

By Senator Burt

16-334-01

1                                   A bill to be entitled  
2           An act relating to consumer services; amending  
3           s. 455.228, F.S.; authorizing the Department of  
4           Business and Professional Regulation to seek  
5           restitution in a civil action for an injured  
6           consumer; creating s. 468.90, F.S.; prohibiting  
7           employment agencies and assistance referral  
8           services from charging advance fees and not  
9           providing the promised services; defining  
10          terms; providing a criminal penalty; amending  
11          s. 484.0512, F.S.; providing a criminal penalty  
12          for sellers of hearing aids who fail to make  
13          required refunds; amending s. 501.160, F.S.;  
14          providing that the prohibition against  
15          unconscionable prices during an emergency does  
16          not preempt local governments from enacting  
17          similar provisions; creating s. 501.162, F.S.;  
18          providing a criminal penalty for a violation of  
19          s. 501.160, F.S.; providing an effective date.

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21 Be It Enacted by the Legislature of the State of Florida:

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23           Section 1. Subsection (2) of section 455.228, Florida  
24 Statutes, is amended to read:

25           455.228 Unlicensed practice of a profession; cease and  
26 desist notice; civil penalty; enforcement; citations;  
27 allocation of moneys collected.--

28           (2) The Legislature finds that consumers often suffer  
29 damages as a result of the practices of unlicensed persons  
30 whose professions are regulated by the department and that  
31 such consumers are not always aware of their right to seek

1 redress in the courts and often do not have resources to hire  
2 legal counsel. Therefore, in addition to or in lieu of any  
3 remedy provided in subsection (1), the department may seek the  
4 imposition of a civil penalty, including restitution, through  
5 the circuit court for any violation for which the department  
6 may issue a notice to cease and desist under subsection (1).  
7 The civil penalty shall be no less than \$500 and no more than  
8 \$5,000 for each offense. The court may also award to the  
9 prevailing party court costs and reasonable attorney fees and,  
10 in the event the department prevails, may also award  
11 reasonable costs of investigation.

12 Section 2. Section 468.90, Florida Statutes, is  
13 created to read:

14 468.90 Employment agencies and assistance referral  
15 services.--

16 (1) INTENT.--It is the purpose of this section to curb  
17 abusive business practices by employment agencies or  
18 assistance referral services which endanger the economic  
19 welfare of the public.

20 (2) DEFINITIONS.--As used in this section, the term:

21 (a) "Employment agency or assistance referral service"  
22 means an individual, a sole proprietorship, a partnership, a  
23 corporation, or another business entity that, for  
24 compensation, engages in the business of procuring or  
25 attempting to procure employment for an applicant.

26 (b) "Applicant" means a person seeking employment  
27 through an employment agency or an assistance referral  
28 service.

29 (c) "Advance fee" means money or other valuable  
30 consideration, including registration fees and interview fees,  
31 which is assessed or collected by any employment agency or

1 assistance referral service prior to an applicant being  
2 employed through its efforts.

3 (3) PROHIBITIONS.--

4 (a) An employment agency or assistance referral  
5 service may not charge, collect, or receive an advance fee  
6 from an applicant for any services incidental to securing  
7 employment for the applicant until services are actually  
8 provided.

9 (b) An employment agency or assistance referral  
10 service may not falsely portray the existence of employment  
11 opportunities or falsely guarantee employment or interviews  
12 either verbally or in writing.

13 (4) PENALTY.--A person who violates this section is  
14 guilty of a misdemeanor of the first degree, punishable as  
15 provided in s. 775.082 or s. 775.083.

16 Section 3. Section 484.0512, Florida Statutes, is  
17 amended to read:

18 484.0512 Thirty-day trial period; purchaser's right to  
19 cancel; notice; refund; cancellation fee.--

20 (1) A person selling a hearing aid in this state must  
21 provide the buyer with written notice of a 30-day trial period  
22 and money-back guarantee. The guarantee must permit the  
23 purchaser to cancel the purchase for a valid reason as defined  
24 by rule of the board within 30 days after receiving the  
25 hearing aid, by returning the hearing aid or mailing written  
26 notice of cancellation to the seller. If the hearing aid must  
27 be repaired, remade, or adjusted during the 30-day trial  
28 period, the running of the 30-day trial period is suspended 1  
29 day for each 24-hour period that the hearing aid is not in the  
30 purchaser's possession. A repaired, remade, or adjusted  
31 hearing aid must be claimed by the purchaser within 3 working

1 days after notification of availability. The running of the  
2 30-day trial period resumes on the day the purchaser reclaims  
3 the repaired, remade, or adjusted hearing aid or on the fourth  
4 day after notification of availability.

5 (2) The board, in consultation with the Board of  
6 Speech-Language Pathology and Audiology, shall prescribe by  
7 rule the terms and conditions to be contained in the  
8 money-back guarantee and any exceptions thereto. Such rule  
9 shall provide, at a minimum, that the charges for earmolds and  
10 service provided to fit the hearing aid may be retained by the  
11 licensee. The rules shall also set forth any reasonable  
12 charges to be held by the licensee as a cancellation fee. Such  
13 rule shall be effective on or before December 1, 1994. Should  
14 the board fail to adopt such rule, a licensee may not charge a  
15 cancellation fee which exceeds 5 percent of the total charge  
16 for a hearing aid alone. The terms and conditions of the  
17 guarantee, including the total amount available for refund,  
18 shall be provided in writing to the purchaser prior to the  
19 signing of the contract.

20 (3) Within 30 days after the return or attempted  
21 return of the hearing aid, the seller shall refund all moneys  
22 that must be refunded to a purchaser pursuant to this section.  
23 A violation of this subsection is a misdemeanor of the first  
24 degree, punishable as provided in s. 775.082 or s. 775.083.

25 Section 4. Subsection (6) of section 501.160, Florida  
26 Statutes, is amended to read:

27 501.160 Rental or sale of essential commodities during  
28 a declared state of emergency; prohibition against  
29 unconscionable prices.--

30 (6) Nothing in this section ~~herein~~ shall be  
31 interpreted to preempt the powers of local government ~~except~~

1 ~~that the evidentiary standards and defenses contained in this~~  
2 ~~section shall be the only evidentiary standards and defenses~~  
3 ~~used in any ordinance adopted by local government to restrict~~  
4 ~~price gouging during a declared state of emergency.~~

5 Section 5. Section 501.162, Florida Statutes, is  
6 created to read:

7 501.162 Criminal penalties.--A person who violates the  
8 provisions of s. 501.160 is guilty of a misdemeanor of the  
9 first degree, punishable as provided in s. 775.082 or s.  
10 775.083.

11 Section 6. This act shall take effect July 1, 2001.

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14 SENATE SUMMARY

15 Authorizes the Department of Business and Professional  
16 Regulation to seek restitution in a civil action for a  
17 consumer injured by a person who has violated a law  
18 relating to a profession regulated by the department.  
19 Prohibits employment agencies and assistance referral  
20 services from charging advance fees for services and not  
21 providing such services. Provides that a seller of a  
22 hearing aid who fails to make a timely refund to a  
23 customer returning the hearing aid is guilty of a  
24 first-degree misdemeanor. Provides that the state law  
25 prohibiting unconscionable prices during times of  
26 emergency does not preempt local governments from  
27 enacting similar laws. Provides that a person who charges  
28 unconscionable prices during a time of emergency is  
29 guilty of a first-degree misdemeanor.  
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