

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/CS/SB 1314

SPONSOR: Agriculture Committee, Commerce, Economic Opportunities, and Consumer Services Committee and Senator Garcia

SUBJECT: Consumer Services

DATE: April 14, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kruse</u>	<u>Maclure</u>	<u>CM</u>	<u>Fav/CS</u>
2.	<u>Akhavein</u>	<u>Poole</u>	<u>AG</u>	<u>Fav/CS</u>
3.	_____	_____	<u>APP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Committee Substitute for Senate Bill 1314 (CS for CS) creates and amends several provisions relating to consumer services, including:

- **Consumer Education Pilot Program:** Creating a consumer education pilot program in four regions of the state to better educate secondary and postsecondary students on consumer issues.
- **“No Sales Solicitation Calls” Report:** Requiring the Department of Agriculture and Consumer Services to issue a report to the Governor and the Legislature by December 1, 2004, regarding the continued viability of the state’s “no sales solicitation calls” listing and recommendations on whether to continue the program as it currently exists.
- **Business Subscriptions to “No Sales Solicitation Calls” Listing:** Providing a business the option of subscribing a business telephone number to the state’s “no sales solicitation calls” listing.
- **Protection of Seniors Citizens and Handicapped Persons:** Authorizing increased administrative fines and civil penalties for violations of the ballroom dance studio law, the pawnbroking law, and the motor vehicle repair law when those violations are committed against senior citizens and handicapped persons.
- **Gasoline and Oil Inspection:** Removing a county-by-county breakdown reporting requirement for petroleum companies when submitting the gasoline and oil inspection fee.
- **Business Opportunities:** Clarifying when a sale or lease of a business opportunity occurs by stating that certain services, such as a marketing and sales program, may be provided, *either contemporaneously at the time of sale or lease or at a future time*, by a seller of a business opportunity to a purchaser.

- **Motor Vehicle Repair Shops:** Removing an out-of-date registration procedure for motor vehicle repair shops and providing an appropriation to an authorized Department of Agriculture and Consumer Services program that was intended to provide financial assistance to motor vehicle repair shop employees wishing to take courses in motor vehicle repair.
- **Sellers of Travel:** Removing the requirement for a seller of travel or an independent agent acting on behalf of a seller of travel to provide social security numbers when registering with the Department of Agriculture and Consumer Services, and requiring an independent agent to provide copies of any contracts the agent has with sellers of travel when registering with the department.
- **Consumer Services:** Clarifying when the Department of Agriculture and Consumer Services may assist consumers with complaints against unregulated entities and providing seven full-time-equivalent positions to the department for assisting consumers who have complaints against unregulated entities.
- **Amusement Rides:** Clarifying when an amusement ride owner must request an inspection certificate when moving a permanent ride within a permanent amusement park and clarifying procedures for when permanent and temporary amusement ride owners must request inspections for their amusement rides.
- **Identity Theft:** Creating the crime of identity theft against a deceased person by revising the definition of “individual” to include a deceased person and establishing penalties.
- **Game Promotions:** Clarifying the definition of an operator of a game promotion in connection with the sale of a consumer product or service and clarifying the time period for submitting certain reports.
- **Health-Related Discount Cards:** Requiring the registration of health-related discount card providers with the Department of Financial Services before a provider may conduct business and providing penalties for failure to register or for defrauding consumers.

The CS for CS substantially amends the following sections of the Florida Statutes: 501.059, 501.143, 525.09, 539.001, 559.801, 559.920, 559.921, 559.928, 559.934, 570.544, 616.242, 817.568, and 849.094.

The CS for CS also reenacts portions of section 921.0022, Florida Statutes, and creates unnumbered sections of the Florida Statutes.

II. Present Situation:

The present situation of each program or activity addressed by the CS for CS is discussed below in the Effect of Proposed Changes section of this staff analysis.

III. Effect of Proposed Changes:

Consumer Education Pilot Program (Section 1 and Section 19)

Present Situation: The Division of Consumer Services of the Department of Agriculture and Consumer Services functions to assist consumers with information, protection, and complaints in the industries regulated by the Division. However, the Division does not have authority to provide legal advice. For those industries that the Division does not regulate, it is the Division’s

policy to make every possible effort to assist consumers by directing them to the appropriate state agency. The Division's website contains links to consumer news, consumer resources, and links for filing complaints.¹ One of the specific powers of the division is to "[a]ssist, develop, and conduct programs of consumer education and consumer information through publications and other informational and educational material prepared for dissemination to the public, in order to increase the competence of consumers."²

Effect of Proposed Changes: The CS for CS creates a consumer education pilot program to be conducted in at least four regions of the state by the department during the 2004-2005 fiscal year to educate secondary and postsecondary students about consumer protection issues. The purpose of the program is to assist students in developing skills to make informed choices as consumers, as well as in developing an understanding of their rights and responsibilities as consumers. The department must report on the activities of the pilot program and whether to continue the program to the President of the Senate and the Speaker of the House of Representatives by December 1, 2005. The pilot program may address topics, including, but not limited to:

- Purchasing an automobile;
- Credit cards and other consumer debt;
- Landlord and tenant relations;
- Health studios;
- Home employment opportunities;
- Identity theft; and
- Credit reporting and scoring.

While collaborating with other state organizations, the department may use, but is not limited to, the following methods to involve students in the pilot program:

- School site visits;
- Public service announcements;
- Contests in which students participate;
- Seminars or similar training sessions; or
- Internet-based applications.

\$100,000 is appropriated from the General Revenue Fund to the department to implement the program during the 2004-2005 fiscal year.

“No Sales Solicitation Calls” Listing (Section 2)

Present Situation: Florida's “no sales solicitation calls” law, s. 501.059, F.S., established in 1990, provides Florida consumers who pay an initial \$10 per telephone number the opportunity to place a residential, mobile, or pager telephone number on the “no sales solicitation calls” listing, administered by the Department of Agriculture and Consumer Services.³ The law

¹ Department of Agriculture and Consumer Services, Division of Consumer Services, Homepage, *available at* <http://www.800helpfla.com> (last visited March 13, 2004).

² Section 570.544(2)(g), F.S.

³ Section 501.059(3)(a), F.S.

prohibits most telephone solicitors from calling consumers who have registered their telephone numbers with the state to sell items normally used for personal, family, or household purposes. The law does not provide the option to a business to subscribe a business telephone number to the listing. An annual renewal subscription fee of \$5 per telephone number is required each year thereafter.⁴ Consumers may subscribe up to five years in advance. Consumers may subscribe by calling a toll-free telephone number to request an application, or they may download the application from the department's website and mail it to the department with the appropriate fee.

In January 2003, the Federal Trade Commission (FTC) revised its Telemarketing Sales Rule (TSR) to create a national Do-Not-Call (DNC) registry that prohibits calls to a consumer registered on the registry.⁵ On July 7, 2003, consumers were able to register with the FTC on the Internet and by telephone a residential or mobile telephone number.⁶ As of October 21, 2003, 53.7 million consumers had signed up for the federal DNC registry. Registration to the federal DNC registry is free and is effective for five years. The federal DNC registry does not provide the option for a business to subscribe business telephone numbers.

The Department of Agriculture and Consumer Services issued a preliminary report on March 1, 2004, regarding the current status of the state's "no sales solicitation calls" listing. The report found for the first seven months of the 2003-2004 fiscal year, as compared to the 2002-2003 fiscal year, a 44-percent decrease in initial subscriptions, a 13.6-percent decrease in subscription renewals, an increase in the purchases of the listing by telephone solicitors, and a 27-percent decrease in complaints by consumers. Although the federal DNC program and the associated litigation have caused some uncertainty over the last seven months, the department stated it believes Florida's citizens value the service provided by the department through the listing and that an 87-percent renewal rate indicated the value of the listing to citizens in maintaining their privacy.⁷

Effect of Proposed Changes: The CS for CS requires the Department of Agriculture and Consumer Services to prepare and submit a report on the state's "no sales solicitation calls" listing under s. 501.059, F.S., to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 1, 2004. The report required by the CS for CS is based upon the findings and recommendations of Interim Project Report 2004-117 by the Committee on Commerce, Economic Opportunities, and Consumer Services. The interim project was conducted to explore the effects of the new, free federal Do-Not-Call (DNC) program on Florida's program, because the federal DNC program envisions working with states on certain aspects of the federal program, such as enforcement, and because of the legal issues raised by the federal litigation.

⁴ *Id.*

⁵ See *Telemarketing Sales Rule, Final Amended Rule*, Federal Trade Commission, 68 Fed. Reg. 4580 (Jan. 29, 2003) (*FTC Order*); authorized under 47 U.S.C. s. 227 (2000).

⁶ Press Release, FTC and FCC, "National Do Not Call Registry Opens," (June 27, 2003), available at <http://www.ftc.gov/opa/2003/06/donotcall.htm> (last visited November 25, 2003).

⁷ Department of Agriculture and Consumer Services, *Interim Report on Effect of Federal Do Not Call Registry on Florida's Do Not Call Law*, at 3-5, 8 (March 1, 2004).

The CS for CS requires the department to provide certain information gathered between November 1, 2003, and November 1, 2004, and compare it to same time period the year before. The CS for CS requires that the following data be collected and reported:

- The number of consumer initial subscriptions and renewal subscriptions to the state listing, and the associated fees collected, per month, with an explanation of any factors that affected consumer subscriptions during the evaluation period;
- The number of purchases of the state listing by solicitors and the amount of fees generated from the purchases;
- The number of complaints received by the department related to the state listing per month; and
- The number of enforcement actions taken by the department per month, the amount of fines imposed per month, and a description of any settlements reached.

The CS for CS also requires the department to provide recommendations on the continued viability of the state's listing. The items to be reported include:

- The status of the federal litigation and an evaluation of the litigation's effect on the department's management of the state listing.
- A recommendation of whether it is feasible to continue operation of the state listing, based upon, among other factors, the effects of the federal program, the associated litigation, and the amount of revenue collected from subscriptions, renewals, solicitor fees, and enforcement actions.
- If the report recommends the continued operation of the state listing, the report must also include a recommendation of, and the rationale for, the resources necessary for the department to continue to manage the listing at its current level of consumer protection.
- A description of how the federal program's preemption of less restrictive state exemptions affects any exemptions allowed under the state's "no sales solicitation calls" listing and a recommendation of legislative action, if any, that may be necessary to address this issue.
- A description of any activities by the department related to enforcement of the federal DNC program.
- The number of listings of Florida consumers registered with the federal DNC program that have been downloaded by the department and subscribed to the state listing, as well as the number of listings uploaded to the federal program.
- If Florida consumers registered with the commission's DNC program have been downloaded to the state listing, an evaluation of whether those consumers have filed complaints with the department, and, if so, the nature of those complaints and what action was taken, if any, by the department to address those complaints.

The CS for CS also gives the department discretion to include any additional information the department believes may assist the Legislature in evaluating the state's listing and any potential changes to the state listing.

Business Telephone Number Subscriptions to “No Sales Solicitation Calls” Listing (Section 3)

Present Situation: See the *Present Situation* section for “No Sales Solicitation Calls” Listing, above.

Effect of Proposed Changes: The CS for CS revises s. 501.059, F.S., to allow a business to subscribe to the state’s “no sales solicitation calls” listing. Specifically, the CS for CS adds “business” to the types of telephone numbers that may be subscribed to the listing. The CS for CS prohibits a telephone solicitor from contacting a business if the business’s telephone number appears on the quarterly listing of the Department of Agriculture and Consumer Services. Also, a telephone solicitor may not include a business telephone number as part of a sale of consumer information if the business telephone number appears on the department’s listing. The CS for CS also revises the definition of “consumer” to incorporate the statutory definition of person found in s. 1.01, F.S. The definition of person includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations. Additionally, the CS for CS makes changes to several definitions in the statute, including “telephonic sales call,” “consumer goods or services,” and “unsolicited telephonic sales call,” to conform those definitions to the change made in the definition of consumer and the expansion of the program to include business numbers. The change in the definition of “consumer goods or services” provides that goods or services that may be offered for sale now include goods or services for business purposes. The CS for CS also requires a telephone solicitor to identify himself or herself when calling a business telephone number.

Protection of Senior Citizens and Handicapped Persons (Section 4, Section 6, and Section 9)

Present Situation: Section 501.2077, F.S., of the Florida Deceptive and Unfair Trade Practices Act (FDUTPA) provides authority for an agency to impose a civil penalty of not more than \$15,000 for violations of FDUTPA when the violation is committed against a senior citizen or a handicapped person. A senior citizen means “a person who is 60 years of age or older” and a handicapped person means “any person who has a mental or educational impairment which substantially limits one or more major life activities.”⁸

Effect of Proposed Changes: The CS for CS provides authority to the Department of Agriculture and Consumer Services to impose an administrative fine or civil penalty not to exceed \$15,000 for a violation of the ballroom dance studio law, the pawnbroking law, or the motor vehicle repair shop law in the case of a violation against a senior citizen or a handicapped person.

Gasoline and Oil Inspection (Section 5)

Present Situation: Under ch. 525, F.S., Gasoline and Oil Inspection, the Department of Agriculture and Consumer Services is required to inspect, test, and analyze petroleum fuels to ensure the quality of fuel delivered to consumers in this state. To defray the costs of the

⁸ Section 501.2077(1)(a) & (b), F.S.

inspection, the department charges an inspection fee of one-eighth cent per gallon on all gasoline, kerosene, and #1 fuel oil.⁹ When remitting this fee to the department, a petroleum company is required to provide a detailed report showing the number of gallons of gasoline, kerosene, or fuel oil sold and delivered in each county.¹⁰

Effect of Proposed Changes: The CS for CS removes the requirement in s. 525.09(3), F.S., for a petroleum company to report the amount of gasoline, kerosene, or #1 fuel oil delivered to each county when remitting the gasoline and petroleum inspection fee to the department. The company must still report the total amount of petroleum products delivered. According to the department, the information regarding the amount delivered to each county is not used by the department or any other agency and requiring the information creates an unnecessary burden on the industry.

Sale of Business Opportunities (Section 7)

Present Situation: The Department of Agriculture and Consumer Services regulates the sale or lease of business opportunities under part VIII of ch. 559, F.S. A business opportunity means the “sale or lease of any products, equipment, supplies, or services which are sold or leased to a purchaser to enable the purchaser to start a business for which the purchaser is required to pay an initial fee or sum of money which exceeds \$500 to the seller, and in which the seller represents:

1. That the seller or person or entity affiliated with or referred by the seller will provide locations or assist the purchaser in finding locations for the use or operation of vending machines, racks, display cases, currency or card operated equipment, or other similar devices or currency-operated amusement machines or devices on premises neither owned nor leased by the purchaser or seller;
2. That the seller will purchase any or all products made, produced, fabricated, grown, bred, or modified by the purchaser using in whole or in part the supplies, services, or chattels sold to the purchaser;
3. That the seller guarantees that the purchaser will derive income from the business opportunity which exceeds the price paid or rent charged for the business opportunity or that the seller will refund all or part of the price paid or rent charged for the business opportunity, or will repurchase any of the products, equipment, supplies, or chattels supplied by the seller, if the purchaser is unsatisfied with the business opportunity; or
4. That the seller will provide a sales program or marketing program that will enable the purchaser to derive income from the business opportunity, except that this paragraph does not apply to the sale of a sales program or marketing program made in conjunction with the licensing of a trademark or service mark that is registered under the

⁹ Section 525.09(1), F.S.

¹⁰ *Id.* at (3).

laws of any state or of the United States if the seller requires use of the trademark or service mark in the sales agreement.”¹¹

Effect of Proposed Changes: By revising the definition of the sale or lease of a business opportunity in s. 559.801, F.S., the CS for CS establishes when the sale or lease of a business opportunity occurs. The CS for CS provides that a sale or lease of a business opportunity occurs when, among other things, a seller promises to provide, either contemporaneously at the time of sale or lease or at a future time, locations of vending machines or similar devices where the purchaser may sell the products purchased from the seller; when a seller promises to purchase, either contemporaneously at the time of sale or lease or at a future time, any or all of the products made from the items sold to the purchaser by the seller; and when a seller promises to provide, either contemporaneously at the time of sale or lease or at a future time, a sales or marketing program that will enable the purchaser to derive income from the business opportunity. The department has stated that by clearly indicating when the items listed above may be provided, i.e., *either contemporaneously at the time of sale or lease or at a future time*, the CS for CS clarifies when a sale or lease of a business opportunity occurs.

Motor Vehicle Repair Shops (Section 8 and Section 18)

Present Situation: The Department of Agriculture and Consumer Services regulates motor vehicle repair shops under part IX of ch. 559, F.S. Prior to conducting business as a motor vehicle repair shop, a person must first register with the department. The application for registration must include at least the following:

- The name of the applicant.
- The name under which the applicant is doing business.
- The business address at which the applicant performs repair work or, in the case of a mobile motor vehicle repair shop, the home address of the owner, if different from the business address.
- Copies of all licenses, permits, and certifications obtained by the applicant or employees of the applicant.
- Number of employees which the applicant intends to employ or which are currently employed.¹²

The department charges a fee based upon the number of employees on a per-year basis as follows:

- If the place of business has 1 to 5 employees: \$50
- If the place of business has 6 to 10 employees: \$150
- If the place of business has 11 or more employees: \$300¹³

Section 559.920, F.S., sets out for motor vehicle repair shops and their employees what are unlawful acts and practices. Some of the unlawful acts and practices include engaging or

¹¹ Section 559.801(1)(a), F.S.

¹² Section 559.904(1)(a)-(e), F.S.

¹³ Section 559.904(3)(a)-(c), F.S.

attempting to engage in repair work for compensation without first being registered with or having submitted an affidavit of exemption to the department, making or charging for repairs that have not been expressly or impliedly authorized by the customer, misrepresenting that repairs have been made to a motor vehicle, and misrepresenting that certain parts and repairs are necessary to repair a vehicle.¹⁴

Section 559.922, F.S., provides that the department is authorized to establish by rule “a program to provide financial assistance for individuals to undertake technical training or courses of study in motor vehicle repair.” However, the department reports that this program has never been funded.

Effect of Proposed Changes: The CS for CS removes language in s. 559.920, F.S., unlawful acts and practices, referencing an affidavit of exemption that may be filed in lieu of registering with the department. According to the department, the phrase “affidavit of exemption” is no longer applicable and became obsolete several years ago when the department revised its registration procedures. The CS for CS also provides the department with the sum of \$100,000 for the purpose of providing financial assistance for individuals to undertake technical training or courses of study in motor vehicle repair as provided in s. 559.922, F.S., during the 2004-2005 fiscal year.

Sellers of Travel (Section 10 and Section 11)

Present Situation: The Department of Agriculture and Consumer Services oversees sellers of travel through part XI of ch. 559, F.S., which requires them to register annually. When a seller of travel registers with the department, a registrant must provide to the department a number of items including, among other items, the registrant’s legal business or trade name, mailing address, and business locations, and the full names, addresses, telephone numbers, and social security numbers of its owners or corporate officers and directors and the Florida agent of the corporation. The registration fee is \$300 per year. An independent agent acting on behalf of a seller of travel must also register annually with the department before engaging in business. An independent agent must provide certain information in an affidavit to the department including the independent agent’s full name, legal business or trade name, mailing address, telephone number, and social security number, and the name or names and addresses of each seller of travel represented by the independent agent.¹⁵

Effect of Proposed Changes: The CS for CS removes the requirement in subsections (1) and (3) of s. 559.928, F.S., for a seller of travel or an independent agent acting on behalf of a seller of travel to provide social security numbers either for the owner or for the corporate officers and directors and the Florida agent of the corporation when registering with the department. The department reports that it does not need the social security numbers for sellers of travel or independent agents. Further, the CS for CS adds a requirement for an independent agent to supply a copy of any contracts the independent agent has with a seller of travel when registering with the department. The CS for CS also revises the language in s. 559.934, F.S., to clearly reference that a violation of the sellers of travel provisions is also a violation of the provisions of

¹⁴ Section 559.920(1)-(4), F.S.

¹⁵ Section 559.928(1)-(3), F.S.

the Florida Deceptive and Unfair Trade Practices Act, ss. 501.201-501.213, F.S., and any rules adopted thereunder.

Complaints and Unregulated Entities (Section 12 and Section 20)

Present Situation: The Division of Consumer Services within the Department of Agriculture and Consumer Services is the state's clearinghouse for consumer information, protection, and complaints. The division is authorized under s. 570.544, F.S., to, among other things, assist consumers through consumer studies, consumer education programs, and by offering conferences related to consumer services to consumers. In Special Session A, the division's authority to assist the public with complaints regarding unregulated entities was removed by the fiscal year 2003-2004 budget implementing bill for one year. The budget also eliminated seven full-time-equivalent (FTE) positions used to support this activity. However, this authority will revert back at the end of this fiscal year, and the department has requested that if the division is required to assist consumers with unregulated complaints, the division's seven FTE positions be returned and funded.

Effect of Proposed Changes: The CS for CS clarifies that, if no agency exists *to which the division may transmit a complaint or grievance*, the division may assist the consumer in seeking a settlement of the complaint. The CS for CS also makes it a duty of the division to make reports and offer recommendations to the Commissioner of Agriculture for submission to the Legislature on any changes in statute, administrative law, or other law changes that may be necessary based on an analysis of complaints received by the division in unregulated areas. The CS for CS also provides \$100,000 to the Department of Agriculture and Consumer Services for marketing to the public the department's complaint-assistance services, and \$255,391 for seven additional full-time-equivalent positions for the Division of Consumer Services to support administration of unregulated complaints.

Amusement Rides (Section 13)

Present Situation: Florida law, in part II of ch. 616, F.S., requires that each permanent amusement ride be inspected by the Department of Agriculture and Consumer Services semiannually and receive an inspection certificate, and that each temporary amusement ride be inspected each time the ride is set up or moved to a new location.¹⁶ Current law is not clear in the situation in which a previously inspected permanent ride is taken down and relocated within a permanent amusement park.

Additionally, the statute requires that ride owners give the department advance notice of their need for an inspection. When providing advance notice, the owner must disclose the date of first intended use and planned opening date. The information is used by the department to plan and schedule inspections.¹⁷

Effect of Proposed Changes: The CS for CS clarifies s. 616.242(7), F.S., to state that a previously inspected permanent amusement ride must be reinspected and issued a new inspection

¹⁶ Section 616.242(7)(a), F.S.

¹⁷ *Id.* at (7)(b)-(d).

certificate when that ride is relocated within a permanent amusement park. When requesting a department inspection, an owner of an amusement ride must provide, among other items, the requested inspection date, the date of first intended use or planned opening date, and the date of arrival on site. Additionally, when a temporary amusement ride is set up or moved to a new location, the owner must provide the requested inspection date. For permanent amusement rides, the request for inspection must be received at least 15 days before the requested inspection date or at least 15 days before the expiration of the prior inspection certificate. For a temporary amusement ride, the request for inspection must be received for each time the amusement ride is set up or moved to a new location at least 14 days before the requested inspection date.

Criminal Use of Personal Identification Information (Section 14)

Present Situation: “Identity theft or identity fraud ... is the criminal act of taking a victim’s identity for the purpose of obtaining credit, credit cards from banks and/or retailers, stealing money from the victim’s existing accounts, applying for loans in the victim’s name, establishing accounts with utility companies, leasing automobiles and residences, filing bankruptcy, and/or even obtaining employment.”¹⁸ Section 817.568, F.S., provides for the crime of identity theft and establishes increasing levels of penalties depending upon the amount of the fraud perpetrated or the number of identities stolen. “Any person who willfully and without authorization fraudulently uses, or possesses with intent to fraudulently use, personal identification information concerning an individual without first obtaining that individual’s consent, commits the offense of fraudulent use of personal identification information.”¹⁹

Effect of Proposed Changes: The CS for CS creates the crime of identity theft of a deceased person’s identity by revising the definition of “individual” to include a deceased person. The CS for CS creates increasing levels of penalties depending upon the number of deceased individuals’ identities stolen or the amount stolen from a deceased person. To avoid prosecution, the CS for CS requires a person to obtain the consent of the deceased person’s estate before using the deceased person’s personal identification information.

Game Promotions in Connection with Sale of Consumer Products or Services (Section 15)

Present Situation: An additional area of regulatory oversight for the Department of Agriculture and Consumer Services is game promotions in connection with the sale of consumer products or services under s. 849.094, F.S. Game promotion means, but is not limited to, “a contest, game of chance, or gift enterprise, conducted within or throughout the state and other states in connection with the sale of consumer products or services, and in which the elements of chance and prize are present.” This definition does not apply to bingo games. An operator means “any person, firm, corporation, or association or agent or employee thereof who promotes, operates, or conducts a game promotion.” This definition does not apply to any charitable nonprofit organization.²⁰ If a game promotion operator plans to offer a game promotion in which the total announced value of the prizes offered is greater than \$5,000, the operator must file with the department a

¹⁸ Florida Attorney General, About Identity Theft Crimes, *available at* <http://myfloridalegal.com/pages.nsf/Main/932BC47213C29D3385256DBB0048479D?OpenDocument> (last visited March 13, 2004).

¹⁹ Section 817.568(2)(a), F.S.

²⁰ Section 849.094(1)(a) & (b), F.S.

copy of the rules and regulations of the game promotion and a list of the prizes and prize categories offered at least seven days prior to the start of the game promotion with a filing fee of \$100.²¹ Once a game promotion has been completed, the game promotion operator must file a certified list of the names and addresses of the winners who have won prizes with a value of more than \$25 and the dates when the prizes were won within 60 days after the winners have been finally determined. The game promoter must provide the list for free to anyone who requests it or may publish the list in a Florida newspaper within 60 days of when the winners were determined and must provide the department with a certified copy of the publication. All winning entries must be held by the game promotion operator for 90 days after the close of the game.²²

Effect of Proposed Changes: The CS for CS clarifies the definition of “operator” in s. 849.094(1)(b), F.S., to mean any person, firm corporation, or association *on whose behalf a game promotion is conducted*, except any charitable nonprofit organization. The CS for CS also raises the filing fee to \$150 from \$100 for game promotions with a prize total greater than \$5,000. Additionally, the CS for CS revises the prize value amount, to \$100 from \$25, for when a game promotion operator must report the winners of a game promotion to the department. The CS for CS also adds that if the operator determines there is no winner, the operator must provide written notice that there was no winner to the department within 60 calendar days of that determination. The CS for CS revises the time periods for complying with various reporting requirements to the department to use *calendar* days for measuring the time for reporting. It also revises a requirement that game rules and regulations be published in all advertising copy associated with a game promotion to instead require publication of the material terms of such rules and regulations in all advertising copy.

Criminal Punishment Code (Section 16)

Present Situation: The criminal punishment code, under s. 921.0022, F.S., provides the offense-severity ranking chart for various crimes established in the Florida Statutes. When a person is charged with one of these crimes, what level of felony a person is charged with is set out in this chart.

Effect of Proposed Changes: The CS for CS reenacts the criminal punishment code in s. 921.0022, F.S., to capture the changes made in the CS for CS to s. 817.568, F.S., governing the crime of identity theft.

Health-Related Discount Cards (Section 17)

Present Situation: Health-related medical discount cards are not health insurance. Because these programs are not health insurance, the companies and their marketing representatives are not regulated by the Department of Financial Services. Consumers are often required to pay a monthly fee of \$20 to \$100 before getting access to savings. Discount card programs offer only a reduction in the actual cost of prescriptions or medical services. Many plans require advance

²¹ *Id.* at (3).

²² *Id.* at (5).

notice of utilization of discounts in order to honor them. Some plans offer discounts only on certain drugs.²³

Effect of Proposed Changes: The CS for CS provides that a person may not sell, market, promote, advertise, or distribute a card or other purchasing mechanism or device that is not insurance that purports to offer discounts or access to discounts from a health care provider for health-related purchases or from a pharmacy for purchases of prescription drugs unless:

- The person registers annually with the Department of Financial Services for this purpose;
- The card prominently states that it is not insurance;
- The person provides evidence to the department that the discounts are authorized and the person has a contract with each provider; and
- The discounts or access offered is not misleading, deceptive, or fraudulent.

Registration is \$50 per year per registrant. A registrant must designate an agent for purposes of service of process. The CS for CS provides a procedure for service on the Secretary of State if there is no agent or address for service of process available. The Department of Financial Services is provided with rulemaking authority to implement the provisions. A person who violates these provisions commits a misdemeanor of the first degree. If a person has been convicted under these provisions previously two or more times, the person commits a felony of the third degree. All other remedies under law are also still available.

Effective Dates (Section 21)

Sections 4, 5, 6, 7, 8, 9, 10, 13, 14, 15, 16, and 17 of the CS for CS take effect October 1, 2004. The remaining sections of the CS for CS take effect July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

²³ Department of Financial Services, "Gallagher Offers Warning on Medical Discount Cards," February 9, 2004, *available at* <http://www.fldfs.com/pressoffice/newsletter/newsletter%5Ffeb0904alt1.htm> (last visited March 13, 2004).

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

The CS for CS raises the game promotion filing fee to \$150 from \$100 for operators of game promotions in which the total value of the prizes offered is greater than \$5,000. The CS for CS also provides for a \$50 annual registration fee for health-related discount card operators.

B. Private Sector Impact:

- \$ A business will have the option of subscribing a business number to the state's "no sales solicitation calls" listing.
- \$ Ballroom dance studio operators, pawnbrokers, and sellers of travel may face increased administrative fines or civil penalties for violations of their respective laws if the violation is committed against a senior citizen or a handicapped person.
- \$ Petroleum businesses will have less to report to the Department of Agriculture and Consumer Services when remitting the petroleum inspection fee.
- \$ Motor vehicle repair shop employees may have access to financial assistance to take training courses in motor vehicle repair.
- \$ Independent agents acting on behalf of sellers of travel will be required to submit copies of any contracts the agents have with sellers of travel.
- \$ An amusement ride owner would pay a fee depending on the size of the amusement ride, from \$35 to \$140, for an inspection certificate if the owner moves a permanent ride from one location to another within a permanent park.
- \$ Health-related discount card operators will be required to register with the Department of Financial Services and pay an annual fee of \$50.

C. Government Sector Impact:

The CS for CS includes the following appropriations:

- \$100,000 to be administered through an authorized program of the Department of Agriculture and Consumer Services established to provide financial assistance to motor vehicle repair shop employees to take courses of study in motor vehicle repair;
- \$100,000 for a consumer education pilot program to be operated by the Department of Agriculture and Consumer Services;
- \$100,000 to the Department of Agriculture and Consumer Services for marketing to the public the department's complaint-assistance services; and
- \$255,391 for seven full-time-equivalent positions within the Department of Agriculture and Consumer Services to support administration of unregulated complaints.

The Department of Financial Services will incur the expense of adopting rules for the registration of health-related discount card operators.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
