

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: SB 420

SPONSOR: Senator Burt

SUBJECT: Consumer Services

DATE: January 7, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	RI	Favorable
2.	_____	_____	CM	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill:

- 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 order restitution to consumers.
- Makes it a first-degree misdemeanor to violate existing restrictions on unconscionable sales or rental prices in a declared emergency.
- Preserves a general prohibition against a credit service organization charging or receiving any money before full and complete performance of the contracted services; deletes an existing exception to this prohibition which allows a credit service organization to do so if it obtains a \$10,000 surety bond and establishes a trust account, and if it deposits all money received in its trust account until full and complete performance of the services; and requires all credit service organizations to obtain a \$10,000 surety bond.

The bill 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 of the Florida Statutes.

II. Present Situation:

Employment agencies are not regulated.

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.

Part I of Chapter 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.

Part II of Chapter 489, F.S., provides for licensing and regulation of electrical and alarm 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.

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.”

Part III, ch. 817, F.S., relates to fraudulent practices by credit service organizations. A credit service organization is any person who, with respect to the extension of credit by others and in return for the payment of money or other valuable consideration, provides services to: improve a customer’s credit record, history, or rating; obtain an extension of credit for a customer; or provide advice or assistance to a customer with regard to credit services. s. 817.7001(2)(a), F.S.

Section 817.7005, F.S., prohibits a credit service organization, or its salespersons, agents, representatives, and independent contractors, from charging or receiving any money or other valuable consideration before full and complete performance of the services the credit service organization has agreed to perform. There is an exception to this general prohibition, allowing a credit service organization to receive money prior to full and complete performance of services if it obtains a \$10,000 surety bond and establishes a trust account and if it deposits all money or other valuable consideration received in its trust account until full and complete performance of the services.

Section 817.701, F.S., waives the surety bond and trust account requirement of s. 817.7005, F.S., for salespersons, agents, or representatives of a credit service organization that has obtained the surety bond and established the trust account.

III. Effect of Proposed Changes:

The bill 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.”

The bill amends s. 484.0512, F.S., to make a violation of the refund requirement a first-degree misdemeanor. The bill also defines “seller” or “person selling a hearing aid” to include:

- Any natural person who is licensed under chapter 484, 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.

The bill amends ss. 489.128 (construction contracting) and 489.532 (electrical and alarm contracting), F.S., to provide legislative intent that courts recognize a connection between unlicensed contracting and damages suffered by consumers and order restitution to consumers.

The bill creates s. 501.162, F.S., to make a violation of s. 501.150, F.S., a first-degree misdemeanor.

Currently, s. 817.7005, F.S., prohibits a credit service organization, or its salespersons, agents, representatives, and independent contractors, from charging or receiving any money or other valuable consideration before full and complete performance of the services the credit service organization has agreed to perform. There is an exception to this general prohibition allowing a credit service organization to receive money prior to full and complete performance of services if it obtains a \$10,000 surety bond, and establishes a trust account and if it deposits all money or other valuable consideration received in its trust account until full and complete performance of the services. The bill deletes this exception from the general prohibition on receiving money before full and complete performance, preserving the prohibition.

The bill amends s. 817.701, F.S., to expressly require a credit service organization or any salesperson, agent, or representative of a credit service organization to obtain a \$10,000 surety bond issued by a surety company admitted to do business in this state. However, if a credit service organization obtains such a surety bond, this requirement is waived as to its salespersons, agents, and representatives.

The bill amends ss. 817.702 and 817.703, F.S., to make technical and conforming changes.

The bill 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:

Consumers should be better protected when dealing with employment agencies, sellers of hearing aids, unlicensed construction or electrical or alarm contractors, and credit service organizations. They should also be better protected during a declared emergency.

C. Government Sector Impact:

In making more acts criminal violations and in subjecting unlicensed contractors to 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.