

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/SB 1272

SPONSOR: Regulated Industries Committee & Senator Burt

SUBJECT: Consumer Services

DATE: March 28, 2001 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Caldwell	Caldwell	RI	Favorable/CS
2.	_____	_____	HC	_____
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. Provides a definition of the terms “seller” or “person selling a hearing aid”. Finally, the bill provides that a person who charges unconscionable prices during a time of emergency is guilty of a first-degree misdemeanor.

This bill creates sections 468.90 and 501.162 of the Florida Statutes and substantially amends the following sections of the Florida Statutes: 455.228 and 484.0512.

II. Present Situation:

Section 455.228, 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 regulator board that have violated any provision of Chapter 455. Subsection (2) allows the department to seek, in lieu of or in addition to the provision 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, etc. 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.

III. Effect of Proposed Changes:

Section 1: Provides 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 prohibitions to curb abusive business practices by employment agencies or assistance referral services that endanger the economic welfare of the public. Provides definitions for the terms "Employment agency or assistance referral service," "Applicant," and "Advance fee." 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: Provides 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: Provides for criminal penalties for violation of the section 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 5. Provides an effective date of July 1, 2001.

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:**

None.

B. Private Sector Impact:

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

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.