

# 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 784

SPONSOR: Commerce and Economic Opportunities Committee and Senator Geller

SUBJECT: Consumer Protection

DATE: March 29, 2001      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gillespie	Maclure	CM	Favorable/CS
2.	_____	_____	AG	_____
3.	_____	_____	AGG	_____
4.	_____	_____	AP	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

Committee Substitute for Senate Bill 784 revises several consumer-protection programs under the regulatory authority of the Division of Consumer Services within the Department of Agriculture and Consumer Services (department):

- **Solicitation of Funds by Charitable Organizations:** The committee substitute requires solicitations to include the solicitor’s registration number, the percentage of contributions kept by the solicitor, and the percentage of funds received by the charity. (*See page 2 of this analysis.*)
- **Health Studios:** The committee substitute requires health studios to pay required refunds within 30 days and clarifies that any person who knowingly makes false representations to obtain an exemption is subject to criminal penalties. (*See page 3 of this analysis.*)
- **Pawnbrokers:** The committee substitute subjects pawnbrokers to administrative and criminal penalties for knowingly accepting or receiving stolen property. The committee substitute also clarifies which agency has rulemaking authority over pawnbrokers. (*See page 5 of this analysis.*)
- **Sellers of Business Opportunities:** The committee substitute subjects guarantees from a seller of business opportunities to regulation, regardless of whether a guarantee is given in writing, and requires disclosure statements to inform consumers of the number of persons who purchased the business opportunity in the past three years and to provide contact information for 10 previous purchasers. The committee substitute subjects securities to administrative, rather than judicial, determination and revises security requirements. Further, the committee substitute subjects sellers of business opportunities to administrative and criminal penalties for failure to deliver goods and services as promised in the contract. The committee substitute also limits the exemption for sales and

marketing programs connected to trademark or service marks to those instances in which the seller requires use of the mark. (See page 6 of this analysis.)

- **Motor Vehicle Repair Shops:** The committee substitute removes the distinction between minor and major repair shops and requires all repair shops to pay the registration fees based upon the number of employees. The committee substitute requires repair shops to submit estimate and invoice forms and to detail charges as part of the written estimates. The committee substitute allows the department to deny registrations. The committee substitute also revises the membership of an industry advisory council and exempts repair shops in public schools and charter technical career centers from registration. (See page 10 of this analysis.)

This committee substitute substantially amends the following sections of the Florida Statutes: 496.411, 501.017, 501.019, 539.001, 559.801, 559.803, 559.807, 559.809, 559.902, 559.904, 559.905, and 559.9221. The committee substitute repeals s. 559.903(5), F.S.

## II. Present Situation:

“The Division of Consumer Services [within the Department of Agriculture and Consumer Services] is Florida’s clearinghouse for consumer information, protection and complaints.”<sup>1</sup> The Division of Consumer Services has responsibility for enforcement of several regulatory laws: assistive technology devices, sellers of business opportunities, the lemon law, dance studios, health studios, motor vehicle repair shops, the no sales solicitation program, pawnbrokers, sellers of travel, solicitation of contributions, and telemarketing.<sup>2</sup> The Department of Agriculture and Consumer Services has identified several statutory provisions that it recommends be revised to enhance the department’s ongoing consumer-protection programs. Due to the diverse nature of the programs that are revised by this committee substitute, the present situation of each program is discussed below in the Effect of Proposed Changes section of this analysis.

## III. Effect of Proposed Changes:

### Solicitation of Funds by Charitable Organizations (Section 1)

**Present Situation:** Under current law, each charitable organization or sponsor required to register<sup>3</sup> must conspicuously display in uppercase letters the following statement on every printed solicitation, written confirmation, receipt, or reminder of a contribution:

<sup>1</sup> Division of Consumer Services, Florida Dep’t of Agriculture & Consumer Services, at <http://doacs.state.fl.us/~cs/index.html> (last modified Mar. 24, 2001).

<sup>2</sup> Division of Consumer Services, Florida Dep’t of Agriculture & Consumer Services, Programs, at <http://www.800helpfla.com/~cs/programs.html> (last visited Mar. 24, 2001).

<sup>3</sup> Under s. 496.405, F.S., each charitable organization or sponsor that intends to solicit contributions in this state by any means or have funds solicited on its behalf by any other person, charitable organization, sponsor, commercial co-venturer, or professional solicitor, or that participates in a charitable sales promotion or sponsor sales promotion, must register with the Department of Agriculture and Consumer Services. Solicitations for a named individual are exempt from registration if the contributions are provided to the beneficiary, and solicitations by an organization of its membership are also exempt from registration. Section 496.406, F.S.

A COPY OF THE OFFICIAL REGISTRATION AND FINANCIAL INFORMATION MAY BE OBTAINED FROM THE DIVISION OF CONSUMER SERVICES BY CALLING TOLL-FREE WITHIN THE STATE. REGISTRATION DOES NOT IMPLY ENDORSEMENT, APPROVAL, OR RECOMMENDATION BY THE STATE.<sup>4</sup>

This statement must include a toll-free number for the Division of Consumer Services that can be used to obtain the registration information. When a solicitation consists of more than one piece, this statement must be displayed prominently in the solicitation materials.<sup>5</sup>

***Effect of Proposed Changes:*** The committee substitute requires those charitable organizations and their sponsors, which are required to register with the Division of Consumer Services, to conspicuously display the following information on every printed solicitation, written confirmation, receipt, or reminder of a contribution:

- The charitable organization's or sponsor's registration number;
- The percentage, if any, of each contribution retained by any professional solicitor that has contracted with the charitable organization or sponsor; and
- The percentage of each contribution received by the charity.

If the solicitation consists of more than a single item, this information must be displayed prominently in the solicitation materials.

### **Health Studios (Sections 2 and 3)**

***Present Situation:*** Health studios provide “instruction, training, or assistance in a program of physical exercise” or “equipment or facilities in furtherance of a program of physical exercise.”<sup>6</sup> The Legislature first enacted regulation of health studios in 1977, finding that “there exist in connection with a substantial number of contracts for health studio services certain practices and business and financing methods which have worked undue financial hardship upon some of the citizens of our state.”<sup>7</sup> The Department of Agriculture and Consumer Services (department) describes that, “[i]n the past, some health studios went out of business after collecting thousands of dollars in prepaid membership dues from consumers. Florida law now affords consumers some protection against this type of problem.”<sup>8</sup>

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<sup>4</sup> Section 496.411(3), F.S.

<sup>5</sup> *Id.*

<sup>6</sup> Section 501.0125(1), F.S.

<sup>7</sup> Section 501.012, F.S.

<sup>8</sup> Division of Consumer Services, Dep't of Agriculture & Consumer Services, *Health Studios: Now You Know* (last modified Apr. 7, 2000), at [http://doacs.state.fl.us/~cs/healthstudio\\_text.html](http://doacs.state.fl.us/~cs/healthstudio_text.html).

Unless exempted from registration,<sup>9</sup> health studios are required to register with the department.<sup>10</sup> Those health studios required to register must post a \$50,000 security in the form of a surety bond, a letter of credit, or a certificate of deposit.<sup>11</sup> The security provides money that can be used to repay consumers whose health studio goes out of business and does not provide an alternate facility of equal quality within five driving miles.<sup>12</sup> A health studio is exempt from this security requirement if:

- The health studio collects payments for health-studio services on a monthly basis,<sup>13</sup> or
- The health studio has operated continuously under the same ownership for five years; has had no civil, criminal, or administrative adjudications against it; and has no unresolved consumer complaints.<sup>14</sup>

In addition, the department may reduce the \$50,000-security requirement to an amount not less than \$10,000 if a health studio demonstrates its outstanding contracts for health studio services total less than \$5,000.<sup>15</sup> Current law provides criminal penalties for knowingly making false representations to the department with the intent of obtaining an exemption of any kind from these security requirements.<sup>16</sup> These violations are punished as a third-degree felony and may apply to a health studio owner and, in the case of corporate ownership, any officer of the corporation, or any manager of a health studio or the health studio's business location.<sup>17</sup> The department reports that it is involved in litigation against the former owner of a health studio who conspired to make false representations to the department, but the current law does not extend to the former owner.

Health studios must hold funds received for future health-studio services in an escrow account,<sup>18</sup> are required to allow consumers to cancel contracts for future services under certain circumstances, and must provide refunds for canceled contracts in proportion to the remaining

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<sup>9</sup> Bona fide nonprofit organizations; gymnastics schools; golf, tennis, and racquetball clubs; facilities used solely for dance, aerobic exercise, or martial arts; and country clubs are exempt from registration. Section 501.013, F.S.

<sup>10</sup> Section 501.015, F.S.

<sup>11</sup> *Id.*; s. 501.016, F.S.

<sup>12</sup> Section 501.016(1), F.S.; Division of Consumer Services, Dep't of Agriculture & Consumer Services, *Health Studios: Now You Know*, at [http://doacs.state.fl.us/~cs/healthstudio\\_text.html](http://doacs.state.fl.us/~cs/healthstudio_text.html) (last modified Apr. 7, 2000).

<sup>13</sup> Section 501.016(3), F.S.

<sup>14</sup> Section 501.016(6), F.S.

<sup>15</sup> Section 501.016(4), F.S.

<sup>16</sup> Section 501.019(2), F.S.

<sup>17</sup> *Id.*

<sup>18</sup> Section 501.016(5), F.S.

period of the contract. The circumstances when a health studio must allow cancellation of a contract include:<sup>19</sup>

- The consumer cancels within three days of making the contract.
- The health studio goes out of business or moves its facilities more than five driving miles away.
- The consumer dies or becomes physically unable to avail him or herself of a substantial portion of the health-studio services.

Under current law, if a consumer cancels within three days of making a contract for future health-studio services, the health studio must provide a refund within 30 days.<sup>20</sup> The law does not specify, however, when health studios must provide refunds when contracts are canceled for the other statutorily prescribed circumstances.

***Effect of Proposed Changes:*** The committee substitute requires health studios to refund a consumer's money within 30 days after canceling a contract for future health-studio services under certain circumstances. As discussed above, health studios are required under current law to provide a refund within 30 days if the consumer cancels within three days of making the contract. In addition, the committee substitute will require refunds to be paid within 30 days in cases where the health studio goes out of business or moves its facilities more than five driving miles away and in cases where the consumer dies or becomes physically unable to avail himself or herself of a substantial portion of the health-studio services.

In addition, the committee substitute allows any person to be prosecuted for knowingly making false representations to the department with the intent of obtaining an exemption for a health studio from any of the security requirements in current law. These violations are punished as a third-degree felony. Thus, the committee substitute expands the category of those who are subject to criminal penalties to all persons from a health studio owner or, in the case of corporate ownership, any officer of the corporation, or any manager of a health studio or the health studio's business location.

#### **Pawnbrokers (Section 4)**

***Present Situation:*** Under current law, dealing in stolen property is a crime punishable as a second-degree felony.<sup>21</sup> However, current law does not establish a violation of the Florida Pawnbroking Act<sup>22</sup> for a pawnbroker who knowingly accepts stolen property in a pawn or purchase transaction. In addition to administrative penalties, pawnbrokers who willfully violate

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<sup>19</sup> Section 501.017(1)(a), (b) & (d), F.S.

<sup>20</sup> Section 501.017(1)(a), F.S.

<sup>21</sup> See s. 812.019(1), F.S. ("Any person who traffics in, or endeavors to traffic in, property that he or she knows or should know was stolen shall be guilty of a felony of the second degree, punishable as provided in ss. 775.082, 775.083, and 775.084[, F.S].")

<sup>22</sup> Section 539.001, F.S.

the act are subject to criminal penalties, punished as a first-degree misdemeanor.<sup>23</sup> The Department of Agriculture and Consumer Services (department) reports that, subsequent to a recent burglary trial in which a pawnbroker admitted accepting stolen property, the department was unable to pursue any administrative action against the pawnbroker, notwithstanding the admission.

In addition, the Florida Pawnbroking Act (act) defines the term “agency” to mean the Division of Consumer Services of the Department of Agriculture and Consumer Services,<sup>24</sup> and this term is used throughout the act. Subsection (21) of the act, however, refers to “department,” rather than “agency” when granting rulemaking authority. In addition, the act uses the term “department” rather than “agency” in s. 539.001(4)(b) and (5)(c), F.S. In subsection (5)(c), the act uses both the terms “department” and “agency,” and it is unclear in at least one reference whether the act refers to the Division of Consumer Services or the Department of Law Enforcement.

***Effect of Proposed Changes:*** The committee substitute establishes a prohibited act for a pawnbroker to knowingly accept or receive any stolen property in a pawn or purchase transaction. Thus, the license of a pawnbroker who knowingly accepts or receives stolen property would be subject to suspension or revocation. In addition to other criminal penalties for dealing in stolen property, pawnbrokers who willfully accept or receive any stolen property in a pawn or purchase transaction in violation of the Florida Pawnbroking Act would be subject to criminal penalties, punished under the act as a first-degree misdemeanor.

The committee substitute replaces the term “department” with the term “agency” in subsection (21) of the Florida Pawnbroking Act in an attempt to clarify that the Department of Agriculture and Consumer Services has rulemaking authority to implement the act. However, the act defines “agency” to mean the Division of Consumer Services of the Department of Agriculture and Consumer Services. Consequently, it may be argued that the committee substitute transfers rulemaking authority to the Division of Consumer Services from the division’s parent agency, the Department of Agriculture and Consumer Services. To avoid the possibly unintended consequence of transferring the department’s rulemaking authority to the Division of Consumer Services, the Legislature may wish to amend the committee substitute to further clarify which subdivision is intended to have the authority to adopt rules. Further, the committee substitute does not replace the term “department” with “agency” in the two remaining instances where these terms are interposed.<sup>25</sup> For internal consistency, the Legislature may wish to amend the committee substitute to clarify the terms in each instance.

### **Sellers of Business Opportunities (Sections 5 – 8)**

***Present Situation:*** The Department of Agriculture and Consumer Services (department) describes a “business opportunity [as] an offer to assist a person in starting his or her own business by providing – either through sales or lease – products, equipment, supplies or

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<sup>23</sup> Section 539.011(17)(b), F.S.

<sup>24</sup> Section 539.001(2)(a), F.S.

<sup>25</sup> See s. 539.001(4)(b) and (5)(c), F.S.

service[s] needed to carry on the business.”<sup>26</sup> Business opportunities range from addressing envelopes or assembling toys at home at a cost of a few dollars, to establishing vending machine routes or installing pay telephones for thousands of dollars. Often, the department reports, these promotions imply that investors can see a substantial return with minimal effort.<sup>27</sup> Under current law, a “business opportunity” is defined as the sale or lease of goods or services to an individual to enable that person to start a business if the individual is charged more than \$500 and the seller represents:<sup>28</sup>

- That assistance will be provided in securing locations for vending machines, racks, display cases, amusement machines, or other similar devices,
- That the seller will purchase the goods produced by the individual using materials sold to the individual by the seller,
- That the seller guarantees in writing that the seller will refund monies paid if the individual does not receive income in excess of the charges for the business opportunity, or
- That the seller will provide a sales or marketing program that will enable the individual to derive income.

When the seller of a business opportunity guarantees *in writing* that it will refund monies paid if the individual does not receive income in excess of the charges for the business opportunity, current law requires the seller to post a \$50,000 security in the form of a surety bond, trust account, or guaranteed letter of credit. An individual who is damaged by a violation of the Sale of Business Opportunities Act (act)<sup>29</sup> or by a breach of contract may bring a civil action for no more than actual damages against the security. These damages may not exceed the amount of the security (\$50,000).

The department reports that these security requirements are inconsistent with the security requirements for other programs implemented by the department in that: 1) a damaged individual may only seek damages in circuit court in lieu of an administrative action; and 2) the security may be posted as a trust account. The department noted that no seller of business opportunities has ever posted a trust account. The department also reports that, when sellers of business opportunities make verbal guarantees that they will refund monies paid if the individual does not receive income in excess of the charges for the business opportunity, these sellers are not required to post a security. The department further relates that some sellers of business opportunities avoid the security requirement by making only verbal guarantees and not putting these guarantees in writing.

Under current law, the Sale of Business Opportunities Act applies to the seller of a business opportunity if the seller makes representations that it will provide a sales or marketing program

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<sup>26</sup> Division of Consumer Services, Dep’t of Agriculture & Consumer Services, *Business Opportunities: Now You Know* (last modified Apr. 7, 2000), at [http://doacs.state.fl.us/~cs/busop\\_text.html](http://doacs.state.fl.us/~cs/busop_text.html).

<sup>27</sup> *Id.*

<sup>28</sup> Section 559.801(1)(a), F.S.

<sup>29</sup> Sections 559.80-559.815, F.S.

that will enable the individual to derive income; however, the law currently exempts a seller when the “sales program or marketing program [is] made in conjunction with the licensing of a trademark or service mark that is registered under the laws of any state or of the United States.”<sup>30</sup> The department reports that some sellers of business opportunities obtain a registered trademark or service mark to avoid the requirements of the act, but sell business opportunities that are unrelated to the trademark or service mark.

Before placing advertisements or making any offer to sell a business opportunity in this state, the seller of a business opportunity must annually file with the department a copy of the written disclosure statement.<sup>31</sup> This disclosure statement must include:<sup>32</sup>

- Information about the seller and management personnel.
- The company’s background and operations.
- Details about the actual services to be provided.
- Financial data.
- Details about training programs that may be required.
- A copy of the business opportunity contract.

If the seller identifies sales or earnings that may be reached through the business opportunity, the disclosure statement must include information about the number of persons who actually achieved anticipated sales or earnings levels and the number of recent purchasers of the business opportunity.<sup>33</sup>

The Sale of Business Opportunities Act includes a list of prohibited acts.<sup>34</sup> These prohibited acts specify several forms of misrepresentation, fraud, and other violations that are subject to administrative, civil, and criminal prosecution.<sup>35</sup> Criminal violations are punishable as a third-degree felony.<sup>36</sup>

***Effect of Proposed Changes:*** The committee substitute removes the requirement that guarantees from the seller of a business opportunity must be *in writing* to subject the seller to the Sale of Business Opportunities Act (act). Thus, verbal guarantees that a seller will refund monies paid if the individual does not receive income in excess of the charges for the business opportunity would be subject to regulation. Specifically, all sellers making these guarantees would be required to post a \$50,000 security, file disclosure statements with the department, and comply with all other provisions of the act. The committee substitute also amends the security

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<sup>30</sup> Section 559.801(1)(a)4., F.S.

<sup>31</sup> Section 559.805, F.S.

<sup>32</sup> Section 559.803, F.S.

<sup>33</sup> Section 559.803(10), F.S.

<sup>34</sup> Section 559.809, F.S.

<sup>35</sup> See ss. 559.813 & 559.815, F.S.

<sup>36</sup> Section 559.815, F.S.



requirements in current law to allow sellers of business opportunities to post certificates of deposit in lieu of the \$50,000 bond, and the committee substitute removes authority for a seller to post a trust account as security. These provisions conform the security requirements for sellers of business opportunities to the security requirements for other programs implemented by the department, including, for example, sellers of travel and health studios. The committee substitute broadens the scope of civil actions that may be brought against a seller of a business opportunity to include fraud, misrepresentation, and financial failure. Further, the committee substitute requires that consumer complaints be brought against the \$50,000 security as administrative proceedings before the department instead of before a circuit court. The committee substitute establishes a presumption that the amount of a court judgment is prima facie evidence of the value of an administrative claim.

The committee substitute clarifies that, when a sales program or marketing program is made in conjunction with the licensing of a trademark or service mark that is registered under the laws of any state or of the United States, the Sale of Business Opportunities Act applies to the seller of a business opportunity unless the seller requires use of the trademark or service mark in the sales agreement.

The committee substitute requires the seller of a business opportunity to include additional information in the written disclosure statement, which must be filed annually with the department before placing advertisements or making any offer to sell a business opportunity. This requirement would apply regardless of whether the seller makes reference to potential sales and earnings. The additional information that would be required in the disclosure statements includes:

- The total number of persons who purchased the business opportunity being offered by the seller within the past three years, and
- The names, addresses, and telephone numbers of the 10 persons who previously purchased the business opportunity from the seller and who are geographically closest to the potential purchaser.

It is noted, however, that the committee substitute is unclear how the seller will list the *10 persons* who previously purchased the business opportunity who are *geographically closest* to the potential purchaser. This provision raises the question whether the seller is required to list the last 10 purchasers of those who are geographically closest to the potential purchaser, only those purchasers (but not necessarily 10) who are geographically closest to the potential purchaser of the last 10 purchasers, or 10 recent (but not necessarily the last 10) purchasers who are geographically closest to the potential purchaser. The Legislature may wish to amend the committee substitute to clarify which purchasers are required to be listed on disclosure statements by sellers of business opportunities.

The committee substitute establishes that failure to provide or deliver the products, equipment, supplies, or services specified in the written business opportunity contract is a prohibited act. Consequently, sellers of business opportunities would be subject to civil, criminal, and administrative penalties for a violation. A criminal penalty would be punished as a third-degree felony.

## Motor Vehicle Repair Shops (Sections 9 – 13)

**Present Situation:** Under the Florida Motor Vehicle Repair Act (act),<sup>37</sup> any person who, for compensation, engages or attempts to engage in the repair of motor vehicles owned by other persons is defined as a motor vehicle repair shop<sup>38</sup> and is subject to regulation unless the repair shop is exempted from the provisions of the act.<sup>39</sup> These repairs include all maintenance of and modifications and repairs to motor vehicles, and diagnostic work incident thereto, including, but not limited to, the rebuilding or restoring of rebuilt vehicles, body work, painting, warranty work, and other work customarily undertaken by motor vehicle repair shops.<sup>40</sup>

The act currently applies to motor vehicle repair shops located in public schools or charter technical career centers. A charter technical career center is a public school or a public technical center operated under a charter granted by a local school board or a community college district board of trustees or a consortium, including one or more school boards and community college district boards of trustees that includes the district in which the facility is located, which is nonsectarian in its programs, admission policies, employment practices, and operations and is managed by a board of directors.<sup>41</sup> Thus, public schools and charter technical career centers must register with the department and comply with all other provisions of the act.

Since 1993,<sup>42</sup> motor vehicle repair shops have been required to register with the department annually and pay a registration fee unless exempted. The amount of the registration fee varies. A repair shop performing only minor repair services<sup>43</sup> pays a \$25 registration fee.<sup>44</sup> All other repair shops pay a registration fee based on the number of employees: \$50 (one to five employees), \$150 (six to 10 employees), and \$300 (11 or more employees).<sup>45</sup> Before 1997, repair shops

<sup>37</sup> Sections 559.901-559.9221, F.S.

<sup>38</sup> Section 559.903(7), F.S.

<sup>39</sup> See s. 559.902, F.S.

<sup>40</sup> Section 559.903(9), F.S.

<sup>41</sup> Section 228.505(3)(a), F.S.

<sup>42</sup> See s. 4, ch. 93-219, L.O.F. (codified at s. 559.904, F.S.).

<sup>43</sup> “‘Minor repair service’ includes repairing and changing tires; lubricating vehicles; cleaning, adjusting, and replacing spark plugs; changing oil and air filters; replacing, adjusting, repairing, or servicing hoses and air filters; changing or otherwise servicing the coolant, automatic door lamp switch, battery, battery ground cable, battery hold-down strap, battery positive cable, battery-to-starter relay cable, oil filter, fan and alternator drive belts, fuses, headlamp foot dimmer, horns, ignition coil output wire, light bulbs and headlamps, ornamental accessories, power steering pump belt, wheels, except alignment, windshield washer tank, and wiper blades; and any other minor service, which may be performed by persons without the skills and knowledge required of motor vehicle mechanics and helpers and which the department has designated by rule to be a minor repair service. No service shall be designated as minor for purposes of this act, if the department finds that performance of the service requires mechanical expertise or has given rise to a high incidence of fraud or deceptive practices.” Section 559.903(5), F.S.

<sup>44</sup> Section 559.904(3), F.S.

<sup>45</sup> *Id.*

performing only minor repairs were exempt from registration and payment of a registration fee.<sup>46</sup> The Legislature subsequently amended the act to require registration by minor repair shops, but established the lesser \$25 fee.<sup>47</sup> In addition, the Legislature permitted a minor repair shop that received a certificate of exemption from the department before July 1, 1997, to remain exempt from registration until the certificate expired. This exemption remains in the statute.<sup>48</sup> The Department of Agriculture and Consumer Services (department) reports that it has become increasingly difficult to distinguish between repair shops performing minor repairs and shops performing major repairs. Further, the department relates that the majority of repair shops currently registered as “minor” are performing major repairs.

To advise the department in implementing the Florida Motor Vehicle Repair Act, the Legislature created the Motor Vehicle Repair Advisory Council.<sup>49</sup> The 11-member council is appointed by the Commissioner of Agriculture and includes eight industry members. Under current law, the industry representatives must include a person engaged solely in minor repair service.<sup>50</sup> In addition, the statute established staggered four-year terms for the initial council members and required these initial members to be registered with the department by October 1, 1993, in order to serve on the council.

The Florida Motor Vehicle Repair Act (act) makes it unlawful for a motor vehicle repair shop to make or charge for repairs which have not been expressly or impliedly authorized by the customer or to fraudulently alter any customer contract, estimate, invoice, or other document.<sup>51</sup> The act does not currently require a repair shop to submit copies of its estimate and invoice forms as part of the registration process. The department reports that the majority of violations are related to repair shops using improper forms or improperly completing these forms.

Motor vehicle repair shops are required under current law to provide written estimates of repair work that will exceed \$100.<sup>52</sup> The statute requires the written estimate to include the estimated cost of repair, including any diagnostic work. However, the statute does not specifically require the estimated cost of repair to include charges for shop supplies, hazardous waste, or other waste removal. Under current law, it is unlawful for a motor vehicle repair shop to charge more than the written estimate plus \$10 or 10 percent, whichever is greater, but not to exceed \$50, unless the motor vehicle repair shop has obtained the customer’s permission to exceed the written estimate.<sup>53</sup> The department reports that many repair shops add an additional charge to written

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<sup>46</sup> See s. 559.904(6), F.S. (1995).

<sup>47</sup> Section 26, ch. 97-250, L.O.F.

<sup>48</sup> See s. 559.904(6), F.S.

<sup>49</sup> Section 559.9221(1), F.S.

<sup>50</sup> *Id.* s. 559.9221(1)(b), F.S.

<sup>51</sup> Section 559.920(2) & (6), F.S.

<sup>52</sup> Section 559.905, F.S.

<sup>53</sup> Section 559.909(3), F.S.

estimates, ranging from 3 to 10 percent of the estimated cost of repair, in order to account for these other costs.

Under current law, the department may deny or refuse to renew the registration of a motor vehicle repair shop for failure to meet the requirements of the act or as the result of certain civil, criminal, or administrative adjudications.<sup>54</sup> However, current law does not allow the department to revoke a registration for those reasons.

***Effect of Proposed Changes:*** The committee substitute exempts motor vehicle repair shops located in public schools or charter technical career centers from the Florida Motor Vehicle Repair Act, thereby eliminating the requirement of annual registration with the department and compliance with other provisions of the act.

The committee substitute removes the definition of the term “minor repair services” and consequently removes the distinction between motor vehicle repair shops performing minor versus major repairs. Thus, repair shops currently registered with the department as minor repair shops will not be eligible for the lesser \$25 registration fee. These repair shops will be required to register based upon the number of employees and will pay a registration fee between \$50 and \$300: one to five employees (\$50), six to 10 employees (\$150), or 11 or more employees (\$300). In addition, the committee substitute removes obsolete provisions permitting a minor repair shop that received a certificate of exemption from the department before July 1, 1997, to remain exempt from registration until the certificate expires. The committee substitute also removes the requirement that one of the eight industry members serving on the Motor Vehicle Repair Advisory Council be engaged solely in minor repair service. Further, the committee substitute removes obsolete provisions that established staggered four-year terms for the initial council members and required these initial members to be registered with the department by October 1, 1993, in order to serve on the council.

The committee substitute requires motor vehicle repair shops to submit copies of their estimate and invoice forms to the department as part of the registration process. The committee substitute also requires motor vehicle repair shops to detail the estimated cost of repair, including charges for shop supplies, hazardous waste, or other waste removal, when providing a written estimate or repair work that will exceed \$100. Thus, repair shops will not be permitted to include additional charges in their written estimates, ranging from 3 to 10 percent of the estimated cost of repair, in order to account for these other costs. It will remain unlawful for a motor vehicle repair shop to charge more than the written estimate plus \$10 or 10 percent, whichever is greater, but not to exceed \$50, unless the motor vehicle repair shop has obtained the customer’s permission to exceed the written estimate.

The committee substitute also allows the department to revoke the registration of a motor vehicle repair shop for failure to meet the requirements of the act or as the result of certain civil, criminal, or administrative adjudications. As discussed above, the department currently may deny or refuse to renew a registration for those reasons.

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<sup>54</sup> Section 559.904(10), F.S.

**Effective Date (Section 14)**

The committee substitute takes effect October 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:**

The committee substitute requires motor vehicle repair shops performing only minor repair services to pay registration fees based on the number of employees. Currently, these repair shops pay a \$25 registration fee. The committee substitute will require these repair shops to pay a registration fee between \$50 and \$300: one to five employees (\$50), six to 10 employees (\$150), or 11 or more employees (\$300). According to the Department of Agriculture and Consumer Services (department), there are 1,081 motor vehicle repair shops registered as minor repair shops.<sup>55</sup> The average number of employees working in minor repairs shops is unknown; therefore, it is difficult to estimate the amount of additional registration fees that will be generated. The department estimates the committee substitute will generate a slight increase in revenues.

**B. Private Sector Impact:**

As discussed above, motor vehicle repair shops registered with the Department of Agriculture and Consumer Services as performing only minor repair services will pay addition registration fees based on the number of employees. The committee substitute requires that solicitation materials for charities be revised to include additional disclosures. The costs associated with making these revisions are unknown. The committee substitute requires sellers of business opportunities to include additional information in their disclosure statements; however, the associated costs should be minimal.

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<sup>55</sup> These figures were current as of February 26, 2001.

### C. Government Sector Impact:

The Department of Agriculture and Consumer Services estimated the committee substitute would have no significant fiscal impact on the department or its implementation of these programs.

## VI. Technical Deficiencies:

The committee substitute allows certificates of deposit to be posted in lieu of surety bonds to meet the security requirements for sellers of business opportunities. In addition, the committee substitute removes authority for trust accounts to be posted in lieu of bonds. The committee substitute replaces the term “trust account” with “certificate of deposit” in s. 559.807, F.S. However, the committee substitute does not conform these terms in ss. 559.803(8) and 559.805(1) and (3), F.S. For internal consistency, the Legislature may wish to amend the committee substitute to replace the remaining instances of the term “trust account” with the term “certificate of deposit.”

In sections 4 and 8, the committee substitute prohibits certain acts conducted by pawnbrokers and sellers of business opportunities, respectively. Under the criminal penalties subsection of the Florida Pawnbroking Act (act),<sup>56</sup> “any person who violates the [the act] ... commits a misdemeanor of the first degree.” Section 4 of the committee substitute prohibits, as part of the act, “[k]nowingly accept[ing] or receiv[ing] misappropriated property from a conveying customer in a pawn or purchase transaction.” Thus, the criminal penalties subsection, by general reference, incorporates this prohibited act as a misdemeanor of the first degree.

The penalties section of the Sale of Business Opportunities Act<sup>57</sup> establishes that “[a]ny person who ... commits an act described in s. 559.809[, F.S.,] is guilty of a felony of the third degree.” Section 559.809, F.S., lists the acts that are prohibited for sellers of business opportunities. Thus, the penalties section, by specific reference to this section, incorporates these prohibited acts, thereby causing the acts to be punishable as a felony of the third degree. Section 8 of the committee substitute prohibits “[f]ailure to provide or deliver the products, equipment, supplies, or services as specified in the written contract required under s. 559.811[, F.S.]” Through addition of this prohibited act in s. 559.809, F.S., the committee substitute attempts to subject the prohibited act to criminal prosecution. However, in *Overstreet v. Blum*,<sup>58</sup> the Florida Supreme Court held that:

It is proper for [a] statute to adopt all or a part of another statute by *specific and descriptive reference* thereto. When this is done the adoption takes the statute as it exists at that time. ... Further, the adoption of another statute by specific reference

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<sup>56</sup> Section 539.001(17), F.S.

<sup>57</sup> Section 559.815, F.S.

<sup>58</sup> 227 So. 2d 197 (Fla. 1969).

takes the second statute as it then exists, unaffected by any subsequent amendment or repeal unless a contrary intent clearly appears.<sup>59</sup>

Because the penalties section of the Sale of Business Opportunities Act incorporates prohibited acts by specific reference to s. 559.809, F.S., a court could rule that only those prohibited acts that were in existence when the penalties section was enacted are incorporated and, therefore, are subject to criminal prosecution. The Legislature may wish to amend the committee substitute to reenact s. 559.815, F.S. (the penalties section), in order to incorporate the new prohibited act.

Further, the title of the committee substitute does not reflect that criminal penalties are attached to these new prohibited acts in the Florida Pawnbroking Act or in the Sale of Business Opportunities Act. The Legislature may wish to amend the committee substitute to reflect these penalties in the title.

## **VII. Related Issues:**

The requirement that sellers of business opportunities disclose the number of purchasers for a three-year period and the names and contact information for 10 persons who purchased the product and who live near a potential purchaser may impinge upon the seller's interest in trade secrets. Customer lists and contact information are often protected as trade secrets. However, by making portions of customer lists publicly available through the disclosures required by the committee substitute, the seller of a business opportunity may lose the ability to protect that information under the trade secret law.<sup>60</sup>

## **VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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<sup>59</sup> (Emphasis added.)

<sup>60</sup> See *East Colonial Refuse Service, Inc. v. Velocci*, 416 So. 2d 1276 (Fla. 5th DCA 1982) (customer lists in the form of compilations made available to the public are not trade secrets).