

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 Commerce Committee

BILL: CS/ SB 658

INTRODUCER: Commerce Committee and Senator Crist

SUBJECT: Locksmith services

DATE: March 17, 2010 REVISED: _____

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

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

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.

This CS requires each locksmith service business to be licensed by the Department of Agriculture and Consumer Services (department) and each license must be renewed biennially. Applicants for a license are required to identify each employee providing locksmith services as well as each officer, director, owner, partner, or registered agent, and submit fingerprints from these individuals to the department to forward to the Florida Department of Law Enforcement and the Federal Bureau of Investigation for a background check, and retain a copy of the background check in the individual's personnel file. Additionally, employees are required to be trained in industry ethics and in other areas affecting their trade and are subject to continuing-education requirements.

This CS provides certain exceptions to the licensing requirement (e.g. emergency personnel, retail sales representatives, hardware stores, manufacturers, landlords, etc.).

Each business is responsible for training and supervising its employees, maintaining a minimum of \$100,000 in liability insurance per incident, and maintaining proper records.

This CS also provides for the regulation of apprentice locksmiths and requires that apprentices be trained and directly supervised.

Additionally, this CS provides for criminal, administrative, and civil penalties.

This CS creates part XII, ch. 559, F.S., and the following 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,¹

A professional trained locksmith/security professional may do some or all of the following: 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.

In addition, 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; or sell, service, or install safes.²

Locksmith Fraud

According to the Federal Trade Commission (FTC), the nation's consumer protection agency, some locksmiths advertising in a local telephone book may not be local at all.³ Additionally, they may not have professional training and may use intimidating tactics and overcharge a customer.⁴

The FTC reports that a number of unscrupulous locksmith companies choose a name for its business that is very similar to the name used by a local locksmith and then advertises in the phone book or online using a local telephone number and local address.⁵ When a consumer calls the advertised number, he or she is actually connected to a call center in another city and there

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 *Id.*

³ 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).

⁴ *Id.*

⁵ *Id.*

may be no locksmith shop at the address listed in the advertisement. The consumer may be quoted a price on the phone, but when the locksmith arrives, often in an unmarked vehicle, the locksmith may want significantly more money and may accept only cash. Some who claim to be “local locksmith” companies have multiple listings (sometimes 30 or more separate listings in a single phone book) with different names. But the calls to each of these numbers go back to the same central number in a distant city where operators dispatch untrained individuals to do the job.⁶

State Regulation

Fourteen states and the District of Columbia require locksmiths to be registered or licensed.⁷ Seven of these states require a test or exam to be a licensed locksmith. However, in Florida there is no statewide regulation of the locksmith industry and only Miami-Dade County regulates locksmiths.⁸

Florida Consumer Protection Laws

Consumers are protected, to an extent, from unfair and deceptive practices of locksmiths under the Florida Deceptive and Unfair Trade Practices Act (FDUTPA), ch. 501, part II, F.S. The act prohibits unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce. “Trade or commerce,” which includes the conduct of any trade or commerce, is defined as 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. The act provides for remedies such as cease and desist orders, injunctions, remedies by the enforcing authority, and the award of attorney’s fees and costs to the prevailing party in civil litigation. A willful violation of the FUDTPA subjects the violator to a civil penalty of not more than \$10,000 for each violation.

Federal Consumer Protection Laws

Federal law provides a measure of protection against unfair or deceptive contract provisions under the Federal Trade Commission Act, which makes unlawful any “unfair or deceptive acts or practices in or affecting commerce.”⁹

In addition, some unscrupulous locksmiths are prosecuted under federal law for mail fraud.¹⁰ The federal law governing mail fraud, under 18 U.S.C. § 1341, is the nation’s oldest federal

⁶ *Id.*

⁷ 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).

⁸ Locksmith.net, *10 Point Phony Locksmith Checklist*, available at <http://www.locksmith.net/> (Website last visited on March 25, 2009).

⁹ See 15 U.S.C. §45.

consumer protection statute.¹¹ Mail fraud is a criminal scheme 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.¹² To be prosecuted for mail fraud, a person must intentionally make a misrepresentation in an offer and rely on the U.S. mail to carry out the scheme.¹³ Those who violate the federal mail fraud statute may be subject to fines or up to 20 years in prison, or both.¹⁴

Sunrise Act

The “Sunrise Act,” under s. 11.62, F.S., requires the Legislature to consider certain factors when determining whether to regulate a profession or occupation. Specifically the Legislature must consider:

- 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.

The Legislature passed the Sunrise Act in 1991, to ensure that no profession or occupation is subject to regulation by the state unless the regulation is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage; that the police power of the state is exercised only to the extent necessary for that purpose; and that no profession or occupation is regulated by the state in a manner that unnecessarily restricts entry into the practice of the profession or occupation or adversely affects the availability of the professional or occupational services to the public.¹⁵

¹⁰ 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>.

¹¹ United States Postal Inspection Service, *The Mail Fraud and False Representation Statutes*, available at <http://www.usps.com/websites/depart/inspect/statutes.htm>.

¹² *Id.*

¹³ *Id.*

¹⁴ See 18 U.S.C. § 1341.

¹⁵ Section 11.62(2), F.S. *See also*, s. 6, ch. 91-429, L.O.F.

III. Effect of Proposed Changes:

This CS creates the “Florida Locksmith Services Act” within part XII, ch. 559, F.S., which is created 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 for the purpose of the CS and states that locksmiths operate in public trust and must be trained in regulations and laws applicable to their profession and that regulation of locksmith services is necessary to protect the safety and security of the public.

Section 559.943, F.S., is created to provide definitions for “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.”

“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 certain individuals or businesses from the application of the CS including:

- Emergency personnel;
- Sales representatives selling locksmith products;
- Employees of hardware stores or retail stores providing rekeying services;
- Electrical or alarm system contractors registered or certified under ch. 489, F.S.;
- A person lawfully acquiring or using a key-duplication machine;
- A landlord 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;
- Building trades personnel;
- Wrecker operators;
- 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 for certain application requirements for being 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), but 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 payment of a nonrefundable biennial license fee. A fee schedule is provided for under s. 559.945, 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.

Along with applications, applicants must submit 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 for each locksmith services business in a certain format and must show at least 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 2 years from the date of issuance. The department is permitted to stagger license expiration dates to prevent an influx of license renewals every 2 years.

A licensee must notify the department in writing at least 30 days before changing its business location and the department must amend a license to show the new business location.

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.

Section 559.946, F.S., is created to provide for the fingerprinting and background screening of locksmith services businesses' officers, directors, partners, owners, registered agents, and employees.

Any person listed in the application for a license must be fingerprinted and must undergo a statewide and federal criminal records check. A person listed on the application cannot be convicted of certain crimes relating to fraud or theft within the previous 10 years of the application for licensure, unless the department grants an exemption for a felony committed more than 3 years before the date of disqualification or a misdemeanor. The department can only exempt a person who demonstrates by clear and convincing evidence that he or she should not be disqualified by showing that he or she has been rehabilitated and not a danger to the public.

FDLE must retain the fingerprints in the statewide automated fingerprint identification system pursuant to s. 943.051, F.S., until notified by the department otherwise, and such retention is paid for by each licensee.

Pursuant to s. 120.60, F.S., every application for a license 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 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) 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 are not residents of Florida. This section provides for license reciprocity with other states, provided that the 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 for the requirements for renewing a license. A license is renewed if the licensee provides 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; 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 under certain circumstances.

Specifically, this section permits the department to deny, suspend, revoke, or refuse to renew the license of a locksmith services business 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. The business must provide proof of insurance 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

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.

Under this section of the CS, a "locksmith" is a person who is 18 years of age or older, 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" is a person who is 18 years of age or older and who has completed a training course in ethics.

An "apprentice locksmith" is a person 15 years of age or older 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 2 years.

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

- Two photographs of the employee, which are to be updated every 2 years;
- The employee's criminal history affidavit;
- Results of the employees background screening; and
- Documentation proving completion of training required under the CS.

¹⁷ See s. 624.01, F.S.

Each locksmith, automotive-only locksmith, or apprentice locksmith must be issued a photo identification card. A locksmith's photo identification card is required to list 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 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 the types of payment a locksmith services business may accept and to provide requirements for recordkeeping.

This section requires locksmiths to accept at least two out of three categories 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 2 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 certain acts by persons. A person is considered to be in violation of the act if they commit one of 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 for violations of this CS. 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

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.

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.

Section 559.956, F.S., is created to provide that any violation of the provisions of this CS constitutes a deceptive and unfair trade practice under part II of ch. 501, F.S., the “Florida Deceptive and Unfair Trade Practices Act” (FDUTPA), and administrative rules adopted pursuant to that act. FDUTPA provides for remedies such as cease and desist orders, injunctions, remedies by the enforcing authority, and the award of attorney’s fees and costs to the prevailing party in civil litigation. A willful violation of the FDUTPA subjects the violator to a civil penalty of not more than \$10,000 for each violation.

Section 559.957, F.S., is created to provide for criminal penalties for certain violations of the CS. The CS makes any person who commits one of the delineated prohibited acts provided for in the CS subject to first-degree misdemeanor penalties.²⁰

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

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

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

Section 559.961, F.S., is created to create an advisory council consisting of nine members appointed by the Commissioner of Agriculture. The purpose of the advisory council is to assist the department in carrying out the law and advise the department on matters relating to advancements in industry standards and practices and on other matters requiring expertise in the locksmith industry to promote better consumer protection.

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.

This section specifies that five members must be individuals employed by separate, licensed locksmith services businesses and who do not provide automotive-only locksmith services; one member must be employed by separate, licensed locksmith services businesses that provide automotive-only locksmith services; one member must be an electrical contractor certified under ch. 489, F.S.;²¹ one member must have private security, investigative, or law enforcement expertise or experience; and one member must be a consumer who is not connected with the locksmith industry.

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.

Council members are appointed for a 4-year term and any vacancies in the interim are to be filled by the Commissioner of Agriculture. The council must annually elect a chair and vice chair and the chair calls all meetings. Members of the council are not paid, but may be reimbursed for certain food and travel expenses.

Initial members of the Florida Locksmith Services Advisory Council are not required to be licensed.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Equal Protection and Due Process

If the Legislature enacts a law that gives the government the opportunity for the exercise of unbridled discretion, whether the discretion is exercised or not, the law implicates a person's rights under the Equal Protection Clause and the Due Process Clause under the

²¹ Part II of ch. 489, F.S., concerns Electrical and Alarm System Contracting.

14th Amendment of the U.S. Constitution.²² The Equal Protection Clause prohibits discriminatory acts by the government and the Due Process Clause prohibits vague language in the law, which may lead to arbitrary and capricious acts by the government.²³

Lines 282 through 286 of the CS permit the department to waive or reduce the biennial license fee for any applicant that establishes that the fee would impose a “significant financial hardship.” However, “significant financial hardship” is not defined and no conditions are provided for establishing what constitutes a “significant financial hardship.” Because the department has no direction as to what constitutes a “significant financial hardship,” the department’s waiver of fees for one person over another may be challenged as a violation of equal protection if the department waives fees, in what may be deemed by a court, in a discriminatory manner. Also, because of the lack of specification, the language may allow for arbitrary and capricious decisions by the department, which would violate a person’s due process rights.

In addition, there may be due process concerns associated with the department’s authority in lines 477 through 478 of the CS, to deny, suspend, revoke, or refuse to renew a license of a locksmith services business if the business has “received any civil, criminal, or administrative adjudication in any jurisdiction...” The department’s authority under this provision may be challenged under the state and federal constitutions as being vague as it may pertain to those instances when a person is adjudicated guilty or not guilty in a criminal case. In addition, this provision does not provide clear notice of what conduct is prohibited.²⁴

In lines 656 through 657 of the CS, the same due process concerns may exist because it states that it is a violation of the CS to “commit any other act of fraud or misrepresentation, or fail to disclose a material fact.” This provision of prohibited conduct may be challenged under the state and federal constitutions as being vague as it may encompass a simple lie or an intentional fraud, affecting a person’s right to due process because this language does not provide clear notice of what conduct is prohibited.²⁵

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

²² Amend. XIV, Section I, of the U.S. Constitution. 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.

²³ *Id.* (all sources).

²⁴ See Amend. XIV, Section I, of the U.S. Constitution. See also, *Whitaker v. Department of Ins. and Treasurer*, 680 So.2d 528 (Fla. 1st DCA 1996).

²⁵ *Id.*

B. Private Sector Impact:

The department has estimated that 2,400 businesses will be subject to licensing based on answers provided by the Associated Locksmiths of America (ALOA) on the Sunrise Questionnaire.²⁶ Should they otherwise qualify, these 2,400 businesses will incur costs associated with licensing fees, including application and background screening fees.

Locksmith services businesses will also have to provide for the training and continuing-education of employees and apprentices as required in the CS. These businesses will also have to purchase liability insurance as required under the CS.

C. Government Sector Impact:

The department will incur costs associated with administration, regulation, and enforcement of the provisions of the CS.

The department reports that it will need 9 full-time staff to fulfill its responsibilities under the CS, whose salaries would cost the department approximately \$480,000 to \$500,000 per year for the first 3 years.²⁷ The total cost of salaries and other recurring related expenses would be approximately \$570,000 to \$590,000. The department estimates having approximately \$328,000 in non-recurring costs for implementing its responsibilities under the CS. The department estimates that these costs, along with some non-operating costs, will be approximately \$1 million in the first year and, with costs leveling out after the first year, around \$700,000 in subsequent years.

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. 559.953, F.S., under the CS provides for certain prohibited acts, while s. 559.954, F.S., provides for civil penalties and remedies.

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 other effective date provided for in the CS. It may be appropriate to say in line 835, "Except as otherwise provided, this act shall take effect July 1, 2010."

²⁶ The "Sunrise Questionnaire for Groups Seeking New Regulation" is on file with the Commerce Committee.

²⁷ The "Sunrise Questionnaire for Department Having Jurisdiction over Proposed Regulation" is on file with the Commerce Committee.

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 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.)

This strike-all differs from the 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.
