

By Senator Burt

16-4B-02

1 A bill to be entitled
2 An act relating to consumer services; creating
3 s. 468.90, F.S.; prohibiting employment
4 agencies and assistance referral services from
5 charging advance fees and not providing the
6 promised services; defining terms; providing a
7 criminal penalty; amending s. 484.0512, F.S.;
8 providing a criminal penalty for sellers of
9 hearing aids who fail to make required refunds;
10 defining the terms "seller" and "person selling
11 a hearing aid"; amending ss. 489.128, 489.532,
12 F.S.; providing legislative intent that courts
13 should order restitution in cases of unlicensed
14 contracting; creating s. 501.162, F.S.;
15 providing a criminal penalty for a violation of
16 s. 501.160, F.S.; amending ss. 817.7005,
17 817.701, 817.702, 817.703, F.S.; prohibiting
18 credit service organizations from accepting
19 money in advance of performing services;
20 conforming provisions to this prohibition;
21 providing an effective date.

22
23 Be It Enacted by the Legislature of the State of Florida:

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25 Section 1. Section 468.90, Florida Statutes, is
26 created to read:

27 468.90 Employment agencies and assistance referral
28 services.--

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

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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.

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

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

28 Section 2. Section 484.0512, Florida Statutes, is
29 amended to read:

30 484.0512 Thirty-day trial period; purchaser's right to
31 cancel; notice; refund; cancellation fee.--

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

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

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

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

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

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

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

20 Section 3. Section 489.128, Florida Statutes, is
21 amended to read:

22 489.128 Contracts performed by unlicensed contractors
23 unenforceable.--

24 (1) As a matter of public policy, contracts entered
25 into on or after October 1, 1990, and performed in full or in
26 part by any contractor who fails to obtain or maintain a
27 license in accordance with this part shall be unenforceable in
28 law or in equity.

29 (2) The Legislature finds that consumers often suffer
30 damages as a result of the practices of unlicensed persons. It
31 is the intent of the Legislature that the courts recognize a

1 connection between unlicensed contracting and damages suffered
2 by consumers. Therefore, courts of competent jurisdiction
3 should order restitution in cases of unlicensed contracting.

4 Section 4. Section 489.532, Florida Statutes, is
5 amended to read:

6 489.532 Contracts performed by unlicensed contractors
7 unenforceable.--

8 (1) As a matter of public policy, contracts entered
9 into on or after October 1, 1990, and performed in full or in
10 part by any contractor who fails to obtain or maintain his or
11 her license in accordance with this part shall be
12 unenforceable in law, and the court in its discretion may
13 extend this provision to equitable remedies.

14 (2) The Legislature finds that consumers often suffer
15 damages as a result of the practices of unlicensed persons. It
16 is the intent of the Legislature that the courts recognize a
17 connection between unlicensed contracting and damages suffered
18 by consumers. Therefore, courts of competent jurisdiction
19 should order restitution in cases of unlicensed contracting.

20 Section 5. Section 501.162, Florida Statutes, is
21 created to read:

22 501.162 Criminal penalties.--A person who violates the
23 provisions of s. 501.160 is guilty of a misdemeanor of the
24 first degree, punishable as provided in s. 775.082 or s.
25 775.083.

26 Section 6. Section 817.7005, Florida Statutes, is
27 amended to read:

28 817.7005 Prohibited acts.--A credit service
29 organization, its salespersons, agents, and representatives,
30 and independent contractors who sell or attempt to sell the
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1 services of a credit service organization shall not do any of
2 the following:

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

20 (2) Charge or receive any money or other valuable
21 consideration solely for referral of the buyer to a retail
22 seller or to any other credit grantor, who will or may extend
23 credit to the buyer if the credit that is or will be extended
24 to the buyer is upon substantially the same terms as those
25 available to the general public;

26 (3) Make, or counsel or advise any buyer to make, any
27 statement that is false or misleading or that should be known
28 by the exercise of reasonable care to be false or misleading,
29 or omit any material fact to a consumer reporting agency or to
30 any person who has extended credit to a buyer or to whom a
31 buyer is applying for an extension of credit with respect to a

1 buyer's credit worthiness, credit standing, or credit
2 capacity; or

3 (4) Make or use any false or misleading
4 representations or omit any material fact in the offer or sale
5 of the services of a credit service organization or engage,
6 directly or indirectly, in any act, practice, or course of
7 business that operates or would operate as fraud or deception
8 upon any person in connection with the offer or sale of the
9 services of a credit service organization, notwithstanding the
10 absence of reliance by the buyer.

11 Section 7. Section 817.701, Florida Statutes, is
12 amended to read:

13 817.701 Surety bonds; exemption.--

14 (1) The credit service organization or any
15 salesperson, agent, or representative of the credit service
16 organization must obtain a surety bond in the amount of
17 \$10,000 which is issued by a surety company admitted to do
18 business in this state.

19 (2) Notwithstanding subsection (1),the requirement to
20 obtain a surety bond ~~and establish a trust account as provided~~
21 ~~in s. 817.7005(1)~~shall be waived for any salesperson, agent,
22 or representative of a credit service organization if where
23 the credit service organization obtains such a surety bond ~~and~~
24 ~~establishes such trust account.~~

25 Section 8. Section 817.702, Florida Statutes, is
26 amended to read:

27 817.702 Statement to buyer.--Upon execution of the
28 contract as provided in s. 817.704 or agreement between the
29 buyer and a credit service organization and before the receipt
30 by the credit service organization of any money or other
31 valuable consideration, ~~whichever occurs first,~~the credit

1 service organization shall provide the buyer with a statement,
2 in writing, containing all the information required by s.
3 817.703. The credit service organization shall maintain on
4 file for a period of 5 years an exact copy of the statement,
5 personally signed by the buyer, acknowledging receipt of a
6 copy of the statement.

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

9 817.703 Information statement.--The information
10 statement required under s. 817.702 shall include all of the
11 following:

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

15 (6) The name and address of the surety company that
16 ~~which~~ issued the bond, ~~or the name and address of the~~
17 ~~depository and the trustee and the account number of the trust~~
18 ~~account~~.

19 Section 10. This act shall take effect July 1, 2002.

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22 SENATE SUMMARY

23 Prohibits employment agencies and assistance referral
24 services from charging advance fees for services and not
25 providing such services. Provides that a seller of a
26 hearing aid who fails to make a timely refund to a
27 customer returning the hearing aid is guilty of a
28 first-degree misdemeanor. Provides legislative intent
29 that courts should order restitution in cases of
30 unlicensed contracting. Prohibits credit service
31 organizations from accepting money in advance of
performing services. (See bill for details.)