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

BILL #: HB 3785

RELATING TO: Consumer Protection

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

COMPANION BILL(S): SB 1620 (s)

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

- (1) BUSINESS REGULATION AND CONSUMER AFFAIRS YEAS 5 NAYS 0
- (2) GENERAL GOVERNMENT APPROPRIATIONS YEAS 8 NAYS 1
- (3)
- (4)
- (5)

I. SUMMARY:

This bill amends various consumer protection laws implemented by the Department of Agriculture and Consumer Services (DACS) to:

- Change the definition of "parent organization" for purposes of clarifying which entities are subject to regulation as a charitable organization.
- Change the current \$10 exemption for charitable organizations to a \$10 registration fee.
- Require charities raising less than \$25,000 annually to register with the DACS instead of filing a statement of exemption.
- Remove an obsolete reference from the dance studio act.
- Require telemarketing salespersons to disclose to the DACS if they have had adjudication withheld for a felony offense.
- Move from DACS to the Department of Banking and Finance the compilation of consumer complaint data regarding consumer collection agencies and the enforcement of the regulations of those agencies.
- Require business opportunity sellers to display their advertisement identification number on all their printed material.
- Authorize the DACS to impose a \$25 late registration renewal penalty for motor vehicle repair shops.
- Allow the Department of Revenue to share with the DACS certain confidential tax information the DACS needs to assist it in enforcing the motor vehicle repair act.
- Change advertising requirements on items being offered as "free."

The fiscal impact of the \$25 penalty on late motor vehicle repair shop annual registrations is indeterminate. The DACS believes that most repair shops will renew on time in lieu of paying the penalty fee. However, approximately 9,000 repair shops annually fail to register in a timely manner. Based on that number, the DACS could collect an additional \$225,000 annually in penalty payments.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

The Department of Agriculture and Consumer Services (DACS) has identified six consumer protection laws it believes would be more effective if statutory changes were made. Additionally, the DACS could enforce consumer protection more effectively if the Department of Revenue could share certain confidential information with the DACS.

Finally, there is no penalty for late renewal of a motor vehicle repair shop registration. The DACS expends numerous man-hours and money attempting to get these businesses to renew their registrations.

See Section II. E. SECTION-BY-SECTION RESEARCH for a detailed explanation of the present situation.

B. EFFECT OF PROPOSED CHANGES:

This bill amends various consumer protection laws implemented by the Department of Agriculture and Consumer Services (DACS) to:

- Change the definition of "parent organization" for purposes of clarifying which entities are subject to regulation as a charitable organization.
- Change the current \$10 exemption for charitable organizations to a \$10 registration fee.
- Require charities raising less than \$25,000 annually to register with the DACS instead of filing a statement of exemption.
- Remove an obsolete reference from the dance studio act.
- Require telemarketing salespersons to disclose to the DACS if they have had adjudication withheld for a felony offense.
- Move from DACS to the Department of Banking and Finance the compilation of consumer complaint data regarding consumer collection agencies and the enforcement of the regulations of those agencies.
- Require business opportunity sellers to display their advertisement identification number on all their printed material.
- Authorize the DACS to impose a \$25 late registration renewal penalty for motor vehicle repair shops.
- Allow the Department of Revenue to share with the DACS certain confidential tax information the DACS needs to assist it in enforcing the motor vehicle repair act.
- Change advertising requirements on items being offered as "free."

The fiscal impact of the \$25 penalty on late motor vehicle repair shop annual registrations is indeterminate. The DACS believes that most repair shops will renew on time in lieu of paying the penalty fee. However, approximately 9,000 repair shops annually fail to register in a timely manner. Based on that number, the DACS could collect an additional \$225,000 annually in penalty payments.

See Section II. E. SECTION-BY-SECTION RESEARCH for a detailed explanation of the effects of the proposed changes.

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?

No.

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

Yes. Business opportunity dealers would have to include their DACS issued advertising identification number on all their printed material.

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

No.

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?

None. The statutory transfer of the responsibilities from DACS to the Department of Banking and Finance is consistent with the current practice, therefore, the bill does not create or eliminate responsibilities, costs or powers to either department.

(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. A new late renewal fee of \$25 is assessed against any motor vehicle repair shop that does not timely file for registration renewal.

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

No.

- 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?

Yes. Motor vehicle repair shops that do not timely renew their registration will pay the cost of bringing them into compliance with the law.

4. Individual Freedom:

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

Yes. Businesses advertising items as "free" can decide how to print the conditions and obligations in a "clear and unambiguous" manner instead of having to print them in at least one-half the type size of the word "free."

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

Yes. Business opportunity sellers would have to print their advertisement identification number on all of their printed material.

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?

N/A

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. STATUTE(S) AFFECTED:

Sections 213.053; 496.404 - 496.406; 501.143; 501.607; 559.725; 559.805; 559.904; and 817.415, Florida Statutes.

E. SECTION-BY-SECTION RESEARCH:

Confidential Records

Section 1. Amends subsection 213.053 (7), F.S., to allow the Department of Revenue (DOR) to share with the DACS the names, addresses, and sales tax registration information from certain confidential records to assist the DACS in enforcing its consumer protection programs.

Currently, the Division of Consumer Services, DACS, shares its registration information on motor vehicle repair shops with the DOR to assist DOR in its regulatory efforts. The DOR, however, cannot reciprocate by sharing its information with the DACS due to confidentiality restrictions in the law. The DACS could provide more efficient and effective enforcement of the Motor Vehicle Repair Act and other consumer protection laws if it had access to the DOR information.

This bill allows the DOR to share names, addresses and sales tax registration information with the DACS to assist it enforce consumer protection laws, particularly those relating to motor vehicle repair shops.

Charitable Organizations

Section 2. Amends subsection 496.404 (16), F.S., to clarify the definition of "parent organization."

The current definition of parent organization as it relates to charitable organizations is unclear regarding which subsidiaries are included. This bill makes it clear that a parent organization includes its chapters, branches and affiliates.

Section 3. Amends subsection 496.405 (4), F.S., to convert the annual \$10 exemption from a registration fee to an annual \$10 registration fee for charitable organizations collecting less than \$25,000 annually.

Charitable organizations raising less than \$25,000 annually now file an exemption statement with DACS and pay \$10 to be exempt from registration. This bill requires charities to pay an annual \$10 registration fee instead of the current exemption fee.

Section 4. Amends section 496.406, F.S., to require charities raising less than \$25,000 annually to register with the DACS instead of filing a statement of exemption. This change is paired with the change made by Section 3 of the bill.

Charities raising less than \$25,000 per year currently file a letter of exemption with the DACS. This bill requires these charities to register with the DACS instead of filing the letter of exemption. The DACS will use its existing registration forms and list these charities in its Gift-Givers Guide if the change is adopted.

These charities would be required to provide some additional information, but at no additional cost. The DACS surveyed 48 affected charities regarding this change: 38 agree; 3 disagree; 7 had no opinion.

Dance Studios

Section 5. Amends subsection 501.143 (3), F.S., to delete an obsolete annual renewal date of October 1.

This change is strictly a clean-up of the statutes. In 1989, when regulations were first placed on ballroom dance studios, the act required them to register with the department by October 1, and annually thereafter. The October 1 registration requirement is obsolete since each new studio must register prior to engaging in business.

Telemarketing

Section 6. Amends subsection 501.607 (1), F.S., to require that a person applying for a telemarketing salesperson license to disclose to the DACS if he or she has had adjudication withheld for a felony offense.

Under current law, applicants for a telemarketing license must disclose, regardless of conviction, any previous arrest for, guilty or nolo contendere plea to, or current indictment for a felony offense. This bill adds disclosure of any instance in which adjudication was withheld for a felony offense. The change is consistent with disclosure changes made last session to other consumer protection laws.

Consumer Collection Practices

Section 7. Amends section 559.725, F.S., to move the consumer complaint process regarding debt collections from the DACS to the Department of Banking and Finance.

When the 1993 Legislature established state registration of consumer collection agencies and regulated their business practices, it required the DACS to maintain records of inquiries, correspondence and complaints involving those agencies. It also established the DACS as the enforcement agency for violations of the law.

However, the DACS contends that the Department of Banking and Finance has the expertise in this area and refers all complaints to that department. The DACS does not compile data on those complaints. This bill transfers the data compilation and enforcement provisions relating to consumer collection agencies from the DACS to the Department of Banking and Finance. The DACS requested this change to comply with its current practices.

Business Opportunities

Section 8. Amends subsection 559.805 (2), F.S., to require business opportunity sellers to include their advertisement identification number, issued by the DACS, in all written materials.

The current law only requires business opportunity sellers to disclose their advertisement identification number to the company receiving an advertisement. The number is issued by the DACS as proof that the seller has filed the required disclosure statements and posted bond. The bill requires all business opportunity sellers to prominently display their advertisement identification number on all of their documents to provide consumers with a way of identifying those sellers who are registered with the DACS.

Motor Vehicle Repair Shops

Section 9. Amends subsection 559.904 (8), F.S., to impose a \$25 late fee for untimely registration renewal.

Currently, the law does not impose any penalty for late renewal of a motor vehicle repair shop registration while the DACS expends numerous man-hours and money attempting to get these businesses to renew their registrations. In FY 1996-97, the DACS took the following actions attempting to get these shops to renew:

1. Mailed 20,888 renewal notices to all shops prior to renewal deadline.
2. Mailed 9,373 subsequent renewal letters to shops not renewed by deadline.
3. Mailed 3,150 certified renewal letters to shops still not renewed.
4. Made approximately 1,000 subsequent telephone calls to shops not renewed after certified letter.
5. Issued 500 investigator assignments following the telephone calls.

This data implies that 500 motor vehicle repair shops that did not renew their registrations received three renewal letters, one telephone call and one personal contact from the DACS. The DACS estimates a revenue shortfall in this program in FY 1997-98 of \$11,641.

This bill authorizes the DACS to impose a \$25 late registration fee on motor vehicle repair shops. The DACS believes most shops will comply with the law to avoid paying the penalty. If this bill does cause most repair shops to renew on time, the DACS should be able to make up its revenue shortfall from administrative cost savings.

Florida Free Gift Advertising Law

Section 10. Amends subsection 817.415 (5), F.S., to change the current type size requirements for certain information relating to advertisements of "free" merchandise and replace it with a requirement that the wording be "clear and unambiguous."

Current law requires that any conditions or obligations that restrict the acceptance of an item that is advertised as "free" appear with equal prominence and in a type size that is at least one-half the size of the word "free." The Florida Retail Federation states, in its request for this change, that the law is "...burdensome to businesses that advertise in several states. Those businesses are having to redo their ads to comply with Florida's restrictive law, and are not able to use ads that comply with Federal Trade Commission (FTC) guidelines produced for use in other states."

The FTC guidelines (16 CFR 251) suggest that advertisements for "free" items should "...set forth clearly and conspicuously at the outset of the offer ... all of the terms, conditions and obligations should appear in close conjunction with the offer..." This bill incorporates part of those guidelines by requiring that such advertisements in Florida set forth the conditions clearly and unambiguously.

Section 11. Provides that the act shall take effect October 1 of the year in which it is enacted.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Indeterminate.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

Indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Motor vehicle repair shops will have to pay a new \$25 penalty for failure to renew their annual registrations on time.

2. Direct Private Sector Benefits:

Motor vehicle repair shops will not have to face potential increases in their annual registration fees to cover the DACS' cost in enforcing the timely registration renewal provisions.

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

N/A

D. FISCAL COMMENTS:

The DACS anticipates no increased revenue from the \$25 penalty on motor vehicle repair shops that do not renew their annual registrations on time. The DACS contends that those shops will meet the renewal deadline instead of paying the penalty. If this bill brings renewal times into compliance, the DACS should be able to make up from administrative cost savings its revenue shortfall of \$11,641 for this program. On the other hand, if all of the FY 1996-97 late renewals continue to file late renewals, the DACS could collect over \$225,000 annually in late fees.

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 counties or municipalities have to raise revenue in the aggregate.

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

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

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Four amendments were adopted by the House Committee on General Government Appropriations at its April 2, 1998, meeting as follows:

Amendment 1: Changes language in section 817.415, F.S., dealing with advertisements in the Florida Free Gift Advertising Law from requiring a “clear and unambiguous” statement to a “clear and conspicuous” statement in the advertisement of free items to conform with federal law.

Amendment 2: Amends section 496.403, F.S., to clarify that persons or organizations who solicit or act as professional fundraising consultants solely on the behalf of bona fide religious institutions, educational institutions, and governmental entities are exempt from registering with the DACS under the “Solicitation of Contributions Act.”

Amendment 3: Amends section 501.2101, F.S., to allow the Department of Legal Affairs to deposit fees recovered under the “Florida Deceptive and Unfair Trade Practices Act” into the Legal Affairs Revolving Trust Fund.

Amendment 4: Removes Section 7 which moves the consumer complaint process regarding debt collections from the DACS to the Department of Banking and Finance from the bill.

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION AND CONSUMER AFFAIRS:

Prepared by:

Legislative Research Director:

Rebecca R. Everhart

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AS REVISED BY THE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS:

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