

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 Regulated Industries Committee

BILL: CS/CS/SB 868

INTRODUCER: Regulated Industries Committee, Agriculture Committee, and Senator Dean

SUBJECT: Department of Agriculture and Consumer Services

DATE: April 1, 2009

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Akhavein</u>	<u>Poole</u>	<u>AG</u>	Fav/CS
2.	<u>Oxamendi</u>	<u>Rhea</u>	<u>RI</u>	Fav/CS
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

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|------------------------------|-------------------------------------|-----------------------------------------|
| 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:

The committee substitute (CS) addresses the following agriculture issues and the powers and duties of the Department of Agriculture and Consumer Services (department). This CS:

- Clarifies requirements for supervision provided by certified operators in charge of pest control businesses.
- Authorizes the department to adopt by rule a requirement that licensees conduct an inspection for wood destroying organisms prior to issuing a contract for wood destroying organisms protection.
- Changes the minimum insurance requirements for a pest control licensee.
- Allows the establishment, inspection and regulation of centralized pest control service centers.
- Establishes a limited certification category for persons who control wildlife to also control rodents.
- Authorizes disciplinary action against pest control licensees for violations by employees under certain circumstances.
- Clarifies that an actively employed law enforcement officer may not manage a security agency.

- Updates Florida Statutes to conform with federal firearms regulations.
- Revises the training requirements for security officer license applicants.
- Provides for flexible methods of payment for license fees charged by the department.
- Updates the term “repossessor” with “recovery agent.”
- Revises the term “food establishment” to include tomato repackers.
- Requires minimum food safety standards for producing, harvesting, packing, and repacking tomatoes.
- Authorizes the department to adopt rules for tomato food safety best management practices.
- Specifies the quantity of antifreeze needed to conduct tests for registration purposes.
- Adds denatured ethanol to the list of petroleum fuels that are collected and analyzed by the department.
- Revises requirements for printed statements on brake fluid containers.
- Revises requirements and procedures for brake fluid stop-sale orders.
- Authorizes businesses to dispose of unregistered brake fluid under certain circumstances.
- Revises requirements for liquefied petroleum gas qualifying examinations and increases continuing education requirements.
- Requires the annual inspection of liquefied petroleum gas transport vehicles.
- Deletes requirements that lists of independent agents of sellers of business opportunities and the agents’ registration affidavits include the agents’ social security numbers.
- Revises provisions for public information about food banks and similar food recovery programs.
- Revises duties of the Division of Fruit and Vegetables for tomato food safety inspections.
- Revises requirements for identifying sellers or handlers of tropical or subtropical fruit or vegetables.
- Removes all references to the Florida Agricultural Museum and the Florida State Collection of Arthropods from the statutes and their references as a direct support organization of the department.
- Deletes a prohibition on the sale of poultry that does not display the poultry grade.
- Allows the Division of Forestry to delegate its open burning authorization for yard waste and land clearing debris to local governments.
- Allows wine producers to use Florida grown ingredients other than grapes to participate in the Florida Farm Winery Program.
- Revises the term “agricultural products” to make tropical foliage exempt from regulation under provisions relating to dealers in agricultural products.
- Authorizes the issuance of stop-operation orders for amusement rides under certain circumstances.
- Authorizes a concealed firearm license applicant to submit fingerprints administered by the Division of Licensing.
- Increases fees for wildlife personnel certification, brake fluid, liquid propane gas, pest control service centers, nursery registration, and for citrus source tree registration.
- Exempts electronic game promotions from the prohibitions against slot machines and lotteries, provides additional regulations for the conduct of game promotions, and authorizes charitable organizations to conduct game promotions.

This CS amends the following sections of the Florida Statutes: 482.021, 482.051, 482.071, 482.152, 482.163, 482.226, 493.6102, 493.6105, 493.6106, 493.6107, 493.6108, 493.6111, 493.6113, 493.6115, 493.6118, 493.6121, 493.6202, 493.6203, 493.6302, 493.6303, 493.6304, 493.6401, 493.6402, 493.6406, 500.03, 501.605, 501.607, 501.913, 525.01, 525.09, 526.50, 526.51, 526.52, 526.53, 527.02, 527.0201, 527.021, 527.12, 559.805, 559.928, 570.07, 570.0725, 570.48, 570.53, 570.54, 570.55, 570.902, 570.903, 581.011, 581.031, 581.131, 581.211, 583.13, 590.125, 590.14, 599.004, 604.15, 604.19, 604.20, 604.25, 616.242, 790.06, and 849.094. This CS creates the following sections of the Florida Statutes: 482.072, 482.157, and 500.70. This CS repeals sections 570.071 and 570.901, Florida Statutes.

II. Present Situation:

Pest Control

Currently, s. 482.021(5), F.S., provides that “personal” and “direct” supervision of pest control employees is the duty of the Certified Operator in Charge (COIC). The term “personal” is not defined and can be construed to mean “in person” rather than through the use of telephonic or other electronic communication or through a properly delegated line supervisor. Many pest control businesses use delegated supervisors to oversee pest control activities, review records of activities, or use telephones or other means of communication to supervise pest control technicians. The intent of the statute is that supervision occur, not necessarily that the COIC be present in person when pest control activities are conducted. Current language also does not clearly allow COICs to perform other functions for a pest control company, such as training, quality control, etc., which are valuable functions that a COIC can perform. Without such clarification, well qualified COICs may be unable to perform such functions at business locations other than the one to which they are assigned, therefore hindering efforts to improve training and quality in companies with more than one business location.

Section 482.05, F.S., provides rulemaking authority to the department regarding wood destroying organism protection. According to the department, it does not include clear authority to require an inspection of a structure prior to offering a protection contract. If an inspection is not completed prior to offering a contract, it is possible that the pest control company may offer contracts to consumers to provide protection or damage replacement on structures with too great an infestation or too much damage for the financial resources of the company. Although most companies will conduct an inspection or provide a treatment before issuing a protection contract, those companies that don’t make this investment have a competitive advantage in the short run, since they can rapidly increase the number of contracts offered without the constraint of actual investment of time and effort.

The minimum requirements in s. 482.071(4), F.S., for insurance coverage to conduct pest control business have not been increased since 1992. These minimums need to be increased to reflect current levels of insurance offered by liability insurers and to provide better protection to Florida consumers.

Currently, there are no provisions for the establishment or operation of a centralized pest control service center. This would allow licensees a more efficient means of providing service to

customers while still protecting customers through specific requirements for licensure and accountability.

Division of Licensing

The Division of Licensing has two primary responsibilities: regulation of private security, private investigative and recovery services, and issuance of licenses to carry concealed weapons or concealed firearms. Chapter 493, F.S., needs to be updated to reflect current terminology that conforms to federal regulations, current payment methods, clarify experience and education requirements, and disciplinary actions. In addition, the term “repossessor” is an antiquated term and needs to be changed to “recovery agent.”

Food Safety

Legislation enacted in 2007,¹ which amended chs. 500 and 570, F.S., authorized the department to regulate food safety at tomato farms and packing houses. Working with industry, the department has promulgated rules based on this authority. However, current statutory language does not provide specific authority that allows the department to include: 1) annual training for farm workers involved in production, harvest, and packing of tomatoes; or 2) registration of farms that are growing tomatoes (to facilitate efficient use of department inspection resources). Further, according to the department, it was the original intent of this legislation that failure to comply with tomato best management and good agricultural practices be subject to penalty provisions under ch. 500, F.S., the Florida Food Safety Act. While it is clear that packing houses, which are permitted under ch. 500, F.S., are subject to these provisions, additional authority is needed to ensure that tomato farms are also subject to these provisions.

Antifreeze Act of 1978

Section 501.913, F.S., provides guidance for the registration of antifreeze products in this state. Specifically, it requires that a properly labeled sample of antifreeze be furnished to the department for testing prior to the issuance of a permit. Specific sample volumes are required to perform the necessary testing, but are not stipulated in current language. According to the department, adequate sample volumes are not always received. Conversely, samples sold in bulk quantities are sometimes received in larger than necessary quantities which require disposal.

Gasoline and Oil Inspection

Fees are charged by the department to defray expenses incident to inspecting, testing and analyzing specified petroleum fuels.² According to the department, as a result of significant changes in the types and composition of motor fuels being used in Florida, additional inspection, testing and analysis of these fuels must now be conducted to continue to protect consumers purchasing these fuels. However, a loss of fees is occurring (and continuing to get larger) as ethanol is currently not subject to the petroleum inspection fee, although costs continue to be incurred relating to the inspection, sampling, and analysis of such fuels.

¹ Chapter 2007-067, L.O.F.

² Section 525.01, F.S.

Ethanol is currently blended in 70 to 80 percent of all gasoline sold in Florida, which began to appear within the last one to two years. By December 31, 2010, all gasoline sold in Florida will be required to contain nine to ten percent ethanol. Further, the presence of E85 (85 percent ethanol and 15 percent gasoline) is gaining a lot of attention in Florida, for use in Flex Fuel Vehicles. Although E85 does not have a large presence at this time, it is anticipated by the department to increase in volume in the near future. Pursuant to s. 525.02, F.S., the department is required to collect and analyze petroleum fuel samples from all fuel sold, offered or exposed for sale in Florida, which includes the ethanol, before it has been blended with gasoline to create ten percent blends or E85. As a result of these fuels entering Florida's motor fuel marketplace, the department's Bureau of Petroleum Inspection has modified its field inspection and expanded laboratory testing procedures and equipment to accommodate fuel quality and measurement standards pertaining to the presence of ethanol blended fuels.

Sale of Brake Fluid

Businesses must meet certain requirements in order to register or renew registration of brake fluid products to sell and distribute brake fluid products in Florida. Currently, there is a registration fee of \$100 and a fee \$50 for renewal of such products. However, according to the department, the cost to the department for renewing the registration compared to the first-time registration of such products is estimated to be identical per brand/formula combination. Additionally, the fees (\$50 per brand/formula combination renewal) collected with renewal applications are insufficient to cover the costs of materials, labor, and analysis to register the products to be renewed.

The department currently can only issue a brake fluid stop-sale order at the location where a violation is found. If a product quality violation is found, the same lot may be available to consumers at one or many other locations, different from where the violation was found. As a result, this product would still be able to be sold and not subject to stop-sale order by the department. This subjects consumers to substandard brake fluid products and prohibits the department from stopping the sale of known substandard product. Removal of language restricting the issuance of a stop sale order to a specific location would allow for the department to adequately protect consumers by stopping the sale of lots of brake fluid products known to be substandard.

Sale of Liquefied Petroleum Gas

The Division of Standards licenses, inspects and conducts investigations for the storage, transportation, distribution, and use of liquid petroleum gas. Section 527.12, F.S., provides the authority for the department to issue cease and desist orders and to assess civil penalties, but it does not authorize the department to issue a stop-use order, stop-operation order, or stop-sale order when a person, liquefied petroleum gas system, storage facility or any part or component thereof fails to comply with the requirements of this law or department rules. There are many potential violations of this public safety law which do not meet the criteria (an immediate serious danger to public health, safety and welfare) for an immediate final order. In order to properly regulate this area and protect the public interest, the department needs the authority to issue stop-operation orders in those instances where a violation occurs that does not rise to the level of an immediate serious danger.

Plant Industry

In 2008, the department assumed responsibility for the regulation of aquatic plants through the Division of Plant Industry, including harvesting, distribution, and sale.³ The current definition of “nursery” in s. 581.011(20), F.S., excludes aquatic plants harvested from the natural environment. Including aquatic plants would allow for the identification, inspection, and registration of sites in the natural environment where aquatic plants are tended for harvest. Monitoring of these sites would assure that over-collection does not occur or otherwise damage the ecosystem in which the aquatic plants thrive.

The department charges \$5.00 annually to register a citrus source tree. The \$5.00 fee level was established prior to the department conducting additional tests for severe strains of citrus tristeza and citrus greening. According to the department, this fee is no longer adequate to cover the cost of testing and registering source trees. During FY 2007-2008, Certificate of Nursery Registration fees collected totaled \$555,778, which represented 56.6 % of the total revenue needed to support this important nursery inspection program activities. Increasing the maximum registration fee would result in a revenue increase of \$190,852 into the Plant Inspection Trust Fund (PITF). The last time there was an adjustment to this fee cap was in 1992, when it was adjusted from \$400 to \$460.

The department may, after notice and hearing, impose an administrative fine not exceeding \$5,000 for each violation of ch. 581, F.S.⁴ The fine cap has not been raised for 30 or more years and is no longer commensurate with the damage that can result to agriculture or the environment. A nursery who unlawfully sells nursery stock under quarantine for an exotic pest can result in a new pest species being quickly distributed throughout the state, making eradication unfeasible and management very costly. If fines are capped at \$5,000 for an infraction, the amount to be gained from selling the plants may far outweigh the monetary penalty. Increasing the cap to \$10,000 may help prevent the unlawful movement of infested plants or pest species.

Sale of Eggs and Poultry

The department was advised by the Food Safety and Inspection Service of the United States Department of Agriculture that the labeling terms in s. 583.13, F.S., for grading poultry are expressly preempted by federal law and cannot be enforced for poultry products being offered for sale in Florida. Specifically, our statute is in violation of s. 8(c) 21 U.S.C. 457(c) and s. 23 U.S.C. 467(e), the Poultry Products Inspection Act (PPIA). USDA’s letter states:

These provisions explicitly prohibit States from imposing any labeling requirements for poultry products prepared at federally inspected establishments which are in addition to, or different from, those imposed under the Acts.

Section 583.13, F.S., requires poultry packed in containers to be clearly marked bearing a label showing a grade that “...may be expressed in the term "premium," "good," or "standard," or as the grade of another state or federal agency the standards of quality of which, by law, are equal

³ See, s. 369.25, F.S., and ss. 581.031(27), (28), and (29), F.S.

⁴ Section 581.211(3)(a)1., F.S.

to the standards of quality provided by this law and rules promulgated hereunder.” Removal of any reference to “grade” will eliminate the disparity that currently exists between federal and state statutes.

Forest Protection

Section 590.02, F.S., authorizes the Division of Forestry (division) to conduct controlled burns to suppress or prevent wild fires. The division does not have the statutory authority to delegate its authority to issue open burning authorizations to local governments. Many local governments have the interest and ability to implement a burn authorization program with division guidance. Some counties are already issuing permits under their own authority, but the division is required to come behind and re-issue a daily authorization, because the division is not able to delegate this authority to the local government.

Section 590.125, F.S., does not provide for civil liability protection for the new Certified Pile Burner Program started in November 2006. The CS would clarify that Certified Pile Burners are entitled to the same gross negligence standard for liability as Certified Prescribed Burn Managers. Section 590.125(2)(a)(5), F.S., does not specify who must be present on the burn site for authorized, no-certified burns. The types of broadcast burning included in the certified prescribed burn program are not listed in s. 590.125, F.S. The county tax collector, rather than the division, is responsible for sending notices of Wildfire Hazard Reduction Treatment to landowners in wildfire hazard areas.

Additionally, there is no statutory provision providing consequences for the violation of division rules.

Florida Viticulture Policy Act

To qualify as a certified Florida Farm Winery, a winery must meet each of the following standards:

1. Produce or sell less than 250,000 gallons of wine annually.
2. Maintain a minimum of 10 acres of owned or managed vineyards in Florida.
3. Be open to the public for tours, tastings, and sales at least 30 hours each week.
4. Make annual application to the department for recognition as a Florida Farm Winery, on forms provided by the department.
5. Pay an annual application and registration fee of \$100.⁵

The Florida Farm Winery Program is limited to wineries that produce wine from grapes. Several Florida wine producers use fruits and vegetables to make wine. However, they are not eligible to be registered and certified by the department as a Florida Farm Winery.

⁵ See s. 599.004, F.S., which establishes the Florida Farm Winery program within the Department of Agriculture and Consumer Services.

Dealers in Agricultural Products

Under s. 604.15, F.S., tropical foliage falls under the required agricultural license and bond. Section 604.19, F.S., prohibits persons, or officers of a corporation, whose license has been suspended or revoked for failure to comply with an order of the department from holding a responsible position with a licensee or until the order of the department has been fully complied with. Additionally, no person who has held a responsible position with a person, partnership, corporation or other business entity against whom the department has entered an administrative complaint or final order or whose license has been suspended or revoked for failure to comply with an order of the department could hold a responsible position with an agricultural dealer, licensed or otherwise, until the order of the department has been fully complied with. Pursuant to s. 604.25, F.S., the department may decline to grant a license or may suspend or revoke a license already granted if the applicant or licensee is employing such a person. According to the department, this is an attempt to close the door on those individuals who register a corporation for the purchasing of agricultural products and then shut it down to avoid licensure or enforcement only to register a new corporation and continue operating without a license.

Safety Standards for Amusement Rides

The department does not have the authority to issue a stop-operation order to an owner or an amusement ride which does not comply with the requirements of ch. 616, F.S., or department rules. There are many potential violations of this public safety law which do not meet the criteria (an immediate serious danger to public health, safety and welfare) for an immediate final order. In order to properly regulate this area and protect the public interest, the department needs the authority to issue stop-operation orders in those instances where a violation occurs that does not rise to the level of an immediate serious danger.

Electronic Game Promotions

Operators of game promotions are required to register with the department of under s. 849.094, F.S. In a game promotion, a person may conduct a game of chance in connection "with the sale of consumer products or services and which the elements of chance and prize are present." The electronic game promotions usually sell phone cards or Internet time with usage minutes in connection with the game promotions. The cards are used to play an electronic gaming machine that reveals whether a player has won a prize.

Game promotion, under s. 849.094 F.S., means:

a contest, game of chance, or gift enterprise, conducted with-in or throughout the state and other states in connection with the sale of consumer products or services, and in which the elements of chance and prize are present...⁶

This provision is used to allow companies to promote their products or services with a promotion or sweepstakes. An example is McDonald's Monopoly game. These types of sweepstakes were

⁶ Section 849.094(1)(a), F.S.

considered an illegal lottery until the passage of s. 849.094, F.S. There are several requirements under s. 849.094, F.S., for the operation of a sweepstakes/game promotion in Florida, including:

1. Registering the game promotion with the DACS if the prizes offered are greater than \$5,000. This requirement also includes providing a copy of rules which specify eligibility requirements, the exact nature of each prize and its associated retail value, and the aggregate value of all prizes to be awarded to the DACS.⁷
2. Establishing a trust fund or surety bond for the total amount of the prizes offered,⁸ unless they qualify for an exception under s. 840.094(4)(b), F.S.⁹
3. Allowing for a reasonable way for a person to enter without purchasing the product.¹⁰

Game promotions are conducted by an “operator,” defined as “any person, firm, corporation, or association or agent or employee thereof who promotes, operates, or conducts a game promotion, except any charitable nonprofit organization.”

Game promotions conduct with an electronic machine or device may qualify as a slot machine under s. 849.16(1), F.S., which defines a slot machine as a machine or device that meets all of the following three elements:

1. It accepts the insertion of any piece of money, coin, or other object;
2. It has any element of chance or the outcome of the operation is unpredictable to the user; and
3. It permits the user to receive something of value or to receive something without value that may be exchanged for something of value.

According to the DACS, there is currently nothing in s. 849.094, F.S., which explains how a game promotion must be conducted. Filing a game promotion with the DACS is not tantamount to acquiring the imprimatur of state approval, it is considered a “file and use” statute and requires no approval by the department prior to commencement. The operator receives a “package complete” letter, but the department takes no position on the validity, efficacy, advisability, or propriety of the game itself. Although the DACS monitors compliance with the statute, it has no authority to determine whether the game in fact is permissible under other gambling prohibitions.

The professional staff of the Senate Committee on Regulated Industries was assigned Interim Project Report 2009-123 to review electronic gaming, including game promotions.¹¹ This study included a review of the status of the current law and surveying the concerns of the affected interests. Representatives for conductors of game promotions recommended that the source code for the electronic game machines should be made available for inspection by a licensed testing

⁷ Section 849.094(3), F.S.

⁸ Section 849.094(4)(a), F.S.

⁹ Section 840.094(4)(b), F.S., permits the department to waive the requirement of a bond or escrow account if the operator has conducted game promotions in the state for not less than five consecutive years and has not had any civil, criminal, or administrative action brought against him or her in violation of s. 849.094, F.S., in the last consecutive five years.

¹⁰ Section 849.094(2)(a)(1)(e), F.S., does not allow the operator to require an entry fee, payment, or proof of purchase as a condition for entering a game promotion.

¹¹ See *Review of Electronic Gaming Exceptions for Adult Arcades and Game Promotions*, Interim Report No. 2009-123, Senate Committee on Regulated Industries, November 2008.

company. They also recommended that the statutory bond be increased, and that the department should be authorized to certify that the games are true game promotions through testing of the source code and software in the machines. The report also found that it is unclear to law enforcement whether these electronic gaming machines are illegal slot machines or are legal under the game promotion statute.

Regarding electronic game promotions, the interim project recommended that the Legislature could:

- Maintain the status quo and not amend s. 849.094, F.S.
- Amend s. 849.094, F.S., to provide for the testing of the computer source code to assure compliance with the game promotion requirements of s. 849.094, F.S., increase the bond requirements for electronic game promotions, provide for more regulatory authority by DACS, or prohibit the electronic gaming machines from having a kill switch.¹²
- Amend s. 849.094, F.S., to prohibit “server-based” electronic gaming machines in a manner similar to the legislation adopted in North Carolina.

III. Effect of Proposed Changes:

Section 1 amends s. 482.021, F.S., to modify the definition of “certified operator in charge.” This would clarify that certified operators in charge of pest control businesses may have other duties and responsibilities for the licensee, such as training at other licensed locations, without being considered to be in violation of the responsibilities of the certified operator in charge.

Section 2 amends s. 482.051, F.S., to provide the Department of Agriculture and Consumer Services (department) with the authority to adopt rules that require licensees of pest control businesses to conduct an inspection for wood destroying organisms prior to issuing a contract for wood destroying organisms protection.

Section 3 amends s. 482.071, F.S., to increase the minimum insurance requirements for a pest control licensee to reflect the current levels of insurance offered by liability insurers.

Section 4 creates s. 482.072, F.S., to allow the establishment, inspection and regulation of centralized pest control service centers. This would allow licensed centers to solicit pest control business and to provide service to customers. It provides for the biennial renewal of the license. It also establishes license fees of at least \$500, but not more than \$1,000 and renewal fees of at least \$500, but not more than \$1000. This section also provides for the expiration of a license not renewed within 60 days of a renewal deadline.

Section 5 amends s. 482.152, F.S., to simplify the definition of “certified operator in charge” by removing ambiguities relative to the responsibilities of supervision. This section clarifies that the certified operator may perform duties at other licensed business locations if the operator’s

¹² A “kill switch” is activated by the operator of the electronic game machine to immediately sever the connection with the server and thereby deletes all the data on the machine. According to the department, this prevents analysis of the data on the machine to help determine whether the machine is operating legally. *Id.*

occupation and work performed relates to pest control and is a full-time employee of the licensee.

Section 6 creates s. 482.157, F.S., to establish a limited certification category for persons engaged in the nonchemical control of wildlife to also control rodents, as defined in ch. 482, F.S. It requires an exam and establishes certification fees of at least \$150, but not to exceed \$300. The bill provides a biennial renewal fee of at least \$150 and not more than \$300. This section also provides for recertification fees, classes, and late fees.

Section 7 amends s. 482.163, F.S., to allow the department to take action against a pest control licensee for the actions of an employee when the employee violates the provisions of ch. 482, F.S. and associated rules. If an employee acts outside the course and scope of his employment or is in violation of an employer rule that is consistently enforced by the employers, the licensee is protected from action by the department.

Section 8 amends s. 482.226, F.S., to increase the minimum insurance requirements for a pest control licensee that performs wood-destroying organism inspections to reflect the current levels of insurance offered by liability insurers.

Section 9 amends s. 493.6102, F.S., to specify that provisions regulating security officer are not intended to allow an actively employed law enforcement officer to manage a security agency.

Section 10 amends s. 493.6105, F.S., to facilitate more efficient processing of applications for private investigator, private security officer, and recovery agent licenses. It also specifies application requirements for firearms instructor licenses.

Section 11 amends s. 493.6106, F.S., to revise citizenship requirements and documentation for private investigator, security officer, and recovery agent licenses. It updates current state law, so it will conform to current federal laws and terminologies. It corrects the name for the United States Citizenship and Immigration Services and helps assure compliance with its regulations and federal firearm regulations. It also clarifies that the department must be notified if an agency or branch office changes its physical location of business.

Section 12 amends s. 493.6107, F.S., to provide flexibility in methods of payment for license fees of this section.

Section 13 amends s. 493.6108, F.S., to update criteria for investigations when the department issues a license under Chapter 493, F.S. It deletes language referring to a Federal Bureau of Investigation criminal history record check, because the FBI no longer routinely conducts a name check when it deems fingerprints illegible. It also requires investigation of the mental and emotional fitness of applicants for firearms instructor licenses.

Section 14 amends s. 493.6111, F.S., to require a security officer school or recovery agent school to obtain the department's approval for use of a fictitious name. This will enable the public to easily determine the owner of the licensed name. It also clarifies that an agency licensee structured as a sole proprietor or partnership may do business under one fictitious name.

However, an agency licensee structured as a corporation or limited liability company can conduct business under the corporate/LLC name or under one fictitious name per license.

Section 15 amends s. 493.6113, F.S., to correct outdated references and cites pertaining to license renewal.

Section 16 amends s. 493.6115, F.S., to conform cross-references pertaining to weapons and firearms.

Section 17 amends s. 493.6118, F.S., to update state law pertaining to disciplinary actions against private investigators, security officers, and recovery agents who are prohibited from purchasing or possessing firearms. This conforms to current federal firearm regulations.

Section 18 amends s. 493.6121, F.S., to correct outdated references and cites. It deletes provisions for the department's access to certain criminal history records provided to licensed gun dealers, manufacturers, and exporters.

Section 19 amends s. 493.6202, F.S., to provide flexibility in methods of payment for license fees of this section.

Section 20 amends s. 493.6203, F.S. to ensure that an individual applying for a Class "CC" private investigator intern license or Class "D" security officer license has received all required training prior to submission of the application. This section limits its affect on previously submitted applications. It also clarifies that experience as a body guard does not satisfy the experience requirements needed to obtain a class "MA" or class "C" license.

Section 21 amends s. 493.6302, F.S., to provide flexibility in methods of payment for license fees of this section.

Section 22 amends s. 493.6303, F.S., to ensure that an individual applying for a Class "D" security officer license has received all required training prior to submission of the application. This section limits applicability to previously submitted applications.

Section 23 amends s. 493.6304, F.S., to allow for online submission of applications for security officer school or training facilities.

Section 24 amends s. 493.6401, F.S., to update the term "repossessor" with "recovery agent," which conforms to the current statutory definition in s. 493.6101, F.S.

Section 25 amends s. 493.6402, F.S., to update the term "repossessor" with "recovery agent," which conforms to the current statutory definition in s. 493.6101, F.S., and provides flexibility in the methods to pay fees.

Section 26 amends s. 493.6406, F.S., to update the term "repossessor" with "recovery agent," which conforms to the current statutory definition in s. 493.6101, F.S. It also requires that recovery agent schools and instructors be licensed.

Section 27 amends s. 500.03, F.S., to revise the term “food establishment” to include tomato repackers for purposes of the Florida Food Safety Act.

Section 28 creates s. 500.70, F.S., to define the terms “field packing”, “packing or repacking,” and “producing.” It requires minimum food safety standards for producing, harvesting, packing, and repacking tomatoes. It authorizes the department to inspect tomato farms, green houses, and packing houses, or repackers. This section authorizes the department to adopt rules for tomato food safety best management practices, including registration and training requirements. It also provides a safe haven for tomato producers who have acted in good faith and have followed best management practices as provide for in department rules. The bill provides the following tomatoes sold by a grower are exempt from the department’s rules:

- Tomatoes sold to a consumer on the grower’s premises on which they are grown, and
- Tomatoes sold at a local farmer’s market.

The amount sold may not exceed two 25 pound boxes per customer.

Section 29 amends s. 501.605, F.S., to delete “social security number” from the required information on the application for commercial telephone seller licenses.

Section 30 amends s. 501.607, F.S., to delete “social security number” from the required information on the application for salesperson licenses.

Section 31 amends s. 501.913, F.S., to specify the quantity of antifreeze needed to conduct all tests performed during registration of each brand of antifreeze.

Section 32 amends s. 525.01, F.S., to clarify and update terminology to conform to recent department rule changes.

Section 33 amends s. 525.09, F.S., to add denatured ethanol to the list of petroleum fuels that are collected and analyzed by the department. Ethanol is currently not subject to the petroleum inspection fee, so this will allow the department to charge fees to defray expenses for inspecting, testing and analyzing ethanol blended fuels.

Section 34 amends s. 526.50, F.S., to define “brand” to mean the product name appearing on the label of a container of brake fluid, and “formula” to mean the name of the chemical mixture or composition of the brake fluid product.

Section 35 amends s. 526.51, F.S., to eliminate the \$50 reduced fee for renewal of registrations for each brand of brake fluid. This amendment would require each applicant to pay a fee of \$100 for first-time registration and for renewals.

Section 36 amends s. 526.52, F.S., to eliminate ambiguity regarding the references to brake fluid quality standards on that must be printed on brake fluid containers. It allows the use of the United States Department of Transportation Motor Vehicle Safety Standard No. 116 in lieu of the Society of Automotive Engineers specification statement, since these standards are equivalent.

Section 37 amends s. 526.53, F.S., to revise the requirements and procedures for brake fluid stop-sale orders. It allows the department to stop the sale of an entire batch of brake fluid products that has been found to be substandard. It removes language that restricts a stop-sale order to a specific location on which the first violation occurred and allows the department to issue a stop-sale order by batch number at multiple locations. It also authorizes businesses to dispose of unregistered brake fluid under certain circumstances.

Section 38 amends s. 527.02, F.S., to increase original application and renewal fees for licenses pertaining to the sale of liquefied petroleum gas. It also revises fees for pipeline system operators.

Section 39 amends s. 527.0201, F.S., to increase an examination fee from \$20 to \$30 for licenses pertaining to the sale of liquefied petroleum gas and increase examination fees from \$30 to \$50 for those seeking “master qualifier” status. It increases the hours for continuing education courses from 12 hours to 16 hours for liquefied petroleum gas installers or master qualifiers.

Section 40 amends s. 527.021, F.S., to increase the inspection fees for liquefied petroleum gas bulk delivery vehicles from \$50 to \$75. Requires registered vehicles to be inspected annually.

Section 41 amends s. 527.12, F.S., to authorize the department to issue stop use orders, stop operation orders, or stop sale orders in instances where a violation occurs that does not rise to the level of an immediate serious danger.

Section 42 amends s. 559.805, F.S., to delete the requirement that lists of independent agents of sellers of business opportunities and the agents’ registration affidavits include the agents’ social security numbers.

Section 43 amends s. 559.928, F.S., to delete the requirement that an agent’s registration affidavit include the agent’s social security number.

Section 44 amends s. 570.07, F.S., to authorize the department to adopt rules establishing comprehensive best management practices for agricultural production and food safety.

Section 45 amends s. 570.0725, F.S., to revise provisions that require the department to annually provide the public with information about food banks and similar food recovery programs and make such provision optional. It also makes food banks and food recovery organizations responsible for providing certain required information to the department.

Section 46 amends s. 570.48, F.S., to revise duties of the Division of Fruit and Vegetables for tomato food safety inspections.

Section 47 amends s. 570.53, F.S., to conform cross-references.

Section 48 amends s. 570.54, F.S., to conform cross-references.

Section 49 amends s. 570.55, F.S., to revise requirements for identifying sellers or handlers of tropical or subtropical fruit or vegetables. It eliminates social security cards as a means of identification.

Section 50 amends s. 570.902, F.S., to remove a definition for the Florida Agricultural Museum, since the Legislature eliminated all funding for the museum in the 2008 Legislative Session.

Section 51 amends s. 570.903, F.S., to remove all references to the Florida State Collection of Arthropods and its status as a direct support organization of the department. Its contract with the department as a direct support organization ended several years ago.

Section 52 amends s. 573.118, F.S., to require the department to maintain records of collections and expenditures for the market order assessment.¹³

Section 53 amends s. 581.011, F.S., to delete language relating to the Florida State collection of Arthropods. It revises the term “nursery” for purposes of plant industry regulations.

Section 54 amends s. 581.031, F.S., to increase the citrus source tree registration fee cap from \$5 to \$15 per tree.

Section 55 amends s. 581.131, F.S., to increase registration fee caps for a nurseryman, stock dealer, agent, or plant broker certificate from \$460 to \$600.

Section 56 amends s. 581.211, F.S., to increase the maximum fine for violations of plant industry regulations from \$5,000 to \$10,000.

Section 57 amends s. 583.13, F.S., to delete a prohibition on the sale of poultry that is not marked with the poultry grade. This will eliminate the conflict that currently exists between state statutes and federal statutes which explicitly prohibit states from imposing any labeling requirements for poultry products prepared at federally inspected establishments.

Section 58 amends s. 590.125, F.S., to revise open burning laws. It:

- Revises terminology for open burning authorizations;
- Specifies that certified prescribed burning is only for the purposes of silviculture, wildlife management, ecological maintenance and restoration, and range and pasture management;
- Requires authorization from the Division of Forestry for certified pile burning;
- Provides for pile burning requirements and limits the liability of property owners or agents engaged in pile burning;
- Provides for the certification of pile burners;
- Provides penalties for violations by certified pile burners;
- Requires the department to adopt rules regulating certified pile burning;
- Revises notice requirements for wildfire hazard reduction treatments;

¹³ Section 573.118, F.S., authorizes the department to assess a fee to defray the cost of formulating, issuing, administering, and enforcing marketing orders, which are, as defined by s. 573.103(9), F.S., department orders that govern the distribution or handling of “agricultural commodities in the primary channel of trade during any specified period or periods.”

- Provides for approval of local government open burning authorization programs;
- Specifies program requirements;
- Authorizes the division to close local government programs under certain circumstances; and
- Provides penalties for violations of local government open burning requirements.

Section 59 amends s. 590.14, F.S., to provide that it is a criminal act to violate Division of Forestry rules on open burning. It authorizes fines for violations of any division rules.

Section 60 amends s. 599.004, F.S., to revise standards that a winery must meet to qualify as a certified Florida Farm Winery. It allows wine producers to use Florida grown fruits and vegetables to participate in the Florida Farm Winery Program. A winery must maintain a minimum of 10 acres of owned or managed land in Florida which produces commodities used in the production of wine.

Section 61 amends s. 604.15, F.S., to revise the definition of “agricultural products” to make tropical foliage exempt from regulation under provisions relating to dealers in agricultural products. It also defines the term “responsible position.”

Section 62 amends s. 604.19, F.S., to revise requirements for late fees on agricultural products dealer applications.

Section 63 amends s. 604.20, F.S., to revise the minimum amount of the surety bond or certificate of deposit required for agricultural products dealer licenses. It specifies that the department has the authority to include recovery of filing fees in payment demanded from bond proceeds. It also requires an applicant to provide letters of denial from at least three different surety companies denying the application for a bond in the full amount required by law.

Section 64 amends s. 604.25, F.S., to prohibit certain persons from holding a responsible position with a dealer in agricultural products. It authorizes the suspension or revocation of an agricultural products dealer license for employing such a person.

Section 65 amends s. 616.242, F.S., to authorize the issuance of stop-operation orders for amusement rides if an owner or amusement ride fails to comply with Chapter 616, F.S., or any rule adopted under this chapter.

Section 66 amends s. 790.06, F.S., to allow an applicant for a concealed firearm license to submit fingerprints administered by the Division of Licensing.

Section 67 amends s. 849.094, F.S., to revise the requirements for conducting game promotions. The bill defines “in connection with the sale of consumer products or services” to mean “the completion of a retail sales transaction between a merchant or service provider and an end-use purchaser of the product or service...” This definition clarifies what can be considered a product or service. By defining “in connection with the sale or consumer products or services” in terms of the transaction rather than the actual product or service, the bill broadens the term “service or product.”

The bill deletes the term “except any charitable nonprofit organization” in s. 849.094(1)(b), F.S., for the definition of “operator.” The bill also amends s. 849.094(10), F.S., to delete the provision that s. 849.094, F.S., does not apply “to the activities of nonprofit organizations or any other organization engaged in any enterprise other than the sale of consumer products or service.” The bill would permit non-profit organizations to operate game promotions.

The bill creates s. 849.094(11), F.S., to authorize the use of electronic devices or computer terminals that have a video display monitor when conducting a game promotion. The bill provides that the following sections do not prohibit the use of electronic devices or computer terminals that have video display monitors to conduct or display the results of a game promotion:

- Section 551.102(8), F.S., which defines a slot machine;
- Section 849.09, F.S., which prohibits lotteries;
- Section 849.15, F.S., which prohibits the sale and possession of slot machines; or
- Section 849.16, F.S., which also defines and prohibits slot machines.

Section 849.094(11), F.S., clarifies that electronic devices and computers used to conduct a game promotion are not an illegal slot machine or violate the prohibition against lotteries.

The bill requires that conductors of electronic game promotions file with the department a certification for the electronic game promotion by an independent testing laboratory. The certification must certify that the game promotion contains a finite number of entries at least seven days before the commencement of the game promotion.

The bill requires all conductors of game promotions to establish a trust account in a national or state-chartered financial institution or a surety bond equal to the value of all prizes offered. The required bond must be in favor of the department for the use and benefit of consumers. The bill provides for the adjudication of consumers claims for payment under the bond through administrative proceeding pursuant to ss. 120.569 and 120.57, F.S.

Section 68 repeals ss. 570.071 and 570.901, F.S., to delete references to the Florida Agricultural Exposition Center and the Florida Agricultural Museum.

Section 69 provides that this act shall take effect July 1, 2009.

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:

None.

B. Private Sector Impact:

The committee substitute requires the private sector to pay higher fees or fines as listed below in the Government Sector Impact section.

C. Government Sector Impact:

The Department of Agriculture and Consumer Services has indicated that the fee increases in the committee substitute would provide the following additional funds to help make department programs more self-supporting:

Wildlife Personnel Certification Fee	\$7,500
Brake Fluid Fees	\$11,850
Liquid Propane Gas Fees	\$262,440
Pest Control Service Centers	\$5,000
Nursery Registration Fee	\$190,852
Citrus Source Tree Registration Fee	\$26,605
Total	\$504,247

The bill amends s. 849.094, F.S., to authorize game promotion by charitable organizations, including the use of electronic game promotions. It is not clear whether the bill would result in additional game promotion enterprises by charitable organizations. The department only receives a \$100 licensing fee for each game promotion¹⁴ and game promotion operators must pay sales taxes for the product or service that the operator is selling and/or promoting.

The bill provides that the general prohibition on slot machines and lotteries, as well and the criminal penalties that apply for violating these prohibitions, do not prohibit the use of electronic devices or terminals with video display monitors to conduct a or display game promotion results that are permitted under the bill. By clearly providing that electronic game promotions are not subject to the prohibitions against slot machines and lotteries, the bill could affect revenue sharing payments to the state by the Seminole Tribe of Florida under an Indian gaming compact that complies with the terms and standards in CS/SB 788 by the Regulated Industries Committee and Senator Jones. (See the discussion below in the Related Issues section.)

VI. Technical Deficiencies:

None.

¹⁴ Section 849.094(3), F.S.

VII. Related Issues:

CS/SB 788 by the Regulated Industries Committee and Senator Jones provides terms and standards for an Indian gaming compact between the state and the Seminole Tribe of Florida, which includes revenue sharing payments by the tribe to the state. CS/SB 788 provides for the reduction of revenue sharing payments if additional Class III games¹⁵ are authorized in this state. This bill amends s. 849.094, F.S., to exempt electronic game promotions from the prohibitions against Class III games in ss. 551.102(8), s. 849.09, s.849.15, and s. 849.16, F.S., i.e., slot machines and lotteries. If the state enters into a valid, approved Indian gaming compact with the Tribe, it is not clear whether s. 849.094, F.S., as amended by this bill, could result in a reduction of revenue sharing payments by the Tribe to the State.

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 Agriculture on March 10, 2009:

Committee Substitute for Senate Bill 868 is different from Senate Bill 868 in that it:

- Clarifies requirements for supervision provided by certified operators in charge of pest control businesses.
- Authorizes the department to adopt by rule a requirement that licensees conduct an inspection for wood destroying organisms prior to issuing a contract for wood destroying organisms protection.
- Changes the minimum insurance requirements for a pest control licensee.
- Allows the establishment, inspection and regulation of centralized pest control service centers.
- Establishes a limited certification category for persons who control wildlife to also control rodents.
- Authorizes disciplinary action against pest control licensees for violations by employees under certain circumstances.
- Clarifies that an actively employed law enforcement officer may not manage a security agency.
- Updates Florida statutes to conform with federal firearms regulations.
- Revises the training requirements for security officer license applicants.
- Provides for flexible methods of payment for license fees charged by the department.
- Updates the term “repossessor” with “recovery agent.”
- Revises the term “food establishment” to include tomato repackers.
- Requires minimum food safety standards for producing, harvesting, packing, and repacking tomatoes.
- Authorizes the department to adopt rules for tomato food safety best management practices.
- Specifies the quantity of antifreeze needed to conduct tests for registration purposes.
- Adds denatured ethanol to the list of petroleum fuels that are collected and analyzed by the department.

¹⁵ Class III games are defined in 25 U.S.C. s. 2703(8).

- Revises requirements for printed statements on brake fluid containers.
- Revises requirements and procedures for brake fluid stop-sale orders.
- Authorizes businesses to dispose of unregistered brake fluid under certain circumstances.
- Revises requirements for liquefied petroleum gas qualifying examinations and increases continuing education requirements.
- Requires the annual inspection of liquefied petroleum gas transport vehicles.
- Deletes requirements that lists of independent agents of sellers of business opportunities and the agents' registration affidavits include the agents' social security numbers.
- Revises provisions for public information about food banks and similar food recovery programs.
- Revises duties of the Division of Fruit and Vegetables for tomato food safety inspections.
- Revises requirements for identifying sellers or handlers of tropical or subtropical fruit or vegetables.
- Removes all references to the Florida Agricultural Museum and the Florida State Collection of Arthropods from the statutes and their references as a direct support organization of the department.
- Deletes a prohibition on the sale of poultry that does not display the poultry grade.
- Allows the Division of Forestry to delegate its open burning authorization for yard waste and land clearing debris to local governments.
- Revises the term "agricultural products" to make tropical foliage exempt from regulation under provisions relating to dealers in agricultural products.
- Authorizes the issuance of stop-operation orders for amusement rides under certain circumstances.
- Authorizes a concealed firearm license applicant to submit fingerprints administered by the Division of Licensing.
- Increases fees for wildlife personnel certification, brake fluid, liquid propane gas, pest control service centers, nursery registration, and for citrus source tree registration.

CS by Regulated Industries on April 1, 2009:

The committee substitute (CS) amends s. 482.072, F.S., to increase the license renewal fee in the bill for a control service center license to at least \$500 and not more than \$1,000. It also extends the period of the license from annually to biennially.

The CS amends s. 482.157, F.S., to increase the license renewal fee in the bill for a limited certification for individual wildlife management personnel to at least \$150 and not more than \$500. It also extends the period of the license from annually to biennially.

The CS does not amend s. 500.121, F.S., relating to the disciplinary provisions for retail food stores and food establishments.

The CS amends s. 500.70, F.S., to provide exemptions to the department's rules for food standards for tomatoes.

The CS amends s. 573.118, F.S., to require the department to maintain records of collections and expenditures for the market order assessment.

The CS amends s. 849.094, F.S., to revise the regulation of game promotions.

B. Amendments:

None.