

**STORAGE NAME:** h1061.brc  
**DATE:** February 26, 1999

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
BUSINESS REGULATION AND CONSUMER AFFAIRS  
ANALYSIS**

**BILL #:** HB 1061 (PCB BRCA 99-01)

**RELATING TO:** Consumer Protection

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

**COMPANION BILL(S):**

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

- (1) BUSINESS REGULATION AND CONSUMER AFFAIRS YEAS 8 NAYS 0
  - (2)
  - (3)
  - (4)
  - (5)
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**I. SUMMARY:**

The bill amends various consumer protection laws relating to charitable solicitations, home solicitation sales, telemarketing, pawnbrokers, sale of business opportunities and motor vehicle repair shops that are implemented by the Department of Agriculture and Consumer Services (DACS). The thrust of these statutes is to require information disclosure and remedies for violations. The bill is designed to clarify and enhance several of these provisions.

The bill focuses on disclosing criminal histories occurring within the last 10 years and background information for persons operating under their respective statutes.

There is no anticipated fiscal impact on state or local governments. Applicants for an initial pawnbroker license would incur the costs of the additional requirement of federal processing of fingerprints for a national criminal history check. This cost is estimated to be an additional fee of \$39.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

The Department of Agriculture and Consumer Services (DACS) has traditionally been the clearinghouse for consumer complaints, as well as, the administrator of programs which regulate various business activities. The stated purpose of its consumer protection program is "to protect Florida's consumers from deceptive and unfair business and trade practices and from unsafe, harmful, and inferior products and services" (DACS PB<sup>2</sup> budget document as approved by the Office of the Governor). Its requested FY 1999-00 consumer protection budget totals \$22,373,571 and 417 FTE.

Although its specific regulatory provisions vary, the programs share several requirements. Regulated businesses must register with the DACS and must disclose certain information to their customers. The DACS has identified several statutory provisions which it feels need to be clarified, updated or specifically stated in order to enhance its ongoing consumer protection capability.

**Solicitation of Contributions**

Charitable organizations or sponsors that engage in solicitation activities in Florida must register with the DACS and provide certain financial and background information, as required by chapter 496, F.S. This law does not apply to religious institutions, educational institutions or governmental agencies. This law also does not apply to political contributions solicited in compliance with the election laws of this state. Registration fees are based on the amount of contributions which are received and range from \$10 to \$400. Fundraising consultants and professional solicitors must also register with the DACS.

The initial registration documents must contain several disclosures including whether the registrant has engaged in any unlawful solicitation practices. There are no current disclosure requirements relating to background criminal activity which has occurred outside the scope of their charitable solicitation activities.

Additionally, current provisions do not prohibit solicitations by persons with criminal histories, except for professional solicitors whose history includes a crime arising from the conduct of charitable solicitation within the last 5 years.

The number of registrants include: Charitable Organizations - 5,139; Fundraising Consultants - 154; Professional Solicitors - 84.

**Home Solicitation Sales**

The provisions of sections 501.021 - 501.055, F.S., apply to home solicitation sales. These door-to-door sales of goods and services in excess of \$25 were first regulated in Florida in 1970. DACS is no longer involved in the permitting process as these activities are currently regulated at the local level through solicitation permits issued by circuit court clerks.

Statutory provisions provide for permit application requirements, prohibited practices, certain duties and responsibilities of the seller, and certain duties of the buyer.

Section 501.025, F.S., provides for a buyers right to cancel a home solicitation sale within three days after agreeing to the transaction. This section also provides for the disclosure of this right of cancellation on certain transaction documents relating to the sale.

## **Telemarketing**

Part IV of chapter 501, F.S., is the "Florida Telemarketing Act". With exceptions, these provisions provide that commercial telephone sellers and salespersons must be licensed by the DACS. The contents of the application are specified and include background information which must be provided. This part also requires certain disclosures be made by licensees when soliciting, and provides for certain terms to be included in the sales contract, including the seller's policies for cancellation and refunds. Section 501.616, F.S., specifies unlawful acts and practices. Persons who are exempt from the provisions of this part must obtain an affidavit of exemption from the DACS.

In addition to Florida law, the Telemarketing and Consumer Fraud Abuse Prevention Act, 47CFR64.1200, addresses restrictions on telephone solicitations at the federal level. This federal act includes a provision which prohibits solicitation calls from being made between the hours of 9:00 p.m. and 8:00 a.m. There is no similar prohibition in the Florida act.

Neither the federal act nor Florida law prohibits "call blocking" by solicitors. This practice includes the use of a device to intentionally prevent the transmission of the solicitor's telephone number to the location of the person being called. The person receiving the call could then not display this information electronically if they were using caller identification equipment.

The number of licensees currently totals: sellers - 25; salespersons - 200.

## **Pawnbrokers**

Pawnbrokers must annually obtain a license from the DACS pursuant to the provisions of chapter 539, F.S., and pay an annual fee of \$300. To be eligible for a license, the applicant must:

- (1) be of good moral character;
- (2) have a net worth of at least \$50,000 or file with the department a surety bond, irrevocable letter of credit, or a certificate of deposit in the amount of \$10,000;
- (3) not have been convicted of a felony within the last 10 years; and
- (4) not have been convicted and not be acting as a beneficial owner for someone who has been convicted of a crime, within the last 10 years, that the department finds directly relates to the duties and responsibilities of a pawnbroker.

The current statutes do not specify what documentation is required for an applicant to submit in order for the DACS to determine that the applicant's net worth exceeds \$50,000. Additionally, the current statutory language allows the DACS to determine what crimes relate to the duties and responsibilities of a pawnbroker for purposes of qualifying for a license. The DACS has indicated that this language does not provide clear background standards of conduct to deny or approve a license.

At the time of application, applicants must provide a set of fingerprints for each owner or beneficial owner, officer, director, or operator. The Florida Department of Law Enforcement (FDLE) conducts the in-state fingerprint background investigations. There is no current requirement for a national background check.

In addition to administrative penalties, criminal penalties are currently provided for violations. Operating without an appropriate license is a third degree felony and a licensee who willfully violates the provisions, or willfully records incorrect information, is subject to a first degree misdemeanor.

The current number of licenses totals: 1,279

### **Business Opportunities**

Pursuant to chapter 559, part VIII, F.S., sellers of business opportunities must annually file with the DACS a copy of the disclosure statement required pursuant to s. 559.803, F.S., prior to placing advertising, or making an offer to sell or soliciting to buy a business opportunity in this state. Among the disclosures which are required, is a statement of whether the seller and management have been convicted of a felony for fraud or several other categories of felonies relating to property. The list does not include a crime for theft or larceny.

Sellers of business opportunities must file with the DACS a list of independent agents who engage in the sale of business opportunities on behalf of the seller in this state. There is no current requirement for sellers to list their own officers or management personnel with the DACS.

The number of filings for fiscal year 97-98 totaled 1,406.

### **Motor Vehicle Repair**

Businesses engaged in the maintenance, modification and repair of motor vehicles, and diagnostic work incident thereto, are required to register annually with the DACS, as provided in chapter 559, part IX, F.S. This part requires written repair estimates, disclosure statements, record keeping, and bonding for claims. Unlawful acts and practices are specified and remedies are provided.

The definition of "motor vehicle" includes automobiles, trucks, buses, recreational vehicles and other motor powered vehicles. The definition specifically excludes certain classes of vehicles such as mobile homes, watercraft and aircraft. The definition does not specifically exclude construction type motor vehicle equipment.

The number of registrations totals 21,015.

## **B. EFFECT OF PROPOSED CHANGES:**

The bill amends various consumer protection laws implemented by the Department of Agriculture and Consumer Services (DACS) for clarity or to improve implementation.

### **Solicitation of Contributions**

The bill amends s. 496.404, F.S., to exclude from the definition of "contribution" funds which are transferred between charitable organizations for purposes of removing this revenue from the calculation of fees due to the DACS. These funds would then not be considered more than once when calculating fees to be paid to the DACS.

A not-for-profit organization must qualify with the IRS for tax purposes. The bill requires that a not-for-profit organization must register with the DACS, as well, for its activities not to be considered a solicitation.

The bill amends s. 496.405, s. 496.409, and 496.410, F.S., to require additional information be submitted in the registration statement. This information would have to be supplied by charitable organizations, their sponsors, professional fundraising consultants, and professional solicitors. The applicant would have to disclose whether management and executive personnel have criminal backgrounds arising within the last 10 years relating to fraud, theft, larceny, embezzlement, fraudulent conversion (unauthorized act which deprives an owner of his or her property), misappropriation of property, any crime relating to a solicitation, or if they have been enjoined from violating any charitable solicitation law.

The bill also prohibits employees of these entities from soliciting contributions if the acts listed above have occurred, or the person has been incarcerated for these acts, within the last 10 years.

### **Home Solicitation Sales**

Documents (evidence of indebtedness) resulting from a home solicitation sale must contain a notification of the buyer's right to cancel the transaction "until midnight of the third business day after the day on which the buyer signs an agreement or offer to purchase." The bill specifies that a mortgage is not considered an instrument which would require the cancellation notice if other documents create the responsibility to pay for the goods or services. If the mortgage instrument includes the promise to pay, the mortgage would be required to include the notice statement.

### **Telemarketing**

The bill amends s. 501.616, F.S., to create two additional unlawful acts. A commercial telephone seller or salesperson could not make solicitation calls between the hours of 9:00 p.m. and 8:00 a.m.

Additionally, sellers or salespersons could not deliberately use a device on their phone line to inhibit the transmission of their telephone number to the phone system of the called party.

### **Pawnbrokers**

The bill amends s. 539.001, F.S., to clarify that the life of a pawnbroker license is one year and must be renewed annually. The annual \$300 fee is due at the time of renewal. The bill further specifies that the applicant must pay the one-time costs for fingerprint checks.

The language of this section, relating to criminal activity for purposes of licensure eligibility, allows the DACS to determine which crimes relate to the business of pawnbrokering which the DACS then could use to deny licensure. The bill amends this language to specify that to be eligible for a license the applicant may not have been incarcerated within the last 10 years or have a criminal background, arising within the last 10 years, relating to property, embezzlement or other fraudulent or dishonest dealing. Also, the applicant may not act as a beneficial owner for someone who has a criminal background in these areas.

The bill specifies the documentation to be submitted with the application for licensure relating to the applicant's net worth to include: a CPA prepared financial statement; a documented affidavit attesting the applicant's net worth to be at least \$50,000; or if a corporation, the most recent tax return.

Section 539.001(5), F.S., is amended by the bill to establish a fee of \$300, rather than an amount of up to \$300. The bill further instructs the Florida Department of Law Enforcement to process fingerprints at the federal level, in addition to state processing.

Section 539.001(6), F.S., currently provides that a license may be suspended or revoked if the DACS determines that a condition now exists which could have been used to deny the initial issuance. The bill adds similar language to state that if the licensee or employees no longer meet the eligibility requirements for a license, then the DACS may suspend or revoke the license.

The bill specifies that clerical and recordkeeping errors are not considered willful and , therefore, would not subject a licensee to penalties. Clerical errors, and repeated patterns of clerical errors, may subject the licensee to certain cited administrative sanctions. [see comments section of this analysis]

### **Sale or Lease of Business Opportunities**

The bill amends s. 559.803, F.S., relating to the sale or lease of business opportunities, to require the disclosure of criminal background activity, regardless of adjudication, which has occurred within the last 10 years, rather than the current specification of 7 years. Whether the person has been incarcerated within the last 10 years for these activities would also have to be disclosed. The bill also adds theft and larceny to the list of offenses to be disclosed.

A seller of a business opportunity would be required to disclose, as a part of the required annual disclosure document, identity information relating to officers and employees who are involved with the seller's business activities in Florida.

### **Repair of Motor Vehicles**

For purposes of the Motor Vehicle Repair Act, the bill amends the definition of "motor vehicle" to specify that it does not include road construction and earth moving type equipment.

The bill requires the posting of a sign indicating that a motor vehicle repair shop has been closed by the DACS when the registration has been suspended or revoked or it is determined that the shop is operating without a registration.

### **Technical Cross Reference**

The bill corrects a cross-reference in chapter 741, F.S., relating to domestic relations, as a result of the bill renumbering the definitions in chapter 496, F.S., relating to solicitation of contributions.

## **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?**

The bill addresses penalties as they relate to clerical and recordkeeping errors made by pawnbrokers. Repeated clerical errors could subject a licensee to administrative penalties "as determined by the agency". The DACS would be expected to adopt rules to establish guidelines for any penalties which may be imposed for these repeated patterns of errors.

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

The chapters of the Florida Statutes which are amended by the bill currently require, primarily, informational filings and disclosures as a means of protecting the consuming public. The DACS is responsible for overseeing these activities. Due to the current requirements that these industries file with the DACS, the additional information would have minimal impact on their respective workloads and bottom lines.

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

N/A

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?

The current fees for pawnbrokers are addressed by statute and are established to be an amount not to exceed \$300. The DACS has established the fee to be \$300. The bill establishes the statutory fee to be exactly \$300, thereby precluding the DACS from reducing the fee without a statutory amendment.

Applicants for an initial pawnbroker license would incur the costs of the additional requirement of federal processing of fingerprints for a national criminal history check. This cost is estimated to be an additional fee of \$39 and would apply to new applicants for a license.

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?

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?

The bill addresses several disclosure statutes to require notifying the DACS of past criminal activity. In addition, the bill would prohibit the DACS from registering a person with a criminal background. This prohibition would apply to employees of charitable organizations, charitable sponsors, and professional fundraising consultants. A professional solicitor would be prohibited from registering if the person has a criminal history occurring within the last 10 years rather than the current 5 year disqualification period.

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 496.404; 496.405; 496.409; 496.410; 496.420; 501.025; 501.604; 501.616; 539.001; 559.803; 559.805; 559.815; 559.903; 559.904; and 741.0305, Florida Statutes.

**E. SECTION-BY-SECTION ANALYSIS:**

**Solicitation of Contributions**

Section 1. Amends s. 496.404, F.S., to exclude from the definition of "contribution" funds which are transferred between charitable organizations for purposes of excluding this revenue from the calculation of fees by the DACS. Clarifies the definition of "solicitation" to exclude charitable organizations which are registered with the DACS when a person is applying for a grant or award and the request for the grant or the award is not considered a solicitation.

Section 2. Amends s. 496.405, F.S., to require charitable organizations or their sponsors to disclose certain criminal-related activities which have occurred within the last 10 years and the disposition of criminal charges. Prohibits employees or sponsors of a charitable organization from soliciting if they have a history of the cited criminal activity within the last 10 years.

Section 3. Amends s. 496.409, F.S., to require professional fundraising consultants to disclose certain criminal background activities which have occurred within the last 10 years and the disposition of criminal charges. Prohibits consultants from consulting if they have a history of the cited criminal activity within the last 10 years.

Section 4. Amends s. 496.410, F.S., to require professional solicitors to disclose certain criminal background activities which have occurred within the last 10 years and the disposition of criminal charges. Prohibits a person from acting as a solicitor if the person has a history of the cited criminal activity within the last 10 years.

Section 5. Amends s. 496.420, F.S., to correct technical references.

### **Home Solicitation Sales**

Section 6. Amends s. 501.025, F.S., to exclude certain mortgages from the requirement that documents include notification of the buyer's right to cancel the home solicitation sale within three days.

### **Telemarketing**

Section 7. Amends the introductory paragraph of s. 501.604, F.S., to subject persons and entities, which are otherwise exempt from the provisions of the telemarketing act, to the prohibitions created in Section 8 of the bill.

Section 8. Amends s. 501.616, F.S., to prohibit telephone solicitation calls between the hours of 9:00 p.m. and 8:00 a.m. Prohibits the use of a device to intentionally prevent the transmission of a telephone solicitor's telephone number to the person who is called.

### **Pawnbrokers**

Section 9. Amends s. 539.001, F.S., to clarify that a pawnbroker license is valid for one year, and to require the applicant to pay the one-time costs for federal background checks. Clarifies what criminal activities relating to pawnbrokering would apply for purposes of denying licensure, such as theft or dealing in stolen property. Exempts certain clerical and recordkeeping errors from criminal penalties, and cites administrative sanctions which may apply to clerical errors.

### **Sale or Lease of Business Opportunities**

Section 10. Amends s. 559.803, F.S., to require a seller of a business opportunity to disclose to a prospective purchaser additional criminal convictions which have occurred within the last 10 years.

Section 11. Amends s. 559.805, F.S., to require the seller of a business opportunity to file with DACS information relating to officers and employees.

Section 12. Reenacts s. 559.815, F.S., to assure this penalty section remains in effect after the cross-reference is amended by the bill.

### **Repair of Motor Vehicles**

Section 13. Amends s. 559.903, F.S., to clarify that the definition of "motor vehicle" does not include road construction and earth moving type equipment.

Section 14. Amends s. 559.904, F.S., to require the posting of a sign indicating that a motor vehicle repair shop has been closed by the DACS when the registration has been suspended or revoked or it is determined that the shop is operating without a registration. Provides penalties for violations.

### **Technical Cross Reference**

Section 15. Amends s. 741.0305, F.S., to correct a cross-reference in chapter 741, F.S., relating to domestic relations, as a result of the bill renumbering the definitions in chapter 496, F.S., relating to solicitation of contributions.

**Effective Date**

Section 16. Provides that the act shall take effect “upon becoming a law”.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

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:

Applicants for an initial pawnbroker license would incur the costs of the additional requirement of federal processing of fingerprints for a national criminal history check. This cost is estimated to be an additional fee of \$39 and would apply to new applicants for a license.

2. Direct Private Sector Benefits:

N/A

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

N/A

D. FISCAL COMMENTS:

Due to the fact that the substantive provisions of the bill are designed to clarify current language or practices, a fiscal impact beyond the pawnbroker fingerprint fees is not anticipated.

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:

Chapter 539, F.S., relates to pawnbrokers. The chapter is comprised of only three sections. Section 539.001 establishes the licensing, regulatory, and penalty framework for implementation by the DACS.

The language of the bill addressing penalties for violations by pawnbrokers appears to raise the question of what penalties apply to recordkeeping and **clerical** errors. The bill appears to exempt "willful" recordkeeping and **clerical** errors from penalties

Subsection (17) of this section currently provides criminal penalties for two categories of violations: 1) operating without a license and 2) willful violations of any provision of the pawnbroker statute or willful false entries in any record.

The bill excludes recordkeeping and **clerical** errors from the "criminal" sanctions of subsection (17) by stating that recordkeeping and **clerical** errors are not a willful violation of this section. By referring to this "section", the language would also exclude willful recordkeeping and **clerical** errors from other penalties which may be imposed other than criminal penalties.

The bill also states that **clerical** errors are subject to administrative penalties of subsection (7) of section 539.001, F.S. Administrative sanctions would apply for: 1) operating in violation of this chapter and 2) making a material false statement in any application, document or record.

The bill further addresses **clerical** errors by providing that repeated patterns of **clerical** errors would subject the pawnbroker to administrative remedies of subsection (6) of section 539.001, F.S. These penalties include suspension or revocation for violations which occur due to: 1) knowingly [willfully] violating this section; 2) the failure to use due care to avoid violating this section; and 3) conspiracy to violate this section.

The language of the bill cites specific administrative penalties for **clerical** errors. Unlike **clerical** errors, the bill does not specifically reference administrative penalties which may apply to recordkeeping errors or patterns of repeated recordkeeping errors. This reference to **clerical** and

non-reference to recordkeepng raises concerns whether administrative penalties would apply to recordkeepng errors and to repeated patterns of recordkeeping errors. Therefore, the language of the bill may inadvertently remove all authority to impose sanctions for violations as they relate to willful recordkeeping errors.

The bill authorizes the DACS to make the determination as to which administrative penalties would apply to **clerical** errors and to determine the nature of repeated patterns of **clerical** errors. This authority should include specific statutory language for DACS to adopt rules to implement this responsibility.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The PCB was amended by the committee prior to the favorable recommendation for introduction.

Amendment 1 includes reference to incarceration as it relates to eligibility requirements for pawnbrokers which had been inadvertently left out of the PCB.

Amendment 2 creates an additional prohibited act for telemarketers to make a commercial telephone solicitation between the hours of 9:00 p.m. and 8:00 a.m.

Amendment 3 creates an additional prohibited act for telemarketers by prohibiting a seller or salesperson from making a telephonic solicitation if their phone line is deliberately equipped with a call blocking device to prevent their phone number from being transmitted to the called party.

Amendment 4 addresses home solicitation sales and specifies that a mortgage instrument would not be required to include the notice of cancellation right of the buyer if the disclosure were included in the other appropriate documents which create the responsibility for payment for the goods or services.

Amendment 5 specifies that clerical and recordkeepng errors committed by a pawnbroker are not considered willful and , therefore, would not subject a licensee to penalties. Clerical errors, and repeated patterns of clerical errors, may subject the licensee to certain administrative sanctions.

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION AND CONSUMER AFFAIRS:

Prepared by:

Staff Director:

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Alan W. Livingston

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Rebecca R. Everhart