

STORAGE NAME: h1829.brc

DATE: March 8, 2000

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

BILL #: HB 1829 (PCB BRCA 00-05)

RELATING TO: Consumer Protection

SPONSOR(S): Committee on Business Regulation & Consumer Affairs and Rep. Ogles

TIED BILL(S): None

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

(1) BUSINESS REGULATION & CONSUMER AFFAIRS YEAS 7 NAYS 0

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I. SUMMARY:

The bill amends various consumer protection laws relating to health studios, 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 does not appear to have a significant fiscal impact on state or local governments. Increases in revenues to the DACS' General Inspection Trust Fund could be anticipated as a result of increased registration fees for minor repair shops. The DACS estimates these revenues to approach \$27,000 annually.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

Lower Taxes - The bill addresses the regulation of motor vehicle repair shops by removing the distinction between shops conducting only minor repairs and other repair shops. Those shops conducting only minor repairs would continue to be required to register with the DACS and comply with the provisions of the motor vehicle repair act. These shops would be required to pay an increased annual registration fee. It is estimated that the shop's annual fee will increase from \$25 to \$50. Fees could also increase to an amount greater than the \$50 fee based on the number of employees of the shop. The DACS does not currently have employee information for minor repair shops and cannot, therefore, accurately estimate the additional registration fee for each shop.

B. 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 PB² budget document as approved by the Office of the Governor)

Although its specific regulatory provisions vary, the programs share several requirements. Regulated businesses must register with the DACS, pay registration fees and 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.

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., to mean "any person who is engaged in the sale of services for instruction, training or assistance in a program of physical exercise or in the sale of services for the right or privilege to use equipment or facilities in furtherance of a program of physical exercise." Health studios must register with the DACS. The law also addresses bonding, contract provisions and penalties.

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Currently, when a consumer contracts with a health studio for services, the consumer may cancel the membership contract under certain circumstances. If the consumer cancels the contract within three days of its execution, the health studio is required to refund the consumer's money within 30 days.

The consumer may also cancel a contract if the studio goes out of business or moves its location. Additionally, the consumer may cancel for health related reasons. The statutes are silent as to any time period for refunding the consumer's money under these three cancellation provisions.

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.

Business opportunity means the sale or lease of goods or services to an individual to enable that person to start a business where a fee in excess of \$500 is charged and the provider: represents assistance in securing a location will be provided; will purchase goods which are created from the goods or services provided; guarantees in writing that the provider will refund monies paid if the individual does not recognize income in excess of the charges for the business opportunity; and will provide an operational program to enable the individual to derive income.

Written disclosures which are required to be made include: information about the seller and management personnel; company background and operations; details of the actual services to be provided; financial data; and training regimens which may be required. If the seller identifies sales or earnings which may be reached through the business opportunity, the disclosure must include information regarding the total number of persons who have achieved anticipated sales or earnings levels and the number of recent purchasers of the business opportunity.

If the provider guarantees in writing that the provider will refund monies paid if the individual does not recognize income in excess of the charges for the business opportunity, then sellers of business opportunities must file a bond, trust account, or guaranteed letter of credit in an amount of not less than \$50,000 with the DACS.

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 and pay an incremental registration fee based on the number of employees, 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. These provisions comprise the "Florida Motor Vehicle Repair Act."

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.

This part also defines "minor repair services" to include motor vehicle repairing and service which may be performed by persons who do not have the skill and knowledge required of a

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motor vehicle mechanic. Shops which only conduct minor repairs pay an annual \$25 registration fee.

C. EFFECT OF PROPOSED CHANGES:

The bill amends various consumer protection laws implemented by the DACS for clarity or to improve implementation.

Health Studios

The bill amends s. 501.017, F.S., to require a health studio to refund a consumer's money within 30 days if the consumer lawfully cancels a contract when a studio goes out of business, changes location, or for health reasons on the part of the consumer.

Business Opportunities

The bill amends s. 559.803, F.S., to require business opportunity providers to include additional information in the required disclosures. The bill requires the provider to list within the disclosure the number of persons who purchased the business opportunity within the past three years and disclose ten previous persons who have purchased the business opportunity from the provider who are geographically closest to the potential purchaser. These requirements would apply when the provider does not make reference to potential sales and earnings.

The bill amends s. 559.807, F.S., to revise the security claim procedures to allow claim procedures to be governed by chapter 120, F.S., the Administrative Procedures Act, through DACS. The bill also replaces a certificate of deposit for a trust account to be used as security in lieu of a bond or guaranteed letter of credit. The current trust account option has never been utilized by an applicant under the provisions of this part.

Motor Vehicle Repair

The bill repeals s. 559.903, F.S., to delete the definition of the term "minor repair service" as it relates to motor vehicle repair. It also amends sections 559.904 and 559.905, F.S., to delete several references to the term minor repair. These deletions remove the distinction between shops conducting only minor repairs and other repair shops. Those shops conducting only minor repairs would continue to be required to register with the DACS and comply with the provisions of the motor vehicle repair act. These shops would be required to pay an increased annual registration fee. It is estimated that the shop's annual fee will increase from \$25 to \$50. Fees could also increase to an amount greater than the \$50 fee pursuant to the current schedule of fees which is based on the number of employees of the shop.

The bill further amends s. 559.904, F.S., to require copies of a shop's estimate and invoice forms be submitted to the DACS as a part of the registration application. The authority of the DACS to revoke a registration is also clarified.

The bill further amends s. 559.905, F.S., to require, as a part of the written estimate, that the shop disclose any charges for miscellaneous shop supplies or waste disposal charges.

D. SECTION-BY-SECTION ANALYSIS:

Health Studios

Section 1. Amends s. 501.017, F.S., to require a health studio to refund a consumer's money within 30 days when the consumer cancels a contract pursuant to statutory authority.

Business Opportunities

Section 2. Amends s. 559.803, F.S., to require that the disclosure statement include the number of persons who have purchased the business opportunity within the past three years and the ten previous persons who have purchased the business opportunity from the provider who are geographically closest to the prospective purchaser.

Section 3. Amends s. 559.807, F.S., to allow security claim procedures to be processed through the DACS and to allow a certificate of deposit to be used as a security option.

Motor Vehicle Repair

Section 4. Amends s. 559.904, F.S., to delete provisions relating to minor repairs and to require copies of a motor vehicle repair shop's estimate and invoice forms be submitted to the DACS as part of the registration application.

Section 5. Amends s. 559.905, F.S., to require the repair shop to disclose, as a part of the written estimate, any charges for miscellaneous shop supplies or waste disposal charges.

Section 6. Amends s. 559.9221, F.S., to delete references to minor repair in relation to the composition of the Motor Vehicle Repair Advisory Council and to delete no longer necessary language relating to the initial appointment of members to the advisory council.

Section 7. Amends s. 325.202, F.S., to correct a reference to the definition of motor vehicle repair shop.

Section 8. Amends s. 325.212, F.S., to correct a reference to the definition of motor vehicle repair shop.

Section 9. Repeals s. 559.903(5), F.S., relating to the definition of minor repair service.

Section 10. Provides that the act shall take effect October 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. <u>Revenues:</u>	2001-02	2002-03
Department of Agriculture and Consumer Services General Inspection TF	\$26,875	\$26,875

2. Expenditures:

Expenditures are anticipated to be absorbed within current budgeting as minor repair shops are currently registered with the DACS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The provisions of the bill do not address or impact local government revenues.

2. Expenditures:

The bill does not require local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill deletes the definition of the term "minor repair service." The bill also deletes several references to the term minor repair in the statutes. These deletions remove the distinction between shops conducting only minor repairs and other repair shops. Those conducting only minor repairs would be required to register with the DACS and comply with the provisions of the motor vehicle repair act, including paying appropriate fees.

D. FISCAL COMMENTS:

The DACS states "the registration fee for a minor shop is currently \$25; for all other shops, the fees range from \$50 to \$300 depending on the number of employees in the shop. As of February 8, 2000, there were 1,075 shops registered as minor shops. This number has decreased significantly over the past few years... It is unknown what is the average number of employees working in the minor shops, therefore, there is no way of estimating the additional registration fees that will be generated."

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 take an action requiring the expenditure of funds.

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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 state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION & CONSUMER AFFAIRS:

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