

**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.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: CS/CS/SB 498

INTRODUCER: Judiciary Committee; Commerce and Tourism Committee; and Senator Young

SUBJECT: Department of Agriculture and Consumer Services

DATE: March 23, 2017

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
2.	<u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
3.	_____	_____	<u>AP</u>	_____

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 498 modifies various areas of law that relate to the authority of the Department of Agriculture and Consumer Services. These areas include private investigative, security, and repossession services and personnel; surveying and mapping; aquaculture; agriculture; concealed weapons and firearms licensing; and taxi services. These modifications include:

Allowing private investigative agency managers to manage multiple agencies or branches;

- Making substantial changes to regulations of surveyors and mappers;
- Clarifying fingerprint retention policies for specific partners and corporate officers of ch. 493, F.S., licensees;
- Removing inconsistent language regarding the terms of renewals for licensure under ch. 493, F.S.;
- Permitting the Florida Department of Law Enforcement to share mental health and substance abuse data from its Mental Competency database with the Department for the purposes of determining eligibility of Class “G” and “K” applicants and licensees;
- Requiring ch. 493, F.S., licensees to reveal if they have been arrested to their employer within 3 days of the arrest, and granting the Department authority to discipline licensees who fail to do so;
- Mandating that statewide firearm licensees complete training for each type of firearm carried in the course of his or her licensed duties;
- Creating a temporary suspension process for Class “G” or “K” licensees who are arrested for or formally charged with a firearms-related crime; and for ch. 493, F.S., licensees who are arrested for or formally charged with a forcible felony;

- Updating the Florida Do Not Call Program to make subscriptions indefinite, rather than for 5 years;
- Creating consistent penalties against intrastate household movers for failure to maintain motor vehicle and liability insurance;
- Exempting company gyms from registration as a health studio with the Department;
- Removing taximeters and digital networks from the definition of a weight and measure, thereby reducing the Department's regulatory authority over taximeters;
- Deleting fees for the registration of a livestock mark or brand, and increasing the term of registration for such marks or brands from 5 to 10 years;
- Repealing a requirement that individuals re-mark or rebrand recently purchased cattle;
- Providing an exemption from registration for agricultural dealers who pay for their purchases with a credit card;
- Allowing the Department to grant concealed weapon or firearm licenses to persons who have been granted relief from firearms disabilities;
- Reducing the concealed weapon or firearm license and renewal fees by five dollars; and
- Making technical changes and deleting of outdated language.

## II. Present Situation:

The Department of Agriculture and Consumer Services (Department) has numerous and varied responsibilities, including safeguarding the public from unsafe or defective products and deceptive business practices, protecting the environment, supporting Florida's agricultural economy, and administering this state's firearms licensing scheme. And these varied responsibilities are spread among the Department's twelve divisions and six offices.<sup>1</sup>

The present situation relative to each section of the bill is discussed in the Effect of Proposed Changes section of this bill analysis. Generally, there will be a heading or subheading, then a discussion of the present situation, then a discussion of the effect of the proposed changes.

## III. Effect of Proposed Changes:

### Agriculture Education and Promotion Facility Grant

An agriculture education and promotion facility is an exhibition hall, arena, civic center, exposition center, or other capital project or facility that can be used for agricultural education, exhibitions, civic, and other events.<sup>2</sup> In 2002, the Legislature gave the Department authority to evaluate applications for grants for the construction or renovation of these facilities.<sup>3</sup> These grants are funded through the General Appropriations Act, which is passed each legislative session.<sup>4</sup>

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<sup>1</sup> Florida Department of Agriculture and Consumer Services, *Divisions and Offices*. <http://www.freshfromflorida.com/Divisions-Offices/> (last visited Mar. 7, 2017).

<sup>2</sup> Section 288.1175(3), F.S.

<sup>3</sup> Ch. 2002-301, Laws of Fla.

<sup>4</sup> Section 288.1175(8), F.S.

**Section 1** amends the statute regulating agriculture education and promotion facility grants<sup>5</sup> to require that applications for a facility grant be *postmarked, or electronically submitted*, by October 1 of each year. Current law is less precise, merely stating that the application must be “submitted” by October 1.

### **Division of Agricultural Environmental Services**

The Division of Agricultural Environmental Services supports state and federal regulatory programs regarding pesticide registration, testing, and regulation, and other related environmental and consumer protection issues.<sup>6</sup> The U.S. Environmental Protection Agency’s (EPA) labeling requirements for pesticides and devices<sup>7</sup> and its Worker Protection Standard<sup>8</sup> provide a minimum standard on which the Division must base certain regulations.<sup>9</sup> Accordingly, the Department maintains rules on these topics.<sup>10</sup>

**Section 9** deletes an outdated reference to the Department’s adoption of rules “. . . during the 1995-1996 fiscal year . . .” to reflect the EPA’s labeling requirement for pesticides and devices, and the EPA’s worker protection standard. This change does not alter the Department’s duties or authority.

### **Division of Licensing**

The Department’s Division of Licensing is responsible for protecting the public from unethical business practices by persons providing private security, private investigative, and recovery services. This Division seeks to accomplish this through licensure and regulation of these industries.<sup>11</sup> Additionally, the division is administers this state’s concealed weapons and firearms licensing scheme.<sup>12</sup>

The Department’s Division of Licensing is responsible for investigating and issuing licenses to conduct private security, private investigative, and recovery services pursuant to ch. 493, F.S. The Division of Licensing also issues concealed weapon or firearm licenses pursuant to s. 790.06, F.S. As of February 28, 2017, there were 1,910,038 holders of Department-issued licenses. Of these, 1,733,487 were concealed weapons and firearms licensees.<sup>13</sup>

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<sup>5</sup> Section 288.1175, F.S.

<sup>6</sup> Florida Department of Agriculture and Consumer Services, *Division of Agricultural Environmental Services*, <http://www.freshfromflorida.com/Divisions-Offices/Agricultural-Environmental-Services> (last visited Mar. 15, 2017).

<sup>7</sup> 40 C.F.R., Pt. 156

<sup>8</sup> 40 C.F.R., Pt. 170

<sup>9</sup> *See* 487.2041, F.S.

<sup>10</sup> *See* rules 5E-2.041, F.A.C., *Pesticides: Materials Incorporated by Reference*, 5E-2.011, F.A.C., *Pesticides: General Labeling Requirements for Pesticides*.

<sup>11</sup> This regulation is conducted pursuant to ch. 493, F.S.

<sup>12</sup> Florida Department of Agriculture and Consumer Services, *Division of Licensing*, <http://www.freshfromflorida.com/Divisions-Offices/Licensing> (last visited Mar. 16, 2017). Florida’s concealed weapons and firearms licensing scheme is set forth at s. 790.06, F.S.

<sup>13</sup> Florida Department of Agriculture and Consumer Services, Division of Licensing, *Number of Licensees by Type*, [http://www.freshfromflorida.com/content/download/7471/118627/Number\\_of\\_Licensees\\_By\\_Type.pdf](http://www.freshfromflorida.com/content/download/7471/118627/Number_of_Licensees_By_Type.pdf) (last visited Mar. 15, 2017).

***Licensure and Discipline of Private Investigators, Security Officers, Recovery Agents, and Related Licenses***

**Section 10** amends s. 493.6101, F.S., to expressly authorize a licensed manager of a private investigative agency—a “Class ‘M’” licensee—to manage up to three offices within a 150-mile radius of the location listed on the agency’s Class “A” license. However, these offices must consist of the location listed on the Agency’s Class “A” license and up to two branch offices, or these offices must consist of no more than three branch offices. In contrast, current law strongly implies that these licensees are limited to oversight of only one investigative agency or branch office at a time.<sup>14</sup>

Currently, the Department requires applicants for licensure under ch. 493, F.S., to submit a full set of fingerprints, a fingerprint-processing fee, and a fingerprint retention fee with their initial application.<sup>15</sup> With this information, the Department conducts an initial background check through the Federal Bureau of Investigation (FBI) and the Florida Department of Law Enforcement (FDLE). The Department also retains the applicants’ fingerprints in the statewide-automated biometric identification system<sup>16</sup> and in the national retained print arrest notification program for ongoing updates on arrests of its licensees.<sup>17</sup> The Department may discipline a licensee based on his or her plea to, or conviction of, certain crimes.<sup>18</sup>

All licenses granted under ch. 493, F.S., are subject to renewal. Although a corporate officer or partner of, for example, a Private Investigative Agency, is required to file a complete initial application *for his or her agency’s licensure*, the corporate officer or partner is not granted a license as a result of his or her application. Instead, it is the *agency* that is granted the license. Therefore, though each corporate officer and partner are required to apply for an application for their company’s licensure, they do not obtain individual licenses.<sup>19</sup>

**Section 11** clarifies that partners and corporate officers who do not also possess a ch. 493, F.S., license subject to renewal<sup>20</sup> are exempt from participation in the fingerprint retention requirements imposed on ch. 493, F.S., licensees.

Notifications

**Section 13** amends s. 493.6108(5), F.S., to require that ch. 493, F.S., licensees notify their employer within three calendar days if they are arrested for any offense.

<sup>14</sup> Section 493.6101, F.S.

<sup>15</sup> Section 493.6105(3)(j), F.S.

<sup>16</sup> *See*, s. 943.05(2)(b), F.S.

<sup>17</sup> *See*, s. 493.6108(4)(b), F.S. To be precise, “[w]hen [FDLE] begins participation in the Federal Bureau of Investigation’s national retained print arrest notification program, [it is then required to] enroll such fingerprints in the program.”

<sup>18</sup> Section 493.6118, F.S.

<sup>19</sup> To be clear, an officer or partner could also apply for an individual license.

<sup>20</sup> Section 493.6113, F.S., subjects all licenses granted under ch. 493, F.S., to renewal. Although a corporate officer or partner of—for example, a Private Investigative Agency—is required to file a complete initial application, the corporate officer or partner is not granted a license as a result of his or her application (but his or her agency is). Therefore, corporate officers and partners are not required to renew a license that does not exist under ch. 493, F.S.

**Section 17** amends s. 493.6118, F.S., to allow the Department to take administrative action against its ch. 493, F.S., licensees for their failure to notify their employer within three calendar days if they are arrested for any offense.

**Section 14** deletes a requirement in s. 493.6112, F.S., that Security Officer and Recovery Agent Schools licensed by the Department under ch. 493, F.S., notify the Department of any hiring, termination, withdrawal, removal, replacement, or addition of the School's partners, officers, or employees. These schools are currently required to provide the Department with information on their instructors, school facilities, and curricula elsewhere in statute.<sup>21</sup>

This section also clarifies that ch. 493, F.S., agency licensees are required to notify the Department of a change in their employment rolls *within 15 calendar days* by a form submitted electronically to the Department. Section 493.6112, F.S., currently requires that licensees notify the Department "immediately" of such changes; according to the Department, this requirement proves vague in practice and results in varying compliance.<sup>22</sup>

### Mental Health History

The Department has a duty to investigate whether any ch. 493, F.S., applicant has been adjudicated incompetent under ch. 744, F.S.,<sup>23</sup> or has been committed to a mental institution under the Florida Mental Health Act, ch. 394, F.S.<sup>24, 25</sup> The Department may deny an application for licensure based on an applicant's:<sup>26</sup>

- Adjudication of incapacitation, unless the applicant's capacity has been judicially restored;
- Placement in a treatment facility for the mentally ill under ch. 394, F.S., or similar law in another state, unless the applicant's competency has been judicially restored;
- Diagnosis of an incapacitating mental illness, unless a Florida-licensed psychologist or psychiatrist certifies that the applicant does not currently suffer from mental illness;
- Chronic and habitual use of alcoholic beverages to the extent that his or her normal faculties are impaired;
- Commitment to a treatment facility for substance abuse;
- Being subject to a finding by a court that she or he is an habitual offender of disorderly intoxication;
- Convictions of driving under the influence, within the 3-year period immediately preceding the application, unless the applicant can prove that she or he is not currently impaired and has successfully completed a rehabilitation course; or

<sup>21</sup> See ss. 493.6304 and 493.6406, F.S.

<sup>22</sup> Florida Department of Agriculture and Consumer Services, *SB 498 Agency Analysis*, p. 5 (Feb. 8, 2017) (On file with the Senate Committee on Judiciary).

<sup>23</sup> A court may grant a petition to determine incapacity that is filed by an adult; the petition must include allegations of the individual's incapacity and facts in support thereof. See s. 744.3201(1), F.S.

<sup>24</sup> Section 493.6108(1)(b), F.S.

<sup>25</sup> A commitment to an institution under ch. 394, F.S., may be voluntary or involuntary based on mental illness. A voluntary commitment requires the patient's consent, and an involuntary commitment requires a finding that the patient is likely to suffer harm to himself or herself, or that he or she poses a real and present threat of substantial harm to his or her well-being, or the well-being of others. Sections 394.462-.463, F.S.

<sup>26</sup> Section 493.6106, F.S.

- Having been found guilty of a controlled substance-related crime, unless the applicant establishes that she or he is not currently abusing any controlled substance and has successfully completed a rehabilitation course.

The Department must further investigate the general mental history and current mental and emotional fitness, including drug or alcohol abuse, of any Statewide Firearms License (Class “G”) or Firearms Instructor (Class “K”) licensee.<sup>27</sup> The Department may deny an application for licensure to a Class “G” or “K” applicant based on a history of mental illness or drug or alcohol abuse.

These investigations into mental health and substance abuse are largely limited to an inquiry by the Department on the application for licensure; records of commitment under ch. 394, F.S., are confidential and exempt unless the applicant authorizes the release of the documentation.<sup>28</sup>

Currently, the Department can access FDLE and clerks of courts records of individuals who are or were committed under chs. 394, 397, or 744, F.S., for the purpose of reviewing the fitness of applicants for concealed weapons licenses under ch. 790, F.S.<sup>29</sup> The FDLE maintains the Mental Competency Database (MECOM), which lists the names and related data of persons who are prohibited from purchasing a firearm based on adjudication of mental defectiveness (total mental incapacity) or commitment to mental institutions because of mental illness or substance abuse.<sup>30</sup> An individual may be removed from MECOM if he or she receives a relief from firearm disabilities under s. 790.065(2)(a)4.d., F.S.

**Section 13** grants the FDLE authority to share data from the MECOM database with the Department for the limited purpose of determining eligibility of Class “G” and “K” applicants and licensees.

#### Actions Against Licensees

**Section 16** requires the Department to review mental health and substance abuse data provided by the FDLE as part of its case-by-case determination whether a temporary Class “G” applicant is prohibited from licensure.

The Department may pursue disciplinary administrative action against a current ch. 493, F.S., licensee based on a finding that he or she committed any of the acts prohibited in s. 493.6118, F.S., including:

- Being found guilty of, or entering a plea of guilty or nolo contendere to, or being convicted of, a crime that directly relates to the business for which the license is held;
- Failure to maintain required commercial general liability coverage;
- Commission of an act of violence, or use of force on any person except in the lawful protection of one’s self or another from physical harm;

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<sup>27</sup> Section 493.6108(3), F.S.

<sup>28</sup> Section 394.4615, F.S.

<sup>29</sup> Sections 790.065(2)(a)4.c.(1), F.S. and 790.065(2)(a)4.f., F.S.

<sup>30</sup> Section 790.065, F.S.; Florida Department of Law Enforcement, *Mental Competency (MECOM) Database: Frequently Asked Questions* p. 5 (June 2, 2014), [https://www.fdle.state.fl.us/cms/FPP/Documents/MECOMFAQs\\_Final\\_06022014.aspx](https://www.fdle.state.fl.us/cms/FPP/Documents/MECOMFAQs_Final_06022014.aspx) (last visited Mar. 16, 2017).

- Failure to cooperate with a Department investigation; or
- Violation of any other provision of ch. 493, F.S.

Administrative disciplinary action is reviewable under ss. 120.569-.57, F.S. These types of administrative hearings generally permit the licensee to dispute the allegations made against him or her. An impartial hearing officer then makes findings of fact and findings of law, which result in a final determination of whether the Department's case against the licensee is supported by clear and convincing evidence.

The Department may also pursue an emergency suspension order under s. 120.60(6), F.S., if the Department finds that the licensee poses a serious danger to the public health, safety, or welfare.<sup>31</sup> The emergency suspension order allows the Department to require the licensee to cease and desist from continuing to act under his or her license, but the Department is obligated to "promptly" institute a formal suspension or revocation proceeding pursuant to ss. 120.569-.57, F.S. The cease and desist language of the emergency suspension order remains in effect until a final order reviewing the allegations against the licensee has been issued pursuant to the hearing under either s. 120.569 or 120.57, F.S.

**Section 17** requires the Department to temporarily suspend a Class "G" or "K" licensee who is arrested for or formally charged with a firearms-related crime that would disqualify him or her from licensure. This section also grants the Department authority to temporarily suspend any ch. 493, F.S., licensee who has been arrested for or formally charged with a forcible felony.<sup>32</sup>

The proposed temporary suspension would grant the licensee a right to hearing under ch. 120, F.S., but the scope of that hearing would be limited only to a determination of whether the licensee has been arrested for or charged with a disqualifying crime. When a licensee is ultimately cleared of the allegations made in his or her underlying criminal case, the Department is required to lift the temporary suspension. When, however, the criminal case results in a disqualifying disposition, the temporary suspension will remain in effect and the Department is required to bring an administrative case under ch. 120, F.S., against the licensee to attempt to revoke his or her license.

### ***Training and Certification for Ch. 493, F.S., Licensees***

Applicants for licensure as a firearms instructor (Class "K") must undergo training and receive certification from either:

- The National Rifle Association (NRA) Private Security Firearm Instructor Certificate Program,<sup>33</sup> or

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<sup>31</sup> See also *Allied Edu. Corp v. State, Dep't of Edu.*, 573 Sp. 2d 959, 1991 (Fla. 1st DCA 1991).

<sup>32</sup> Section 776.08, F.S., defines a "forcible felony" as treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.

<sup>33</sup> National Rifle Association, *Instructor Development Schools*, <http://le.nra.org/training/instructor-development-schools.aspx#schedule> (last visited Mar. 15, 2017); National Rifle Association, *Recertification*, <http://le.nra.org/training/recertification.aspx> (last visited Mar. 15, 2017).

- A federal law enforcement agency’s firearms instructor certificate program, e.g., through the U.S. Department of Homeland Security’s Federal Law Enforcement Training Center (FLETC).<sup>34</sup>

The NRA’s firearm instructor certificate expires after 3 years, unless the instructor successfully completes recertification with the NRA, which requires proof of 24 hours of continuing education.<sup>35</sup> The FLETC firearm instructor certificate does not expire, but the instructor may be required to obtain recertification by the agency (such as a local police department or sheriff’s office) that sponsored the original certification of the trainee by FLETC.<sup>36</sup>

**Section 11** of the bill also makes minor modifications to the application requirements for a firearms instructor (Class “K”) license. Current law requires Class “K” applicants to submit one of a list of three certificates demonstrating competency as a firearms instructor. The bill requires two of these to be “valid” and to have been issued within three years of the submission of the application.

**Sections 19 and 21** delete the requirement that private investigator interns and security officer licensees receive training in two parts and deletes out-of-date references. According to the Department, the requirement that training be provided in two parts was cumbersome to both training schools and trainees.<sup>37</sup>

Currently, s. 493.6113(3)(b), F.S., requires a Class “G”<sup>38</sup> statewide firearms licensee to annually complete four hours of firearms recertification training.<sup>39</sup> The licensee must submit proof of his or her annual recertification training to the Department. If the licensee fails to provide documentation of the training by the end of the first year of the license’s two-year term, the license is automatically suspended until the licensee provides proof of the training. If the licensee fails to provide such documentation by the end of his or her license’s term, the Department may not renew the license until the applicant completes the initial licensing requirements, including at least 28 hours of range and classroom training.<sup>40</sup>

Class “G” licensees are currently permitted to carry up to two of the following types of firearms during the course of their licensed duties: a .38 caliber revolver, a .380 caliber or 9 millimeter semiautomatic pistol; a .357 caliber revolver with .38 caliber ammunition; a .40 caliber handgun; or a .45 ACP handgun.<sup>41</sup> Security officer licensees who also have a Class “G” license may only

<sup>34</sup> U.S. Department of Homeland Security, Federal Law Enforcement Training Centers, *Firearms Instructor Training Program*, <https://www.fletc.gov/training-program/firearms-instructor-training-program> (last visited Mar. 15, 2017).

<sup>35</sup> National Rifle Association, *Recertification*, <http://le.nra.org/training/recertification.aspx> (last visited Mar. 15, 2017).

<sup>36</sup> Committee staff conversation with Federal Law Enforcement Training Center (“FLETC”) representative (Mar. 1, 2017).

<sup>37</sup> Florida Department of Agriculture and Consumer Services *SB 498 Agency Analysis*, p. 7 (Feb. 8, 2017) (On file with the Senate Committee on Judiciary).

<sup>38</sup> A Class “G” licensee permits Class “C,” “CC,” “D,” “M,” “MA,” or “MB” licensees to bear a firearm in the course of their licensed duties. Section 493.6115(2), F.S.

<sup>39</sup> The Department may waive the annual firearms recertification training for certain applicants, such as state and federal law enforcement officers and correctional officers. Section 493.6113(3)(b)1.-3., F.S.

<sup>40</sup> The initial training criteria for Class “G” licensees are found in s. 493.6105(5), F.S.

<sup>41</sup> Section 493.6115(6), F.S.

carry their firearm in a concealed manner if they are performing limited, special assignment duties or are performing bodyguard services.<sup>42</sup>

**Section 15** amends s. 493.6113, F.S., to require statewide firearm licensees, Class “G” licensees,<sup>43</sup> to perform and successfully complete training for *each type and caliber* of firearm that they will carry in the course of their duties.

**Section 16** updates an outdated cross-reference in s. 493.6115, F.S., to clarify under what circumstances security officer licensees who also have a Class “G” license may carry their authorized firearm in a concealed manner.

Under current law, recovery agents and interns (also known as Class “E” or “EE” licensees, or repossession service agents) are required to meet the basic licensure requirements in ch. 493, F.S., and complete a minimum of 40 hours of professional training at an accredited recovery agent school.<sup>44</sup>

**Section 24** requires these licensees to *submit proof of successful completion* of the professional training, and submit proof thereof to the Department. This section also deletes an outdated reference in s. 493.6403, F.S.

#### ***Concealed Weapon or Firearm Licenses***

**Section 39** amends the qualifications for concealed weapon or firearm licensure under ch. 790, F.S., to allow the Department to grant a concealed weapon license to applicants who have been committed for a mental health issue or abuse of a controlled substance; or adjudicated incapacitated, but have subsequently been granted relief from firearms disabilities pursuant to s. 790.065(2)(a)4.d., F.S., or similar law. This brings the Department’s practices into line with the FDLE’s regulations on the sale of guns.<sup>45</sup>

This section also implements a \$5 fee reduction for concealed weapon or firearm license and renewal fees.<sup>46</sup>

#### ***Technical Changes***

**Section 22** makes technical changes to s. 493.6304(1), F.S.

**Sections 12, 18, 20, and 23** delete erroneous references to “biennial” license fees. License renewals occur on either biennial or triennial cycles, depending on the type of license.<sup>47</sup> These amendments remedy inconsistency within the chapter and between the chapter and related rules.

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<sup>42</sup> Section 493.6305, F.S.

<sup>43</sup> Class “G” licenses are supplemental licenses that require as a prerequisite that the applicant is currently licensed with the Department as either a Class “C,” “CC,” “D,” “M,” “MA,” or “MB” licensee. *See* s. 493.6115, F.S.

<sup>44</sup> Section 493.6403(2), F.S.

<sup>45</sup> *See*, s. 790.065, F.S.

<sup>46</sup> A concealed weapon or firearm license fee is currently \$60; a renewal fee is \$50. Section 790.06(5)(b), F.S.

<sup>47</sup> *See* s. 493.6113, F.S.

## **Division of Consumer Services**

The Department's Division of Consumer Services regulates certain businesses, including commercial weight-loss practices, telephone solicitation, pawnshops, health studios, sellers of travel, and telemarketing. The Division of Consumer Services also functions as a clearinghouse for consumer complaints.

### ***Board of Professional Surveyors and Mappers***

The Department's Board of Professional Surveyors and Mappers (board) is tasked with regulating professional surveyors and mappers, as well as businesses that offer surveying and mapping services.<sup>48</sup> The Board's regulatory duties include:<sup>49</sup>

- Adopting rules detailing the review and approval of courses of study in surveying and mapping;
- Determining the moral character of applicants for licensure;
- Instituting by rule the criteria and course content for continuing education courses;
- Approving and disciplining providers of continuing education;
- Holding probable cause panel hearings to determine whether to move forward with disciplinary proceedings against a licensee; and
- Issuing final orders in disciplinary cases.

The practice of surveying and mapping, generally, is the determination of the facts of size, shape, topography, tidal datum planes, legal or geodetic location or relation, and orientation of improved or unimproved real property through the direct measurement or from certifiable measurement through photogrammetric procedures.<sup>50</sup>

Surveyors and mappers must meet the following qualifications to be licensed by the Department:<sup>51</sup>

- Be of good moral character;
- Pass a licensure examination; and
- Meet specific education and experience requirements.

**Section 2** exempts subcontractors of registered surveyors and mappers or their businesses from registration under ch. 472, F.S. The subcontractor must be subordinate to, and under the direct control and personal supervision of, a registered surveyor and mapper in order to qualify for this exemption.

**Section 3** amends definitions in s. 472.005, F.S., to clarify that the practice of surveying and mapping includes the determination of the volume of bodies of water, and of the orientation of personal property that is attached to any improved or unimproved real property.

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<sup>48</sup> Florida Department of Agriculture and Consumer Services, Board of Professional Surveyors and Mappers, *Frequently Asked Questions* (Jun. 2011), <http://www.freshfromflorida.com/content/download/21271/398679/boardFAQ.pdf> (last visited Mar. 15, 2017).

<sup>49</sup> See, ch. 472, F.S.

<sup>50</sup> Section 472.005(3), F.S.

<sup>51</sup> Sections 472.013 and 472.015, F.S.

**Section 4** broadens the prerequisite course of education for surveyor and mapper licensees to include a bachelor's degree in surveying and mapping *or any similarly titled program*. This section also permits applicants for licensure as a surveyor and mapper intern to qualify by completing 2 years of college education in surveying, mapping, mathematics, photogrammetry, forestry, civil engineering, or land law and the physical sciences, in addition to accruing at least 2 years in work as a subordinate to a registered surveyor and mapper.

**Section 5** deletes outdated language and removes the requirement that a surveyor and mapper prominently post a sign giving notice that she or he does not carry professional liability insurance. The surveyor and mapper is still required to give notice of their lack of insurance to their consumers by a written statement.<sup>52</sup>

**Section 6** grants the Board the power to establish the criteria for continuing education providers, and other continuing education requirements, including the method of continuing education delivery and the carry over for each license renewal. This also requires the Department to establish a system for the administration of those continuing education requirements that are adopted by the Board.

**Section 7** requires registered surveyors and mappers to receive and use a seal that is approved by the Board, but deletes the requirement that the seal be an impression-type metal seal.

Surveyors and mappers are required to submit to the Department a copy of each elevation certificate that she or he completes.<sup>53</sup> **Section 8** clarifies that a surveyor and mapper may submit a copy of an elevation certificate to the Department, and the copy need not be signed and sealed. However, the surveyor and mapper must maintain the original signed and sealed copy in his or her own records.

### ***Do Not Call List***

The Department administers the Florida Do Not Call Program, which prohibits unsolicited phone calls to consumers by telephone solicitors. A consumer must request to be placed on the Department's directory of those who do not wish to be contacted, and such request lasts for five years.<sup>54</sup> The consumer can re-subscribe every five years. Under s. 501.059(5), F.S., a telephone solicitor is also prohibited from calling a consumer who has previously communicated to the solicitor that he or she does not wish to receive a telephone call that is:

- Made by or on behalf of the seller whose goods or services are offered; or
- Made on behalf of a charity for which a charitable contribution is solicited.

**Section 26** deletes the five-year subscription duration from the Do Not Call Program, thereby making each a lifetime subscription. However, subscribers may request to be removed from the program at any time.

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<sup>52</sup> Section 472.015(12), F.S.

<sup>53</sup> Section 472.0366(2), F.S.

<sup>54</sup> Section 501.059(3)-(4), F.S.

### *Health Studios*

The Health Studio Act, ss. 501.012-501.019, F.S., regulates health studios that enter into contracts for health studio services with consumers. “Health studios” includes, among other things, a gym that offers its members the use of weight-training and cardiovascular equipment. The act requires studios to:

- Register with the Department;
- Include specific provisions in every contract with a consumer, such as the consumer’s total payment obligations, and cancellation provisions;
- Provide a security bond, generally ranging from \$10,000 to \$25,000, depending on the value of outstanding contracts with the studio; and
- Refrain from prohibited practices, such as committing an intentional fraud.

The following health studios or health-related businesses are exempt from registration with the Department:<sup>55</sup>

- Nonprofit organizations that have tax-exempt status with the Internal Revenue Service;
- Gymnastics schools that engage in instruction and training only;
- Golf, tennis, or racquetball clubs that do not offer physical exercise equipment;
- Country clubs that primarily provide social or recreational amenities to its members; and
- Personal trainers who do not have an established place of business and who do not accept payment for their services more than 30 days in advance.

The Department can seek an injunction or civil penalties for any violation of the act, and violations are generally misdemeanors. The Department may also institute administrative prosecution of a health studio in violation of s. 501.015 or s. 501.016, F.S.

**Section 25** of the bill exempts from registration as a health studio with the Department any program or facility offered by an organization for the exclusive use of its employees and their family members, such as a gym within a corporate headquarters.

### *Intrastate Household Movers*

Chapter 507, F.S., governs the loading, transportation, shipment, unloading, and affiliated storage of household goods as part of intrastate household moves. The chapter applies to any mover engaged in intrastate transportation or shipment of household goods that originate and terminate in the state.<sup>56</sup>

Section 507.04, F.S., requires movers to maintain liability and motor vehicle insurance. A mover who operates more than two vehicles is required to maintain liability insurance of at least \$10,000 per shipment and not less than 60 cents per pound, per article.<sup>57</sup> Movers who operate fewer than two vehicles are required only to carry either a performance bond or a \$25,000 certificate of deposit in lieu of liability insurance.<sup>58</sup> A mover who fails to maintain the required liability insurance is subject to:

<sup>55</sup> Sections 501.0125-.013, F.S.

<sup>56</sup> Section 507.02, F.S.

<sup>57</sup> Section 507.04(4), F.S.

<sup>58</sup> Section 507.04(1)(b), F.S.

- Immediate suspension of the license by the Department;
- Immediate injunction prohibiting the mover from operating in the state; and
- Civil liability for any injuries that arise.<sup>59</sup>

However, under current law, the Department has no similar penalties available to it in the case of a mover who fails to maintain motor vehicle insurance. The Department must wait until the mover files for renewal of his or her license with the Department to be able to take any action.<sup>60</sup> The Department cites this difference in penalty scheme as a procedural burden for the Department and a possible danger to consumers, who may develop an incorrect impression that a mover who lacks motor vehicle insurance is in good standing with the Department.<sup>61</sup>

**Section 27** grants the Department the same penalty scheme for a mover's failure to maintain both liability and motor vehicle insurance. This will make the Department's procedures more consistent.

### ***Bureau of Standards***

The Department's Bureau of Standards is generally responsible for the inspection of weights and measures devices or instruments in Florida. This includes, but is not limited to, the prescription of the appropriate unit of weight or measurement to be used, testing of weights and measuring instruments used by any city or county, and inspection of retail scales that are used to determine the weight, measurement or total count of commodities offered for sale, such as fruit and vegetables at a grocery store. For the purpose of consumer protection, the Bureau of Standards is also empowered under s. 531.42, F.S., to enforce the proper use of weights and measuring instruments or devices and the advertisement of the correct weight or measurement on a good for sale.

A taximeter is a device that automatically calculates and indicates the charge for the hire of a vehicle, such as a taxi.<sup>62</sup>

**Sections 28, 29, and 30** delete the Department's authority to regulate taximeters, and remove related language. The bill also expressly frees the Department from regulating "digital networks," which may include what are effectively digital taximeters linked to servers that may be in other states. These digital networks may be used by services like Uber.

### **Division of Animal Industry**

The Department's Division of Animal Industry safeguards animal and public health, and maintains market access for Florida's animals and animal products by surveilling the movement

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<sup>59</sup> Section 507.04(1), F.S.

<sup>60</sup> Section 507.04(2)-(3), F.S.

<sup>61</sup> Florida Department of Agriculture and Consumer Services, *SB 498 Agency Analysis*, p. 9 (Feb. 8, 2017) (On file with the Senate Committee on Judiciary).

<sup>62</sup> U.S. Department of Commerce, National Institute of Standards and Technology, *Handbook 44, Section 5.54 Taximeters* (2012), <https://www.nist.gov/sites/default/files/documents/pml/wmd/pubs/2011/10/26/5-54-12-hb44-final.pdf> (last visited Mar. 15, 2017).

of animals into and throughout the state, and monitoring any animal disease that may arise.<sup>63</sup> One estimate concludes that approximately 1.5 million cattle are currently raised in Florida.<sup>64</sup> These cattle must have official identification unless the cattle are:

- Moving directly to slaughter or through one approved livestock market and then directly to slaughter;
- Moving to an approved tagging site; or
- Being moved from one premises to another while remaining under common ownership as part of normal farm operations.<sup>65</sup>

Federal law provides identification requirements for cattle that is transported across interstate lines.<sup>66</sup>

**Section 31** replaces the requirement that an application for livestock mark or brand registration be accompanied by a “facsimile” of the brand or mark, with a requirement that the application include a “detailed drawing” of the brand or mark.

**Section 32** extends the term of a livestock mark or brand registration from five to ten years, and deletes the \$5 registration renewal fee.

**Section 33** deletes s. 534.061, F.S., which requires a person who purchases cattle to re-mark or rebrand the cattle within 10 days. The Department states that the Division of Animal Industry does not currently regulate such transfers.<sup>67</sup>

### **Division of Fruit and Vegetables**

The Division of Fruit and Vegetables inspects and certifies all state and federal marketing orders—the program that collectivizes agriculture producers for the purpose of marketing and selling their products.<sup>68</sup> As part of the marketing order program, the Department enters into contracts to promote the agriculture producers’ products; these contracts are not subject to the competitive bidding process under s. 287.057, F.S. However, in each instance that the Division enters into a contract without competitive bidding, the director of the Division must file a report to justify the contract process with the Department’s internal auditor.<sup>69</sup>

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<sup>63</sup> Florida Department of Agriculture and Consumer Services, *Division of Animal Industry*, <http://www.freshfromflorida.com/Divisions-Offices/Animal-Industry> (last visited Mar. 16, 2017).

<sup>64</sup> *Id.*

<sup>65</sup> Florida Department of Agriculture and Consumer Services, *Summary of Cattle Traceability Requirements* (Aug. 21, 2014), <http://www.freshfromflorida.com/content/download/38829/857923/SummaryRequirements.pdf> (last visited Mar. 16, 2017).  
*See also*, Rule 5C-31, Fla. Admin. Code.

<sup>66</sup> *Id.* *See also*, Ch. 9, C.F.R., pt. 86.

<sup>67</sup> Florida Department of Agriculture and Consumer Services, *SB 498 Agency Analysis* (Feb. 8, 2017) (On file with the Senate Committee on Judiciary).

<sup>68</sup> Florida Department of Agriculture and Consumer Services, *Division of Fruits and Vegetables*, <http://www.freshfromflorida.com/Divisions-Offices/Fruit-and-Vegetables> (last visited Mar. 16, 2017).

<sup>69</sup> Section 573.118, F.S.

The Division of Marketing and Development supervised the marketing order process, until a recent reorganization of the Division's duties.<sup>70</sup>

**Section 35** amends s. 573.118, F.S., to require the director of the Division of Fruit and Vegetables, rather than the Division of Marketing and Development, to file each report justifying a contract or agreement entered into without competitive bidding in the marketing order process. This reflects the Division reorganization.

### **Florida Forest Service**

The Florida Forest Service (FFS) is dedicated to management of state forests and Florida's forest resources.<sup>71</sup> The FFS constructs structures on forest land to support its duties thereon, including wildfire, educational, camping and recreational, and law enforcement facilities. Currently, s. 590.02, F.S., grants the FFS exclusive authority to enforce the Florida Building Code relating to the wildfire and law enforcement structures the FFS builds.

**Section 36** expands the grant of authority under s. 590.02, F.S., to the Department to enforce the Florida Building Code as it relates to all FFS facilities, in addition to the FFS's law enforcement and wildfire facilities.

### **Division of Aquaculture**

Pursuant to ch. 597, F.S., the Division of Aquaculture coordinates and assists with the development of aquaculture in Florida, and regulates aquafarms to protect and conserve Florida's aquatic organisms.<sup>72</sup>

The Department issues certificates of registration under s. 597.004, F.S., to aquaculture producers who must agree to submit to the Department's best management practices.<sup>73</sup> These certificates permit the aquaculture producer to sell all aquaculture products except those otherwise prohibited by law, and those for which the origin of the product is unknown.<sup>74</sup>

**Section 37** clarifies that dealers licensed pursuant to part VII of ch. 379, F.S., ("Nonrecreational Licenses") including downline sellers of aquaculture products, such as wholesale and retail saltwater products dealers and freshwater fish dealers (excepting the initial aquaculture producer sellers), are not required to be certified aquaculture producers under s. 597.004, F.S. According to the Department, the Florida Fish and Wildlife Commission requested this clarification.<sup>75</sup>

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<sup>70</sup> Florida Department of Agriculture and Consumer Services, *SB 498 Agency Analysis* (Feb. 8, 2017) (on file with the Senate Committee on Judiciary).

<sup>71</sup> Florida Department of Agriculture and Consumer Services, *Florida Forest Service*, <http://www.freshfromflorida.com/Divisions-Offices/Florida-Forest-Service> (last visited Mar. 16, 2017). *See also*, s. 590.01, F.S.

<sup>72</sup> Florida Department of Agriculture and Consumer Services, *Division of Aquaculture*, <http://www.freshfromflorida.com/Divisions-Offices/Aquaculture> (last visited Mar. 16, 2017).

<sup>73</sup> Section 597.004, F.S.

<sup>74</sup> Section 597.004(5), F.S.

<sup>75</sup> Florida Department of Agriculture and Consumer Services, *SB 498 Agency Analysis*, p. 10 (Feb. 8, 2017) (on file with the Senate Committee on Judiciary).

### **Office of Agricultural Law Enforcement**

The Division of Agricultural Law Enforcement (AgLaw) is the law enforcement arm of the Department. As part of its duties, AgLaw operates 23 agricultural inspection stations; investigates crimes involving agriculture, as well as unfair and deceptive trade practices; and partners with federal, state, and local law enforcement agencies to coordinate the Domestic Marijuana Eradication Task Force.<sup>76</sup>

A dealer in agricultural products is any person, partnership, corporation, or other business entity that is engaged in the purchase, receipt, or solicitation of agricultural products from the initial producer, for the purpose of resale or processing for sale.<sup>77</sup> The AgLaw regulates these dealers in order to protect sellers of agricultural products (farmers). The Legislature created this duty because the recovery of agricultural products from a dealer who is ultimately unable to pay the producer for his or her products is impractical because of the quick decay or consumption of agricultural products.<sup>78</sup>

Section 640.16, F.S. exempts certain dealers from registration as a dealer, if the dealer:

- Pays for the products in cash at the time of the purchase;
- Is a bonded licensee under the federal Packers and Stockyards Act; or
- Purchases less than \$1,000 of agricultural products during a one-month period.

**Section 38** amends s. 640.16, F.S., to provide an additional exemption from registration for those dealers who pay for the products with a credit card at the time of the agricultural purchase.

### **Department Authority to Inspect Raw Food Facilities**

**Section 34** requires the Department to perform food safety inspection services where raw agricultural commodities are grown, produced, harvested, held, packed, or repacked.

**Section 40** provides an effective date of July 1, 2017.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

### **B. Public Records/Open Meetings Issues:**

None.

### **C. Trust Funds Restrictions:**

None.

<sup>76</sup> Florida Department of Agriculture and Consumer Services, Office of Agricultural Law Enforcement, <http://www.freshfromflorida.com/Divisions-Offices/Agricultural-Law-Enforcement> (last visited Mar. 16, 2017).

<sup>77</sup> Section 604.15(2), F.S.

<sup>78</sup> Section 604.151, F.S.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Private investigator, or Class “M,” licensees under ch. 493, F.S., may be able to take on additional employment to supplement their income since, under the bill, they may act as a manager at multiple private investigative agencies or branches.

Those who register a livestock brand or mark will see a reduction in associated fees. Agricultural Dealers who pay for their purchases with a credit card are no longer required to pay a registration fee to the Department.

The licensure and renewal fees for concealed weapons and firearms licensees issued pursuant to s. 790.06, F.S., are reduced by \$5.

Those who operate taximeters will no longer incur registration fees and related regulations under the Department.

**C. Government Sector Impact:**

CS/SB 498 has a slightly negative impact on state revenues. The elimination of certain fees relating to licensure requirements under chs. 534 and 604, F.S., is estimated to reduce the Department’s revenues in the total amount of \$318,939 beginning in Fiscal Year 2017-2018.<sup>79</sup>

The Department expects a decrease in expenditures of \$252,363 beginning in Fiscal Year 2017-2018. This reduction is the result of the elimination of four Departmental positions related to the licensure of agriculture products dealers, and of reduced background check expenditures ch. 493, F.S., agency manager licensees, who are no longer required to file multiple applications for licensure to be able to manage multiple branches or agencies.<sup>80</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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<sup>79</sup> Florida Department of Agriculture and Consumer Services, *SB 498 Agency Analysis* (Feb. 8, 2017) (on file with the Senate Committee on Judiciary).

<sup>80</sup> *Id.*

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 288.1175, 472.003, 472.005, 472.013, 472.015, 472.018, 472.025, 472.0366, 487.2041, 493.6101, 493.6105, 493.6107, 493.6108, 493.6112, 493.6113, 493.6115, 493.6118, 493.6202, 493.6203, 493.6302, 493.6303, 493.6304, 493.6402, 493.6403, 501.013, 501.059, 507.04, 531.37, 531.61, 531.63, 534.021, 534.041, 570.07, 573.118, 590.02, 597.004, 604.16, and 790.06.

This bill repeals section 534.061, F.S.

**IX. Additional Information:**

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

**CS/CS by Judiciary on March 22, 2017:**

The committee substitute:

- Requires the Department to perform food safety inspection services where raw agricultural commodities are grown, produced, harvested, held, packed, or repacked;
- Deletes Sections 8 and 9 of the underlying bill, which added language duplicating current law; and
- Limits a manager of a private investigative agency to managing three offices.

**CS by Commerce and Tourism on March 6, 2017:**

- Makes substantial changes to regulations and qualifications of surveyors and mappers in ch. 472, F.S.;
- Permits the use of the FDLE’s MECOM database for only Class “G” and “K” applicants and licensees;
- Provides for the temporary suspension of Class “G” or “K” licensees who are arrested for or charged with a firearms-related crime, and for ch. 493, F.S. licensees who are arrested for or charged with a forcible felony;
- Exempts company gyms that are used only by employees and their families from registration as a health studio with the Department;
- Deletes the regulation of taximeters from the Department’s duties, and clarifies that digital networks are not regulated by the Department;
- Allows the Department to provide a concealed weapon or firearm license to applicants who have had their firearms disabilities restored pursuant to s. 790.065(2)(a)4.d., F.S.; and
- Reduces the concealed weapon or firearm license and renewal fees by five dollars.

- B. **Amendments:**

None.