

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 420

SPONSOR: Commerce and Economic Opportunities and Senator Burt

SUBJECT: Consumer Services

DATE: February 21, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	RI	Favorable
2.	Cibula	Maclure	CM	Favorable/CS
3.				
4.				
5.				
6.				

I. Summary:

The committee substitute:

- Makes it a first-degree misdemeanor for an employment agency or assistance referral service to collect an advance fee from an applicant or to falsely portray the existence of employment opportunities or falsely guarantee employment or interviews.
- Makes it a first-degree misdemeanor to violate existing requirements on refunds associated with hearing aid purchases.
- Provides legislative intent that courts recognize a connection between unlicensed construction, electrical, and alarm contracting and damages suffered by consumers and authorizes restitution to consumers.
- Makes it a first-degree misdemeanor to violate existing restrictions on unconscionable sales or rental prices in a declared emergency.
- Conforms to the federal Credit Repair Organizations Act by eliminating exceptions to the prohibition against advance fees for credit repair services, requires all credit service organizations to obtain a \$10,000 surety bond, and authorizes the imposition of criminal penalties for requesting or accepting payment in advance of credit repair services.
- Conforms to the federal Fair Credit Reporting Act by authorizing consumers to request a free copy of their credit report within 60 days after the denial of credit.
- Clarifies that the Attorney General is authorized to enforce the federal Credit Repair Organizations Act.

The committee substitute substantially amends the following sections of the Florida Statutes: 484.0512, 489.128, 489.532, 817.7005, 817.701, 817.702, and 817.703. It also creates sections 468.90 and 501.162, Florida Statutes.

II. Present Situation:

Employment Agencies

Employment agencies are not specifically regulated under the Florida Statutes.

Hearing Aid Sales

Section 484.0512, F.S., provides the rights and duties relating to sales of hearing aids. A person selling hearing aids must provide the buyer a written notice of a 30-day trial period and money-back guarantee. The guarantee must allow the buyer to cancel the purchase for any reason allowed by rule within 30 days of receiving the hearing aid. The terms and conditions of the guarantee, including the total amount available for refund, must be provided in writing to the buyer prior to signing the purchase contract. The seller must make full refund of all money owed within 30 days after return of the hearing aid.

Unlicensed Construction Contracting

Part I of ch. 489, F.S., provides for licensing and regulation of construction contractors. Section 489.128, F.S., provides that contracts entered into by an unlicensed contractor are unenforceable in law and equity.

Unlicensed Electrical and Alarm System Contracting

Part II of ch. 489, F.S., provides for licensing and regulation of electrical and alarm system contractors. Section 489.532, F.S., provides that contracts entered into by an unlicensed contractor are unenforceable in law, and gives courts discretion to extend the provision to equity.

Price Gouging

Section 501.160, F.S., makes it unlawful and a violation of the Florida Deceptive and Unfair Trade Practices Act to rent or sell any essential commodity at an unconscionable price within an area covered by a declaration of emergency by the Governor. The term “commodity” means “any goods, services, materials, merchandise, supplies, equipment, resources, or other article of commerce, and includes, without limitation, food, water, ice, chemicals, petroleum products, and lumber necessary for consumption or use as a direct result of the emergency.” Penalties for sales in violation of s. 501.160, F.S., may include fines of up to \$1,000 per violation not to exceed \$25,000 for any 24-hour period. Section 501.164, F.S. For willful violations, additional fines not to exceed \$10,000 per violation and injunctions and cease and desist orders may be imposed under the Florida Deceptive and Unfair Trade Practices Act. Part II, ch. 501, F.S.

Credit Service Organizations

Credit service organizations are regulated by part III, ch. 817, F.S., and the federal Credit Repair Organizations Act (CROA), codified in 15 U.S.C. ss. 1679 et seq. The term “credit service organization” is defined in s. 817.7001(2)(a), F.S., as:

any person who, with respect to the extension of credit by others, sells, provides, performs, or represents that he or she can or will sell, provide, or perform, in return for the payment of money or other valuable consideration, any of the following services:

1. Improving a buyer's credit record, history, or rating;
2. Obtaining an extension of credit for a buyer; or
3. Providing advice or assistance to a buyer with regard to the services described in either subparagraph 1. or subparagraph 2.

The CROA, however, only regulates a subset of credit service organizations that the CROA defines as credit repair organizations. A "credit repair organization," according to 15 U.S.C. s. 1679a(3):

(A) means any person who uses any instrumentality of interstate commerce or the mails to sell, provide, or perform (or represent that such person can or will sell, provide, or perform) any service, in return for the payment of money or other valuable consideration, for the express or implied purpose of --

(i) improving any consumer's credit record, credit history, or credit rating; or

(ii) providing advice or assistance to any consumer with regard to any activity or service described in clause (i).

Section 817.7005, F.S., prohibits credit service organizations from receiving compensation prior to complete performance of the contracted services unless the credit service organization has obtained a surety bond in the amount of \$10,000 and utilizes a trust account for the deposit of unearned client funds. However, the CROA in 15 U.S.C. s. 1679b(b), without exception, prohibits credit repair organizations from receiving compensation prior to complete performance of their contracts with customers.

Section 817.703(1)(b), F.S., mandates that credit service organizations provide an information statement to customers notifying them of the right to review their credit reports free of charge if a request for such review is made within 30 days after a denial of credit. However, the Fair Credit Reporting Act in 15 U.S.C. ss. 1681j(b) and 1681m(a)(3)(A), and the CROA in 15 U.S.C. s. 1679c(a) provide consumers with 60 days after the denial of credit to request a free copy of their credit reports from a credit reporting agency. As such, Florida law is inconsistent with the level of consumer protection provided by federal law.

The Federal Trade Commission (FTC) and the "chief law enforcement officer of a State, or an official or agency designated by a State," are authorized to enforce the CROA. 15 U.S.C. s. 1679h(c). The FTC suggests that the entities described in 15 U.S.C. s. 1679h(c) authorized to enforce the CROA include state attorneys general. See, e.g., *File Segregation: New ID Is a Bad Idea*, available at <http://ftc.gov/bcp/online/pubs/credit/creditid.htm> (January 1999). However, according to s. 4(c), Art. IV of the State Constitution, the attorney general is chief state legal

officer, not the chief law enforcement officer. As a result, there may be confusion as to the state government entity responsible for the enforcement of the CROA.

When authorized by 15 U.S.C. s. 1679h(c) to enforce the CROA, states may bring actions to enjoin violations and bring actions for damages on behalf of residents. However, pursuant to s. 817.705(3), F.S., violations of part III, ch. 817, F.S., are third-degree felonies.

III. Effect of Proposed Changes:

Employment Agencies (Section 1)

The committee substitute creates s. 468.90, F.S., to make it a first-degree misdemeanor for an employment agency or assistance referral service to collect an advance fee from an applicant or to falsely portray the existence of employment opportunities or falsely guarantee employment or interviews. "Employment agency or assistance referral service" is defined as any individual or business entity that, for compensation, engages in the business of procuring or attempting to procure employment for an applicant. "Advance fee" is defined to mean money or other valuable consideration, including registration fees and interview fees, which is assessed or collected by any employment agency or assistance referral service prior to an applicant being employed through its efforts. The section states that the legislative intent is to "curb abusive business practices by employment agencies or assistance referral services which endanger the economic welfare of the public."

Hearing Aid Sales (Section 2)

The committee substitute amends s. 484.0512, F.S., to make the failure to provide a refund within 30 days after the return of a hearing aid a first-degree misdemeanor. The committee substitute also defines "seller" or "person selling a hearing aid" to include:

- Any natural person who is licensed under ch. 484, F.S., who signs a sales receipt for a hearing aid, or who otherwise fits, delivers, or dispenses a hearing aid;
- Any business organization that dispenses a hearing aid or enters into an agreement to dispense a hearing aid; or
- Any person who controls, manages, or operates an establishment or business that dispenses a hearing aid or enters into an agreement to dispense a hearing aid.

Construction Contracting and Electrical and Alarm System Contracting (Sections 3 & 4)

The committee substitute amends ss. 489.128 and 489.532, F.S., to provide legislative intent that courts recognize a connection between unlicensed contracting and damages suffered by consumers and order restitution to consumers.

Price Gouging (Section 5)

The committee substitute creates s. 501.162, F.S., to make violations of the prohibitions against price gouging during a declared state of emergency contained in s. 501.160, F.S., a first-degree misdemeanor.

Credit Service Organizations (Sections 6 & 7)

The committee substitute brings part III, ch. 817, F.S., into conformity with the federal Credit Repair Organizations Act, 15 U.S.C. ss. 1679 et seq., by eliminating the exception to the prohibition against advance payments to credit service organizations. Specifically, the committee substitute eliminates the option for credit service organizations to receive payment in advance of their services by maintaining a surety bond in the amount of \$10,000 and maintaining a trust account for the deposit of unearned funds. However, all credit service organizations will be required to maintain a surety bond in the amount of \$10,000, and no credit service organization will be required to maintain a trust account. Because s. 817.705(3), F.S., provides that violations of part III, ch 817, F.S., are third-degree felonies, the effect of the committee substitute is to authorize the imposition of criminal sanctions on credit service organizations that receive advance payment for their services.

Technical and Conforming Changes (Sections 8 & 9)

The committee substitute amends ss. 817.702 and 817.703, F.S., to make technical changes and changes in conformity with the substance of the committee substitute. The committee substitute also amends s. 817.703(1)(b), F.S., to conform to the federal Fair Credit Reporting Act, 15 U.S.C. ss. 1681j(b) and 1681m(a)(3)(A), by providing consumers with 60 days after the denial of credit to request a free copy of their credit reports.

Enforcement Authority (Section 10)

The committee substitute clarifies that the Attorney General is authorized to enforce the federal Credit Repair Organizations Act, codified in 15 U.S.C. ss. 1679 et seq.

Effective Date (Section 11)

The committee substitute takes effect July 1, 2002.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

- i. Employment agencies are subject to criminal penalties for charging advance fees.
- ii. Hearing aid sellers are subject to criminal penalties for failing to provide refunds after the return of a hearing aid.
- iii. Unlicensed construction contractors and electrical and alarm contractors may be ordered by courts to pay restitution for damages caused to consumers.
- iv. Any person who engages in price gouging during a declared state of emergency may be subject to criminal penalties.
- v. All credit service organizations are required to maintain a surety bond in the amount of \$10,000, and they may be subject to criminal penalties for requiring payment in advance of their services.

C. Government Sector Impact:

By increasing the number of activities that constitute criminal conduct and by authorizing courts to order unlicensed contractors to pay restitution, there may be an impact on state attorneys, public defenders, and the courts.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.