

STORAGE NAME: h1751.frc
DATE: March 22, 2001

HOUSE OF REPRESENTATIVES
FISCAL RESPONSIBILITY COUNCIL
ANALYSIS

BILL #: HB 1751
RELATING TO: Telemarketing
SPONSOR(S): Fiscal Responsibility Council and Representative Dockery

TIED BILL(S):

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

- (1) FISCAL RESPONSIBILITY COUNCIL YEAS 17 NAYS 5
 - (2)
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

This bill amends Chapter 501, the Florida Telemarketing Act, to remove all provisions for licensure and regulation of commercial telephone sellers and salespersons by the Department of Agriculture and Consumer Services.

The change reflects budget reductions contained within the House Appropriations bill. One full-time equivalent (FTE) position is eliminated and spending authority of \$47,687 is reduced in the General Inspection Trust Fund in the Department of Agriculture and Consumer Services. This change also reflects a decrease in fees totaling as estimated \$70,000 in Fiscal Year 2001-02.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

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

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

The Department currently issues licenses to commercial telephone sellers and their representative or agents who initiate unsolicited telephone calls for the purpose of inducing the person to purchase or invest in consumer goods and services; monitors registrants for compliance with the law; responds to and investigates complains; and administers claims against security. The commercial telemarketers and their salespersons are required to apply for an annual license and pay a \$1,500 annual fee for the business and a \$50 annual fee for each salesperson.

The licensure program was established in 1991. Many types of businesses are exempt from the requirements, including: religious, charitable, or other noncommercial purposes; persons soliciting from consumers who have previously purchased from the business enterprise for which the solicitor is calling; and persons licensed under other Florida Statutes who are soliciting within the scope of their license. The Department is authorized to seek civil remedies and penalties, including a civil penalty of not more than \$10,000 for each violation. (OPPAGA report 94-28)

According to OPPAGA's report 94-28, dated January 11, 1995, congressional hearings have found that state consumer protection agencies are often ineffective in dealing with telemarketing crimes. Persons require only a telephone to set up operations and can contact and defraud a large number of persons in a short period of time. Telemarketing businesses can also be very mobile and can quickly change locations to avoid detection and prosecution. Persons who engage in fraudulent activities are already operating outside of the law and probably do not try to register with the state. (OPPAGA report 94-28)

In fiscal year 1999-2000, the Department issued 36 licenses to telemarketing businesses and 231 licenses to salespersons or agents.

C. EFFECT OF PROPOSED CHANGES:

This statutory change eliminates the registration portion of the Florida Telemarketing Act, but retains the current statutory restrictions on telemarketing practices.

D. SECTION-BY-SECTION ANALYSIS:

Section 1 repeals s. 501.605, F.S., licensure of commercial telephone sellers [telemarketers]; s. 501.606, F.S., disclosures required of commercial telephone sellers; s. 501.607, F.S., licensure of telemarketing salespersons; 501.608, F.S., licenses or affidavit of exemption required for occupational license; s. 501.609, F.S., license renewal requirements; s. 501.612, F.S., grounds for departmental action against licensure applicants or licensees; s. 501.622, F.S., authority for the Department to provide evidence for criminal prosecution; and s. 501.626, F.S., rulemaking power for the Department.

Section 2 amends s. 501.603, F.S., to eliminate the Department from the list of terms for the part.

Section 3 amends s. 501.604, F.S., to conform section references to substantive change.

Section 4 amends s. 501.611, F.S., to eliminate a requirement to provide the Department information on security bond, letter of credit, or certificate of deposit.

Section 5 amends subsection (2) of s. 501.613, F.S., to eliminate the requirement to inform the purchaser of the state license number.

Section 6 amends s. 501.614, F.S., to require the seller to submit to the purchaser, if requested, certain information related to claims of eligibility to receive any gift, premium, bonus, or prize, rather than providing the information to the Department.

Section 7 amends s. 501.615, F.S., to eliminate reference to [state] registration number.

Section 8 amends s. 501.616, F.S., to eliminate references to unlicensed commercial telephone seller or salesperson.

Section 9 amends s. 501.618, F.S., to eliminate the Department as the enforcing authority to bring general civil remedies.

Section 10 amends s. 501.619, F.S., to eliminate the Department as the enforcing authority for civil penalties.

Section 11 amends subsection (1) and (3) of section 501.621, F.S., to eliminate the Department as eligible for attorney's fees and costs.

Section 12 amends s. 501.623, F.S., to eliminate criminal penalties for failing to secure a license.

Section 13 repeals s. 205.1973, F.S., to eliminate a requirement that issuing an occupational license is contingent upon being licensed or exempt under the Florida Telemarketing Act.

Section 14 provides this act shall take effect July 1, 2001.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: FY 2001-02

Recurring
General Inspection Trust Fund

License Fees (70,000)

2. Expenditures: FY 2001-02

Recurring
Salaries and Benefits 1 FTE (38,117)
Expenses (9,570)
Total – General Inspection Trust Fund (47,687)

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Eliminates license fee for applicable businesses.

D. FISCAL COMMENTS:

None

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

None

B. REDUCTION OF REVENUE RAISING AUTHORITY:

None

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

None

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None

B. RULE-MAKING AUTHORITY:

None

C. OTHER COMMENTS:

None

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

FISCAL RESPONSIBILITY COUNCIL:

Prepared by:

Staff Director:

Marsha Belcher

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