

STORAGE NAME: h1829.jud

DATE: March 30, 2000

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
JUDICIARY
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
 - (2) JUDICIARY
 - (3) FINANCE & TAXATION
 - (4) GENERAL GOVERNMENT APPROPRIATIONS
 - (5)
-

I. SUMMARY:

The bill amends various consumer protection laws relating to health studios, sale of business opportunities and motor vehicle repair shops regulated 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, conform and enhance several of these provisions.

The bill will have a significant positive fiscal impact on state government.

The bill has an effective date of October 1, 2000.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1. Less Government Yes No N/A
2. Lower Taxes Yes No N/A

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.

3. Individual Freedom Yes No N/A
4. Personal Responsibility Yes No N/A
5. Family Empowerment Yes No N/A

B. PRESENT SITUATION:

The Department of Agriculture and Consumer Services (DACS) is the clearinghouse for consumer complaints and 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)

The DACS has identified several statutory provisions which it feels need to be clarified or updated 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.

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. Chapter 501, F.S., is silent as to the 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.

A "business opportunity" is defined as 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 provides an operational program to enable the individual to derive income.

Written disclosures which are required 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 it 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. This security must be in favor of the department. Any person who is damaged by a violation of ss. 559.80-559.815 or by breach of contract or related obligation by the business opportunity may bring an action on the security to recover damages, but the aggregate liability of the surety or trustee shall be only for actual damages and may not exceed the amount of the security.

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. The law specifies unlawful acts and practices and provides remedies for violations. 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

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

C. EFFECT OF PROPOSED CHANGES:

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. This conforms ss. 501.017(1)(b) and (d) to s. 501.017(1)(a).

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 conform them to the provisions of s. 559.929, F.S. The security may be in the form of a bond, certificate of deposit, or letter of credit, and must be in the favor of the department for the use and benefit of a person who is injured by the fraud, misrepresentation, breach of contract, financial failure, or for any violation of Part VIII of Chapter 559, F.S. An injured person may initiate an action at law in civil court against the business opportunity, but the security is not subject to enforcement except through administrative action involving the department. A civil judgment may serve as prima facie evidence of the value of the claim against the security in the administrative proceeding however. The bill contains legislative intent regarding the application of the security under the department's authority, and provides that the security may be open to successive claims but the aggregate amount of the claims may not exceed the amount of the security.

Motor Vehicle Repair

The bill repeals s. 559.903, F.S., to delete the definition of the term "minor repair service," which will remove the distinction between shops conducting only minor repairs and other repair shops. It also conforms ss. 559.904 and 559.905, F.S., in that regard. Those shops conducting only minor repairs will be required to register with the DACS and comply with the provisions of the Motor Vehicle Repair Act. However, these shops will be required to pay an increased annual registration fee. DACS estimates that the shops' annual fee will increase from \$25 to \$50. These fees could also increase beyond \$50 under the current schedule of fees which is based on the number of employees of a 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 the disclosure statement include the number of persons who have purchased the business opportunity within the past three years and the names, addresses and phone numbers of 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 conform that section to s. 559.929, F.S. It allows a certificate of deposit to serve as a security instead of a trust account, provides for a right of action against that security, and makes clear that the security will be amenable and enforceable only in administrative proceedings involving DACS.

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
Dept. 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.” This will have the effect of increasing the registration fees for these entities from \$25 to at least \$50. 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.

D. FISCAL COMMENTS:

According to DACS, as of February 8, 2000, there were 1,075 shops registered as minor repair shops. This number has decreased significantly over the past few years, and many of what are currently classified as “minor repair” shops are doing sophisticated repair work. The average number of employees working in the minor shops is unknown, therefore, there is no way of estimating the additional registration fees that will be generated. However, the bill is supported by the Florida automotive repair industry.

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.

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:

The requirement that business opportunities disclose the number of purchasers for a 3 year period and the names and contact information for 10 persons who have purchased the product and who live near a potential purchaser may impinge upon a business owner's interest in trade secrets. Customer lists and contact information are often protected as trade secrets. However, by making portions of customer lists publicly available through the disclosures required by the bill, a business opportunity may lose the ability to protect that information under trade secret law. See East Colonial Refuse Service, Inc. v. Velocci, 416 So.2d 1276 (Fla. 5th DCA 1982)(customer lists in the form of compilations made available to the public are not trade secrets).

The amendment to s. 559.807, F.S., broadens the scope of suits that may be initiated on a security provided by a business opportunity. The bill would allow such suits on grounds of fraud, misrepresentation, and insolvency as well as the current law provisions for breach of contract. Section 559.809, F.S., lists a number of categories of "misrepresentation" relating directly to the business opportunity. By broadening the scope of the cause of action, the bill may increase claims and may allow for claims that are tangentially related to the business opportunity and the regulatory provisions of Chapter 559.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION & CONSUMER AFFAIRS:

Prepared by:

Staff Director:

Alan W. Livingston

Rebecca R. Everhart

STORAGE NAME: h1829.jud

DATE: March 30, 2000

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AS REVISED BY THE COMMITTEE ON JUDICIARY:

Prepared by:

Staff Director:

Michael W. Carlson, J.D.

P.K. Jameson, J.D.