

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1712

SPONSOR: Senator Meek

SUBJECT: Consumer Protection

DATE: March 10, 1999 REVISED: 03/17/99 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Akhavein</u>	<u>Poole</u>	<u>AG</u>	<u>Fav/2 amendments</u>
2.	_____	_____	<u>RI</u>	_____
3.	_____	_____	<u>FP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The Division of Consumer Services, within the Department of Agriculture and Consumer Services(department), acts as a clearinghouse for consumer complaints, consumer complaint referrals, and consumer complaint mediation. This bill enhances and clarifies the laws relating to information disclosure and remedies for enforcement for the following consumer protection program areas:

Solicitation of Contributions - Funds which are transferred between charitable organizations would be excluded from the definition of “contribution” as it relates to the solicitation of contributions and fees of the department. Solicitors would be required to disclose their criminal histories, and anyone with felony and other specific convictions during the last ten years would be prohibited from soliciting in Florida.

Commercial Telephone Solicitation - A commercial telephone seller or salesperson would be prohibited from making a call before 8 a.m. or after 9 p.m. local time at the called person’s location. In addition, such person could not take any action to block the telemarketer’s name or telephone number from caller I.D.

Business Opportunities - Business opportunity sellers would be required to disclose their criminal histories for the past ten years in their disclosure statements and to file a list of their management personnel, including addresses and driver’s license numbers.

Pawnbrokers - The bill clarifies that pawnbroker licenses expire after one year and must be renewed annually for a fee of \$300. It requires an applicant to pay one-time costs for fingerprint checks and requires a national criminal background check. It clarifies the documentation that must be submitted to prove an applicant’s net worth.

Motor Vehicle Repair - The bill revises the definition of “motor vehicle” to clarify that it does not include off-road construction equipment. It requires the department to post a sign at locations where the repair shop’s registration has been suspended or revoked.

This bill amends sections 496.404, 496.405, 496.409, 496.410, 496.420, 501.604, 501.616, 539.001, 559.803, 559.805, 559.903, 559.904, and 741.0305, Florida Statutes.

This bill reenacts section 559.815, Florida Statutes.

II. Present Situation:

The primary mission of the Division of Consumer Services (division) is to serve as a clearinghouse for matters relating to consumer protection, consumer information, and consumer services in general. The division accomplishes this mission through its statewide toll-free consumer help lines, written consumer complaint mediation, ten regulatory programs, U.S. Consumer Product Safety Commission responsibilities, investigative and enforcement activities, and a variety of consumer outreach and education programs.

Although the division’s specific regulatory programs vary, they have many of the same requirements. Regulated businesses must register with the Department of Agriculture and Consumer Services (department) and must disclose certain information to their customers. The department has identified several statutory provisions in five program areas that need to be clarified, updated, or specifically stated in order to enhance its ongoing consumer protection capability.

Solicitation of Contributions

The Legislature gives persons or organizations the right to conduct solicitation activities. It protects the public by requiring full public disclosure of the identity of persons who solicit contributions from the public, and of the purposes for which such contributions are solicited and the manner in which the contributions are actually used. Charitable organizations or sponsors that engage in solicitation activities in Florida must register with the department and provide certain financial and background information, as required by ch. 496, F.S. This law does not apply to religious institutions, educational institutions, or governmental agencies. It also does not apply to political contributions solicited in compliance with the election laws of this state. Registration fees are based on the amount of the contributions which are received and range from \$10 to \$400. Fundraising consultants and professional solicitors must also register with the department.

Charitable organizations and sponsors must file initial registration documents that contain several disclosures including whether the registrant has engaged in any unlawful solicitation practices. There are currently no disclosure requirements relating to background criminal activity which has occurred outside the scope of their charitable solicitation activities. Additionally, current provisions do not prohibit solicitations by persons with criminal histories, except for professional solicitors whose history includes a crime arising from the conduct of charitable solicitation within the last five years.

Commercial Telephone Sellers

Prior to doing business in this state, a commercial telephone seller must obtain a license from the department. Section 501.616, F.S., specifies unlawful acts and practices for commercial telephone sellers or salespersons, but it does not include restrictions on the hours a seller may make calls or prohibit a seller to block an identifying name or telephone number from caller I.D.

Pawnbrokers

In 1996, the Legislature created the Florida Pawnbroking Act to authorize the department to license and regulate pawnbrokers. A pawn is the advancement of funds on the security of pledged goods on condition that the pledged goods are left in the possession of the pawnbroker for the duration of the pawn and may be redeemed by the pledgor on certain terms and conditions. Pawnbrokers must annually obtain a license from the department and pay an annual fee of up to \$300. To be eligible for a license, the applicant must:

- Be of good moral character;
- Have a net worth of at least \$50,000 or file with the department a surety bond, irrevocable letter of credit, or a certificate of deposit in the amount of \$10,000;
- Not have been convicted of a felony within the last 10 years; and
- Not have been convicted and not be acting as a beneficial owner for someone who has been convicted of a crime, within the last 10 years, that the department finds directly relates to the duties and responsibilities of a pawnbroker.

Currently, the statutes do not specify what documentation is required for an applicant to submit in order for the department to determine that the applicant's net worth exceeds \$50,000.

Additionally, current statutory language allows the department to determine what crimes relate to the duties and responsibilities of a pawnbroker for purposes of qualifying for a license. The department has indicated that this language does not provide clear background standards of conduct to deny or approve a license.

At the time of application, applicants must provide a set of fingerprints for each owner or beneficial owner, officer, director, or operator. The Florida Department of Law Enforcement conducts an in-state fingerprint background investigation, but there is no current requirement for a national background check.

Business Opportunities

The Florida Sale of Business Opportunities Act is intended to help protect prospective investors by requiring the seller to provide information about the business opportunity. The law requires sellers of business opportunities to provide a disclosure document that includes the information necessary for the prospective investor to make an informed investment decision. This disclosure document must be presented prior to the time an investor signs a business opportunity contract or makes any payment.

Sellers of business opportunities must annually file with the department a copy of the disclosure statement required pursuant to s. 559.803, F.S., prior to placing advertising or making an offer to sell or solicit to buy a business opportunity in this state. Among the disclosures which are required, is a statement of whether the seller and management have been convicted of a felony

for fraud or several other categories of felonies relating to property. The list does not include a crime for theft or larceny.

Sellers of business opportunities must file with the department a list of independent agents who engage in the sale of business opportunities on behalf of the seller in this state. There is no current requirement for a seller to list their own officers or management personnel with the department.

Motor Vehicle Repair

The Florida Motor Vehicle Repair Act requires businesses engaged in the maintenance, modification and repair of motor vehicles and diagnostic work incident thereto, to register annually with the department. It requires written repair estimates, disclosure statements, record keeping, and bonding for claims. Unlawful acts and practices are specified and remedies are provided.

The definition of “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. The definition does not specifically exclude construction type motor equipment.

III. Effect of Proposed Changes:

Section 1. Amends s. 496.404, F.S., to exclude from the definition of “contribution” funds which are transferred between charitable organizations for purposes of excluding this revenue from the calculation of fees by the department. Deletes the definition for “conviction.” Clarifies the definition of “solicitation” to exclude charitable organizations which are registered with the department when a person is applying for a grant or award and the request for the grant or the award is not considered a solicitation.

Section 2. Amends s. 496.405, F.S., to require charitable organizations or their sponsors to disclose certain criminal activities in their disclosure statements which have occurred within the last ten years. These activities would include fraud, theft, larceny, embezzlement, fraudulent conversion (unauthorized act which deprives an owner of his or her property), misappropriation of property, or any crime relating to a solicitation, or if they have been enjoined from violating any charitable solicitation law. Prohibits employees or sponsors of a charitable organization from soliciting contributions if they have a history of the cited criminal activities within the last ten years.

Section 3. Amends s. 496.409, F.S., to require professional fundraising consultants to disclose certain criminal activities in their disclosure statements which have occurred within the last ten years. These activities would include fraud, theft, larceny, embezzlement, fraudulent conversion (unauthorized act which deprives an owner of his or her property), misappropriation of property, or any crime relating to a solicitation, or if they have been enjoined from violating any charitable solicitation law. Prohibits a person from acting as a professional fundraising consultant if they have a history of the cited criminal activities within the last ten years.

Section 4. Amends s. 496.410, F.S., to require professional solicitors to disclose certain criminal activities in their disclosure statements which have occurred within the last ten years. These activities would include fraud, theft, larceny, embezzlement, fraudulent conversion (unauthorized act which deprives an owner of his or her property), misappropriation of property, or any crime relating to a solicitation, or if they have been enjoined from violating any charitable solicitation law. Prohibits a person from acting as a solicitor if the person has a history of the cited criminal activities within the last ten years.

Section 5. Amends s. 496.420, F.S., to correct technical references.

Section 6. Amends s. 501.604, F.S., to prohibit certain telephone calls by a commercial telephone seller or salesperson.

Section 7. Amends s. 501.616, F.S., to prohibit a commercial telephone seller or salesperson to make a commercial telephone solicitation phone call before 8 a.m. or after 9 p.m. local time at the called person's location. Prohibits a commercial telephone seller or salesperson making telephonic solicitations to take any intentional action that would prevent the solicitor's telephone number from being passed on to the called party.

Section 8. Amends s. 539.001, F.S., to clarify that a pawnbroker license is valid for one year and must be renewed annually. Establishes an annual fee of \$300 rather than an amount of up to \$300. Clarifies what criminal activities relating to pawnbroking would result in the denial of licensure, such as theft or dealing in stolen property, among others. Requires the following documentation to be submitted with an application for licensure relating to an applicant's net worth:

- A current financial statement prepared by a certified public accountant; or
- A documented affidavit attesting the applicant's net worth to be at least \$50,000; or
- If a corporation, the most recent tax return.

Requires an initial applicant to submit a complete set of fingerprints, \$300 for the first year's license fee, and the actual cost to the department for fingerprint analysis. Requires the Division of Consumer Services to submit the fingerprints to the Department of Law Enforcement for processing. Requires the Department of Law Enforcement to forward the fingerprints to the Federal Bureau of Investigation for a national criminal history check. Provides that a pawnbroker license may be suspended or revoked if a licensee no longer meets the eligibility requirements to hold a pawnbroker's license.

Section 9. Amends s. 559.803, F.S., to require a seller of a business opportunity to disclose to a prospective purchaser any criminal background activity, regardless of adjudication, which has occurred within the last ten years rather than the current specification of seven years. Adds theft and larceny to the list of offenses to be disclosed.

Section 10. Amends s. 559.805, F.S., to require the seller of a business opportunity to disclose, as a part of the required annual disclosure document, identity information relating to officers and employees who are involved with the seller's business activities in Florida. This information would include name, home and business address, telephone number, driver's license number, the

state in which the driver's license is issued, and birth date.

Section 11. Reenacts s. 559.815, F.S., to assure this penalty section remains in effect after a cross-reference is amended by this bill.

Section 12. Amends s. 559.903, F.S., to revise the definition of "motor vehicle" to specify that it does not include off-road construction and earth moving type equipment.

Section 13. Amends s. 559.904, F.S., to require the department to post a prominent "closed by Order of the Department" sign on any motor vehicle repair shop that has had its registration suspended or revoked or that has been determined to be operating without a registration. Provides a second-degree misdemeanor penalty for defacing or removing such a sign, for operating without a registration, or for operating with a revoked or suspended registration. Authorizes the department to impose administrative sanctions for violations.

Section 14. Amends s. 741.0305, F.S., to conform a cross-reference. This bill renumbers the definitions in s. 496.404, F.S., resulting in an incorrect reference in s. 741.0305(3)(a), F.S.

Section 15. Provides that this act shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The bill requires a national criminal history check on pawnbroker license applicants, in addition to state processing. A national criminal history check is approximately \$40 as opposed to a \$15 Florida check. The provision will be applied prospectively, therefore, only first-time applicants will be required to pay for the national check when submitting an application for license. Any person applying for a renewal license will not be required to pay for an additional criminal background check.

B. Private Sector Impact:

This bill will offer Florida consumers greater protection by enhancing information disclosure to the public and enforcement remedies available to the Department of Agriculture and Consumer Services.

C. Government Sector Impact:

The Department of Agriculture and Consumer Services has indicated that this bill has no fiscal impact to the department. All revenues received from applicants for criminal background checks are forwarded to the Florida Department of Law Enforcement.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Agriculture and Consumer Services:

This amendment clarifies which documents of a home solicitation sale require the three day right-to-cancel notice.

#2 by Agriculture and Consumer Services:

This amendment provides that clerical or recordkeeping errors regarding any document or record required by the Florida Pawnbroking Act do not constitute a willful violation and are not subject to criminal penalties. Clerical or recordkeeping errors are subject to administrative remedies.