

By the Committee on Regulated Industries and Senator Burt

315-1669-01

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; defining the terms "seller"
14 and "person selling a hearing aid"; creating s.
15 501.162, F.S.; providing a criminal penalty for
16 a violation of s. 501.160, F.S.; providing an
17 effective date.

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

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

23 455.228 Unlicensed practice of a profession; cease and
24 desist notice; civil penalty; enforcement; citations;
25 allocation of moneys collected.--

26 (2) The Legislature finds that consumers often suffer
27 damages as a result of the practices of unlicensed persons
28 whose professions are regulated by the department and that
29 such consumers are not always aware of their right to seek
30 redress in the courts and often do not have resources to hire
31 legal counsel. Therefore, in addition to or in lieu of any

1 remedy provided in subsection (1), the department may seek the
2 imposition of a civil penalty, including restitution, through
3 the circuit court for any violation for which the department
4 may issue a notice to cease and desist under subsection (1).
5 The civil penalty shall be no less than \$500 and no more than
6 \$5,000 for each offense. The court may also award to the
7 prevailing party court costs and reasonable attorney fees and,
8 in the event the department prevails, may also award
9 reasonable costs of investigation.

10 Section 2. Section 468.90, Florida Statutes, is
11 created to read:

12 468.90 Employment agencies and assistance referral
13 services.--

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

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

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

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

27 (c) "Advance fee" means money or other valuable
28 consideration, including registration fees and interview fees,
29 which is assessed or collected by any employment agency or
30 assistance referral service prior to an applicant being
31 employed through its efforts.

1 (3) PROHIBITIONS.--

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

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

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

14 Section 3. Section 484.0512, Florida Statutes, is
15 amended to read:

16 484.0512 Thirty-day trial period; purchaser's right to
17 cancel; notice; refund; cancellation fee.--

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

1 the repaired, remade, or adjusted hearing aid or on the fourth
2 day after notification of availability.

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

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

23 (4) For purposes of this section, the term "seller" or
24 "person selling a hearing aid" includes:

25 (a) Any natural person licensed under this chapter or
26 any other natural person who signs a sales receipt required by
27 s. 484.051(2) or s. 468.1245(2) or who otherwise fits,
28 delivers, or dispenses a hearing aid.

29 (b) Any business organization, whether a sole
30 proprietorship, partnership, corporation, professional
31 association, joint venture, business trust, or other legal

1 entity, which dispenses a hearing aid or enters into an
2 agreement to dispense a hearing aid.

3 (c) Any person who controls, manages, or operates an
4 establishment or business that dispenses a hearing aid or
5 enters into an agreement to dispense a hearing aid.

6 Section 4. Section 501.162, Florida Statutes, is
7 created to read:

8 501.162 Criminal penalties.--A person who violates the
9 provisions of s. 501.160 is guilty of a misdemeanor of the
10 first degree, punishable as provided in s. 775.082 or s.
11 775.083.

12 Section 5. This act shall take effect July 1, 2001.

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14 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
15 COMMITTEE SUBSTITUTE FOR
16 SB 1272

17 -Provides definitions for the terms "seller" and "person
18 selling a hearing aid".

19 -Reinstates s. 501.160 to current law.
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