this observation must be made in the presence of the trainer and not reviewed remotely or from a prerecording. Further, it is unclear if the firearms trainer may use simulated ammunition or firearms to conduct the training.

The bill will create a requirement that a student taking a course, to qualify for a concealed weapon license, must discharge an actual firearm using functional ammunition in the physical presence of a trainer. Thus, firearms instructors will be required to use actual firearms and live ammunition when providing firearms training and the student will be required to discharge a firearm in the physical presence of the trainer, not via Internet video technologies such as Skype. The NRA is supportive of the proposed changes.

Notice of Service Requirements

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

A large number of concealed weapons license holders live outside the state of Florida (176,315 as of the end of Fiscal Year 2013-2014).⁶ The publication requirements for notice of license holders out of state has increased costs associated with the publication of legal notices and the Department believes that newspaper publication of a license holder’s name and license number may violate s. 790.0601, F.S., which makes the personal identifying information of a concealed weapon license holder confidential and exempt from disclosure.

This bill would provide that legal notification to concealed weapon license holders be conducted via first-class, postage-paid mail addressed to the licensee at his or her last known mailing address, or by e-mail if the licensee provided an e-mail address. The proposed statutory change will completely eliminate all future publication costs for the Department.

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

Renewal Notarization

Concealed weapon license holders are required to have renewal affidavits notarized before submitting pursuant to s. 790.06(11), F.S. In order to develop a system to automate the concealed weapon license renewal application process online, the notarization requirement will need to be removed as it is currently impossible to notarize an online submitted form. The Department indicated that a total of 1,282,036 concealed weapons licenses will expire over the next six years, and expects a renewal rate between 53 and 78 percent, for approximately 800,000 license renewals. The Department is concerned that the volume of renewals will be overwhelming without an online, automated system in place to assist.⁷

⁶ Florida Department of Agriculture and Consumer Services, Agency Analysis of House Bill 955, p. 6 (Mar. 3, 2015).

⁷ Florida Department of Agriculture and Consumer Services, Agency Analysis of House Bill 955, p. 7 (Mar. 3, 2015).

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

Concealed Weapon License Fees

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

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

Section 19 amends s. 790.06, F.S.

Tax Collectors

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

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

The bill provides that a tax collector who is accepting concealed weapon license applications may now print and furnish a renewal license to a concealed weapon license holder who submits a complete license renewal application to a tax collector's office, after the Department approves the renewal. The Department believes that allowing tax collectors to print concealed weapon licenses at the time of submission of a license renewal application will be major convenience to license holders.

Section 20 amends s. 790.0625, F.S.

Section 21 provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Recurring

Military Veteran License Fees

The Department expects a reduction in revenue generated from military veterans and their spouses who take advantage of the fee waiver provisions of this bill in the following amounts:

	(FY 15-16)	(FY 16-17)	(FY 17-18)
	Amount / FTE	Amount / FTE	Amount / FTE
Military Veteran Fee Waiver	(\$49,350)	(\$49,350)	(\$49,350)

Fingerprint Retention

The Department expects to generate the following from new fees related to Fingerprint Retention programs:

	(FY 15-16)	(FY 16-17)	(FY 17-18)
	Amount / FTE	Amount / FTE	Amount / FTE
Federal Bureau of Investigation (FBI) Funds	\$1,552,000	\$1,552,000	\$442,000
FDLE Operating Trust Fund	<u>\$1,040,000</u>	<u>\$1,040,000</u>	<u>\$684,000</u>
Subtotal:	<u>\$2,592,000</u>	<u>\$2,592,000</u>	<u>\$1,126,000</u>

These fees will be collected by the Department and deposited in the Division of Licensing Trust Fund where they will then be disbursed to the FBI or FDLE for the administration of their fingerprint retention programs.

Safety Standards for Amusement Rides

The Department expects the following reduced revenue from fees that will no longer be collected from organizations made exempt from regulation under this bill.

	(FY 15-16)	(FY 16-17)	(FY 17-18)
	Amount / FTE	Amount / FTE	Amount / FTE
Safety Standards for Amusement Rides	(\$2,280)	(\$2,280)	(\$2,280)

Concealed Weapon License Fees, s.790.06 (5)(b), F.S.

The Department estimates the following revenue reduction from the lowering of initial and renewal concealed weapon license fees by \$10 each. The Division indicates it can absorb the reduction.

New CW License Fee Reduction (\$10.00)	(\$1,280,000)	(\$1,280,000)	(\$1,280,000)
Renewal CW License Fee Reduction (\$10.00)	<u>(\$1,103,050)</u>	<u>(\$1,743,740)</u>	<u>(\$1,397,430)</u>
Total-Division of Licensing Trust Fund	<u>(\$2,383,050)</u>	<u>(\$3,023,740)</u>	<u>(\$2,677,430)</u>

Non-Recurring

None.

2. Expenditures:

Recurring

Notice of Service of Process for Out of State Licensees

The Department expects to reduce expenditures related to publishing costs for notifying out-of-state licensees of revocation or suspension of their concealed weapon license.

	(FY 15-16)	(FY 16-17)	(FY 17-18)
	Amount / FTE	Amount / FTE	Amount / FTE
Chapter 790: Notice of Service	(\$158,948)	(\$158,948)	(\$158,948)

Non-Recurring

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:
None.

D. FISCAL COMMENTS:
None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Notice of Service Requirements

Procedural Due Process: Generally

The Due Process Clauses of the Fifth and Fourteenth Amendments contemplate fair process. “An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objection.”⁸ The degree to which due process protections apply varies with the nature of the interests implicated.⁹

The bill’s removal of notice by publication for concealed weapon licenses and replacing such notice with a requirement to send notice by regular mail after notice by certified mail is returned undeliverable may not be considered reasonably calculated, under all the circumstances, to apprise an interested party of the action and thus, may implicate procedural due process concerns.

The courts have not ruled directly whether replacing notice by publication with notice by first class mail is sufficient procedural due process.¹⁰

B. RULE-MAKING AUTHORITY:
None.

C. DRAFTING ISSUES OR OTHER COMMENTS:
None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 10, 2015, the Business & Professions Subcommittee adopted one amendment. The amendment reduced the fee for initial and renewal concealed weapon licenses. The bill was reported favorably as a committee substitute.

The staff analysis is drafted to reflect the committee substitute.

⁸ *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

⁹ *Mathews v. Eldridge*, 424 U.S. 319 (1976); *Hadley v. Dept. of Admin.*, 411 So.2d 184 (Fla. 1982).

¹⁰ *Anderson v. State*, 87 So. 3d 774, 776 (Fla. 2012).

