

By the Committees on Health, Aging and Long-Term Care;
Regulated Industries; and Senators Burt and Crist

317-1821-01

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"; amending s.
15 501.160, F.S.; redefining the term "commodity";
16 prohibiting unconscionable pricing during an
17 ordered evacuation as well as a declared state
18 of emergency; providing an exception to the
19 exemption for government-approved price
20 increases for posted room rates; providing that
21 the prohibition against unconscionable pricing
22 during an emergency or ordered evacuation does
23 not preempt local governments from enacting
24 similar provisions; creating s. 501.162, F.S.;
25 providing a criminal penalty for a violation of
26 s. 501.160, F.S.; amending ss. 817.7005,
27 817.701, 817.702, 817.703, F.S.; prohibiting
28 credit service organizations from accepting
29 money in advance of performing services;
30 revising requirements for surety bonds;
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1 conforming other provisions to this
2 prohibition; providing an effective date.

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

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

8 455.228 Unlicensed practice of a profession; cease and
9 desist notice; civil penalty; enforcement; citations;
10 allocation of moneys collected.--

11 (2) The Legislature finds that consumers often suffer
12 damages as a result of the practices of unlicensed persons
13 whose professions are regulated by the department and that
14 such consumers are not always aware of their right to seek
15 redress in the courts and often do not have resources to hire
16 legal counsel. Therefore, in addition to or in lieu of any
17 remedy provided in subsection (1), the department may seek the
18 imposition of a civil penalty, including restitution, through
19 the circuit court for any violation for which the department
20 may issue a notice to cease and desist under subsection (1).
21 The civil penalty shall be no less than \$500 and no more than
22 \$5,000 for each offense. The court may also award to the
23 prevailing party court costs and reasonable attorney fees and,
24 in the event the department prevails, may also award
25 reasonable costs of investigation.

26 Section 2. Section 468.90, Florida Statutes, is
27 created to read:

28 468.90 Employment agencies and assistance referral
29 services.--

30 (1) INTENT.--It is the purpose of this section to curb
31 abusive business practices by employment agencies or

1 assistance referral services which endanger the economic
2 welfare of the public.

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

4 (a) "Employment agency or assistance referral service"
5 means an individual, a sole proprietorship, a partnership, a
6 corporation, or another business entity that, for
7 compensation, engages in the business of procuring or
8 attempting to procure employment for an applicant.

9 (b) "Applicant" means a person seeking employment
10 through an employment agency or an assistance referral
11 service.

12 (c) "Advance fee" means money or other valuable
13 consideration, including registration fees and interview fees,
14 which is assessed or collected by any employment agency or
15 assistance referral service prior to an applicant being
16 employed through its efforts.

17 (3) PROHIBITIONS.--

18 (a) An employment agency or assistance referral
19 service may not charge, collect, or receive an advance fee
20 from an applicant for any services incidental to securing
21 employment for the applicant until services are actually
22 provided.

23 (b) An employment agency or assistance referral
24 service may not falsely portray the existence of employment
25 opportunities or falsely guarantee employment or interviews
26 either verbally or in writing.

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

30 Section 3. Section 484.0512, Florida Statutes, is
31 amended to read:

1 484.0512 Thirty-day trial period; purchaser's right to
2 cancel; notice; refund; cancellation fee.--

3 (1) A person selling a hearing aid in this state must
4 provide the buyer with written notice of a 30-day trial period
5 and money-back guarantee. The guarantee must permit the
6 purchaser to cancel the purchase for a valid reason as defined
7 by rule of the board within 30 days after receiving the
8 hearing aid, by returning the hearing aid or mailing written
9 notice of cancellation to the seller. If the hearing aid must
10 be repaired, remade, or adjusted during the 30-day trial
11 period, the running of the 30-day trial period is suspended 1
12 day for each 24-hour period that the hearing aid is not in the
13 purchaser's possession. A repaired, remade, or adjusted
14 hearing aid must be claimed by the purchaser within 3 working
15 days after notification of availability. The running of the
16 30-day trial period resumes on the day the purchaser reclaims
17 the repaired, remade, or adjusted hearing aid or on the fourth
18 day after notification of availability.

19 (2) The board, in consultation with the Board of
20 Speech-Language Pathology and Audiology, shall prescribe by
21 rule the terms and conditions to be contained in the
22 money-back guarantee and any exceptions thereto. Such rule
23 shall provide, at a minimum, that the charges for earmolds and
24 service provided to fit the hearing aid may be retained by the
25 licensee. The rules shall also set forth any reasonable
26 charges to be held by the licensee as a cancellation fee. Such
27 rule shall be effective on or before December 1, 1994. Should
28 the board fail to adopt such rule, a licensee may not charge a
29 cancellation fee which exceeds 5 percent of the total charge
30 for a hearing aid alone. The terms and conditions of the
31 guarantee, including the total amount available for refund,

1 shall be provided in writing to the purchaser prior to the
2 signing of the contract.

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

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

10 (a) Any natural person licensed under this chapter or
11 any other natural person who signs a sales receipt required by
12 s. 484.051(2) or s. 468.1245(2) or who otherwise fits,
13 delivers, or dispenses a hearing aid.

14 (b) Any business organization, whether a sole
15 proprietorship, partnership, corporation, professional
16 association, joint venture, business trust, or other legal
17 entity, which dispenses a hearing aid or enters into an
18 agreement to dispense a hearing aid.

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

22 Section 4. Section 501.160, Florida Statutes, is
23 amended to read:

24 501.160 Rental or sale of essential commodities during
25 a declared state of emergency or ordered evacuation;
26 prohibition against unconscionable prices.--

27 (1) As used in this section:

28 (a) "Commodity" means any goods, services, materials,
29 merchandise, supplies, equipment, resources, or other article
30 of commerce, and includes, without limitation, food, water,
31 ice, chemicals, petroleum products, and building materials

1 ~~lumber~~ necessary for consumption or use as a direct result of
2 the emergency.

3 (b) It is prima facie evidence that a price is
4 unconscionable if:

5 1. The amount charged represents a gross disparity
6 between the price of the commodity or rental or lease of any
7 dwelling unit or self-storage facility that is the subject of
8 the offer or transaction and the average price at which that
9 commodity or dwelling unit or self-storage facility was
10 rented, leased, sold, or offered for rent or sale in the usual
11 course of business during the 30 days immediately prior to a
12 declaration of a state of emergency or ordered evacuation, and
13 the increase in the amount charged is not attributable to
14 additional costs incurred in connection with the rental or
15 sale of the commodity or rental or lease of any dwelling unit
16 or self-storage facility, or national or international market
17 trends; or

18 2. The amount charged grossly exceeds the average
19 price at which the same or similar commodity was readily
20 obtainable in the trade area during the 30 days immediately
21 prior to a declaration of a state of emergency, and the
22 increase in the amount charged is not attributable to
23 additional costs incurred in connection with the rental or
24 sale of the commodity or rental or lease of any dwelling unit
25 or self-storage facility, or national or international market
26 trends.

27 (2) Upon a declaration of a state of emergency by the
28 Governor or ordered evacuation, it is unlawful and a violation
29 of s. 501.204 for a person or her or his agent or employee to
30 rent or sell or offer to rent or sell at an unconscionable
31 price within the area for which the state of emergency is

1 declared, any essential commodity including, but not limited
2 to, supplies, services, provisions, or equipment that is
3 necessary for consumption or use as a direct result of the
4 emergency. This prohibition remains in effect until the
5 declaration expires or is terminated.

6 (3) It is unlawful and a violation of s. 501.204 for
7 any person to impose unconscionable prices for the rental or
8 lease of any dwelling unit or self-storage facility during a
9 period of declared state of emergency or ordered evacuation.

10 (4) A price increase approved by an appropriate
11 government agency shall not be a violation of this section.
12 This exemption does not apply to room rates posted in
13 accordance with s. 509.201.

14 (5) This section shall not apply to sales by growers,
15 producers, or processors of raw or processed food products,
16 except for retail sales of such products to the ultimate
17 consumer within the area of the declared state of emergency.

18 (6) Nothing in this section ~~herein~~ shall be
19 interpreted to preempt the powers of local government ~~except~~
20 ~~that the evidentiary standards and defenses contained in this~~
21 ~~section shall be the only evidentiary standards and defenses~~
22 ~~used in any ordinance adopted by local government to restrict~~
23 ~~price gouging during a declared state of emergency.~~

24 (7) Section 501.211 notwithstanding, nothing in this
25 section creates a private cause of action in favor of any
26 person damaged by a violation of this section.

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

29 501.162 Criminal penalties.--A person who violates the
30 provisions of s. 501.160 is guilty of a misdemeanor of the
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1 first degree, punishable as provided in s. 775.082 or s.
2 775.083.

3 Section 6. Section 817.7005, Florida Statutes, is
4 amended to read:

5 817.7005 Prohibited acts.--A credit service
6 organization, its salespersons, agents, and representatives,
7 and independent contractors who sell or attempt to sell the
8 services of a credit service organization shall not do any of
9 the following:

10 (1) Charge or receive any money or other valuable
11 consideration prior to full and complete performance of the
12 services the credit service organization has agreed to perform
13 for the buyer, ~~unless the credit service organization has~~
14 ~~obtained a surety bond of \$10,000 issued by a surety company~~
15 ~~admitted to do business in this state and has established a~~
16 ~~trust account at a federally insured bank or savings and loan~~
17 ~~association located in this state; however, where a credit~~
18 ~~service organization has obtained a surety bond and~~
19 ~~established a trust account as provided herein, the credit~~
20 ~~service organization may charge or receive money or other~~
21 ~~valuable consideration prior to full and complete performance~~
22 ~~of the services it has agreed to perform for the buyer but~~
23 ~~shall deposit all money or other valuable consideration~~
24 ~~received in its trust account until the full and complete~~
25 ~~performance of the services it has agreed to perform for the~~
26 ~~buyer;~~

27 (2) Charge or receive any money or other valuable
28 consideration solely for referral of the buyer to a retail
29 seller or to any other credit grantor, who will or may extend
30 credit to the buyer if the credit that is or will be extended
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1 to the buyer is upon substantially the same terms as those
2 available to the general public;

3 (3) Make, or counsel or advise any buyer to make, any
4 statement that is false or misleading or that should be known
5 by the exercise of reasonable care to be false or misleading,
6 or omit any material fact to a consumer reporting agency or to
7 any person who has extended credit to a buyer or to whom a
8 buyer is applying for an extension of credit with respect to a
9 buyer's credit worthiness, credit standing, or credit
10 capacity; or

11 (4) Make or use any false or misleading
12 representations or omit any material fact in the offer or sale
13 of the services of a credit service organization or engage,
14 directly or indirectly, in any act, practice, or course of
15 business that operates or would operate as fraud or deception
16 upon any person in connection with the offer or sale of the
17 services of a credit service organization, notwithstanding the
18 absence of reliance by the buyer.

19 Section 7. Section 817.701, Florida Statutes, is
20 amended to read:

21 817.701 Surety bonds; exemption.--

22 (1) The credit service organization or any
23 salesperson, agent, or representative of the credit service
24 organization must obtain a surety bond in the amount of
25 \$10,000 which is issued by a surety company admitted to do
26 business in this state.

27 (2) Notwithstanding subsection (1),the requirement to
28 obtain a surety bond ~~and establish a trust account as provided~~
29 ~~in s. 817.7005(1)~~shall be waived for any salesperson, agent,
30 or representative of a credit service organization if ~~where~~

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1 the credit service organization obtains such a surety bond ~~and~~
2 ~~establishes such trust account.~~

3 Section 8. Section 817.702, Florida Statutes, is
4 amended to read:

5 817.702 Statement to buyer.--Upon execution of the
6 contract as provided in s. 817.704 or agreement between the
7 buyer and a credit service organization and before the receipt
8 by the credit service organization of any money or other
9 valuable consideration, ~~whichever occurs first,~~the credit
10 service organization shall provide the buyer with a statement,
11 in writing, containing all the information required by s.
12 817.703. The credit service organization shall maintain on
13 file for a period of 5 years an exact copy of the statement,
14 personally signed by the buyer, acknowledging receipt of a
15 copy of the statement.

16 Section 9. Subsections (5) and (6) of section 817.703,
17 Florida Statutes, are amended to read:

18 817.703 Information statement.--The information
19 statement required under s. 817.702 shall include all of the
20 following:

21 (5) A statement notifying the buyer of his or her
22 right to proceed against the bond ~~or trust account~~ required
23 under s. 817.701 ~~s. 817.7005~~.

24 (6) The name and address of the surety company that
25 ~~which~~ issued the bond, ~~or the name and address of the~~
26 ~~depository and the trustee and the account number of the trust~~
27 ~~account.~~

28 Section 10. This act shall take effect July 1, 2001.
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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
CS for SB 1272

CS/CS/SB 1272 prohibits sellers of building materials, rather than just lumber, from raising and charging higher prices during an emergency and extends the prohibition against raising and charging higher prices for commodities to include during an evacuation ordered by the Governor in addition to a declared state of emergency.

CS/CS/SB 1272 prohibits credit service organizations from accepting money in advance of performing services and revises surety bond requirements to require credit service organizations to maintain the surety bond as condition of doing business. The bill revises disclosure requirements for credit service organizations.