

STORAGE NAME: h1619.gg
DATE: April 16, 1997

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
GENERAL GOVERNMENT APPROPRIATIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 1619 (PCB BRCA 97-02)

RELATING TO: Consumer Protection

SPONSOR(S): Committee on Business Regulation and Consumer Affairs

STATUTE(S) AFFECTED: Sections 496.405, 496.419, 496.420, 496.424, 501.013, 501.014 - 501.016, 501.019, 501.021, 501.022, 501.052, 501.143, 501.605, 501.607, 501.612, 501.626, 539.001, 559.801-559.813, 559.903 - 559.905, 559.921, 559.9221, 559.92201, 559.927 - 559.929, 559.9295, 559.9335, 559.9355, and 559.8015, F.S.

COMPANION BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) BUSINESS REGULATION AND CONSUMER AFFAIRS YEAS 7 NAYS 0
- (2) GOVERNMENTAL RULES AND REGULATIONS YEAS 5 NAYS 0
- (3) GENERAL GOVERNMENT APPROPRIATIONS
- (4)
- (5)

I. SUMMARY:

This bill increases and clarifies the regulatory authority of the Department of Agriculture and Consumer Services (department) in nine consumer protection programs: solicitation of contributions; health studios; home solicitation sales; dance studios; telemarketing; pawnbrokers; sale of business opportunities; motor vehicle repair; and sellers of travel. The bill:

- Rewords current rulemaking authority to make it consistent throughout the bill and to conform it to the 1996 rewrite of the Administrative Procedures Act, ch. 120, F.S., and gives new rulemaking authority;
- Allows the department to issue second administrative orders in lieu of taking civil action;
- Makes consistent and expands, in certain instances, the administrative remedies available to the department;
- Increases some fees and fines; and
- Generally makes consumer protection provisions consistent throughout the statutes.

The bill raises an additional \$400,455 annually from increased fees in the motor vehicle repair program and an additional \$37,500 annually from new fees in the sellers of travel program. Total revenues raised annually by this bill are estimated at \$437,955 for FY 1997-98 and for FY 1998-99.

The bill was amended to strike certain grants of rule-making authority that are specific to each consumer protection program. New rule-making authority requested by the Department to implement the programs regulating pawnbroking, motor vehicle repair, and sale of business opportunities remain in the bill.

This bill takes effect July 1, 1997.

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II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

This analysis is divided into the nine consumer protection programs, implemented by the Department of Agriculture and Consumer Services (department), that are amended by this bill. Three general issues appear throughout these programs:

- (1) The department has rulemaking authority under most of these laws. However, the Joint Administrative Procedures Committee recommends inserting consistent rulemaking language in the statutes based on the 1996 rewrite of chapter 120, F.S.
- (2) Chapter 120, F.S., directs executive agencies to civil court when a violator does not comply with an administrative order. The department contends that issuing a second administrative order is more effective, as well as less costly to both the citizen and the department.
- (3) The department has authority to institute administrative action, including assessing a fine, for violations of each of these programs, except home solicitation. The level of administrative fine differs from program to program, based on the potential harm a violation can cause the public. Additional remedies available to the department vary greatly. The department is asking for appropriately consistent administrative remedies throughout these consumer protection programs. Also, various sections of law contain authority for the department to issue a "letter of concern" which accomplishes the same or similar intent to the notice of noncompliance required in s.120.695, F.S. However, letter of concern is not statutorily defined; notice of noncompliance is described in chapter 120, F.S.

Solicitation of Contributions Act

Chapter 496, F.S., was enacted in 1991 to regulate individuals and businesses that solicit charitable contributions from the public. It is the express intent of the chapter to protect the public by requiring full disclosure of the identity of the person soliciting, the purpose of the solicitation and the manner in which the money is to be used. This information is utilized by the department to prohibit deception, fraud and misrepresentation.

The chapter requires all solicitors to register annually with the department, and pay a registration fee based on the previous year's collections. The department also is authorized to set a late registration fee by rule, not to exceed \$25. Currently, that fee is set at the cap of \$25. The department is given 10 days to examine the registration documents and approve, deny, exempt or request additional information. Prior to 1994, the department was given 10 *working* days to complete this work. However, in 1994 the act was rewritten and "working" was dropped from the requirement. The department contends that this shortened time frame is virtually impossible to meet.

Section 496.419, F.S., allows the department to assess an administrative fine of up to \$1,000 per violation. It also contains the additional administrative remedies the department wants to insert into the other consumer protection programs, except the requirement to issue a notice of noncompliance as its first response to minor violations.

In 1994, the chapter was amended to include specific provisions relating to solicitations on behalf of law enforcement and emergency service employees, including firefighters. Due to the placement of these provisions within the chapter, those solicitors cannot be regulated by the Department of Agriculture and Consumer Services and the Department of Legal Affairs cannot institute civil action for violations of the chapter.

Health Studios

State regulation of health studio businesses began in 1977. Sections 501.012-501.019, F.S., authorize those regulations for the express intent of protecting the public from financial hardship due to certain business practices and financing methods of health studios.

Health studios are defined in s. 501.0125, F.S., and do not include country clubs. However, the department has received questions regarding their inclusion under the law. Health studios must register and annually renew that registration with the department. Each studio must post a \$50,000 surety bond, unless it has: (1) operated for five years; or (2) collects membership payments no more than 30 days in advance. The bond requirement is waived for any studio meeting one of those criterion. The department is seeking additional criteria for exemption from the bond requirement. It cites instances where a studio has met one of the exemption criteria, but had been operating for more than a year in violation of other provisions of the law. The department is seeking authority to deny an exemption in such cases.

Health studios must include their registration numbers on all advertisements, contracts and publications. The industry asserts that this requirement is impractical and does not provide consumer protection when applied to radio and television ads since the long number is difficult to remember.

Section 501.019, F.S., prescribes the civil and criminal penalties for violations of the law in addition to the administrative penalties of: (1) up to \$5,000 for failure to post bond; (2) up to \$500 for failure to file for exemption, meet the contract requirements, or notify buyers and the department of a change in ownership; and (3) \$10 per day, up to \$100 for failure to renew registration. The department contends that the late renewal fee is insufficient to act as a deterrent or to protect the public. The department is seeking additional administrative penalties, including issuing a notice of noncompliance, to make this act consistent with other consumer protection laws.

Home Solicitation Sale

Door-to-door sales of goods or services in excess of \$25 were first regulated in Florida in 1970 by ss. 501.021-501.055, F.S. These activities are mostly regulated at the local level through solicitation permits issued by circuit court clerks. However, the department may issue a statewide solicitation certificate that complies with a local permit, and the circuit court clerks must notify the department when denying, suspending, or revoking a permit. The department issued five certificates in FY 1995-96, has had no requests this fiscal year and recommends deleting these requirements.

Additionally, the department must investigate complaints and report the results to the Attorney General or local state attorney. The department receives few complaints regarding home solicitation and contends that the Attorney General or state attorney would conduct independent investigations if they chose to pursue a case.

Dance Studio Act

Dance studios were first regulated by the state in 1992, under s. 501.143, F.S., in response to complaints regarding unscrupulous business activities particularly against senior citizens. These studios must register annually with the department and pay a fee of up to \$300 per registrant. The fee currently is set at the cap by rule for each dance studio location; the department requests setting the fee in statute to eliminate the need for a rule.

The administrative penalties authorized by this law include allowing the department to suspend or revoke registration and to assess a fine of up to \$5,000. The penalties are essentially the same as those the department has requested in other programs, except that the notice of noncompliance is not part of current law.

Florida Telemarketing Act

Telemarketers were first regulated under Chapter 501, Part IV, F.S., in 1991 to promote the general welfare of the public and the telemarketing industry. There are 29 individual or business activity exemptions in the law. Telemarketers and salespersons who are regulated must apply for licensure annually, and pay a fee of up to \$1,500 and \$50, respectively. Each fee is established by rule, and is currently set at the maximum. The department would eliminate the rule if the fees are set by law.

To apply for licensure, telemarketers and salespersons must inform the department of any arrests for felonious activities, including pleas of nolo contendere and where adjudication is withheld. The department believes this language needs clarification. Additionally, the department may deny licensure or institute civil proceedings against those who violate the act; no administrative action is prescribed.

Florida Pawnbroking Act

Pawnbrokers were regulated under secondhand dealers, Chapter 538, Part I, F.S., until 1996 when the Florida Pawnbroking Act was established in Chapter 539, F.S. The new law failed to: (1) provide needed definitions; (2) require a valid state pawnbroker license prior to issuance of a local occupational license; (3) clarify that conviction includes a plea of nolo contendere or when adjudication is withheld; and (4) provide rulemaking authority to the department. The administrative penalties are consistent with those the department is seeking for other consumer protection programs, except for the specific authority to issue a notice of noncompliance.

Sale of Business Opportunities

The Sale or Lease of Business Opportunities Act was enacted in 1979 as ss. 559.80-559.815, F.S., to afford protection to those paying more than \$500 for product or service with the assurance that the business would be profitable. An example of this activity is when a person is offered the opportunity of buying a vending machine with a promise from the seller that the seller will provide a profitable location for that machine.

The law specifies the disclosures the seller must make to the buyer. The seller must file those disclosure statements with the department; update the filing upon material change; and annually pay a \$300 filing fee. Sellers are required to give the purchaser a copy of the contract *72 hours* prior to finalizing the document and to give the purchaser the disclosure statement *three working days* prior to signing the contract. Needless to say, these different time frames cause confusion and make the law difficult to enforce.

The department may impose an administrative fine of up to \$5,000 or take civil action for violations of the law. The department is asking for administrative penalties consistent with other consumer protection programs. Additionally, the department does not have specific rulemaking authority in this act.

The department is experiencing difficulty bringing action against some business opportunity sellers who contract out the sale of those opportunities. These independent contractors are not registered with the department and are not employees of the actual seller.

Florida Motor Vehicle Repair Act

Motor vehicle repairs shops were first regulated in 1980 by the Florida Motor Vehicle Repair Act, Chapter 559, Part IX, F.S., and it requires the shops to give a written estimate if the repairs exceed \$50. Fifty dollars is equivalent to \$95.27 in 1996 dollars and shop owners say that diagnostic tests on the new computerized engines generally exceed the \$50 limit. The shop owners request an increase to \$100 in the cost of repairs requiring a written estimate.

The largest number of consumer complaints filed with the department are against motor vehicle repairs shops. In 1993, the law was amended to establish a state registration program and to institute registration fees to cover the cost of regulating repair shops. However, the program continues to run at a deficit.

The department recommends amending the act to: (1) clarify the definitions; (2) increase some fees; (3) make the administrative penalties consistent with other consumer protection programs; and (4) provide rulemaking authority to the department.

Sellers of Travel

Travel agents were first regulated by the state in 1988, Chapter 559, Part XI, F.S., as a result of increasing consumer complaints about the industry. The law defines sellers of travel and exempts certain sellers. Those selling only airline tickets under contract with the Airline Reporting Corporation for five years are exempt from registration, security requirements, and disclosure submission to the department. The department retains authority to seek remedies for violations committed by exempt entities. The department states that certain exempt entities question that authority.

Sellers of vacation certificates must give the department copies of their contracts and promotional materials. The department notifies the sellers, usually within 2 weeks, regarding whether or not the documents are in substantial compliance with the act. The law, however, does not place a specific response time limit on the department.

The department is requesting changes to clarify that authority and to: (1) establish fees and bond amounts by statute instead of rule; (2) extend regulations to include independent agents and create a new affidavit filing fee for them; and (3) add new actions by sellers that will constitute deception or misrepresentation. The administrative penalties are consistent with other consumer protection programs, except that specific authority to issue a notice of noncompliance or to issue second administrative orders are not in current law.

Discussion of Rulemaking Authority

HB 1619 rewords current rulemaking authority found throughout statutes regulating consumer protection programs. The bill rewords the relevant statutory sections along the lines suggested by Joint Administrative Procedures Committee (JAPC), although phrasing the language in this manner: "The department has the authority to adopt rules pursuant to chapter 120 to implement . . ." However, JAPC suggests that such changes refer directly to the Administrative Procedures Act (APA) and not ch. 120, as it is the Act and not the statute chapter that controls the rulemaking process.

B. EFFECT OF PROPOSED CHANGES:

This bill amends, as necessary, these consumer protection programs to:

- (1) Make the current rulemaking authority consistent as recommended by the Joint Administrative Procedures Committee. Those changes are noted only when new rulemaking authority is given.
- (2) Give the department the authority to issue second administrative orders in lieu of seeking civil action.
- (3) Clarify those actions that constitute a violation and, in instances of violation and in addition to assessing an administrative, to give the department the authority to: (1) issue a notice of noncompliance as its first response to minor violations, in accordance with chapter 120, F.S.; (2) cancel an exemption; (3) issue cease and desist order; (4) refuse to register or renew a registration; and (5) place the person or business on probation. This change is sought to make the administrative remedies available to the department consistent throughout the consumer protection programs.

Solicitation of Contributions Act

This bill gives the department 10 *working* days, instead of 10 *calendar* days to act on a registration, allowing them more time to complete their work. It also moves from rule to statute the \$25 late registration filing fee, thereby eliminating the need for an administrative rule.

The existing regulatory and rulemaking authority of the Department of Agriculture and Consumer Services is extended to include solicitations made on behalf of law enforcement or firefighters. It further extends the existing civil causes of action available to the Department of Legal Affairs against those soliciting on behalf of law enforcement or firefighters who violate the chapter. These changes correct the 1994 error made when those specific solicitation activities were added to the chapter, but inadvertently placed outside the authority of both departments.

Section 496.419, F.S., is amended to reduce the \$1,000 maximum administrative fine for violations by 501 (3) © organizations to a \$500 maximum, and to include issuing a notice of noncompliance as one of the administrative remedies available to the department. The remaining remedies are consistent with those the department is seeking in other programs.

Health Studios

This bill makes it specific that country clubs are not health studios and, therefore, are not regulated by this act. It also sets the criteria a health studio must meet for

exemption from the bond requirement by combining the five year operating requirement with a no penalty record requirement. This change accommodates the industry's request to prevent the department from denying bond exemption for minor violations. The bill further clarifies that studio registration numbers are required only on print materials, thereby eliminating an impractical government regulation.

Section 501.019, F.S., adds specific, clarifying language stating the instances under which the department may bring administrative action and: (1) brings all existing penalties into one section; (2) increases from a maximum of \$100 to a maximum of \$5,000 the fine for failure to renew registration to better protect the public; (4) gives the department the new authority to: issue a notice of noncompliance prescribed by chapter 120; require health studios to cease and desist certain activities; deny, suspend or revoke registration; and place a registrant under probation. The new penalties are consistent with the authority the department currently has in other laws.

Home Solicitation Sale

This bill deletes the requirement for: (1) circuit court clerks to notify the department when taking action against a permittee; (2) the department to issue statewide certificates; and (3) the department to investigate complaints and submit the results to law enforcement agencies. The department requested these changes to repeal unnecessary government regulation.

Dance Studio Act

The annual registration fee for each dance studio location is set at \$300 in s. 501.143, F.S., thereby eliminating the need for an administrative rule. While the department is given the authority in this bill to issue a notice of noncompliance, the other administrative remedy changes sought by the department to other consumer programs are not made. The department rarely receives complaints regarding dance studios and believes it has sufficient authority to enforce this act.

Florida Telemarketing Act

This bill sets by law the annual licensing fees for telemarketer and salespersons at \$1,500 and \$50, respectively. The change will allow the department to eliminate the current rule which sets the fees at these levels. Also, it clarifies that criminal convictions include instances in which adjudication is withheld or a plea of nolo contendere is entered. This change provides the clarity sought by the department.

It expands the denial of licensure section to include instances under which the department can take administrative action. New administrative penalties are added: (1) issuing a notice of noncompliance; (2) issuing an administrative fine of up to \$10,000, which is consistent with the civil penalties currently in the law; (3) issuing a cease and desist order; (4) refusing to issue or renew a license and allowing to revoke or suspend a license; (5) placing the person or business on probation; and (6) providing that all administrative proceedings be conducted in accordance with Chapter 120, F.S. These administrative penalties are consistent with other changes in this bill and with the department's authority in other areas.

Florida Pawnbroking Act

Four changes are made to this section of the bill to assist the department in implementing the 1996 act by adding: (1) needed definitions; (2) that a valid license must be shown before issuance of a local occupational license; (3) that criminal

convictions include cases where adjudication is withheld or a plea of nolo contendere is entered; (4) rulemaking authority to the department; and (1) the authority to issue a notice of noncompliance.

Sale of Business Opportunities

This bill makes it explicit that business opportunities include sales involving coin or currency operated equipment. It also clarifies that a seller must disclose any administrative action in which the government rendered an order against that seller. It requires a 30 day deadline for filing material changes to disclosure statements. Both amendments intend to assure the department has current information.

The bill creates a new filing requirement specifying that sellers provide identifying information about independent agents working for them. This change means to assist the department in identifying and penalizing those agents who violate the law. The 72 hour waiting period between delivery of the sales contract and the signing of it is clarified to "3 working days."

The administrative penalty section is expanded to make it consistent with similar provisions of law and changes in this bill, including the instances under which the department can take administrative action. New administrative penalties are added: (1) issuing a notice of noncompliance; (2) refusing to issue or renew a license, or revoking or suspending a license; (3) placing the person on probation; and (4) providing that all administrative proceedings must meet chapter 120, F.S., requirements.

The department is given new rulemaking authority for this act.

Florida Motor Vehicle Repair Act

This bill amends the definitions in Chapter 559, Part IX, F.S., to: (1) clarify that airplane and boat repair work are *not* regulated by the part; (2) clarify that mobile motor vehicle repair shops *are* regulated by the part; and (3) remove upholstery shops from the regulations. Changes are made to several sections to include mobile repair shops in the regulations and an annual registration fee of \$25 is created for them.

Minor repair shops, i.e., those changing oil or tires, are no longer exempt from the regulations and they must annually pay a \$25 *registration* fee instead of the current annual \$10 *exemption* filing fee. The annual registration fee for repair shops with 1 to 5 employees is increased from \$25 to \$50. These increases are sought by the department to cover the cost of implementing the motor vehicle repair act.

The cost of repairs requiring a written estimate is increased from \$50 to \$100. This change is requested by the repair shop owners to update the 1980 regulations by making them conform to 1997 repair costs and the 1997 Consumer Price Index.

New administrative penalties are added for those violating the law, making a false statement to the department, or defrauding the public. Those penalties include issuing a notice of noncompliance, directing the shop to cease and desist certain activities, and placing a registrant on probation. These changes are consistent with other changes in this bill and with other programs implemented by the department.

Finally, the department is given new rulemaking authority consistent with other consumer protection programs it implements.

Sellers of Travel

This bill clarifies that the department has authority to seek remedies for violations committed by those selling only airline tickets. This change was sought by the department to address questions from some of these entities.

The current \$300 registration fee and \$50,000 security requirement are set by statute to remove the need for rules. A new affidavit filing requirement and annual \$25 fee are placed on people who solicit travel business for sellers of travel and who are paid by the travel agent, not the consumer.

This bill places a new requirement on the department by requiring it to notify vacation certificate sellers within 10 working days of receipt of promotional documents, other than those submitted for registration or renewal, as to whether or not those materials substantially comply with the statutes.

The bill adds new activities by sellers of travel that will constitute misrepresentation or deceit and, therefore, violate the law: (1) represent that a promotion is a gift or award if that is not the case; (2) fail to inform a prospective purchaser that a travel offer is non-refundable; and (3) fail to include in advertisements or promotional material the statement, "This is an offer to sell travel."

Additionally, the bill amends the violation and penalty sections to allow the department to issue a notice of noncompliance and to issue a second administrative order.

Repealer and Effective Date

The bill repeals s. 559.8015, F.S., relating to advertisers of business opportunity since this provision is included in s. 599.805, F.S. Finally, it makes the bill take effect July 1, 1997.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Creates and Increases. New rulemaking authority is given to the Department of Agriculture and Consumer Services in s. 539.001, F.S., pawnbrokers; s. 559.813, F.S., business opportunities; and s. 559.92201, F.S., motor vehicle repair. Also, existing rulemaking authority is made consistent with chapter 120 throughout the bill. Additional administrative remedies are authorized in s. 501.019, F.S., health studios; s. 501.612, F.S., telemarketing; s. 559.813, F.S., business opportunities; and s. 559.921, F.S., motor vehicle repair, making them consistent with penalties in other consumer protection programs.

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. This bill relates to consumer protection and, therefore, places additional government requirements on those businesses or individuals regulated in order to protect the public.

- (3) any entitlement to a government service or benefit?

Yes. Consumers receive the benefit of government regulating unfair and deceptive trade practices.

- b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

- (2) what is the cost of such responsibility at the new level/agency?

N/A

- (3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

Yes. Section 559.904, F.S., motor vehicle repair, increases fees and s. 559.928, F.S., sellers of travel, creates a new fee.

- c. Does the bill reduce total taxes, both rates and revenues?

N/A

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. SECTION-BY-SECTION RESEARCH:

Solicitation of Contributions Act

Section 1. Amends s. 496.405, F. S., to set the late filing fee for the annual registration renewal at \$25 per month, by statute instead of agency rule. It also gives the department 10 working days, instead of 10 calendar days, to request additional information for registration or renewal. It reduces the administrative fine, in some instances, from a maximum of \$1,000 to a maximum of \$500.

Section 2. Amends s. 496.419, F.S., to extend the department's powers, including assessing penalties, to those soliciting on behalf of law enforcement or firefighters; to include issuing a notice of noncompliance as an administrative remedy available to the department.

Section 3. Amends s. 496.420, F.S., to give the Department of Legal Affairs authority to seek civil remedies for violations of the law committed by those soliciting on behalf of law enforcement or firefighters.

Section 4. Amends s. 496.424, F.S., to extend the department's rulemaking authority to the provisions relating to soliciting on behalf of law enforcement or firefighters.

Health Studios

Section 5. Amends s. 501.013, F.S., to specifically exempt country clubs from the health studio law upon the filing of an affidavit of exemption.

Section 6. Amends s. 501.014, F.S., to reword existing rulemaking authority to make it consistent with chapter 120, F.S.

Section 7. Amends s. 501.015, F.S., to delete the late registration penalty and move it to s. 501.019, F.S., where it is increased (see Section 8.) Additionally, it clarifies that the health studio registration number must be used only on printed materials.

Section 8. Amends s. 501.016, F.S., to allow a bond exemption to any health studio that has operated for five years in compliance with the health studio law **and** has no record of civil, criminal or administrative adjudication against it; and has a satisfactory complaint history with the department.

Section 9. Amends s. 501.019, F.S., to provide additional administrative penalties against health studios violating the law and increasing the fine for non-registration from a maximum of \$100 to a maximum of \$5,000.

Home Solicitation Sale

Section 10. Amends s. 501.021, F.S., to delete the reference to the Division of Consumer Services in this definition section to conform the section to other changes in the bill that remove the department's responsibilities for this program.

Section 11. Amends s. 501.022, F.S., to delete the requirement that circuit court clerks notify the department when denying, suspending or revoking a county home solicitation sale permit, and to delete the authority for the department to issue a certificate for statewide sales.

Section 12. Amends s. 501.052, F.S., to delete the requirement that the Division of Consumer Services investigate complaints and report the results to the Attorney General or state attorney.

Dance Studio Act

Section 13. Amends s. 501.143, F.S., to set the annual registration fee at \$300 by law and deleting the rulemaking authority to set the fee. It also gives the department the authority to issue a second administrative order and it rewords current rulemaking authority. Finally, it adds the authority to issue a notice of noncompliance.

Florida Telemarketing Act

Section 14. Amends s. 501.605, F.S., to set by statute the \$1,500 licensing fee for telemarketer and to delete the rulemaking authority to set the fee. The current rule sets the fee at \$1,500.

Section 15. Amends s. 501.607, F.S., to clarify that criminal convictions include cases in which adjudication is withheld and a plea of nolo contendere is entered. It also sets by statute the \$50 licensing fee for telemarketing salespersons and deletes the rulemaking authority to set the fee. The current rule sets the fee at \$50 per salesperson.

Section 16. Amends s. 501.612, F.S., to expand the administrative action the department may take against a telemarketer or telemarketing salesperson and to include new administrative penalties.

Section 17. Amends s. 501.626, F.S., to reword current rulemaking authority to make it consistent with chapter 120, F.S.

Florida Pawnbroker Act

Section 18. Amends s. 539.001, F.S., to add definitions; to specify that a pawnbroker must show a current state license when applying for a local occupational license; to clarify that criminal convictions include cases in which adjudication is withheld and a plea of nolo contendere is entered; and to provide new rulemaking authority to the department.

Sale of Business Opportunities

Section 19. Amends s. 559.801, F.S., to specify that the definition of a business opportunity includes currency or card operated equipment.

Section 20. Amends s. 559.803, F.S., to include punitive administrative orders in the list of legal actions the seller must disclose to the buyer.

Section 21. Amends s. 559.805, F.S., to specify that material changes to the disclosure statement must be filed with the department within 30 days; and to require each seller to provide the department with a list of independent contractors selling business opportunities on behalf of the seller.

Section 22. Amends s. 559.811, F.S., to clarify that a seller must give a potential purchaser of a business opportunity a copy of the purchase contract three working days prior to signing the contract, instead of the current 72 hour requirement.

Section 23. Amends s. 559.813, F.S., to make the administrative penalties consistent with other consumer protection programs including: denying, refusing to renew, suspending or revoking an advertisement identification number (this takes the place of registration numbers in other programs); placing a seller on probation; and issuing a notice of noncompliance pursuant to Chapter 120.695, F.S. Additionally, new rulemaking authority is given to the department.

Florida Motor Vehicle Repair Act

Section 24. Amends s. 559.903, F.S., to specify that boats and airplanes do not fall under the definition of motor vehicle; to include “*mobile* motor vehicle repair shops” in the definition of motor vehicle repair shop; to delete “upholstery shops” from the definition of motor vehicle repair shop; and to clarify that the “place of business” can be a vehicle in the instance of a mobile shop.

Section 25. Amends s. 559.904, F.S., to:

- (1) specifically include mobile motor vehicle repair shops under the act;
- (2) delete the exemption for minor repair service;
- (3) require minor repair shops to pay an annual registration fee of \$25 instead of the current \$10 annual exemption fee;
- (4) increase the annual registration fee for shops employing 1 to 5 employees from \$25 to \$50; and

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- (5) authorize the department to issue a notice of noncompliance and to deny or refuse to renew a registration under additional circumstances.

Section 26. Amends s. 559.905, F.S. , to increase from \$50 to \$100 the threshold cost of repairs after which the customer must receive a written estimate.

Section 27. Amends s. 559. 921, F.S., to provide additional administrative penalties.

Section 28. Amends s. 559.92201, F.S., to provide new rulemaking authority to the department.

Section 29. Amends s. 559.9221, F.S., to conform language relating to minor repair shops to the changes proposed in s. 559.904, F.S. (Section 25)

Sellers of Travel

Section 30. Amends s. 559.927, F.S., to clarify that the definition of seller of travel includes those who sell only airline tickets.

Section 31. Amends s. 559.928, F.S., to set in statute the annual registration fee at \$300 and delete the current authority to the department to set the fee by rule at up to \$300. It also creates a new annual fee of \$25 for each person who solicits travel business for a seller of travel, but who is not paid by the prospective traveler.

Section 32. Amends s. 559.929, F.S., to set the performance bond amount at \$50,000 for those selling vacation certificates, and to delete the rulemaking authority to the department to set the bond level by rule.

Section 33. Amends s. 559.9295, F.S., to place a new 10 working day limit on the time the department has to respond to certain documents; adds a disclaimer stating that the department does not approve or endorse the promotional material vacation certificate sellers are required to submit to the department. It also allows vacation certificate sellers to submit federal income tax returns to the department in lieu of financial statements.

Section 34. Amends s. 559.9335, F.S., to add new actions by sellers that will constitute deception or misrepresentation.

Section 35. Amends s. 559.9355, F.S., to add violations of department rules or orders to violations for which the department may take administrative action, including issuing a notice on noncompliance and issuing a second administrative order.

Repealer and Effective Date

Section 36. Repeals s. 559.8015, F.S., to remove redundant provisions from the statutes.

Section 37. Makes the bill take effective July 1, 1997.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

<u>Revenues:</u>	1997-98	1998-99
Department of Agriculture & Consumer Services Motor Vehicle Repair General Inspection Trust Fund	\$400,455	\$400,455
Department of Agriculture & Consumer Services Sellers of Travel General Inspection Trust Fund	\$37,500	\$37,500

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

<u>Revenues:</u>	1997-98	1998-99
Department of Agriculture & Consumer Services General Inspection Trust Fund	\$437,955	\$437,955

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. **DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

1. Direct Private Sector Costs:

Motor Vehicle Repair Act

It is estimated that 14,924 motor vehicle repair shops having 1 - 5 employees will pay an additional \$25 annually, for a total annual increased cost of \$373,100.

It is estimated that 1,907 minor repair businesses will pay an additional \$15 annually for a total annual increased cost of \$28,605.

Sellers of Travel

An estimated 1,500 independent agents working for sellers of travel will pay a new fee of \$25 annually, for a total annual increased cost of \$37,500.

2. Direct Private Sector Benefits:

Motor Vehicle Repair Act

It is estimated that 50 motor vehicle upholstery shops will no longer pay the \$25 annual registration fees totaling \$1,250 per year in savings to the private sector.

3. Effects on Competition, Private Enterprise and Employment Markets:

The increased costs will be paid by all businesses, therefore, these new costs should not affect competition.

D. **FISCAL COMMENTS:**

Motor Vehicle Repair Act

This bill raises an additional \$400,455 for this program by eliminating one and increasing two fees. The motor vehicle repair program had a deficit of \$356,592 in FY 1995-96 even though current law requires the program to be self-supporting. The increased fees in this bill will give the program an estimated surplus of \$43,859.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. **APPLICABILITY OF THE MANDATES PROVISION:**

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. **REDUCTION OF REVENUE RAISING AUTHORITY:**

This bill does not reduce the authority that municipalities or counties have to raise revenue in the aggregate.

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C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

The general grants of rulemaking authority invoke the rulemaking procedures under the Administrative Procedures Act. It is the rule to be created that must refer to a specific section of the relevant statute and not merely to the statute section that provides the grant of rulemaking authority. The consistent rulemaking language used in this bill may appear to give broad rulemaking authority to the department, but it is consistent with the requirements of s. 120.536 (1), F.S. (1996 Supp.), which requires a specific law to be implemented by rule and that the agency may adopt only those rules that implement, interpret, or make specific the particular powers and duties granted by the statute.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

As heard in the Committee on Governmental Rules and Regulations:

Amendment 1: This amendment, as amended, revises the language providing rulemaking authority to reflect the language suggested by JAPC. It does not have a substantive effect on the bill.

Amendments 2, 3, and 4: These amendments struck from the bill grants of rule-making authority that were specific to each consumer protection program addressed in the bill. Amendment 2 struck sections of the bill that were grants of rulemaking authority that comprised a section of the bill, while amendments 3 and 4 struck such grants that were part of a bill section.

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION AND CONSUMER AFFAIRS:

Prepared by:

Legislative Research Director:

Rebecca R. Everhart

Lucretia Shaw Collins

AS REVISED BY THE COMMITTEE ON GOVERNMENTAL RULES AND REGULATIONS:

Prepared by:

Legislative Research Director:

David M. Greenbaum

David M. Greenbaum

AS FURTHER REVISED BY THE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS:

Prepared by:

Legislative Research Director:

Eliza Hawkins

Cynthia P. Kelly