

By the Committee on Commerce and Economic Opportunities; and  
Senator Burt

310-2016-02

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          revising the content of an information  
22          statement to a buyer of services of a credit  
23          service organization to conform to federal  
24          provisions on the time period for requesting  
25          review of certain consumer reporting agency  
26          files; authorizing the Attorney General to  
27          enforce the Credit Repair Organizations Act;  
28          providing an effective date.

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30 Be It Enacted by the Legislature of the State of Florida:  
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1           Section 1. Section 468.90, Florida Statutes, is  
2 created to read:

3           468.90 Employment agencies and assistance referral  
4 services.--

5           (1) INTENT.--It is the purpose of this section to curb  
6 abusive business practices by employment agencies or  
7 assistance referral services which endanger the economic  
8 welfare of the public.

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

10           (a) "Employment agency or assistance referral service"  
11 means an individual, a sole proprietorship, a partnership, a  
12 corporation, or another business entity that, for  
13 compensation, engages in the business of procuring or  
14 attempting to procure employment for an applicant.

15           (b) "Applicant" means a person seeking employment  
16 through an employment agency or an assistance referral  
17 service.

18           (c) "Advance fee" means money or other valuable  
19 consideration, including registration fees and interview fees,  
20 which is assessed or collected by any employment agency or  
21 assistance referral service prior to an applicant being  
22 employed through its efforts.

23           (3) PROHIBITIONS.--

24           (a) An employment agency or assistance referral  
25 service may not charge, collect, or receive an advance fee  
26 from an applicant.

27           (b) An employment agency or assistance referral  
28 service may not falsely portray the existence of employment  
29 opportunities or falsely guarantee employment or interviews  
30 either verbally or in writing.

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

4           Section 2. Section 484.0512, Florida Statutes, is  
5 amended to read:

6           484.0512 Thirty-day trial period; purchaser's right to  
7 cancel; notice; refund; cancellation fee.--

8           (1) A person selling a hearing aid in this state must  
9 provide the buyer with written notice of a 30-day trial period  
10 and money-back guarantee. The guarantee must permit the  
11 purchaser to cancel the purchase for a valid reason as defined  
12 by rule of the board within 30 days after receiving the  
13 hearing aid, by returning the hearing aid or mailing written  
14 notice of cancellation to the seller. If the hearing aid must  
15 be repaired, remade, or adjusted during the 30-day trial  
16 period, the running of the 30-day trial period is suspended 1  
17 day for each 24-hour period that the hearing aid is not in the  
18 purchaser's possession. A repaired, remade, or adjusted  
19 hearing aid must be claimed by the purchaser within 3 working  
20 days after notification of availability. The running of the  
21 30-day trial period resumes on the day the purchaser reclaims  
22 the repaired, remade, or adjusted hearing aid or on the fourth  
23 day after notification of availability.

24           (2) The board, in consultation with the Board of  
25 Speech-Language Pathology and Audiology, shall prescribe by  
26 rule the terms and conditions to be contained in the  
27 money-back guarantee and any exceptions thereto. Such rule  
28 shall provide, at a minimum, that the charges for earmolds and  
29 service provided to fit the hearing aid may be retained by the  
30 licensee. The rules shall also set forth any reasonable  
31 charges to be held by the licensee as a cancellation fee. Such

1 rule shall be effective on or before December 1, 1994. Should  
2 the board fail to adopt such rule, a licensee may not charge a  
3 cancellation fee which exceeds 5 percent of the total charge  
4 for a hearing aid alone. The terms and conditions of the  
5 guarantee, including the total amount available for refund,  
6 shall be provided in writing to the purchaser prior to the  
7 signing of the contract.

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

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

15 (a) Any natural person licensed under this chapter or  
16 any other natural person who signs a sales receipt required by  
17 s. 484.051(2) or s. 468.1245(2) or who otherwise fits,  
18 delivers, or dispenses a hearing aid.

19 (b) Any business organization, whether a sole  
20 proprietorship, partnership, corporation, professional  
21 association, joint venture, business trust, or other legal  
22 entity, which dispenses a hearing aid or enters into an  
23 agreement to dispense a hearing aid.

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

27 Section 3. Section 489.128, Florida Statutes, is  
28 amended to read:

29 489.128 Contracts performed by unlicensed contractors  
30 unenforceable.--

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

6       (2) The Legislature finds that consumers often suffer  
7 damages as a result of the practices of unlicensed persons. It  
8 is the intent of the Legislature that the courts recognize a  
9 connection between unlicensed contracting and damages suffered  
10 by consumers. Therefore, courts of competent jurisdiction  
11 should order restitution in cases of unlicensed contracting.

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

14       489.532 Contracts performed by unlicensed contractors  
15 unenforceable.--

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

22       (2) The Legislature finds that consumers often suffer  
23 damages as a result of the practices of unlicensed persons. It  
24 is the intent of the Legislature that the courts recognize a  
25 connection between unlicensed contracting and damages suffered  
26 by consumers. Therefore, courts of competent jurisdiction  
27 should order restitution in cases of unlicensed contracting.

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

30       501.162 Criminal penalties.--A person who violates the  
31 provisions of s. 501.160 is guilty of a misdemeanor of the

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 (1), (5), and (6) of section  
17 817.703, 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 (1)(a) A complete and accurate statement of the  
22 buyer's right to review any file on the buyer maintained by  
23 any consumer reporting agency, as provided under the Federal  
24 Fair Credit Reporting Act, 15 U.S.C. ss. 1681-1681t;

25 (b) A statement that the buyer may review his or her  
26 consumer reporting agency file at no charge if a request is  
27 made to the consumer reporting agency within 60 ~~30~~ days after  
28 receiving notice that credit has been denied; and

29 (c) The approximate price the buyer will be charged by  
30 the consumer reporting agency to review his or her consumer  
31 reporting agency file.



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

4           (6) The name and address of the surety company that  
5 ~~which~~ issued the bond, ~~or the name and address of the~~  
6 ~~depository and the trustee and the account number of the trust~~  
7 ~~account~~.

8           Section 10. Pursuant to 15 U.S.C. s. 1679h(c), the  
9 Attorney General is authorized to enforce the provisions of  
10 the Credit Repair Organizations Act codified in 15 U.S.C. ss.  
11 1679 et seq.

12           Section 11. This act shall take effect July 1, 2002.

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14                           STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
15   COMMITTEE SUBSTITUTE FOR  
16   Senate Bill 420

17 The committee substitute amends s. 817.703(1)(b), F.S., to  
18 conform to the federal Fair Credit Reporting Act, by providing  
19 consumers with 60 days after the denial of credit to request a  
20 free copy of their credit reports. The committee substitute  
21 also clarifies that the Attorney General is authorized to  
22 enforce the federal Credit Repair Organizations Act.  
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