

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 Community Affairs Committee

BILL: CS/SB 658

INTRODUCER: Commerce Committee and Senator Crist

SUBJECT: Locksmith Services

DATE: April 7, 2010 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Callaghan	Cooper	CM	Fav/CS
2.	Gizzi	Yeatman	CA	Favorable
3.			GO	
4.			CJ	
5.			GA	
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This committee substitute (CS) creates the Florida Locksmith Services Act within part XII, ch. 559, F.S., to provide for statewide regulation of the locksmith services industry. With certain exceptions, the CS requires locksmith service businesses and referral services to be licensed by the Department of Agricultural and Consumer Services biennially, and requires these businesses and services to maintain proper records and a minimum of \$100,000 in liability insurance.

The CS also requires locksmith businesses to undergo specified training and criminal background checks, and provides for criminal, administrative and civil penalties.

This CS creates Part XII, chapter 559 of the Florida Statutes, including the following new sections: 559.941, 559.942, 559.943, 559.944, 559.945, 559.946, 559.947, 559.948, 559.949, 559.95, 559.951, 559.952, 559.953, 559.954, 559.955, 559.956, 559.957, 559.958, 559.959, 559.96, and 559.961.

II. Present Situation:

Background

According to the Associated Locksmiths of America, a professionally trained locksmith or security professional is entitled to do all or some of the following activities:

install locks, deadbolts and other mechanical or electronic locking devices to safeguard homes, businesses, vehicles and other property. Locksmiths also may modify or repair such devices, rekey locks, make duplicate keys or cards, generate or program new keys/cards for locks whose keys/cards have been lost and respond to emergency calls to unlock vehicles, homes and businesses that have been locked accidentally, or whose locks have malfunctioned. Some locksmiths install and service electronic alarm and surveillance systems; ... specify, design, provide, install and service a wide range of electronic access control systems and closed circuit television (CCTV) systems; ... maintain security hardware and software for computer systems.¹

The Federal Trade Commission (FTC) reports that there are a number of advertised locksmiths that lack adequate professional training and engage in false or intimidating tactics to overcharge or misconceive customers. The FTC also states that some locksmith companies purposely choose a particular company name for its similarity to local companies, and have multiple listings with different names that all relate back to a central number in a distant city.²

Fifteen states, including the District of Columbia, require the state registration and licensure of locksmiths and seven additionally require a licensing exam.³ Currently, Florida does not provide statewide regulation or licensing for locksmiths. Miami-Dade is the only county within the state of Florida that presently regulates locksmiths.⁴

Florida Consumer Protection Laws

The Florida Deceptive and Unfair Trade Practices Act (FDUTPA), provides some consumer protection against fraudulent locksmith practices. Located within Part II, of chapter 501, F.S., this Act prohibits unfair methods of competition, and unconscionable, unfair, or deceptive acts or practices in the conduct of any trade or commerce. Section 501.203(8), F.S., defines “trade or commerce” to mean:

¹ Associated Locksmiths of America. *What Does a Professional Locksmith/Security Professional Do?*, available at <http://www.aloa.org/about/> (Website last visited on March 9, 2010).

² Federal Trade Commission; *FTC Consumer Alert*; February 2008; available at <http://www.ftc.gov/bcp/edu/pubs/consumer/alerts/alt032.shtm> (Website last visited on March 9, 2010).

³ See Ala.Code 1975 § 34-1A-1 (Alabama); West’s Ann.Cal.Bus. & Prof.Code D. 3, Ch. 8.5 (California); C.G.S.A. § 20-691 (Connecticut); ILCS Ch. 225, ACT 447 (Illinois); LSA-R.S. T. 40, Ch. 7, Pt. III, Subpt. D-3 (Louisiana); MD Code, Business Regulation, T. 12.5 (Maryland); Neb.Rev.St. § 28-1402 (Nebraska); N.R.S. 655.010 – 655.080 (Nevada); N.J.S.A. 45:5A-30 (New Jersey); N.C.G.S.A. Ch. 74F (North Carolina); 59 Okl.St. Ann. § 1800.1 (Oklahoma); T. C. A. § 62-11-101 (Tennessee); V.T.C.A., Occupations Code § 1702.221 (Texas); Va. Code Ann. § 9.1-139 (Virginia). Note: Oregon passed a law, which will be effective on July 1, 2010, to regulate locksmiths (ORS 701.475 to 701.490).

⁴ Department of Agriculture and Consumer Services, *Senate Bill Analysis 658* at 1 (Dec. 9, 2009)(on file with the Senate Committee on Community Affairs). See also Ch. 8A, Article XVII, Miami-Dade County “Locksmith Ordinance”.

the advertising, soliciting, providing, offering, or distributing, whether by sale, rental, or otherwise, of any good or service, or any property, whether tangible or intangible, or any other article, commodity, or thing of value, wherever situated.⁵

Any person that willfully engages in an activity that violates the FUDTPA, is subject to a civil penalty of up to \$10,000 for each violation. A person's actions are considered to be "willful" if he or she "knew or should have known that his or her conduct was unfair or deceptive or prohibited by rule".⁶ The Act also provides for attorney's fees and costs, and for additional remedies, which include, but are not limited to: cease and desist orders, injunctions and/or declaratory judgments.⁷

Federal Consumer Protection Laws

The Federal Trade Commission Act provides analogous consumer protections to those provided in FUDTPA, by making unlawful: any "unfair or deceptive acts or practices in or affecting commerce".⁸

Unscrupulous locksmiths can also be prosecuted under the U.S. Code for mail fraud pursuant to 18 U.S.C. § 1341.⁹ Mail fraud encompasses any criminal activity where the postal system is used to obtain money or compensation from a victim by offering a product, service, or investment opportunity that does not live up to its claims.¹⁰ In order to be prosecuted for mail fraud, a person must have made an intentional misrepresentation in an offer and relied on the U.S. postal system to carry out his or her scheme.¹¹ Any individual that violates 18 U.S.C. § 1341, may be subject to fines, or up to 20 years in prison, or both.¹²

The Sunrise Act

The Legislature enacted the Sunshine Act in 1991 to prohibit the state regulation of any profession or occupation unless it is necessary to protect the "public health, safety or welfare from significant and discernible harm or damage".¹³ Adopted legislation must only be enforced to the extent necessary to achieve these goals without unreasonably restricting or adversely affecting that profession or occupation.¹⁴

Codified in s. 11.62, F.S., the Legislature is required to consider the following factors in determining whether to regulate a previously unregulated profession or occupation:

⁵ Section 501.203(8), F.S.

⁶ Section 501.2075, F.S.

⁷ See ss. 501.208, 501.2105 and 501.211, F.S.

⁸ See 15 U.S.C. §45 (a)(1).

⁹ Lee, Demorris A.; *Two owners of Clearwater-based Dependable Locks arrested on mail fraud charges*, November 5, 2009; available at <http://www.tampabay.com/news/publicsafety/crime/two-owners-of-clearwater-based-dependable-locks-arrested-on-mail-fraud/1049772>.

¹⁰ United States Postal Inspection Service, *The Mail Fraud and False Representation Statutes*, available at <http://www.usps.com/websites/depart/inspect/statutes.htm>.

¹¹ *Id.*

¹² See 18 U.S.C. § 1341. *Frauds and swindles* (Further providing that any such act that involves a presidentially declared major disaster/emergency or that affects a financial institution, shall result in fines not more than \$1,000,000 or imprisonment for a term of not more than 30 years, or both.)

¹³ Section 11.62(2), F.S. See also s. 6, ch. 91-429, L.O.F.

¹⁴ *Id.*

- Whether the unregulated practice of the profession or occupation will substantially harm or endanger the public health, safety, or welfare, and whether the potential for harm is recognizable and not remote;
- Whether the practice of the profession or occupation requires specialized skill or training, and whether that skill or training is readily measurable or quantifiable so that examination or training requirements would reasonably assure initial and continuing professional or occupational ability;
- Whether the regulation will have an unreasonable effect on job creation or job retention in the state or will place unreasonable restrictions on the ability of individuals who seek to practice or who are practicing a given profession or occupation to find employment;
- Whether the public is or can be effectively protected by other means; and
- Whether the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable.¹⁵

III. Effect of Proposed Changes:

This CS creates the “Florida Locksmith Services Act” within part XII, ch. 559, F.S., to regulate locksmith services and preempt all local regulation of the locksmith industry beginning July 1, 2011.

Section 559.942, F.S., is created to provide the Legislative purpose of this Act, stating that locksmiths operate in public trust and therefore must be licensed and regulated to protect the safety and security of the public from the misuse of locksmith knowledge, supplies, manuals and equipment.

Section 559.943, F.S., is created to provide definitions for the following terms: “advertise,” “apprentice locksmith,” “automotive-only locksmith,” “business location,” “department,” “key duplication machine,” “licensee,” “lock,” “locksmith,” “locksmith referral service,” “locksmith services,” “locksmith services business,” “master key system,” “mobile locksmith services business,” and “motor vehicle”.

As related to this act, the term “locksmith” is defined as a natural person who performs any locksmith services on behalf of a locksmith services business and includes an automotive-only locksmith, but does not include a person whose activities are limited to making duplicate keys.

Section 559.944, F.S., is created to exempt the individuals and businesses from the application of this Act:

- Law enforcement officers, firefighters, emergency personnel, and other government employees that perform locksmith services in an emergency situation in their official line of duty where a person, livestock, or pet is endangered;
- Sales representatives selling locksmith products;
- In-store employees of hardware stores or retail stores providing rekeying services;
- Electrical or alarm system contractors registered or certified under ch. 489, F.S.;

¹⁵ Section 11.62(3)(a)(e), F.S.

- A person lawfully acquiring or using a key-duplication machine or key blanks to duplicate keys;
- A property-owner or his or her agent using a master-key system;
- Employees of financial institutions providing safe-keeping services;
- Motor vehicle dealers, motor vehicle repair shops, a lock manufacturer or agent of the lock manufacturer who service, install, repair, or rebuild motor vehicle locks or originates/duplicates motor vehicle keys;
- Building trades personnel who perform certain provided activities;
- Wrecker operators that possess or use car-opening tools as described in s. 559.953(2)(b), F.S., that do not advertise themselves as locksmiths;
- Automobile clubs; and
- Hardware stores, do-it-yourself home product stores, or other retail stores selling locks and safes designed to be installed and used without professional assistance.

Section 559.945, F.S., is created to provide certain application requirements to be licensed as a locksmith services business.

This section provides that any locksmith services business providing locksmith services, including referral services, must be licensed by the Department of Agriculture and Consumer Services (department). However, an employee of a licensee is not required to obtain a separate license.

To be licensed, all applicants must provide the department with specific information, including:

- The full legal name and mailing address of the applicant;
- Each name under which the applicant does business in Florida and the date of registration of any fictitious name used;
- The business' mailing and street address, and telephone number for the principal business location and any other business location;
- If the applicant is a business, a statement of the type of business entity; federal employer identification number; whether the business is a foreign or domestic business, the state and date of incorporation, the charter number, the date the applicant first registered with the Department of State;
- Each name under which any owner of the business operated, was known, or did business as a locksmith services business within 5 years before the date of application; and
- The names, addresses, and telephone numbers of employee locksmiths, each officer and director of the corporation, each general partner, each managing member, proprietor, and Florida agent for service of process.

Each application must be accompanied by a nonrefundable biennial license fee. The fee schedule is provided under s. 559.945(2), F.S., which requires an applicant to pay:

- Up to \$800, if employing 1 to 5 locksmiths.
- Up to \$1,600, if employing 6 or more locksmiths.
- Up to \$800, if the applicant operates a locksmith referral service and does not employ any locksmiths.

The department has the discretion to waive or reduce license fees if an applicant can establish that such fees would impose a “significant financial hardship” upon the applicant.

In addition to the application, applicants must also submit the following documentation to the department:

- Proof of liability insurance;
- A set of fingerprints for any person listed in the application;
- A criminal history affidavit for anyone listed in the application who has a criminal history; and
- Payment of fees for the criminal background screening for any person listed in the application.¹⁶

A license must be issued to each locksmith services business in a certain format, that must at least show the name and license number of the locksmith services business. The license must also disclose the street address of each business location, or if none, the owner’s address. Licenses are non-transferrable, non-assignable, and valid for two years from the date of issuance. The department is permitted to stagger license expiration dates to prevent an influx of license renewals every two years.

A licensee must notify the department in writing at least 30 days before changing its business location, so that the department can amend the license.

Section 559.946, F.S., is created to require all locksmith services businesses’ officers, directors, partners, owners, registered agents, and employees to be subject to fingerprinting, and state and federal background screenings by the Florida Department of Law Enforcement (FDLE) and the Federal Bureau of Investigation (FBI).

An applicant must not have been convicted of any of the following crimes in the last 10 years: involving trespass, burglary, theft, larceny, dealing in stolen property, receiving stolen property, embezzlement, obtaining property by false pretenses, possession of altered property, or any other fraudulent or dishonest dealing. However, the department may disqualify an individual from these requirements for a felony committed more than 3 years before the date of disqualification or a misdemeanor, so long as that person demonstrates by clear and convincing evidence that he or she has been rehabilitated and is no longer a danger to the public.

All fingerprints must be electronically submitted to the FDLE, which must retain the fingerprints in the statewide automated fingerprint identification system pursuant to s. 943.051, F.S., until notified by the department otherwise. The costs of retaining the fingerprints and performing the background check shall be paid by the licensee.

Pursuant to s. 120.60, F.S., every license application must be approved or denied by a state agency within 90 days after receipt of a completed application, unless a shorter period of time for

¹⁶ Note: The CS requires any person hired after licensure to submit fingerprints, a criminal history affidavit if he or she has a criminal history, and payment of any fees or costs associated with background screening within 10 days of being hired.

agency action is provided by law. However, the CS provides that the deadline under s. 120.60, F.S., is extended if a background check takes longer than the 90 days.

Subsection (4) further provides that an applicant may only operate as an apprentice locksmith, meaning he or she must continually be supervised by a locksmith, until his or her criminal background check has been completed.

Section 559.947, F.S., is created to provide for the licensing of locksmith services businesses that do not reside in Florida. This section provides for license reciprocity with other states, so long as that state's licensure programs collect at least the same information required by this legislation and permits Florida licensed locksmith services businesses to do business in their state.

Section 559.948, F.S., is created to provide biennial license renewal requirements, stating that a licensee must provide the following information to the department:

- A complete renewal application containing all the information required for initial licensure;
- Payment of the biennial license fee;
- Proof of liability coverage;
- An updated criminal history affidavit, if applicable; and
- A set of fingerprints for any person required to, but who has not undergone, a background screening, his or her criminal history affidavit, and fees associated with the background screening.

Section 559.949, F.S., is created to authorize the department to deny, suspend, revoke, or refuse to renew licenses if a person listed in the application for licensure:

- Failed to meet the requirements set forth in the CS;
- Is disqualified based upon his or her criminal background check;
- Received any civil, criminal, or administrative adjudication in any jurisdiction; or
- Have had a judgment entered against him or her pursuant to the Florida Deceptive and Unfair Trade Practices Act.

Section 559.95, F.S., is created to require each locksmith services business to carry at least \$100,000 per incident liability insurance coverage, as part of the licensing process. The liability insurance is necessary to cover losses or damages resulting from the negligence of the locksmith business or employees. Failure to maintain the insurance would allow the department to suspend the business' license and seek a court ordered injunction, a civil penalty up to \$10,000, and reasonable court costs. The insurance policy must be issued by an insurance company or carrier licensed to transact business in this state, pursuant to the Florida Insurance Code.¹⁷

¹⁷ See s. 624.01, F.S.

Section 559.951, F.S., is created to specify who may perform locksmith services, to require locksmiths to carry photo identification cards, and to require locksmith services businesses to display licenses.

This section states that an individual may not perform locksmith services unless he or she is the licensee or one of the following:

- A “locksmith” who is 18 years of age or older and who has completed 16 hours of training in industry ethics, the federal Americans with Disabilities Act, the Florida Building Code, the Florida Fire Prevention Code, and the Life Safety Code, as they pertain to locksmith services.
- An “automotive-only locksmith” who is 18 years of age or older and who has completed a training course in ethics.
- An “apprentice locksmith” who is 15 years of age or older, and who has completed at least 16 hours of training in industry ethics, the federal Americans with Disabilities Act, the Florida Building Code, the Florida Fire Prevention Code, and the Life Safety Code, as they pertain to locksmith services.
 - An apprentice locksmith must be directly and continually supervised while performing locksmith services and must have the permission of his supervisor to perform such services.

Locksmiths, including automotive-only locksmiths, must continue to receive training every two years.

A locksmith services business must maintain a personnel record of each locksmith, automotive-only locksmith, and apprentice locksmith it employs, that includes:

- Two photographs of the employee, which are to be updated every two years;
- The employee’s criminal history affidavit;
- Results of the employees background screening; and
- Documentation proving completion of training required under the CS.

Each locksmith, automotive-only locksmith, or apprentice locksmith must be issued a photo identification card that lists the employee’s name, the business’ name, the locksmith license number, and contain the word “Locksmith,” “Automotive-Only Locksmith,” or “Apprentice,” as applicable. Employees are required to carry and display the card on their person at all times when performing locksmith services.

Locksmith services businesses are also required to display a copy of their license issued by the department at the place of business and in a manner easily readable by the general public. Alternatively, for mobile locksmith services, a copy of the license shall be maintained in each service vehicle for presentation to any person of the general public, any law enforcement officer, or any state or local official upon request. The CS requires all advertisements, service vehicles, and forms to include the license number and the name of the business.

Section 559.952, F.S., is created to specify that a locksmith services business shall accept at least two of the following forms of payment:

- Cash, cashier's check, money order, or traveler's check;
- Valid personal check with appropriate identification information; or
- Valid credit card, which shall include, but not be limited to, Visa or MasterCard.

This section also requires the locksmith services business to clearly and conspicuously disclose in the work order, invoice, or sales receipt, the forms of payment that the locksmith will accept. Additionally, a copy of each work order, invoice, or sales receipt must be retained for two years; include the name of the person performing the service; and must be readily available for inspection by any law enforcement officer or by the department during normal business hours.

Section 559.953, F.S., is created to prohibit a person from engaging in the following acts:

- Perform or offer to perform locksmith services without a valid license issued by the department;
- Advertise or represent oneself as a locksmith services business without being licensed;
- Operate a locksmith referral service without a valid license issued by the department;
- Require a consumer to waive his or her rights provided in the CS as a precondition to performance of locksmith services;
- Fail or refuse to provide law enforcement or the department with any document or record or information required to be produced;
- Employ or contract with a person not qualified to perform locksmith services;
- File with the department the fingerprints of a person other than the person required to submit fingerprints under this part;
- Advertise or solicit business without disclosing prominently and conspicuously in all advertisements, work orders, invoices, or sales receipts, the address of the locksmith services business;
- Operate a locksmith services business in a location other than the location provided on the business license;
- Make a false statement in response to a request or investigation by the department, the Department of Legal Affairs, a law enforcement officer, or the state attorney;
- Make a material false statement in an application, document, or record required to be submitted or retained under this part;
- Commit any other act of fraud or misrepresentation, or fail to disclose a material fact;
- Disclose or permit the disclosure of any customer information without the customer's consent, unless authorized by law; or
- Violate any of the provisions of this act or rules adopted by the department.

Section 559.954, F.S., is created to provide for civil remedies and penalties. This section permits a customer injured by a violation of this CS to bring an action in the appropriate court for relief, including injunctive relief. The prevailing party may be awarded court costs and reasonable attorney's fees.

Furthermore, the department is authorized to institute a civil action to recover any penalties or damages authorized by this CS and for injunctive relief to compel compliance with the provisions of this CS. The department is permitted to seek a civil penalty of up to \$10,000 for each violation and may seek restitution for, and on behalf of, any customer injured by a violation.

This section also provides that any agreement that purports to waive, limit, restrict, or avoid any of the duties, obligations, or prescriptions of the locksmith services business, as provided by this CS, is void.

Section 559.955, F.S., is created to provide for administrative remedies and penalties. This section requires the department to process consumer complaints as prescribed by current law.

Additionally, this section requires a locksmith services business to allow department personnel to enter its place of business to ascertain whether the license certificate is current. If the business refuses entry, the department may seek injunctive relief from a circuit court to compel compliance.

If the department finds that a business is in violation of the provisions of this CS or rules adopted by the department, the department may:

- Issue a notice of noncompliance under s. 120.695, F.S.;¹⁸
- Impose an administrative fine up to \$10,000 for each act or omission;
- Direct that the locksmith services business cease and desist specified activities;
- Refuse to issue a license or revoke or suspend a license; or
- Place the licensee on probation for a period of time, subject to the conditions specified by the department.

This section directs that administrative proceedings, which could result in the entry of an order imposing any of the penalties expressed in the CS, are governed by ch. 120, F.S.¹⁹ The department is permitted to assess the reasonable cost of conducting administrative proceedings against the sanctioned party when issuing a final order imposing an administrative fine or suspending, revoking, or denying initial issuance or renewal of a license, unless the sanctioned party was sanctioned for an inadvertent act or an act made in good faith.

The department is directed to post a prominent “Closed by Order of the Department” sign on any locksmith services business that has had its license suspended or revoked. The department shall also post the sign if the business has been judicially or administratively determined to be operating without a license. A business may be subject to second-degree misdemeanor penalties if it removes or defaces a sign posted by the department or continues to operate even though its license is suspended or revoked. Additionally, the department may impose administrative sanctions for any of these violations.

¹⁸ This section expresses that its intent is to be the department’s first response to a minor violation of a rule in any instance in which it is reasonable to assume that the violator was unaware of the rule or unclear as to how to comply with it.

¹⁹ The Administrative Procedures Act.

Section 559.956, F.S., is created to state that a violation of the provisions of this CS constitutes as a deceptive and unfair trade practice subject to the remedies and penalties provided in Part II of ch. 501, F.S.

Section 559.957, F.S., is created to provide criminal penalties, stating that any person who violates s. 559.954, of this act, commits a misdemeanor of the first degree, punishable as provided in ss. 775.082 or 775.082, F.S.²⁰

Section 559.958, F.S., is created to provide the department with rulemaking authority to adopt rules related to: the licensing of locksmith services businesses, fingerprinting and background screening of certain individuals, required forms, necessary fee and costs schedules, methods for obtaining and renewing photo identification, and the use and display of licenses.

Section 559.959, F.S., is created to require any funds recovered by the department from fees or penalties shall to be deposited into the department's General Inspection Trust Fund.

Section 559.96, F.S., is created to provide that the language in this CS shall preempt any local regulation of locksmith services, locksmiths, or locksmith services businesses beginning July 1, 2011.

Section 559.961, F.S., creates the Florida Locksmith Services Advisory Council, composed of seven industry members, one electrical contractor, and one consumer appointed by the Commissioner of Agriculture for a four-year term.²¹ The Council is authorized to consult and advise the department on matters relating to advancements in industry standards and practices, and on other matters requiring expertise in the locksmith industry in order to promote better consumer protection.

Members of the advisory council must meet the following specific criteria to be qualified as a member:

- Must have at least 3 years of experience in his or her profession (except for the consumer member);
- Must be currently engaged in his or her profession; and
- Must be a resident of Florida.

This CS provides an effective date of July 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

²⁰ Sections 775.082 and 775.083, F.S., provide that a first-degree misdemeanor carries a jail sentence not exceeding 1 year as well as a fine not exceeding \$1,000. Note: See ss. 559.953 and 559.954, F.S., for a list of delineated prohibited acts.

²¹ The council must annually elect a chair and vice chair and the chair calls all meetings. Any vacancies in the interim are to be filled by the Commissioner of Agriculture.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The 14th Amendment of the U.S. Constitution, and article I, section 9 of the Florida Constitution protect a person's right to due process of law.²² In order to exercise legitimate police powers, there must be a reasonable and substantial relation to the regulatory goal and the regulation cannot be unreasonably vague so as to be arbitrary or capricious.²³ The Equal Protection Clause in the U.S. Constitution further prohibits discriminatory acts by the government. A law that provides a governmental agency with the ability to exercise unbridled discretion implicates the individual rights granted under the Due Process Clause and the Equal Protection Clause.

Lines 282 through 286 of the CS authorize the department to waive or reduce the biennial license fee if the department determines that the fee would impose a *significant financial hardship* for that applicant. However, this section does not require a department rule or provide legislative criteria to be used in determining what constitutes as a *significant financial hardship*. This may result in discriminatory treatment in violation of the Equal Protection Clause, and may also allow for arbitrary and capricious decisions by the department in violation of the Due Process Clause.

Lines 447 through 478 of the CS, allow the department to deny, suspend, revoke, or refuse to renew a locksmith license if the business has “*received* any civil, criminal, or administrative adjudication in any jurisdiction.” The department’s authority under this provision may be challenged as being vague since it may apply equally when a person is adjudicated guilty or not guilty in a criminal case. Further this provision does not provide sufficient notice as to what is considered to be prohibited conduct.²⁴

Lines 656 through 657 of the CS may also present the same due process concerns, stating that it is a violation of this Act to “*commit* any other act of fraud or misrepresentation, or fail to disclose a material fact.” This provision may also be challenged as being unconstitutionally vague since the current language may encompass anything from a simple lie to an intentional fraud, thereby affecting a person’s right to due process because of insufficient notice as to what particular conduct is prohibited under this act.²⁵

²² Amend. XIV, Section I, of the U.S. Constitution. See also Article I, section 9 of the Florida Constitution.

²³ *Id.* See also, *Effie v. City of Ocala*, 438 So. 2d 506 (Fla. 5th DCA 1983); *Friends of the Great Southern, Inc. v. City of Hollywood*, 964 So. 2d 827 (Fla. 4th DCA 2007); 16B Am. Jur. 2d Constitutional Law s. 839; and 16B Am. Jur. 2d Constitutional Law s. 847.

²⁴ See Amend XIV, Section I, of the U.S. Constitution. See also, *Whittaker v. Dep’t of Ins. And Treasurer*, 680 So. 2d 528 (Fla. 1st DCA 1996).

²⁵ *Id.*

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Locksmith services businesses that are approved for licensure under this act will be subject to application and license fees. Biennial license fees will be determined by the number of employed locksmiths, but will be capped at \$800 for one-five employees and at \$1,600 for more than six employees.

Locksmith services businesses will also bear the costs for criminal background screenings as part of their application process. According to the Florida Department of Law Enforcement (FDLE), approximately 7,000 state and national background checks will be performed the first year and 500 checks in subsequent years for new licensees. These figures are based on hard card fingerprint submissions.

- Year 1: 7,000 x \$34.25 = \$239,750
- Year 2: 500 x \$34.25 = \$17,125
 - Year 2: \$6 fingerprint retention fee x 7,000 = \$42,000
- Year 3: 500 x \$34.25 = \$17,125
 - Year 3: \$6 fingerprint retention fee x 7,500 = \$45,000

Each fingerprint request costs \$34.25. Of that amount, \$15.00 goes into the FDLE Operating Trust Fund and \$19.25 from each request is forwarded to the FBI. The result is not revenue for Florida, but an expense to the private sector.²⁶

B. Private Sector Impact:

Based on the statistics provided by the Associated Locksmiths of America (ALOA) in a Sunrise Questionnaire study, the Department of Agriculture and Consumer Services estimates that 2,400 businesses will be subject to the licensing requirements provided in this CS. Should these businesses qualify for licensure, they will incur costs associated with licensing, application, and background screening fees (costs listed above).²⁷ These businesses will further be required to maintain minimum liability insurance of \$100,000.

Locksmith services businesses will also have to provide training and continuing education for employees and apprentices.

²⁶ Florida Department of Law Enforcement, *Senate Bill Analysis 658* at 2 (Feb 9, 2010) (on file with the Senate Committee on Community Affairs).

²⁷ Department of Agriculture and Consumer Services, *Senate Bill Analysis 658* at 1 (Dec. 9, 2010) (on file with the Senate Committee on Community Affairs).

C. Government Sector Impact:

The Department of Agriculture and Consumer Services will incur costs associated with the administration, regulation and enforcement of the provisions in the CS. The department reports that it will need an additional nine full-time staff members in order to fulfill these responsibilities, which will include four Regulator Consultants, one Administrative Secretary, and four Investigation Specialists II. The salaries for these new staff members will cost the department approximately \$480,000-\$500,000 per year for the first three years.

The department estimates that during the 2010-11 fiscal year, this CS will cost \$571,987 in recurring expenditures and \$328,265 in non-recurring expenditures, with a grand total of costs being \$1,057,468 during the first year. The department estimates that there will be \$1,080,000 in recurring revenues during the 2010-11 fiscal year. This figure is derived after the initial background check fees are passed through.

The biennial license fees will be set by department rule based upon the estimated costs to the department. To implement the process, 50 percent of registrants will register for one year and 50 percent will register for two years. During the second year, the 50 percent that only registered for one year will then register for two years in order to stagger biennial revenues so that annualized expenses will be covered.²⁸

VI. Technical Deficiencies:

Line 499 in the CS authorizes the department to suspend a business's license or "eligibility for licensure" if it does not maintain the required insurance coverage. However, it is awkward to say that a business's eligibility is suspended, when the intent is likely to mean that the business is "not eligible" to become licensed until it becomes insured.

Line 739 of the CS references s. 559.954, F.S., to provide that a person who commits a prohibited act under that section is subject to first degree misdemeanor penalties. However, s. 559.954, F.S., provides for civil penalties and remedies. It is s. 559.953, F.S., of the CS that provides for certain prohibited acts.

Lines 770 through 774 of the CS provide for the preemption of local regulations, which is to be effective on July 1, 2011. However, the effective date provided in line 835 of the CS makes no mention of the state preemption effective date provided on lines 770-774 of the CS. It may be appropriate to state on line 835 of the CS: "Except as otherwise provided, this act shall take effect July 1, 2010."

VII. Related Issues:

Lines 172 through 177 of the CS limit law enforcement, emergency personnel, and government officials' authority to perform locksmith services. Such personnel are only permitted to perform locksmith services in an emergency situation if the life of a person, livestock, or pet animal is

²⁸ Department of Agriculture and Consumer Services, *Senate Bill Analysis 658* at 2-4 (Dec. 9, 2010) (on file with the Senate Committee on Community Affairs).

endangered. However, this restriction does not contemplate those instances when such personnel may need to perform locksmith services when a person's property is in danger of being harmed or destroyed or when law enforcement may have a warrant to enter property, even when there is no emergency to do so. To permit such personnel to carry out their lawful duties, lines 172 through 177 should read instead, "A law enforcement officer, firefighter or voluntary firefighter, emergency medical technician or paramedic, or other government employee or agent who, in his or her official line of duty, performs locksmith services."

Lines 358 through 359 of the CS grant the department the authority to exempt persons who are disqualified for licensure if the person has committed a felony 3 years before the date of disqualification or for any misdemeanor. The provided length of time for an exemption to be permitted may be problematic because it may be hard to determine the date a felony was actually committed. It may be better to say "convicted of a felony 3 years before the date of disqualification."

Lines 559 through 561 of the CS require each locksmith services business to keep a personnel file for each employee and each file must include "documentation provided by the locksmith services business that demonstrates completion of the training" required by the CS. If locksmith services businesses are providing the certificates of completion for training for their own employees, it may be hard for the department to detect which businesses are actually complying with the training requirements as some unscrupulous businesses may circumvent the training requirements by providing the certification without providing the appropriate training classes.

Line 596 of the CS requires a locksmith to accept a valid personal check as payment if the check shows the name and address of an "authorized representative." However, the term "authorized representative" is not defined.

VIII. Additional Information:

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

CS by Commerce on March 17, 2010:

The Committee Substitute differs from the original bill in that it:

- Deletes definition of "Locksmith Tool";
- Deletes the department's discretionary exemption for a "noncriminal offense";
- Requires fingerprints to be "electronically" submitted;
- Requires a locksmith to only operate as an apprentice locksmith while his or her criminal status is being verified;
- Deletes a disqualifying provision for licensure concerning the failure to satisfy civil penalties;
- Specifies the education and training requirements should pertain to locksmith services;
- Deletes the provisions concerning the prohibition of using certain locksmith tools by certain persons;
- Deletes the prohibition of using a credit card fraudulently;

- Took out the criminal provision for the unlawful use of locksmith tools; and
- Gives a court the discretion to award attorney's fees and costs, instead of mandating such an award.

B. Amendments:

None.

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