

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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

**BILL:** CS/SB 1040

**INTRODUCER:** Commerce and Tourism Committee and Senator Stargel

**SUBJECT:** Consumer Services

**DATE:** March 11, 2013      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Malcolm	Hrdlicka	CM	<b>Fav/CS</b>
2.	_____	_____	AGG	_____
3.	_____	_____	AP	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

CS/SB 1040 modifies several regulatory activities under the jurisdiction of the Florida Department of Agriculture and Consumer Services (DACS). Specifically, the bill:

*Division of Licenses*

- Revises the definition of repossession to specify when a recovery agent has active possession and command of a recovered vehicle or other equipment, i.e., when the repossession is complete;
- Clarifies that proof of annual firearms training for class “G” and “K” licensees be submitted to DACS upon completion, provides suspension or non-renewal for non-compliance, and creates a third-degree felony for issuing a fraudulent training certificate as part of an application for licensure;
- Removes the 50-mile radius limitation on private investigator and recovery agent internships.

*Division of Consumer Services*

- Transfers petroleum inspection fee collections from DACS to the Department of Revenue, exempts certain measuring devices from permitting fees, and exempts devices used for measuring aviation fuel from permitting requirements;
- Updates the requirements for filing financial reports for charitable organizations, provides that charitable organization and sponsor renewal statements must be issued by DACS 30 days prior to expiration and may be sent via electronic mail, removes notary requirements for registration packages, increases the application/renewal processing time from 10 to 15 days, and clarifies criminal reporting requirements for charitable organizations and sponsors;
- Updates the annual registration requirement for professional solicitors and fundraising consultants so that registration renewal is based on the date of issuance;
- Exempts charities that have a total revenue of less than \$25,000, have no employees or members compensated to do fundraising, and that do not use a professional solicitor from the \$10 annual registration fee;
- Reduces the time for professional solicitors to file financial documentation for campaigns lasting less than 1 year and extends the due date for financial reporting on campaigns lasting more than 1 year;
- Eliminates the requirement that charitable organizations and sponsors place a statement on all printed material stating the percentage of each contribution retained by a professional solicitor and the percentage of each contribution received by the organization or sponsor;
- Makes it unlawful for solicitors of contributions to provide false, misleading, or inaccurate information and authorizes the issuance of cease and desist orders for certain prohibited acts committed by charitable organizations;
- Reduces the required security for certain health studios from \$50,000 to \$25,000;
- Amends the Florida Do Not Call statute to prohibit unsolicited calls for charitable donations;
- Updates the definition of “commercial telephone solicitation” to include reference to consumer goods or services, eliminates the requirement that telemarketing salespersons provide a 3-year work history, clarifies that an exempt entity must file a valid affidavit of exemption and allows DACS to request additional information to verify an exemption, requires a telemarketing business keep its bond or other security in force as long as the business is open and operating, authorizes onsite inspection by investigators, requires exempt entities to display either a license or receipt of filing and affidavit of exemption, and provides notice to telemarketers engaged in timeshare sales that they must comply with DACS and DBPR licensing requirements;
- Requires moving brokers to supply a list of affiliated movers, requires moving brokers only contract with properly registered movers, eliminates the bond requirement for moving brokers, makes it unlawful for moving brokers to contract with unregistered movers, and makes it unlawful for movers to contract with unregistered moving brokers;
- Amends the definition of alternative fuel to provide for adopting fuel quality standards that cover new blended fuels;
- Staggers the license expiration dates for LP gas licensees, requires applicants taking the license examination pass each area of the examination with a score of at least 75 percent,

- and increases the minimum number of hours of continuing education from 12 to 16 hours;
- Extends the sunset repeal provision from July 1, 2014, to July 1, 2020, relating to permitting fees for weighing and measuring devices;
  - Allows pawnshop owners to have their fingerprints taken at an FDLE-authorized fingerprinting service provider;
  - Authorizes DACS to create a form allowing franchises to file a notice of exemption from the business opportunity regulation statute, eliminates the required disclosure statements and mandatory filing requirements from the seller of a business opportunity, eliminates the required \$300 annual fee and the \$50 filing update fee from the seller of a business opportunity, and eliminates DACS enforcement authority on unlawful acts committed by a seller of a business opportunity;
  - Decreases the size of the Motor Vehicle Repair Council from 11 to 9 members by merging the positions of “independent automotive collision shops” with “franchise or company owned automotive collision shops” and “independent tire dealer” with “franchise or company owned tire dealer”; and
  - Eliminates the option of obtaining a bond for operators of amusement rides.

This bill amends the following sections of the Florida Statutes: 206.45, 493.6101, 493.6113, 493.6116, 493.6118, 493.6120, 493.6121, 496.405, 496.406, 496.407, 496.409, 496.410, 496.411, 496.415, 496.419, 501.016, 501.059, 501.603, 501.604, 501.608, 501.611, 501.615, 501.617, 507.03, 507.04, 507.07, 525.01, 525.10, 527.01, 527.0201, 527.03, 531.415, 531.61, 539.001, 559.802, 559.803, 559.813, 559.815, 559.9221, 616.242, 721.20.

This bill repeals ss. 502.607(1)(b), 525.09(2)-(4), 559.805, 559.807(2), F.S.

This bill amends s. 40, ch. 2009-66, L.O.F.

This bill transfers, redesignates, and amends s. 525.09(1), F.S., as s. 206.41(1)(h), F.S.

## II. Present Situation:

The Florida Department of Agriculture and Consumer Services (DACS) is charged with supporting Florida’s agricultural economy and protecting consumers from unsafe products and deceptive business practices. To carry out these functions, DACS is organized under the divisions of Consumer Service and Licensing.<sup>1</sup> In the 2012 legislative session, the Division of Standards was eliminated and merged into the Division of Consumer Services.<sup>2</sup>

The Division of Consumer Services is tasked with receiving the state’s consumer complaints. It is responsible for overseeing and regulating the following activities and entities: business opportunities, motor vehicle repair shops, charitable organizations, Florida Do Not Call, dance studios, pawnshops, health studios, sellers of travel, intrastate movers, game promotions, telemarketing, and professional surveyors and mappers. In addition, this division is also responsible for protecting consumers from unfair and unsafe business practices across a wide

<sup>1</sup> Section 20.14, F.S. (2011)

<sup>2</sup> Chapter 2012-67, L.O.F. (2012)

range of products, including gasoline, brake fluid, antifreeze, liquefied petroleum gas, amusement rides, and weighing and measuring devices. The Division of Licensing is responsible for regulating and licensing private security, private investigative, and recovery services, as well as issuing concealed weapon and firearm licenses.

### III. Effect of Proposed Changes:

#### *Division of Licenses*

##### **Recovery Agents, ch. 493, F.S.**

Currently, persons engaged in the repossession of vehicles and other equipment are licensed under ch. 493, F.S. Currently, s. 493.6101(22), F.S., defines the term “repossession” to include the following statement:

A repossession is complete when a licensed recovery agent is in control, custody, and possession of such repossessed property.

“Control, custody, and possession” of a vehicle or other equipment is a legal concept with respect to the act of repossession because it identifies that moment at which the person conducting the repossession has taken active possession and command of the property being repossessed.<sup>3</sup> However, the meaning of that phrase is not defined in statute.

**Section 3** amends s. 493.6101, F.S., by revising the definition of repossession to specify when a recovery agent actually has active possession and command of a recovered vehicle or other equipment; i.e., when the repossession is complete. This section specifies that property is considered to be in the control, custody, and possession of a recovery agent if the vehicle or equipment has been secured in preparation for transport from the site of the recovery by means of having been attached to or placed on the towing transport vehicle or if the vehicle or equipment being recovered is being operated or about to be operated by an employee of the recovery agency.

##### **Security Officers and Private Investigators, ch. 493, F.S.**

Currently, holders of a Class “G”<sup>4</sup> firearm license must complete 4 hours of recertification training annually and must submit proof of such training at the time of renewal of the license.

**Section 4** amends s. 493.6113, F.S., by requiring proof of completion of annual recertification training to be submitted to DACS upon completion of that training. If documentation of the recertification training is not submitted by the end of the first year of the 2-year period of the license, the license is automatically suspended until proof of the training is submitted. If the

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<sup>3</sup> DACS 2013 Legislative Proposal, Division of Licensing, Short Title - Defining “Control, Custody, and Possession” as that Phrase Relates To Property Recovery, 12-18-2012, page 4, copy available in committee files. DACS commentary notes that “by including a technical definition of control, custody, and possession in the statute, we have provided a standard and a benchmark that can be applied both by the recovery industry as well as by law enforcement agents when they are called to get involved with a repossession.”

<sup>4</sup> A Class “G” licensee permits Class “C,” “CC,” “D,” “M,” “MA,” or “MB” licensees to bear a firearm. A Class “G” licensee may carry only the following weapons: a .38 caliber revolver; a .380 caliber or .9mm semiautomatic pistol, or a .357 caliber revolver with .38 caliber ammunition. Such licensee may carry no more than two firearms upon his or her person when performing regulated duties. Section 493.6115, F.S.

documentation is not submitted by the end of the second year of the 2-year period of the license, the license may not be renewed unless the applicant completes the minimum number of hours of range and classroom training required at the time of initial licensure.<sup>5</sup>

**Section 6** amends s. 493.6118, F.S., by granting DACS the authority to commence disciplinary action against Class “G” licensees for failing to complete recertification training. The bill specifies that failure of Class “K” licensees to maintain certification as a professional firearms instructor is also grounds for disciplinary action. Lastly, this section makes it a third-degree felony<sup>6</sup> to knowingly possess, issue, cause to be issued, sell, or submit a fraudulent training certificate to a person applying for licensure or to the division as part of an application for licensure.

**Sections 7 and 8** amend ss. 492.6120 and 493.6121, F.S., to correct cross-references due to the amendments in s. 493.6118, F.S., by Section 6.

**Private Investigators & Recovery Agents: Internships, ch. 493, F.S.**

Currently, individuals who do not have the requisite experience for licensure as a private investigator or recovery agent must serve an internship with a licensed private investigator or recovery agent to gain that experience. The law requires that the distance between a sponsor's place of business and the intern's assigned place of business be within a 50-mile radius.

**Section 5** amends s. 493.6116, F.S., by eliminating the 50-mile-radius requirement and instead provides that an intern's duties must be performed within the state of Florida.

*Division of Consumer Services*

**Petroleum Inspection Fees, ch. 531, F.S., Weights and Measures Act of 1971**

Currently, DACS and the Department of Revenue (DOR) collect taxes and fees on petroleum products. Regulated entities must remit motor fuel taxes to DOR and petroleum inspection fees to DACS.

Petroleum inspection fee collection transfer to DOR from DACS

Currently, a petroleum inspection fee is assessed by DACS on gasoline, kerosene (except when used as aviation fuel), and #1 fuel oil (heating oil) sold or used in this state.

**Section 1** transfers and redesignates s. 529.09(1), F.S., to s. 206.41(1)(h), F.S., to transfer the assessment and collection of the 0.125 cent per gallon inspection fee from DACS to DOR. The bill assesses the fee based on DOR's definition of “motor fuel.”<sup>7</sup>

**Sections 2 and 31** amend ss. 206.45 and 525.10, F.S., to transfer the assessment and collection of the 0.125 cent per gallon inspection fee from DACS to DOR.

<sup>5</sup> Initial licensure requires a minimum of 28 hours of range and classroom training, of which no more than 8 hours may be range training. Section 493.6105(5), F.S.

<sup>6</sup> A third-degree felony is punishable by a term of imprisonment not exceeding 5 years and a fine not exceeding \$5,000.

<sup>7</sup> “Motor fuel” is defined as all gasoline products or any product blended with gasoline or any fuel placed in the storage supply tank of a gasoline-powered motor vehicle. Section 206.01(9), F.S.

**Section 30** repeals s. 525.09(2)-(4), F.S., which are no longer necessary due to the transfer of the inspection fee from DACS to DOR.

**Section 35**, amends s. 531.415, F.S., to exempt measuring devices used to measure petroleum fuel from permitting fees.

Aviation fuel permit exemption

Currently, certain petroleum products assessed inspection fees by DCAS pursuant to s. 525.09, F.S., are exempt from the commercial weights and measures instruments permit requirements of ss. 531.60 – 531.66, F.S. Weights and measures instruments or devices may not be used for commercial purposes within this state without a commercial use permit issued by DACS, unless exempted as provided in s. 531.61, F.S.

**Section 36** amends s. 531.61, F.S., to provide that a device used exclusively for measuring aviation fuel is exempt from the permit requirements pursuant to ss. 531.60 – 531.66, F.S. The bill also removes a cross-reference to s. 525.09, F.S., which is being repealed by this bill.

**Charitable Organizations: Solicitation of Funds, ch. 496, F.S.**

Financial Report Filing Requirements

Currently, ss. 496.405 and 496.407, F.S., allows charities to submit IRS Form 990 with a Schedule A to meet the financial reporting requirements required at registration and renewal. The IRS has redesigned Form 990 and 990EZ; consequently, Schedule A no longer provides the same information it did when the statutes were enacted.

**Sections 9 and 11** amend ss. 496.405(2)(a) and 496.407, F.S., by updating the financial reporting requirements for charitable organizations that intend to solicit contributions. The bill requires submission of the updated IRS forms to comply with statutory reporting requirements.

Processing Timelines

Currently applications and renewals for charitable organizations and sponsors, professional solicitors, and professional fundraising consultants must be processed within 10 days by DACS or the organization is automatically approved.

**Sections 9, 12, and 13**, amend ss. 496.405(7), 496.490(6), and 496.410(5), F.S., to increase the application and renewal processing time by DACS from 10 to 15 days for charitable organizations and sponsors, professional solicitors, and professional fundraising consultants.

Annual Registration

Currently, registrations for professional solicitors and professional fundraising consultants expire on March 31 of each year regardless of the date the license was issued.

**Sections 12 and 13** amend ss. 496.409(3) and 496.410(3), F.S., so that professional solicitors and professional fundraising consultants have an annual registration requirement based on the date of issuance rather than all registrations expiring on March 31.

### Renewal Statements

Currently, s. 496.405, F.S., requires DACS to send annual renewal notices by mail 60 days before the expiration date of the charitable organization or sponsor. Because the notices are sent so far in advance of expiration, many organizations ignore the notice making a second reminder necessary.

**Section 9** amends s. 496.405(1)(b), F.S., by giving DACS the option to send a renewal statement by electronic mail. The bill also reduces from 60 days to 30 days the time before renewal in which the renewal notice must be sent to the charitable organization.

### Felony Reporting

Currently, s. 496.405, F.S., specifies the contents of registration statements that are required to be submitted by charitable organizations and sponsors. DACS states the current language related to past criminal activities seems to confuse applicants.<sup>8</sup>

**Section 9** amends s. 496.405(2)(d), F.S., to clarify past criminal activities that must be reported by charitable organizations and sponsors. The bill provides for reporting the same information but is clearer and easier to understand.

### Small Charity Fee Exemption

Currently, charities who solicit funds from the public must register with DACS. Charities who receive less than \$25,000 in contributions must pay a \$10 filing fee and file similar financial records as larger charities.

**Section 10** amends s. 496.406, F.S., by allowing charities with less than \$25,000 in total revenue, that have no employees or members who are compensated, and that do not use a professional solicitor to file an affidavit of exemption that contains basic information about the charity and limited financial information about the charity. These charities will also be exempt from paying the \$10 filing fee. However, if a charity exceeds \$25,000 in contributions, it must register within 30 days after the date the revenue reaches \$25,000.

### Remove Notary Requirement

Currently, charitable organizations and sponsors, professional solicitors, and professional fundraisers must all sign their applications under oath. DACS intends to move to an online application process for all registrations. The notarization requirement is a barrier to having this registration process move online because the online filing cannot be notarized.<sup>9</sup>

**Sections 9, 12, and 13**, amend ss. 496.405(2), 496.409(2), and 496.410(2), F.S., by removing the notarization requirement for charitable organizations and sponsors, professional solicitors, and professional fundraisers applications. The bill allows DACS to add a statement to each registration package that certifies the filing is true and correct and that the person signing the registration is authorized to do so.

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<sup>8</sup> DACS 2013 Legislative Proposal, Division of Consumer Services, Short Title – SOC – Felony Reporting Requirements, 12-18-2012, page 1, copy available in committee files.

<sup>9</sup> DACS 2013 Legislative Proposal, Division of Consumer Services, Short Title – SOC – Remove Notary Requirements, 12-18-2012, page 39, copy available in committee files.

### Financial Reporting

Currently, professional solicitors are required to file a financial report of campaign (FROC) detailing the gross revenue received and an itemization of expenses incurred within 90 days of the end of a solicitation campaign or on the anniversary date of a campaign lasting more than 1 year. The financial information requested for campaigns lasting longer than 1 year must contain data for the previous year. DACS allows professional solicitor's to file FROCs within 30 days of the anniversary date for campaigns lasting more than 1 year. The current statute allows for 90 days to file the FROC for campaigns that last less than 1 year.

**Section 13** amends s. 496.410(8), F.S., by reducing the time for professional solicitors to file necessary financial documentation for campaigns lasting less than 1 year from 90 days to 45 days. The bill delays the due date for financial reporting on campaigns lasting more than 1 year from on the anniversary date to 45 days after the anniversary.

### Financial Reporting

Currently, s. 496.411, F.S., requires charitable organizations and sponsors to place a statement on printed solicitations, receipts, and contribution reminders stating the percentage of contributions that go to the charity and the percentage that go to a professional solicitor. DACS notes the State of North Carolina has a similar provision which was deemed unconstitutional in a Supreme Court decision in 1988, *Riley v. National Federation of the Blind*, 487 U.S. 781 (1988). Based on this decision, DACS does not enforce this statute.<sup>10</sup>

**Section 14** amends s. 496.411(6), F.S., by removing the requirement that charitable organizations and sponsors place a statement on printed material indicating the percentage of each contribution retained by a professional solicitor and the percentage of each contribution received by the organization or sponsor.

### Cease And Desist Orders

Charitable organization registrations have continued to increase over the last several years along with the number of organizations receiving increased media scrutiny for inappropriate use of solicited funds. Several organizations based in Florida have been the subject of high profile investigations for filing false documents and for failing to use proceeds as intended.

**Section 15** amends s. 496.415, F.S., to include submitting false, misleading, or inaccurate information to the public by a charitable organization or sponsor as a prohibited act.

**Section 16** amends s. 496.419, F.S., by authorizing DACS to issue an immediate cease and desist order for certain prohibited acts. The bill also requires DACS to report any substantiated criminal violations to the proper prosecuting authority.

### **Bond Reduction for Health Studios, ss. 501.012-.019, F.S., Health Studios**

Currently, health studios that sell contracts for services are required to obtain a bond, certificate of deposit, or letter of credit in the amount of \$50,000 for each business location. The security is then available to compensate consumers in the event that the health studio violates any of the

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<sup>10</sup> DACS 2013 Legislative Proposal, Division of Consumer Services, Short Title – SOC – Eliminate Certain Campaign Disclosures, 12-18-2012, page 37, copy available in committee files.



provisions of the Health Studio Act. A health studio that is in business for 5 years under the same ownership and control with no unresolved consumer complaints is allowed to waive the security requirement.

**Section 17** amends s. 501.016, F.S., by reducing the required security for health studios from \$50,000 per location to \$25,000 per location. DACS reports that over the last 2 years, only one payout exceeded \$25,000 and most were significantly less.<sup>11</sup>

**Do Not Call Program (DNC), s. 501.059, F.S., Telephone Solicitation**

Under the Florida Do Not Call (DNC) program, if a person notifies DACS of his or her desire to be placed on a list (the “Do Not Call” list) indicating that he or she does not wish to receive unsolicited telephonic sales calls, DACS places the person on the list for 5 years. Telephone solicitors are prohibited from calling phone numbers on the Do Not Call list. However, some unsolicited phone calls do not meet the definition of a “telephonic sales call” as defined by statute, typically because the entity is not selling a product or service. This includes charitable organizations seeking donations. DACS receives frequent complaints from individuals who are frustrated because they have subscribed to the DNC program and continue to receive calls, primarily from professional solicitors calling on behalf of charitable organizations.<sup>12</sup>

**Section 18** amends s. 501.059, F.S., to expand the state DNC program to prohibit telephone solicitors seeking donations on behalf of charities from contacting individuals who have previously communicated to the solicitor that he or she does not wish to receive telephone solicitations from that charitable organization. The bill authorizes DACS to enforce this provision against charities and professional solicitors working on behalf of charities. The bill is intended to align Florida’s DNC program with the federal DNC program.

**Consumer Services – Telemarketing, ss. 501.601-501.626, F.S., Florida Telemarketing Act Definition**

The current definitions of “commercial telephone solicitation” contain three separate definitions that delineate what types of activities fall under the statute.<sup>13</sup> Two of the definitions reference consumer goods or service but one does not. Some interpretations expand the definition to non-consumer goods and services. DACS has stated the discrepancy has caused confusion for DACS and individuals seeking licensure.<sup>14</sup>

**Section 19** amends s. 501.603(1), F.S., by adding a reference to consumer goods or services so that all three definitions of “commercial telephone solicitation” include references to consumer goods or services.

**Section 20** amends s. 501.604, F.S., by updating the reference to entities exempt from the Telemarketing Act by removing the outdated reference to “National Association of Securities

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<sup>11</sup> DACS 2013 Legislative Proposal, Division of Consumer Services, Short Title – Health Studio Bond Reduction, 12-18-2012, page 7, copy available in committee files.

<sup>12</sup> DACS 2013 Legislative Proposal, Division of Consumer Services, Short Title – DNC Requirements of Charities, 12-18-2012, page 5, copy available in committee files.

<sup>13</sup> Section 501.603(1)(a), (b), and (c), F.S.

<sup>14</sup> DACS 2013 Legislative Proposal, Division of Consumer Services, Short Title – Telemarketing – Clarifying Definition of a Commercial Telephone Solicitation, 12-18-2012, page 50, copy available in committee files.

Dealers” and updates the reference to “Financial Industry Regulatory Authority.” The amendment further clarifies the application of the exemption to a supervised financial institution or parent, subsidiary, or affiliate operating within the scope of the supervised activity.

#### Exemption Status

Currently, the definition of a commercial telephone seller does not include a broad range of entities exempted by statute. Entities seeking an exemption are required to provide a notarized affidavit of exemption to DACS. The current language does not provide a way for DACS to verify the information provided in the affidavit of exemption.

**Section 19** amends s. 501.603(2), F.S., by clarifying that an entity exempt from the definition of “commercial telephone seller” is only exempt when a valid affidavit of exemption has been filed.

**Section 22** amends s. 501.608, F.S., to authorize DACS to review and request additional information before approving affidavits of exemption. The exempt entity must display its either its license or receipt of filing of an affidavit of exemption.

#### Work History

Currently, the Telemarketing Act requires telemarketing salespersons provide a 3-year work history on their application. DACS indicates it does not have a way to verify the accuracy of the data reported.<sup>15</sup>

**Section 21** amends s. 501.607, F.S., by removing the requirement for telemarketing salespersons to provide a 3-year work history as a part of his or her application.

#### Bond

The Telemarketing Act requires commercial telephone sellers obtain a bond, certificate of deposit, or letter of credit when they register or renew their license. If the bond expires before the renewal date, the statute does not require the commercial telephone seller to provide a valid security prior to its next renewal period.

**Section 23** amends 501.611, F.S., by stating that the required bond for telemarketers must remain in force throughout the licensure period.

#### Timeshare Advertising

Telemarketers who engage in timeshare advertising are regulated by DACS. Activities related to timeshare advertising are regulated by the Department of Business and Professional Regulation (DBPR) under ch. 721, F.S. In 2012, the Legislature enacted provisions to regulate timeshare resale service providers.<sup>16</sup>

**Section 24** amends s. 501.615, F.S., to reconcile the new DBPR timeshare reseller language in ch. 721, F.S., with the DACS telemarketing statute. The bill requires telemarketers who advertise timeshares to comply with the contract requirements in s. 721.205, F.S.

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<sup>15</sup> DACS 2013 Legislative Proposal, Division of Consumer Services, Short Title – Telemarketing – Eliminate Salesperson Work History Requirement, 12-18-2012, page 45, copy available in committee files.

<sup>16</sup> Ch. 2012-76, L.O.F.

**Section 47** amends s. 721.20 F.S., to highlight the requirement that telemarketers who advertise timeshares must also comply with the licensing requirements in part IV of ch. 501, F.S.

#### Inspections

DACS has regulatory authority over telemarketing businesses and regularly conducts onsite investigations looking for unlicensed or unlawful activity. Businesses may refuse entry to or refuse to provide required materials, such as scripts, to investigators. Currently, DACS has subpoena power to gain access to these materials.

**Section 25** amends s. 501.617, F.S., by expanding DACS' investigative authority to allow onsite investigators to conduct regulatory inspections of telemarketing businesses and thereby view business records.

#### **Moving Services, ch. 507, F.S.**

Currently, DACS does not interpret the definition of a moving broker to include online brokering services. DACS has stated that the increase in online brokering services in recent years has made it easy for unregistered movers to advertise and get referrals from moving brokers. Additionally, moving brokers are required to obtain a \$25,000 bond. DACS states it has never had to use the bond.<sup>17</sup>

**Section 26** amends s. 507.03, F.S., to require moving brokers to report affiliated movers upon request by DACS.

**Section 28**, amends s. 507.07, F.S., to create two new violations of ch. 507, F.S. The bill makes it unlawful for a moving broker to subcontract for services with an unregistered mover. Similarly, the bill makes it unlawful for a mover to subcontract for services with an unregistered moving broker.

**Section 27** amends s. 507.04, F.S., to repeal the requirement that moving brokers obtain a performance bond or certificate of deposit in the amount of \$25,000.

#### **Alternative Fuels, ch. 525, F.S.**

Currently, fuel products are being developed that are not covered under the definition of alternative fuels found in s. 525.01, F.S. Specifically, the standard for E85 has been amended by ASTM International. ASTM provides a forum for the development and publication of voluntary consensus standards for materials, products, and services. Current ASTM standards have altered the definition of E85 to allow for a gasoline-ethanol blend containing 51 percent to 83 percent ethanol.

**Section 29** amends s. 525.01, F.S., to broaden the definition of alternative fuels. The change is designed to allow DACS the flexibility to adjust to changing fuel quality standards and new blended fuels.

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<sup>17</sup> DACS 2013 Legislative Proposal, Division of Consumer Services, Short Title – Moving Broker Registration Requirement, 12-18-2012, page 9, copy available in committee files.

**LP Gas Licensees, ch. 527, F.S.**License year

Currently, LP gas licenses expire on August 31st of each year.

**Sections 32 and 34**, amend ss. 527.01 and 527.03, F.S., to allow for staggered license expiration dates. The bill amends the renewal sequence of licenses to include the period from either September 1 through the following August 31, or April 1 through the following March 31, depending upon the type of license.

Examinations

Section 527.0201, F.S., authorizes DACS to issue competency examinations to licensees based on licensure category. This section currently states that the applicant for licensure must “prove competency by passing a written examination administered by the department or its agent with a grade of 75 percent or above.” This language appears to require that an overall score of 75 percent must be achieved, not a score of 75 percent on each area tested on the examination.

**Section 33** amends s. 527.0201, F.S., to require that applicants taking the license examinations must pass each area tested with a score of at least 75 percent.

Continuing education

Currently, a minimum of 12 hours of continuing education is required in order to maintain certification as a qualifier or master qualifier. The industry recommends a minimum of 16 hours.

**Section 33** amends s. 527.0201(5)(c), F.S., to increase the minimum number of hours of continuing education required to maintain certain licenses from 12 to 16.

**Weights and Measures Fees, ch. 531, F.S., Weights and Measures Act of 1971.**

Currently, ch. 531, F.S., sets the maximum fees for commercial weighing and measuring devices. Actual fees are established by rule. The permits are issued on a per device basis, but businesses with multiple devices in one location are assessed less per device since certain economies of scale are realized by the regulatory program when conducting multiple inspections at one location.

When the permitting fees were enacted in 2009, the fees were to sunset on July 1, 2014. Prior to 2009, the weights and measures program was funded by General Revenue.

**Section 37** amends s. 40 of ch. 2009-66, L.O.F., by extending the sunset provision relating to permitting fees for weighing and measuring devices from July 1, 2014, to July 1, 2020.

**Pawn Broker Fingerprinting, ch. 539, F.S.**

Currently, pawn shop owners must submit fingerprints taken by a law enforcement agency as part of the registration requirements.

**Section 38** amends s. 539.001, F.S., by allowing pawn shop owners to have their fingerprints taken at a fingerprinting service provider authorized by the Florida Department of Law Enforcement.

**Sale of Business Opportunities Act, ss. 559.80-559.815, F.S.**

Currently, businesses file an annual disclosure statement with DACS if selling or leasing business opportunities in Florida. The Federal Trade Commission regulates business opportunities and DACS has limited regulatory authority. Franchises are exempt from the requirements of the business opportunity statute as long as they meet the Federal Trade Commission's definition of a franchise.

**Sections 39, 40, 41, 42, 43, and 44**, deregulate sellers of business opportunities as follows:

**Section 39** amends s. 559.802, F.S., by authorizing DACS to create a form for a franchise to file its notice of exemption.

**Section 40** amends s. 559.803, F.S., by eliminating the provision that allows the seller of a business opportunity file a disclosure statement or any other document required to be filed by the seller under federal regulations in lieu of the documents required by s. 559.803. Elimination of this provision now requires the seller of a business opportunity to comply with the disclosure requirements of s. 559.803.

**Section 41** repeals s. 559.805, F.S., which eliminates the requirement that a seller of a business opportunity annually file a copy of its disclosure statement before placing an advertisement or making any other offer to sell, or solicit an offer to buy, a business opportunity to a prospective purchaser in this state. In addition, the seller of a business opportunity is no longer required to file a list of the seller's officers, directors, trustees, general partners, general managers, principal executives, or any other person charged with the responsibility for the seller's business activities. The department will no longer be required to issue an advertisement identification number to a seller of a business opportunity. In addition, the department will no longer collect an annual fee of \$300 from sellers of a business opportunity or a \$50 fee to update any filing.

**Section 42** repeals s. 559.807(2), F.S., which eliminates the requirement that a bond, certificate of deposit, or guaranteed letter of credit be held in favor of the department for the use and benefit of any person who is injured by the fraud, misrepresentation, breach of contract, financial failure, or violation of any statute regulating the acts of a seller of a business opportunity. However, the bill retains the requirement that a seller of a business opportunity obtain a surety bond, establish a certificate of deposit, or a guaranteed letter of credit for the minimum amount of \$50,000 if the seller makes certain representations to prospective buyers.

**Section 43** amends s. 559.813, F.S., by eliminating the enforcement authority of DACS with respect to unlawful acts committed by a seller of a business opportunity. However, the bill retains a private cause of action for an individual injured by the unlawful acts of a seller of a business opportunity. Similarly, the Attorney General or state attorney may also bring an action against the seller.

**Section 44** amends s. 559.815, F.S., by eliminating a reference to mandatory filing requirements required of a seller of a business opportunity by the department.

The bill retains the consumer protection provisions of ch. 559, F.S., such as the requirement that the seller of a business opportunity provide a written disclosure to prospective buyers, the

requirement that certain sellers obtain \$50,000 in security, a private cause of action against a seller, and other civil sanctions.

**Motor Vehicle Repair Advisory Council, ss. 559.901-559.9221, F.S., Florida Motor Vehicle Repair Act.**

Currently, the 11 member Motor Vehicle Repair Advisory Council exists to advise and assist DACS in carrying out the provisions of the Motor Vehicle Repair Act.

**Section 45** amends s. 559.9221, F.S., by decreasing the size of the Motor Vehicle Repair Council from 11 to 9 members. The bill merges the position of “independent automotive collision shops” with “franchise or company owned automotive collision shops” and merges the position of “independent tire dealer” with “franchise or company owned tire dealer.”

**Public Fairs & Expositions, ch. 616, F.S.**

Currently, an owner of an amusement ride may not operate a ride without meeting the insurance requirements, which may be satisfied with an insurance policy or a bond.

**Section 46** amends s. 616.242, F.S., by eliminating the option of obtaining a bond. Although the bill removes a bond option, DACS reports that no entity has utilized the bond option.<sup>18</sup>

**Effective Date**

Section 48 provides an effective date of July 1, 2013.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

Because the repeal of the business opportunity registration requirement includes elimination of an annual fee of \$300 and a \$50 fee to update any filing, DACS calculated an estimated revenue loss of \$11,000 annually.<sup>19</sup> Similarly, the elimination of the \$10

<sup>18</sup> DACS 2013 Legislative Proposal, Division of Consumer Services, Short Title – Eliminate Fair Rides Bond, 12-18-2012, page 6, copy available in committee files.

<sup>19</sup> DACS Analysis, SB 1040, February 18, 2013, copy available in committee files.

filing fee for charitable organizations that make less than \$25,000 in total revenue will result in an estimated revenue loss of \$53,520 annually.<sup>20</sup>

Extends the sunset date on permitting fees for commercial weighing and measuring devices from July1, 2014 to July 1, 2020.

#### B. Private Sector Impact:

According to DACS, the removal of the \$300 annual fee for a business opportunity and the \$10 filing for charitable organizations making less than \$25,000 will reduce administrative costs for these industries.<sup>21</sup> Likewise, reducing the bond security amount from \$50,000 to \$25,000 for health studios and the elimination of a bonding requirement for moving brokers will produce savings for these industries.<sup>22</sup>

The centralized collection of motor fuel taxes and inspection fees within DOR may decrease administrative costs to the regulated entities.

However, by requiring 4 additional hours for continuing education courses for LP gas licensees, these licensees will incur an added cost for having to register for more courses. DACS provides classes at a cost of \$15 to \$25. Classes may also be taken with private providers at a higher fee.

Additionally, the enforcement of DNC violations against charities may subject such charities to fines or other civil sanctions.<sup>23</sup>

#### C. Government Sector Impact:

DACS has estimated the elimination of the filing fee for charitable organizations that make less than \$25,000 in total revenue will cause the department to incur an estimated \$8,028 in administrative costs.<sup>24</sup> However, eliminating the processing of applications from small charities will provide DACS staff more time to focus on enforcement against larger charities.<sup>25</sup> Additionally, the decrease in applications from small charities will save expenses and resources associated with processing the other applications from charities.<sup>26</sup>

DACS stated that revenue will likely increase due to increased registration and fines of moving brokers and movers; however, there may be minimal expenses to increased administrative costs of processing registrations and pursuing enforcement actions.<sup>27</sup> DACS stated the staggered LP gas license renewal periods may reduce expenses by

<sup>20</sup> DACS Analysis, *supra* note 19.

<sup>21</sup> DACS 2013 Legislative Proposal, Division of Consumer Services, Short Title – Business Opportunity Repeal, 12-18-2012, page 1, copy available in committee files; DACS 2013 Legislative Proposal, Division of Consumer Services, Short Title – SOC – Small Charity Exemption, 12-18-2012, page 33, copy available in committee files.

<sup>22</sup> DACS 2013 Legislative Proposal, *supra* note 11; DACS 2013 Legislative Proposal, *supra* note 17.

<sup>23</sup> See DACS 2013 Legislative Proposal, *supra* note 12.

<sup>24</sup> DACS Analysis, *supra* note 19.

<sup>25</sup> DACS 2013 Legislative Proposal, *supra* note 21.

<sup>26</sup> DACS 2013 Legislative Proposal, *supra* note 21.

<sup>27</sup> DACS 2013 Legislative Proposal, *supra* note 17.

eliminating the need for additional OPS employees during the renewal period.<sup>28</sup> DACS stated the ability to email renewal notices to charitable organizations and sponsors will save the department on mailing costs.<sup>29</sup>

Lastly, according to DOR, the operational impact of transferring collection of taxes and fees on petroleum products from DACS to DOR will be insignificant.<sup>30</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Commerce and Tourism on March 11, 2013:**

The committee substitute does the following:

- Removes the word “applicant” from the provisions allowing for disciplinary proceedings against a Class “G” licensee for failing to complete required recertification training or against a Class “K” licensee for failing to maintain active certification as a professional firearms trainer.
- Reduces the number of days, from 20 to 15, the department has to process applications and renewals for charitable organizations, professional solicitors, and professional fundraising consultants before the application is automatically approved.
- Provides a commercial telephone salesperson the option to display either a license or a receipt of filing of an affidavit of exemption at the place of business. Failure to do so may result in the salesperson being ordered by the department to leave the business until he or she can produce one of the two required documents.

**B. Amendments:**

None.

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

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<sup>28</sup> DACS 2013 Legislative Proposal, Division of Consumer Services, Short Title – LP Gas License Renewal, 12-18-2012, page 15, copy available in committee files.

<sup>29</sup> DACS 2013 Legislative Proposal, Division of Consumer Services, Short Title – Renewal Statements, 12-18-2012, page 27, copy available in committee files.

<sup>30</sup> DOR 2013 Bill Analysis, SB 1040, March 6, 2013, copy available in committee files.