

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: CS/SB 1712

SPONSOR: Committee on Regulated Industries and Senator Meek

SUBJECT: Consumer Protection

DATE: March 30, 1999

REVISED: _____

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

I. Summary:

The Division of Consumer Services, within the Department of Agriculture and Consumer Services 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 transferred between charitable organizations are excluded from the definition of “contribution” as it relates to the solicitation of contributions and fees of the department. Solicitors are required to disclose their criminal histories, and anyone with felony and other specific convictions during the last ten years is prohibited from soliciting in Florida.

Commercial Telephone Solicitation. A commercial telephone seller or salesperson is 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 telemarketer cannot take any action to block the telemarketer’s name or telephone number from caller I.D., providing that the equipment used by the telemarketer is capable of creating and transmitting the telemarketer’s name or telephone number.

Sales of Business Opportunities. Business opportunity sellers are required to disclose their criminal histories for the past ten years in their disclosure statements and to file a list of their management and sales 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 initial 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 of Agriculture and

Consumer Services 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, 501.025, 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 more specifically stated in order to enhance its ongoing consumer protection capability.

Solicitation of Contributions. Current law requires 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 range from \$10 to \$400, based on the amount of contributions received. Fundraising consultants and professional solicitors also must 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 currently are no disclosure requirements relating to background criminal activity that 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.

Home Solicitation Sales. A buyer has the right to cancel a home solicitation sale until midnight of the third business day after the day on which the buyer signs an agreement or offer to purchase. Notice of a buyer's right to cancel must appear on every note or other evidence of indebtedness given pursuant to any such home solicitation sale.

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 from blocking 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 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, an 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
- Neither have been convicted nor 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 initial 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 that 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 conviction 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 with the department officers, management personnel or sales employees.

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 that are transferred between charitable organizations for purposes of excluding this revenue from the calculation of fees by the department. This section of the bill deletes the definition for “conviction.” It also clarifies the definition of “solicitation” to exclude charitable organizations that 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.

Sections 2, 3, and 4 amend s. 496.405, F.S., relating to charitable organizations and their sponsors, s. 496.409, F.S., relating to professional fundraising consultants, and s. 496.410, F.S., relating to professional solicitors. The bill provides that charitable organizations, their sponsors, professional fundraising consultants, and professional solicitors must disclose in their disclosure statements certain criminal activities that have occurred within the last ten years. These activities include fraud, theft, larceny, embezzlement, fraudulent conversion (unauthorized act that deprives an owner of property), misappropriation of property, or any crime relating to a solicitation, regardless of adjudication, or having been enjoined from violating any charitable solicitation law. These sections of the bill also prohibit employees of a charitable organization, as well as professional fundraising consultants and professional solicitors, from soliciting contributions if the employee, sponsor, professional fundraising consultant or professional solicitor has a history of the cited criminal activities within the last ten years.

Section 5 amends s. 496.420, F.S., to remove all references to the Department of Legal Affairs and provide that the agency of the state to enforce the remedies contained in the Solicitation of Contributions Act shall be the Department of Agriculture and Consumer Services. Changes the name of the trust fund wherein the department would deposit all monies collected pursuant to this chapter to the General Inspection Trust Fund.

Section 6 amends s. 501.025, F.S., to provide that unless a mortgage also creates the buyer's promise to pay the secured debt, it is not an evidence of indebtedness for purposes of this section.

Section 7 clarifies that the exemptions provided in s. 501.604, F.S., do not apply to those telephone calls by a commercial telephone seller or salesperson that are prohibited in newly created ss. 501.616(6) and (7), F.S., (*see*, Section 7 of this bill).

Section 8 amends s. 501.616, F.S., to prohibit a commercial telephone seller or salesperson from making 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 who is making telephonic solicitations from taking any intentional action that would prevent the solicitor's name or telephone number from being passed on to the called party when the equipment or service used by the telephone solicitor is capable of creating and transmitting the telephone solicitor's name or telephone number.

Section 9 amends s. 539.001, F.S., the Florida Pawnbroking Act. This section of the bill:

- Clarifies that a pawnbroker license is valid for one year and must be renewed annually;
- Establishes an annual fee of \$300, rather than an indeterminate amount of up to \$300;
- Clarifies which criminal activities relating to pawnbroking would result in the denial of licensure;
- Requires the following documentation to be submitted with an application for licensure when eligibility is based upon the applicant's net worth being at least \$50,000:
 - 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; and
- Provides that clerical or recordkeeping errors, such as typographical errors or scrivener errors, regarding any document or record required by this section do not constitute a willful violation of this section and are not subject to criminal penalties.

Section 10 amends s. 559.803, F.S., the Sale of Business Opportunities Act, 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. It also adds theft and larceny to the list of offenses to be disclosed.

Section 11 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 12 reenacts s. 559.815, F.S., to assure this penalty section remains in effect after a cross-reference is amended by this bill.

Section 13 amends s. 559.903, F.S., the Florida Motor Vehicle Repair Act, to revise the definition of "motor vehicle" to specify that it does not include off-road construction and earth moving type equipment.

Section 14 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. This section of the bill also makes it a second-degree misdemeanor to deface or remove such a sign, to operate without a registration, or to operate with a revoked or suspended registration. Finally, this section authorizes the department to impose administrative sanctions for violations.

Section 15 amends s. 741.0305, F.S., to conform a cross-reference.

Section 16 provides an effective date of 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 costs approximately \$40, compared to \$15 for a Florida-only 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:

The bill enhances information disclosure regarding licensure, increasing information disclosure to the public, and strengthening 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:

None.