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DATE: March 16, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
AGRICULTURE & CONSUMER AFFAIRS
ANALYSIS**

BILL #: HB 1449 (PCB AG 01-02)
RELATING TO: Consumer Protection
SPONSOR(S): Committee on Agriculture & Consumer Affairs, Representative Spratt & others
TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) AGRICULTURE & CONSUMER AFFAIRS (CCC) YEAS 8 NAYS 0
 - (2)
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

The bill amends various consumer protection laws relating to charitable organization disclosure requirements, health studio contracts, pawnbrokers, sale of business opportunities, motor vehicle repair shop registrations and repair estimates, and Motor Vehicle Repair Advisory Council membership requirements. The thrust of these statutes is to require information disclosure and remedies for violations.

The bill is designed to clarify, conform and enhance several of these provisions.

The bill will have a positive fiscal impact on state government.

The bill has an effective date of October 1, 2001.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- 1. Less Government Yes No N/A
- 2. Lower Taxes Yes No N/A

The bill addresses the regulation of motor vehicle repair shops by removing the distinction between shops conducting only minor repairs and other repair shops. Those shops conducting only minor repairs would continue to be required to register with the DACS and comply with the provisions of the motor vehicle repair act. These shops would be required to pay an increased annual registration fee. It is estimated that the shop's annual fee will increase from \$25 to \$50. Fees could also increase to an amount greater than the \$50 fee based on the number of employees of the shop. The DACS does not currently have employee information for minor repair shops and cannot, therefore, accurately estimate the additional registration fee for each shop.

- 3. Individual Freedom Yes No N/A
- 4. Personal Responsibility Yes No N/A
- 5. Family Empowerment Yes No N/A

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

The Department of Agriculture and Consumer Services (DACS) is the clearinghouse for consumer complaints and the administrator of programs that regulate various business activities. The stated purpose of its consumer protection program is to protect Florida's consumers from deceptive and unfair business and trade practices and from unsafe, harmful, and inferior products and services.

The DACS has identified several statutory provisions that need to be clarified or updated to enhance its ongoing consumer protection capability.

Solicitation of Contributions

Currently, each charitable organization or sponsor required to register under Chapter 496, F.S., must include the following statement on every printed solicitation, written confirmation, receipt or reminder of a contribution:

A COPY OF THE OFFICIAL REGISTRATION AND FINANCIAL INFORMATION MAY BE OBTAINED FROM THE DIVISION OF CONSUMER SERVICES BY CALLING TOLLFREE WITHIN THE STATE. REGISTRATION DOES NOT IMPLY ENDORSEMENT, APPROVAL, OR RECOMMENDATION BY THE STATE.

Pawnbroking

The Florida Pawnbroking Act defines "agency" to mean the Department of Agriculture and Consumer Services, and "agency" is used throughout the act. Subsection (22), however, refers to "department", rather than "agency" for purposes of rule making authority.

Existing law does not make it a violation of the Florida Pawnbroking Act for a pawnbroker to knowingly accept stolen property in a pawn or purchase transaction. In a recent burglary trial where a pawnbroker acknowledged accepting stolen property, the DACS was unable to pursue any administrative action against the pawnbroker in spite of the admission.

Health Studios

State regulation of health studio businesses began in 1977. Sections 501.012-501.019, F.S., authorize those regulations for the express intent of protecting the public from financial hardship due to certain business practices and financing methods of health studios.

Health studios are defined in s. 501.0125, F.S., to mean Any person who is engaged in the sale of services for instruction, training or assistance in a program of physical exercise or in the sale of services for the right or privilege to use equipment or facilities in furtherance of a program of physical exercise. Health studios must register with the DACS. The law also addresses bonding, contract provisions and penalties.

Currently, when a consumer contracts with a health studio for services, the consumer may cancel the membership contract under certain circumstances. If the consumer cancels the contract within three days of its execution, the health studio is required to refund the consumer's money within 30 days.

The consumer may also cancel a contract if the studio goes out of business or moves its location. Additionally, the consumer may cancel for health-related reasons. Chapter 501, F.S., is silent as to the time period for refunding the consumer's money under these three cancellation provisions.

Business Opportunities

Pursuant to chapter 559, part VIII, F.S., prior to placing advertising, or making an offer to sell or soliciting to buy a business opportunity in this state, sellers of business opportunities must annually file with the DACS a copy of the disclosure statement required pursuant to s. 559.803, F.S.

A business opportunity is defined as the sale or lease of goods or services to an individual to enable that person to start a business where a fee in excess of \$500 is charged and the provider:

- represents that assistance in securing a location will be provided;
- will purchase goods created from the goods or services provided;
- guarantees in writing that the provider will refund monies paid if the individual does not recognize income in excess of the charges for the business opportunity; and
- provides an operational program to enable the individual to derive income.

Required written disclosures include:

- information about the seller and management personnel;
- company background and operations;
- details of the actual services to be provided;
- financial data; and
- training regimens that may be required.

If the seller identifies sales or earnings that may be reached through the business opportunity, the disclosure must include information regarding the total number of persons achieving anticipated sales or earnings levels and the number of recent purchasers of the business opportunity.

If the provider guarantees in writing that it will refund monies paid if the individual does not recognize income in excess of the charges for the business opportunity, then sellers of business opportunities must file a bond, trust account, or guaranteed letter of credit in an amount of not less than \$50,000 with the DACS. This security must be in favor of the department. Any person damaged by a violation of ss. 559.80-559.815 or by breach of contract or related obligation by the business

opportunity may bring an action on the security to recover damages, but the aggregate liability of the surety or trustee shall be only for actual damages and may not exceed the amount of the security.

Motor Vehicle Repair

Businesses engaged in the maintenance, modification and repair of motor vehicles, and diagnostic work incident thereto, are required to register annually with the DACS and pay an incremental registration fee based on the number of employees, as provided in chapter 559, part IX, F.S. This part requires written repair estimates, disclosure statements, record keeping, and bonding for claims. The law specifies unlawful acts and practices and provides remedies for violations. These provisions comprise the Florida Motor Vehicle Repair Act.

The definition of a motor vehicle includes automobiles, trucks, buses, recreational vehicles and other motor powered vehicles. The definition specifically excludes certain classes of vehicles such as mobile homes, watercraft and aircraft.

This part also defines a minor repair services to include motor vehicle repairing and service that may be performed by persons not having the skill and knowledge required of a motor vehicle mechanic. Shops only performing minor repairs pay an annual \$25 registration fee.

C. EFFECT OF PROPOSED CHANGES:

Solicitation of Contributions

The bill amends existing law to require those charitable organizations or sponsors required to register under Chapter 496, F.S., to include the following in their disclosure statements.

- The charitable organization's or sponsor's registration number,
- The percentage, if any, of each contribution retained by any professional solicitor that has contracted with the charitable organization or sponsor, and
- The percentage of each contribution received by the charity.

Health Studios

The bill amends s. 501.017, F.S., to require a health studio to refund a consumer's money within 30 days if the consumer lawfully cancels a contract when a studio goes out of business, changes location, or for health reasons on the part of the consumer. This conforms ss. 501.017(1)(b) and (d) to s. 501.017(1)(a), F.S.

In addition, the bill revises s. 501.019, F.S., to make it a criminal violation for any person to knowingly make a false representation to the DACS with the intent of obtaining an exemption from the security requirements of s. 501.016, F.S.

Pawnbroking

The bill amends s. 539.001, F.S., to make it a prohibited act for a pawnbroker to knowingly accept any stolen property in a pawn or purchase transaction.

Business Opportunities

The bill amends s. 559.801, F.S., to delete the requirement that representations guaranteeing certain income from a business opportunity must be made in writing. Also in s. 559.801, F.S., the bill includes in the definition of "business opportunity" situations where the seller requires use of a licensed trademark or service mark in the sales agreement.

The bill amends s. 559.803, F.S., to require business opportunity providers to include additional information in the required disclosures. The bill requires the provider to list within the disclosure (1) the number of persons purchasing the business opportunity within the past 3 years and (2) names, addresses, and phone numbers of the 10 persons who previously purchased the business

opportunity from the seller and who are geographically closest to the potential purchaser. These requirements would apply when the provider does not make reference to potential sales and earnings.

The bill amends s. 559.807, F.S., to revise security claim procedures to conform them to the provisions of s. 559.929, F.S. Security may be in the form of a bond, certificate of deposit, or letter of credit, and must be in the favor of the DACS for the use and benefit of a person injured by the fraud, misrepresentation, breach of contract, financial failure, or for any violation of part VIII of chapter 559, F.S. An injured person may initiate an action at law in civil court against the business opportunity, but the security is not subject to enforcement except through administrative action involving the DACS. A civil judgment may serve as prima facie evidence of the value of the claim against the security in the administrative proceeding, however. The bill contains legislative intent regarding application of the security under the DACS' authority, and provides that the security may be open to successive claims, but the aggregate amount of the claims may not exceed the amount of the security.

The bill amends s. 559.809, F.S., to prohibit a business opportunity seller from failing to deliver the products, equipment, supplies or services as promised in the business opportunity contract.

Motor Vehicle Repair

The bill amends s. 559.902, F.S., to specify that the Motor Vehicle Repair Act shall not apply to those motor vehicle repair shops located in public schools as defined in s. 228.041, F.S., or charter technical career centers as defined in s. 228.505, F.S.

The bill repeals s. 559.903, F.S., to delete the definition of the term Minor repair service. The deletion removes the distinction between shops conducting only minor repairs and other repair shops. It also conforms ss. 559.904 and 559.905, F.S., in that regard. The bill also requires those shops conducting only minor repairs to register with the DACS and comply with provisions of the Motor Vehicle Repair Act. However, these shops will be required to pay an increased annual registration fee. The DACS estimates the shops' annual fee will increase from \$25 to \$50. These fees could also increase beyond \$50 under the current schedule of fees that is based on the number of employees of a shop.

The bill further amends s. 559.904, F.S., to require copies of a shop's estimate and invoice forms be submitted to the DACS as a part of the registration application. The authority of the DACS to revoke a registration is also clarified.

In addition, s. 559.905, F.S., is amended to require, as a part of the written estimate, that the shop disclose any charges for miscellaneous shop supplies or waste disposal charges.

The bill repeals s. 559.9221(d), F.S., relating to initial appointments and terms of service for members of the Motor Vehicle Repair Advisory Council. The original language is now obsolete.

D. SECTION-BY-SECTION ANALYSIS:

Solicitation of Contributions

Section 1: amends s. 496.411, F.S., to provide disclosure statement requirements for charitable organizations or sponsors.

Health Studios

Section 2: amends s. 501.017, F.S., to require a health studio to refund a consumer's money within 30 days when the consumer cancels a contract pursuant to statutory authority.

Section 3: amends s. 501.019, F.S., to provide a criminal violation for providing false information to the DACS.

Pawnbroking

Section 4: amends s. 539.001, F.S., to prohibit a pawnbroker from knowingly accepting stolen property.

Business Opportunities

Section 5: amends s. 559.801, F.S., to delete the requirement that representations guaranteeing certain income from a business opportunity must be made in writing.

Section 6: amends s. 559.803, F.S., to require the disclosure statement include the number of persons who have purchased the business opportunity within the past three years and the names, addresses and phone numbers of ten previous persons who have purchased the business opportunity from the provider who are geographically closest to the prospective purchaser.

Section 7: amends s. 559.807, F.S., to conform that section to s. 559.929, F.S. It allows a certificate of deposit to serve as a security instead of a trust account, provides for a right of action against that security, and makes clear that the security will be amenable and enforceable only in administrative proceedings involving DACS.

Section 8: amends s. 559.809, F.S., to prohibit a business opportunity seller from failing to deliver the products equipment, supplies or services as promised in the business opportunity contract.

Motor Vehicle Repair

Section 9: amends s. 559.902, F.S., to specify that the Motor Vehicle Repair Act shall not apply to those motor vehicle repair shops located in public schools as defined in s. 228.041, F.S., or charter technical career centers as defined in s. 228.505, F.S.

Section 10: amends s. 559.904, F.S., to delete provisions relating to minor repairs and to require copies of a motor vehicle repair shop's estimate and invoice forms be submitted to the DACS as part of the registration application.

Section 11: amends s. 559.905, F.S., to require the repair shop to disclose, as a part of the written estimate, any charges for miscellaneous shop supplies or waste disposal charges.

Section 12: amends s. 559.9221, F.S., to delete references to minor repair in relation to the composition of the Motor Vehicle Repair Advisory Council and to delete no longer necessary language relating to the initial appointment of members to the advisory council.

Section 13: repeals s. 559.903(5), F.S., relating to the definition of minor repair service.

Section 14: provides that the act shall take effect October 1, 2001.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Provisions of the bill relating to the Motor Vehicle Repair Act will generate a slight increase in revenues from registration fees. Repair shops currently registered as "minor" will no longer register under this distinction. For a minor repair shop, the existing fee is \$25; for all other shops, fees range from \$50 to \$300 depending on the number of employees in the shop. Approximately 1,081 shops are registered as minor. The number has decreased over the past

few years as educational efforts and DACS inspections have shown that many minor shops perform other than minor repairs. Therefore, those shops should not be registered as minor repair shops. The average number of employees working in the minor shops is unknown; therefore, there is no way to estimate the additional fees that will be generated

2. Expenditures:

Due to the slight increase in revenues from increased motor vehicle repair registration fees, there will be an increase in the General Revenue Service Charge to the General Inspection Trust Fund. The amount is unknown at this time.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not address or impact local government revenues.

2. Expenditures:

The bill does not require local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Costs:

The bill requires solicitation materials for charities to be revised to include additional disclosures. The costs associated with making the revisions are unknown.

The bill requires sellers of business opportunities to include additional information in their disclosure statements; however, associated costs should be minimal.

Some motor vehicle repair shops incorrectly registered under the "minor" category will have increased registration costs when no longer registered as "minor."

2. Benefits:

With respect to charitable solicitations, health studios, pawnshops, business opportunities, and motor vehicle repair shops, the bill's provisions offer greater protection to consumers.

D. FISCAL COMMENTS:

According to the DACS, as of February 8, 2000, there were 1,075 motor vehicle repair shops registered as minor repair shops. This number has decreased significantly over the past few years, and many of what are currently classified as "minor repair" shops are doing sophisticated repair work. The average number of employees working in the minor shops is unknown; therefore, there is no way of estimating the additional registration fees that will be generated. However, the bill is supported by the Florida automotive repair industry.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that counties or municipalities have to raise revenue in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

The requirement that business opportunities disclose the number of purchasers for a 3-year period and the names and contact information for 10 persons who have purchased the product and who live near a potential purchaser may impinge upon a business owner's interest in trade secrets. Customer lists and contact information are often protected as trade secrets. However, by making portions of customer lists publicly available through the disclosures required by the bill, a business opportunity may lose the ability to protect that information under trade secret law. See East Colonial Refuse Service, Inc. v. Velocci, 416 So.2d 1276 (Fla. 5th DCA 1982)(customer lists in the form of compilations made available to the public are not trade secrets).

The amendment to s. 559.807, F.S., broadens the scope of suits that may be initiated on a security provided by a business opportunity. The bill would allow such suits on grounds of fraud, misrepresentation, and insolvency as well as the current law provisions for breach of contract. Section 559.809, F.S., lists a number of categories of misrepresentation relating directly to the business opportunity. By broadening the scope of the cause of action, the bill may increase claims and may allow for claims that are tangentially related to the business opportunity and the regulatory provisions of Chapter 559.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

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VII. SIGNATURES:

COMMITTEE ON AGRICULTURE & CONSUMER AFFAIRS:

Prepared by:

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