

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/CS/SB 1272

SPONSOR: Health, Aging and Long-Term Care Committee, Regulated Industries Committee and Senator Burt

SUBJECT: Consumer Services

DATE: April 11, 2001 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Caldwell	Caldwell	RI	Favorable/CS
2.	Munroe	Wilson	HC	Favorable /CS
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill authorizes the Department of Business and Professional Regulation (the department) to seek restitution in a civil action for a consumer injured by a person who has violated a law relating to a profession regulated by the department. The bill prohibits employment agencies and assistance referral services from charging advance fees for services and not providing such services. Sellers of a hearing aid who fail to make a timely refund to a customer returning the hearing aid will be guilty of a first-degree misdemeanor. The bill provides a definition of the terms “seller” or “person selling a hearing aid”.

The bill prohibits sellers of building materials, not just lumber, from raising and charging higher prices during an emergency and extends the prohibition against raising and charging higher prices for commodities to apply during an evacuation ordered by the Governor. The bill removes a requirement that the evidentiary standards and defenses contained in s. 501.160, F.S., must be the standards and defenses used in a local government ordinance to restrict price gouging during a declared state of emergency. The bill provides that a person who charges unconscionable prices during a time of emergency is guilty of a first-degree misdemeanor.

The bill prohibits credit service organizations from accepting money in advance of performing services; removes an existing exception to this prohibition; and revises surety bond requirements to require credit service organizations to maintain the surety bond as condition of doing business. A waiver to the surety bond requirement for any salesperson, agent, or representative of a credit service organization is provided if that organization obtains the required surety bond. Information that must be disclosed by a credit service organization is also revised to include a statement notifying the buyer of his or her right to proceed against the credit service organization’s surety bond.

This bill creates sections 468.90 and 501.162 of the Florida Statutes and amends sections 455.228, 484.0512, 501.160, 817.7005, 817.701, 817.702, and 817.703, Florida Statutes.

II. Present Situation:

Section 455.228(1), F.S., authorizes the department to issue cease and desist orders, impose an administrative penalty not to exceed \$5,000 per incident, or issue a citation against persons not licensed by the department or an appropriate regulatory board who have violated any provision of chapter 455, F.S. Subsection (2) of s. 455.228, F.S., allows the department to seek, in lieu of or in addition to the provisions in subsection (1), civil penalties through the circuit court.

Chapter 468, F.S., provides for the regulation of miscellaneous professions and occupations including speech-language pathology and audiology, nursing home administration, occupational therapy, auctioneers, talent agencies, and other professions. Currently there is no specific regulation of employment agencies and assistance referral services.

Part II of chapter 484, F.S., provides for the regulation of fitting and dispensing of hearing aids. Section 484.0512, F.S., provides the conditions under which hearing aids must be sold including a thirty-day trial period, cancellation rights, notice, refunds, and cancellation fees.

Chapter 501, F.S., provides for consumer protection. Section 501.160, F.S., protects consumers during a declared state of emergency from unconscionable prices for the rental or sale of essential commodities. Subsection (6) states that local governments are not preempted from establishing their own protections, but limits the local government to including in its ordinance the evidentiary standards and defenses contained in this section. There are no criminal penalties specified for violation of this section.

Chapter 817, F.S., provides prohibitions against fraudulent practices. Part III, ch. 817, F.S., specifies requirements for credit service organizations. A credit service organization is any person who, with respect to the extension of credit by others, sells, provides, performs, or represents that he or she can or will sell, provide, or perform, in return for the payment of money or other valuable consideration, services to: improve a buyer's credit record, history, or rating; obtain an extension of credit for a buyer; or provide advice or assistance to a buyer with regard to credit services.

Section 817.7005, F.S., prohibits a credit service organization, its salespersons, agents, and representatives, and independent contractors who sell or attempt to sell the services of a credit service organization from charging or receiving any money or other valuable consideration before full and complete performance of the services the credit service organization has agreed to perform for the buyer, unless the credit service organization has obtained a surety bond of \$10,000 from a surety company allowed to do business in Florida and has established a trust account at a federally insured bank or savings and loan association located in Florida. If a credit service organization has obtained a surety bond and trust account, the credit service organization may charge or receive money or other valuable consideration before full and complete performance of the services it has agreed to perform for the buyer, but must deposit all money or other valuable consideration received in its trust account until the full and complete performance of the services it has agreed to perform for the buyer.

Under s. 817.701, F.S., the salespersons, agents, or representatives of credit service organizations are exempt from maintaining a surety bond and establishing a trust account where the credit service organization has already done so in accordance with s. 817.7005, F.S. Section 817.702, F.S., requires credit service organizations, upon execution of a contract or agreement between a buyer and a credit service organization and before the receipt of money or other valuable consideration for its services, whichever occurs first, to provide the buyer with a written statement with specified disclosures under s. 817.703, F.S., which includes the buyer's rights and the name and address of the surety company that issued the bond for the credit service organization's business activities.

III. Effect of Proposed Changes:

Section 1. Amends s. 455.228, F.S., to provide a legislative finding that consumers suffer damages as a result of the practices of unlicensed persons whose professions are regulated by the department and that such consumers are not always aware of their right, or may not have the resources to seek redress in the courts. This section is amended to allow the department to also seek restitution in the circuit court for any violation for which the department may issue a notice to cease and desist.

Section 2. Creates s. 468.90, F.S., to create prohibitions to curb abusive business practices by employment agencies or assistance referral services that endanger the economic welfare of the public. The bill provides definitions for the terms "Employment agency or assistance referral service," "Applicant," and "Advance fee." The bill provides that an employment agency or assistance referral service may not charge, collect, or receive an advance fee from an applicant for services incidental to securing employment until such services are actually provided. Such agencies or referral services may not falsely portray the existence of employment opportunities or falsely guarantee employment or interviews either verbally or in writing. A violation of these prohibitions is a misdemeanor of the first degree punishable under ss. 775.082 or s. 775.083, F.S.

Section 3. Amends s. 484.0512, F.S., to provide that any person that violates the provisions of section 484.0512 is guilty of a misdemeanor of the first degree, punishable under ss. 775.082 or 775.083, F.S. Provides a definition for the terms "seller" or "person selling a hearing aid."

Section 4. Amends s. 501.160, F.S., relating to the rental or sale of essential commodities during a declared state of emergency and prohibitions against unconscionable prices, to prohibit sellers of building materials, not just lumber, from raising and charging higher prices during an emergency. The bill extends the prohibition against raising and charging higher prices for commodities to apply during an evacuation ordered by the Governor. The bill specifies that the exemption from s. 501.160, F.S., of price increases approved by an appropriate government agency does not apply to room rates posted in accordance with s. 509.201, F.S., relating to posting of rental rates of public lodging establishments. The bill removes a requirement that the evidentiary standards and defenses contained in s. 501.160, F.S., must be the standards and defenses used in a local government ordinance to restrict price gouging during a declared state of emergency.

Section 5. Creates s. 501.162, F.S., to provide criminal penalties for violation of s. 501.160, F.S. The penalty is a misdemeanor of the first degree, punishable by a definite term of imprisonment not exceeding one year (s. 775.082, F.S.) or by fine of \$1,000 (s. 775.083, F.S.).

Section 6. Amends s. 817.7005, F.S., relating to credit service organizations, to prohibit a credit service organization from charging or receiving any money or other valuable consideration before full and complete performance of the services that the credit service organization has agreed to perform for the buyer. An exception is eliminated that currently allows a credit service organization that has obtained a surety bond and trust account to charge or receive money or other valuable consideration before full and complete performance of the services it has agreed to perform for the buyer, if the organization has deposited all money or other valuable consideration received in its trust account until the full and complete performance of the services it has agreed to perform for the buyer.

Section 7. Amends s. 817.701, F.S., relating to surety bond requirements for credit service organizations, to require a credit service organization or any salesperson, agent, or representative of the credit service organization to obtain a \$10,000 surety bond from a surety company authorized to do business in Florida. The bill provides a waiver to the surety bond requirement for any salesperson, agent, or representative of a credit service organization if that organization obtains the required surety bond.

Section 8. Amends s. 817.702, F.S., to require credit service organizations upon execution of a contract or agreement between a buyer and a credit service organization and before the receipt of money or other valuable consideration for its services, to provide the buyer with a written statement with specified disclosures under s. 817.703, F.S., which includes the buyers rights and the name and address of the surety company that issued the bond for the credit service organization's business activities.

Section 9. Amends s. 817.703, F.S., to revise the specified information that must be disclosed by a credit service organization to include a statement notifying the buyer of his or her right to proceed against the credit service organization's surety bond; and the name and address of the surety company. To conform to the bill's requirements that credit service organizations only maintain a \$10,000 surety bond for consumers to seek redress in the event of lack of performance, requirements for disclosure of the name and address of the depository and the trustee and the account number of the trust account are eliminated.

Section 10. Provides an effective date of July 1, 2001.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Art. VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Art. III, s. 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Consumers should be better protected. Legitimate professionals and businesses should not be affected by this bill.

To the extent that credit service organizations or their salespersons, agents, representatives, or independent contractors have not already obtained a \$10,000 surety bond, the bill will require them to obtain such a bond.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

According to the Department of Business and Professional Regulation, it does not remedy unlicensed practice of a regulated profession by filing an action in circuit court under s. 455.228(2), F.S. Instead, it relies on the administrative process and penalties in s. 455.228(1), F.S. Accordingly, the department suggests that the authority to seek restitution be added to subsection (1) as well as subsection (2).

VII. Related Issues:

None.

VIII. Amendments:

None.