

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: March 31, 1998 Revised: _____

Subject: Consumer Protection

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	Rhea	Wilson	GO	Favorable/CS
2.	_____	_____	WM	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The Division of Consumer Services, of the Department of Agriculture and Consumer Services (DACS), is responsible for enforcing many consumer protection laws. The committee substitute revises a number of consumer protection statutes. The committee substitute permits the Department of Revenue to share names, addresses, and sales tax registration information with the DACS. The committee substitute provides that charitable organizations raising less than \$25,000 per year be required to register with the DACS, instead of filing for an exemption.

Further, the committee substitute requires applicants for a telemarketing license to disclose whether adjudication was withheld for a felony offense. The committee substitute requires sellers of business opportunities to include their advertisement identification number in all written materials. The committee substitute also imposes a \$25 late fee for late filed renewals of motor vehicle repair shop registrations. The committee substitute requires advertising that includes free items must include a clear and conspicuous statement of any condition or obligation.

This committee substitute amends sections 213.053, 496.403, 496.404, 496.405, 496.406, 501.143, 501.607, 501.2101, 559.805, 559.904, and 817.415, Florida Statutes.

II. Present Situation:

The Department of Agriculture and Consumer Services, Division of Consumer Services (DACS), is assigned responsibility to enforce many consumer protection laws. Chapter 213, F.S., which relates to state revenue, exempts some financial information from public records requirements.¹ The Department of Revenue (DOR) is authorized to share some of this exempt information under

¹Section 213.053, F.S.

certain circumstances with other governmental entities.² For example, the DOR may share names, addresses, and dates of commencement of business activities of corporations with the Department of State in the conduct of its official duties.³ As well, the DOR may share the names, addresses, and sales tax registration information with the Department of Business and Professional Regulation in the conduct of its official duties. The DOR is not, however, authorized to share exempt information with the DACS.

The DACS is assigned regulatory responsibility under Chapter 496, F.S., the Solicitation of Contributions Act. Section 496.405, F.S., requires charitable organizations and sponsors to register with the DACS. Every charitable organization, sponsor or parent organization must pay a single registration fee.⁴ Fees are assessed based upon total contributions received during the year. For example, a \$10 fee is required if contributions received for the last fiscal or calendar year were less than \$5,000. Currently, the highest fee assessed is \$400; this fee is assessed if the contributions received for the last fiscal year were \$10,000,000 or more.

Charitable organizations may be exempt from registration, but an exemption must be claimed following specific procedures.⁵ Charitable organizations whose fundraising activities are carried on by volunteers, members, officers, or permanent employees who are not compensated primarily to solicit contributions and which do not actually raise or receive contributions from the public in excess of \$25,000 during the immediately preceding fiscal year, may be exempt. Nevertheless, these entities still must submit a sworn statement setting forth specified information, along with a \$10 fee. A letter of exemption is issued by the DACS to those organizations that are exempt.

Chapter 501, F.S., provides consumer protection regulation. Section 501.143, F.S., is the Dance Studio Act. Under s. 501.143(3), F.S. each owner or operator of a ballroom dance studio must register with the DACS no later than October 1.

Section 501.626, F.S., is the Florida Telemarketing Act. Under the act, license applicants to be a salesperson must submit to the DACS a written application for a license. The application must contain specific information, including whether the applicant has previously been arrested for, convicted or found guilty of, has entered a plea of guilty or a plea of nolo contendere to, or is under indictment or information for, a felony and, if so, the nature of the felony, regardless of whether the applicant was convicted.

Section 501.607, F.S., regulates telemarketing. Under the act, salespersons must submit an application to the DACS which contains certain information. In particular, the applicant must state whether he or she has previously been arrested for, convicted or found guilty of, has entered

²Section 213.053(7), F.S.

³Section 213.053(7)(b), F.S.

⁴Section 496.405(4), F.S.

⁵Section 496.406, F.S.

a plea of guilty or a plea of nolo contendere to, or is under indictment or information for, a felony and, if so, the nature of the felony, regardless of whether he or she was convicted.

Section 559.805, F.S., regulates sellers of business opportunities. Sellers of business opportunities must make specific disclosures to purchasers under the act and must file a copy of its disclosure statement with the DACS. Upon filing of this disclosure statement, the DACS must issue an advertisement identification number. The seller is required to disclose this advertisement identification number to each person with whom he or she places advertising.

Section 559.904, F.S., requires motor vehicle repair shops to register with the DACS. Each application registration must be accompanied by a fee, which is based upon the number of its employees. No annual registration fee is required for any motor vehicle repair shop which has a local municipal or county license issued pursuant to an ordinance containing standards which the DACS determines are at least equal to the requirements of the act. Each registration must be renewed annually. No penalty is assessed for late filings.

According to the DACS, in 1996-97, 20,888 renewal notices were mailed to motor vehicle repair shops at least 30 days prior to renewal deadline. An additional 9,373 subsequent renewal letters were mailed to shops that did not renew by the deadline. Another 3,150 certified renewal letters were sent to shops that still did not renew, at a cost of over \$10,000. As a result of the large number of late renewals and nonrenewals, the Motor Vehicle Repair Council which is made up primarily of industry members, suggested to the DACS that a \$25 late fee be imposed.

Section 817.415, F.S., establishes requirements for advertising in which free gifts are offered. Under the section, if any conditions or obligations are attached with the “free” gift, such advertising must contain a statement of any conditions or obligations with equal prominence and type size at least half that of the term “free” used in the advertisement.

III. Effect of Proposed Changes:

Section 1. The committee substitute, which amends s. 213.053, F.S., permits the Department of Revenue to share the names, addresses, and sales tax registration information with the DACS in the conduct of its official duties. Currently, the DACS provides information to the DOR regarding motor vehicle repair shops to assist them in their regulatory efforts; however, the DOR is unable to share information with the DACS.

Section 2. The committee substitute amends s. 496.403, F.S., which provides for exemptions from the Solicitation of Contributions Act.⁶ The committee substitute exempts persons or organizations who solicit or act as professional fundraising consultants solely on the behalf of religious institutions, educational institutions, and state agencies or other government entities from the provisions of ss. 496.401- 496.424, F.S.

⁶Sections 496.401 - 496.424, F.S.

Section 3. The committee substitute clarifies s. 496.404(16), F.S., which provides a definition of the term “parent organization.” The amendment clarifies that the chapters, branches, or affiliates in Florida over which the parent organization exercises control are its own chapters, branches, or affiliates.

Sections 4 and 5. The committee substitute, which amends ss. 496.405 and 496.406, F.S., modifies the current registration scheme by requiring the registration of charitable organizations or sponsors whose fundraising activities are carried on by volunteers, members, officers, or permanent employees who are not compensated primarily to solicit contributions and which do not actually raise or receive contributions from the public in excess of \$25,000 during the immediately preceding fiscal year. These entities already must file annually to be exempt and pay a \$10 fee. No additional costs are imposed.

Section 6. The committee substitute amends s. 501.143, F.S., which is in the Dance Studio Act. The committee substitute deletes the October 1 date by which owners or operators of ballroom dance studios must file their registration with the DACS. The amendment simply clarifies that registration is good for one full year from the actual date of registration.

Section 7. The committee substitute amends the licensure procedure provisions for telemarketing salespersons contained in s. 501.607, F.S. The committee substitute requires an applicant to state on his or her application whether he or she has been arrested for, convicted or found guilty of, has entered a plea of guilty or a plea of nolo contendere to, or is under indictment or information for, a felony and, if so, the nature of the felony, regardless of adjudication (not conviction).

Section 8. The committee substitute permits moneys received by an enforcing authority for attorney’s fees and costs of investigation or litigation in proceedings brought under the provisions of ss. 501.207, 501.208, and 501.211, F.S., to be deposited in the Legal Affairs Revolving Trust Fund.

Section 9. The committee substitute amends s. 559.805(2), F.S., dealing with the sale or lease of business opportunities. Specifically, sellers of business opportunities must include and prominently display its advertisement identification number in all written advertisements, sales materials, promotional documents, and business opportunity contracts.

Section 10. The committee substitute amends s. 559.904(8), F.S., relating to motor vehicle repair shop registration. The committee substitute requires late filed renewal applications to be accompanied by a \$25 late fee prior to issuance of the registration by the DACS. The department is not authorized to issue a registration until all fees are paid.

Section 11. The committee substitute amends s. 817.415(5), F.S., which contains requirements for advertisements that contain “free” gifts. The committee substitute deletes the current standard that requires that conditions and obligations be stated with equal prominence and type size at least half that of the term “free.” The committee substitute instead inserts a standard that conditions or obligations be stated in a clear and conspicuous fashion.

Section 11. The committee substitute has an effective date of October 1, 1998.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The committee substitute authorizes the Department of Revenue to share the names, addresses, and sales tax registration information with the Department of Agriculture and Consumer Services, Division of Consumer Services, for consumer protection enforcement provisions. The committee substitute does not create a new exemption to the public records requirements. The provision does not explicitly state that the DACS must maintain the confidentiality of this shared information, but the section in which it is being placed provides that disclosure of information must be by written agreement and that the receiving entity is bound by the same requirements of confidentiality as the DOR.

C. Trust Funds Restrictions:

None. The Legal Affairs Revolving Trust Fund was created in s. 16.53, F.S.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Motor vehicle repair shops that fail to timely renew their registrations will be required to pay a \$25 fine each year that they fail to timely register. It is unknown what the total financial impact will be as it is expected that the penalty will encourage timely payment and late payments will be reduced.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

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