

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: SB 498

INTRODUCER: Senator Young

SUBJECT: Department of Agriculture and Consumer Services

DATE: March 3, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	Pre-meeting
2.			JU	
3.			AP	

I. Summary:

SB 498 modifies provisions in several areas regulated by the Department of Agriculture and Consumer Services (DACS), including:

- Allowing private investigative agency managers to manage multiple agencies or branches;
- 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 MECOM database with the Department for the purposes of determining eligibility of applicants for licensure under ch. 493, F.S.;
- 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 DACS 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 an automatic 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;
- Making penalties against intrastate household movers for failure to maintain motor vehicle and liability insurance consistent;
- 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 purchase with a credit card;
- Making technical changes and deleting out-of-date language.

II. Present Situation:

The Department of Agriculture and Consumer Services (DACS or Department) has broad duties, including safeguarding the public from unsafe or defective products and deceptive business practices, providing environmental protection, and supporting Florida's agricultural economy. Twelve divisions and six offices within the Department support these missions.¹

The present situation for each relevant provision of the bill is discussed in the Effect of Proposed Changes section of this bill analysis.

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.² In 2002, the Legislature gave the Department authority to evaluate applications for grants for the construction or renovation of such facilities.³ Funding of the grants occurs through the General Appropriations Act, which is passed each legislative session.⁴

Section 1 amends s. 288.1175, F.S., to require that applications for an agriculture education and promotion facility grant be *postmarked or electronically submitted* by October 1 of each year; this further defines and clarifies what qualifies as a timely submitted application for the program.

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.⁵ The U.S. Environmental Protection Agency's (E.P.A.) labeling requirement for pesticides and devices⁶ and its Worker Protection Standard⁷ provide a floor from which the Division must base certain regulations.⁸

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

² Section 288.1175(3), F.S.

³ Ch. 2002-301, Laws of Fla.

⁴ Section 288.1175(8), F.S.

⁵ Florida Department of Agriculture and Consumer Services, *Division of Agricultural Environmental Services*, <http://www.freshfromflorida.com/Divisions-Offices/Agricultural-Environmental-Services> (last visited Mar. 1, 2017).

⁶ 40 C.F.R., Pt. 156

⁷ 40 C.F.R., Pt. 170

⁸ See Rule 5E-2.041, F.A.C., *Pesticides: Materials Incorporated by Reference*; Rule 5E-2.011, F.A.C., *Pesticides: General Labeling Requirements for Pesticides*.

Section 2 deletes an out-of-date reference to the Department’s adoption “during the 1995-1996 fiscal year...” of rules to reflect the E.P.A’s labeling requirement for pesticides and devices and worker protection standard. This amendment to s. 487.2041, F.S., does not alter the Department’s duties or authority.

Division of Licensing

The Division of Licensing within the DACS is responsible for investigating and issuing licenses to conduct private security, private investigative, and recovery services pursuant to ch. 493, F.S. As of January 2017, there were 176,687 licenses issued by the Department pursuant to ch. 493, F.S.⁹ The Division of Licensing also issues concealed weapon or firearm licenses pursuant to s. 790.06, F.S.

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

Section 3 amends s. 493.6101, F.S., to permit a manager of a private investigative agency licensed under ch. 493, F.S., to manage multiple agencies and branch offices. Currently, a class ‘M’ (manager) licensee is limited to oversight of only one agency or branch at a time.¹⁰

The DACS 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.¹¹ 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 system¹² and in the national retained print arrest notification program for ongoing updates on arrests of its licensees.¹³ The Department may discipline a licensee based on his or her plea to, or conviction of certain crimes.¹⁴

Section 4 clarifies that partners and corporate officers who do not also possess a ch. 493, F.S., license subject to renewal under s. 493.6113, F.S.,¹⁵ are exempt from participation in the DACS fingerprint retention requirements otherwise imposed on ch. 493, F.S., licensees.

Notifications

Section 6 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.

⁹ Florida Department of Agriculture and Consumer Services, Division of Licensing, *Number of Licensees by Type* (Jan. 31, 2017), http://www.freshfromflorida.com/content/download/7471/118627/Number_of_Licensees_By_Type.pdf (last visited Mar. 2, 2017).

¹⁰ Section 493.6101, F.S.

¹¹ Section 493.6105(3)(j), F.S.

¹² *See*, s. 943.05(2)(b), F.S.

¹³ *See*, s. 493.6108, F.S.

¹⁴ Section 493.6118, F.S.

¹⁵ Section 493.6113, F.S., subjects all licenses granted under ch. 493, F.S., to renewal. Although a corporate officer or partner of, e.g., 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 10 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 7 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 DACS with information on their instructors, school facilities, and curricula elsewhere in statute.¹⁶

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.¹⁷

Mental History

The Department has a duty to investigate whether any ch. 493, F.S., applicant has been adjudicated incompetent under ch. 744, F.S.,¹⁸ or has been committed to a mental institution under ch. 394, F.S.^{19, 20} The Department may deny an application for licensure based on an applicant's:²¹

- Adjudication of incapacitation under s. 744.331, F.S., or similar law in another state, 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 under ch. 397, F.S., or similar law in another state;
- Being subject to a finding by a court that she or he is an habitual offender of disorderly intoxication under s. 856.011, F.S., or similar law in another state;

¹⁶ See ss. 493.6304 and 493.6406, F.S.

¹⁷ Florida Department of Agriculture and Consumer Services, *SB 498 Agency Analysis*, p. 5 (Feb. 8, 2017) (On file with the Senate Committee on Commerce and Tourism).

¹⁸ A court may grant a petition to determine incapacity based on 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.

¹⁹ Section 493.6108(1)(b), F.S.

²⁰ 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.

²¹ Section 493.6106, F.S.

- Convictions of driving under the influence or similar law in another state, 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
- Having been found guilty of a controlled substance-related crime under ch. 893, F.S., or similar law in another state, 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 class “G” or “K” licensee.²² 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.²³

Currently, the Department can access Florida Department of Law Enforcement (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.²⁴ 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.²⁵ 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 6 grants the FDLE authority to share data from the MECOM database with the DACS for the limited purpose of determining eligibility of ch. 493, F.S., applicants and licensees.

Actions Against Licensees

Section 9 requires the DACS 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;

²² Section 493.6108(3), F.S.

²³ Section 394.4615, F.S.

²⁴ Sections 790.065(2)(a)4.c.(1), F.S. and 790.065(2)(a)4.f., F.S.

²⁵ 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 (last visited Mar. 1, 2017).

- 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;
- 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 (ESO) 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.²⁶ The ESO 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 ESO 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 10 allows the Department to automatically suspend a class "G" or "K" license if that licensee is arrested for or formally charged with a firearms-related crime that would disqualify him or her from licensure under s. 493.6118, F.S. This automatic suspension would remain in place until final disposition of the licensee's underlying criminal case.

This section also allows the Department to automatically suspend any ch. 493, F.S., licensee who has been arrested for or formally charged with a forcible felony.²⁷ This automatic suspension would also remain in effect until final disposition of the licensee's underlying criminal case.

These automatic suspensions do not permit administrative review of the order until final disposition of the licensee's underlying criminal case.

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;²⁸ or

²⁶ See also *Allied Edu. Corp v. State, Dep't of Edu.*, 573 Sp. 2d 959, 1991 (Fla. 1st DCA 1991).

²⁷ 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.

²⁸ National Rifle Association, *Instructor Development Schools*, <http://le.nra.org/training/instructor-development-schools.aspx#schedule> (last visited Mar. 1, 2017); National Rifle Association, *Recertification*, <http://le.nra.org/training/recertification.aspx> (last visited Mar. 1, 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).²⁹

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.³⁰ 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.³¹

Section 4 amends s. 493.6105(6)(a), F.S., to require that firearms instructor applicants submit evidence of both valid and recent (within the last 3 years) certification. This amendment reflects industry terminology and practices.

Sections 12 and 14 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 proved cumbersome to both training schools and trainees.³²

Section 493.6113(3)(b), F.S., currently requires holders of a Class "G"³³ statewide firearms licensee to annually complete four hours of firearms recertification training.³⁴ 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.³⁵

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.³⁶ Security officer licensees who also have a class "G" license may only carry their firearm in a concealed manner if he or she is performing limited, special assignment duties, or is performing bodyguard services.³⁷

²⁹ 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. 1, 2017).

³⁰ National Rifle Association, *Recertification*, <http://le.nra.org/training/recertification.aspx> (last visited Mar. 1, 2017).

³¹ Committee staff conversation with Federal Law Enforcement Training Center ("FLETC") representative (Mar. 1, 2017).

³² Florida Department of Agriculture and Consumer Services *SB 498 Agency Analysis*, p. 7 (Feb. 8, 2017) (On file with the Senate Committee on Commerce and Tourism).

³³ 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.

³⁴ The DACS 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.

³⁵ The initial training criteria for Class "G" licensees are found in s. 493.6105(5), F.S.

³⁶ Section 493.6115(6), F.S.

³⁷ Section 493.6305, F.S.

Section 8 amends s. 493.6113, F.S., to require statewide firearm licensees, Class “G” licensees,³⁸ to perform and successfully complete training for *each type and caliber* of firearm that he or she will carry in the course of his or her duties.

Section 9 updates an out-of-date 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.

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., in addition to completing a minimum of 40 hours of professional training at an accredited recovery agent school.³⁹

Section 17 requires recovery agent and recovery agent intern licensees to *successfully complete* professional training, and submit proof thereof to the Department. This section also deletes an outdated reference in s. 493.6403, F.S.

Technical Changes

Section 15 makes technical changes to s. 493.6304(1), F.S.

Sections 5, 11, 13, and 16 delete erroneous references to “biennial” license fees. License renewals occur on either biennial or triennial cycles, depending on the type of license.⁴⁰ These amendments clarify inconsistent language throughout the chapter and related rules.

Division of Consumer Services

The Division of Consumer Services within the DACS regulates specific business activities, including commercial weight loss practices, telephone solicitations, pawnshops, health studios, sellers of travel, and telemarketing. The Division of Consumer Services also functions as a clearinghouse for consumer complaints.

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.⁴¹ 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.

³⁸ 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.

³⁹ Section 493.6403(2), F.S.

⁴⁰ *See* s. 493.6113, F.S.

⁴¹ Section 501.059(3)-(4), F.S.

Section 18 deletes the five-year subscription duration from the Do Not Call Program, thereby making each a lifetime subscription. Subscribers may request to be removed from the program at any time, however.

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.⁴²

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.⁴³ 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.⁴⁴ A mover who fails to maintain the required liability insurance is subject to:

- 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.⁴⁵

However, the Department has no such 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.⁴⁶ The Department cites this variation of penalties as a burden to their procedures 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.⁴⁷

Section 19 grants the Department the same penalty guidelines for a mover's failure to maintain both liability and motor vehicle insurance. This will make the Department's procedures more consistent.

Division of Animal Industry

The Division of Animal Industry safeguards animal and public health, and maintains market access for Florida's animals and animal products by surveilling the movement of animals into and throughout the state, and monitoring any animal disease that may arise.⁴⁸ One estimate

⁴² Section 507.02, F.S.

⁴³ Section 507.04(4), F.S.

⁴⁴ Section 507.04(1)(b), F.S.

⁴⁵ Section 507.04(1), F.S.

⁴⁶ Section 507.04(2)-(3), F.S.

⁴⁷ Florida Department of Agriculture and Consumer Services, *SB 498 Agency Analysis*, p. 9 (Feb. 8, 2017) (On file with the Senate Committee on Commerce and Tourism).

⁴⁸ Florida Department of Agriculture and Consumer Services, *Division of Animal Industry*, <http://www.freshfromflorida.com/Divisions-Offices/Animal-Industry> (last visited Mar. 2, 2017).

concludes that approximately 1.5 million cattle are currently raised in Florida.⁴⁹ 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.⁵⁰

Federal law provides identification requirements for cattle that is transported across interstate lines.⁵¹

Section 20 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 21 extends the term of a livestock mark or brand registration from five to ten years, and deletes the five-dollar registration renewal fee.

Section 22 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.⁵²

Division of Fruit and Vegetables

The Division of Fruit and Vegetables (Division) inspects and certifies all state and federal marketing orders—the program that collectivizes agriculture producers for the purpose of marketing and selling their products.⁵³ 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.⁵⁴

The Division of Marketing and Development supervised the marketing order process, until a recent reorganization of the Division’s duties.⁵⁵

Section 23 amends s. 573.118, F.S., to require the director of the Division of Fruit and

⁴⁹ *Id.*

⁵⁰ 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>. See also, Rule 5C-31, Fla. Admin. Code.

⁵¹ *Id.* See also, Ch. 9, C.F.R., pt. 86.

⁵² Florida Department of Agriculture and Consumer Services, *SB 498 Agency Analysis* (Feb. 8, 2017) (On file with the Senate Committee on Commerce and Tourism).

⁵³ Florida Department of Agriculture and Consumer Services, *Division of Fruits and Vegetables*, <http://www.freshfromflorida.com/Divisions-Offices/Fruit-and-Vegetables> (last visited Mar. 2, 2017).

⁵⁴ Section 573.118, F.S.

⁵⁵ Florida Department of Agriculture and Consumer Services, *SB 498 Agency Analysis* (Feb. 8, 2017) (on file with the Senate Committee on Commerce and Tourism).

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.⁵⁶ 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 24 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' 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.⁵⁷

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.⁵⁸ 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.⁵⁹

Section 25 clarifies that downline sellers of aquaculture products, such as wholesale dealers and grocery stores (excepting the initial aquaculture producer sellers), are not required to be certified aquaculture producers under s. 597.004, F.S. According to the Department, this clarification is being made at the request of the Florida Fish and Wildlife Commission.⁶⁰

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 and unfair and deceptive trade practices; and partners

⁵⁶ Florida Department of Agriculture and Consumer Services, *Florida Forest Service*, <http://www.freshfromflorida.com/Divisions-Offices/Florida-Forest-Service> (last visited Mar. 2, 2017). *See also*, s. 590.01, F.S.

⁵⁷ Florida Department of Agriculture and Consumer Services, *Division of Aquaculture*, <http://www.freshfromflorida.com/Divisions-Offices/Aquaculture> (last visited Mar. 2, 2017).

⁵⁸ Section 597.004, F.S.

⁵⁹ Section 597.004(5), F.S.

⁶⁰ Florida Department of Agriculture and Consumer Services, *SB 498 Agency Analysis*, p. 10 (Feb. 8, 2017) (on file with the Senate Committee on Commerce and Tourism).

with federal, state, and local law enforcement agencies to coordinate the Domestic Marijuana Eradication Task Force.⁶¹

A dealer in agricultural products (dealer) 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.⁶² The AgLaw regulates 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.⁶³

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 26 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.

Section 27 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.

D. Other Constitutional Issues:

Notice Requirements

The automatic suspensions provided for in section 10 of the bill do not permit administrative review of the order until final disposition of the licensee's underlying criminal case. The Due Process Clauses of the Fifth and Fourteenth Amendments contemplate fair process. "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford

⁶¹ Florida Department of Agriculture and Consumer Services, Office of Agricultural Law Enforcement, <http://www.freshfromflorida.com/Divisions-Offices/Agricultural-Law-Enforcement> (last visited Mar. 2, 2017).

⁶² Section 604.15(2), F.S.

⁶³ See, s. 604.151, F.S.

them an opportunity to present their objection.”⁶⁴ Three factors must be weighed to determine the degree to which due process protections apply:

- The private interest that will be affected;
- The risk of erroneous deprivation of such interest through the procedures used; and
- The government’s interest, including fiscal and administrative burdens of additional process.⁶⁵

A licensee has a property interest in his or her professional license once it has been granted to him or her.⁶⁶ However, this interest may be tempered by the State’s interest in the public’s health, safety, and welfare.⁶⁷

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Private investigator class “M” licensees under ch. 493, F.S., may be able to take on additional employment to supplement their income since 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.

C. Government Sector Impact:

SB 498 has a slightly negative impact on state revenues. The bill eliminates certain fees relating to licensure requirements, estimated to reduce the Department’s revenues in the total amount of \$318,939 beginning in Fiscal Year 2017-2018.⁶⁸

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 for 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.⁶⁹

⁶⁴ *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

⁶⁵ *Mathews v. Eldridge*, 424 U.S. 319 (1976); *Hadley v. Dept. of Admin.*, 411 So.2d 184 (Fla. 1982).

⁶⁶ *Dep’t of Banking and Fin., Div. of Sec & Investor Prot. v. Osborne Stern & Co.*, 670 So. 2d, 932, 935 (Fla. 1996).

⁶⁷ *Grantham v. Gunter*, 498 So. 2d 1328, 1333 (Fla. 4th DCA 1986), “...as indicated in *Eldridge*, the due process standard that should be applied balances the public’s interest against that of the licensee.”

⁶⁸ Florida Department of Agriculture and Consumer Services, *SB 498 Agency Analysis* (Feb. 8, 2017) (on file with the Senate Committee on Commerce and Tourism).

⁶⁹ *Id.*

VI. Technical Deficiencies:

The term “licensed dealer” in section 25 of the bill is undefined in ch. 597, F.S. This may lead to confusion in the implementation of the bill.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 288.1175, 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, 501.059, 507.04, 534.021, 534.041, 573.118, 590.02, 597.004, and 604.16. This bill repeals s. 534.061, F.S.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.