

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 301 Locksmith Services
SPONSOR(S): Public Safety & Domestic Security Policy Committee, Agriculture and Natural Resources Policy Committee, Anderson and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 658

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Agriculture & Natural Resources Policy Committee	11 Y, 1 N, As CS	Thompson	Reese
2)	Public Safety & Domestic Security Policy Committee	8 Y, 0 N, As CS	Billmeier	Cunningham
3)	Full Appropriations Council on Education & Economic Development			
4)	General Government Policy Council			
5)				

SUMMARY ANALYSIS

HB 301 creates Part XII, Locksmith Services, within Ch. 559, F.S., and provides the popular name, the "Florida Locksmith Services Act." The bill provides for statewide regulation of the locksmith services industry, and requires locksmith services businesses and locksmith referral services to be licensed by the Department of Agriculture and Consumer Services (DACS) and be responsible for maintaining proper records, training, and supervision of employees. The bill requires licensing to be biennial and for businesses to maintain a minimum of \$100,000 in liability insurance, among other requirements.

Under the bill, applicants for a license are required to identify each employee providing locksmith services as well as each officer, director, owner and partner and submit fingerprints from these individuals to the DACS to forward to the Florida Department of Law Enforcement and the Federal Bureau of Investigation for a background check. A copy of the background check must be retained in the individual's personnel file. Other provisions include basic training requirements for employees in areas such as industry ethics and the Americans with Disabilities Act, as well as compliance with advertising requirements.

Further, the bill provides for criminal, administrative, and civil penalties. The bill creates several criminal violations and provides for private rights of action in civil cases.

The bill is projected by the DACS to be self-funding with initial funds being drawn from the DACS General Inspection Trust Fund. The bill caps licensure fees at \$800 for businesses employing one to five locksmiths and \$1600 for those employing six or more. In its fiscal analysis, the DACS estimates initial fees of \$600 (\$300 per year) will be necessary to cover the costs of implementing the bill.

The bill has an effective date of July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

At present, there is no statewide regulation of the locksmith services industry. Miami-Dade County is the only county presently regulating locksmiths.¹

According to the Associated Locksmiths of America, “[a] professional trained locksmith/security professional may do some or all of the following: install locks, deadbolts and other mechanical or electronic locking devices to safeguard homes, businesses, vehicles and other property. Locksmiths also may modify or repair such devices, rekey locks, make duplicate keys or cards, generate or program new keys/cards for locks whose keys/cards have been lost and respond to emergency calls to unlock vehicles, homes and businesses that have been locked accidentally, or whose locks have malfunctioned. Some locksmiths install and service electronic alarm and surveillance systems. Many locksmiths specify, design, provide, install and service a wide range of electronic access control systems and closed circuit television (CCTV) systems. Because of the integration of electronic security systems with computers and networks, some locksmiths maintain security hardware and software for computer systems.”

Proposed Changes

The bill creates Part XII “Locksmith Services” within Chapter 559, F.S., and provides the popular name, the “Florida Locksmith Services Act.” The bill creates a statewide regulatory scheme for the locksmith industry and requires licensing of locksmith service providers by the Department of Agriculture and Consumer Services (DACs). The bill prohibits a person from performing locksmith services for compensation unless the person obtains a license from the DACs. The bill does not license individual locksmiths; only locksmith businesses and locksmith referral services will be licensed.

The bill preempts all local regulation of the locksmith industry beginning July 1, 2011 unless the local regulations meet or exceed the requirements in the bill. The bill provides certain exceptions to the licensing requirement including:

- Law enforcement officers, firefighters, emergency medical technicians, and government employees or agents acting within their official duties;

¹ Ch. 8A, Article XVII, Miami-Dade County 'Locksmith Ordinance'

- Sales representatives providing demonstrations of products to locksmiths;
- In-store employees of hardware stores, home product stores, or other retail stores;
- Electrical and alarm system contractors acting within the scope of practice;
- Any person who lawfully acquires and uses a key duplication machine to duplicate keys;
- A property owner or agent who maintains a file of key cutting data for a property;
- An employee of a financial institution providing safety deposit box, safe, or vault services;
- Certain motor vehicle dealers; and
- Wrecker operators.

APPLICATION REQUIREMENTS

The bill directs the DACS to collect contact information for all applicants including the business' physical address, the names of employee locksmiths, the applicant's Florida agent for service of process, and other contact information. Also, the bill defines information collection and background check requirements for the business' owner (e.g. officers and directors of a corporation; general partners for a partnership).

The bill requires the applicant to submit information regarding all locksmith employees. This required information includes affidavits regarding the employee's criminal record, as well as fingerprints. The Florida Department of Law Enforcement (FDLE) is directed to process the fingerprints for a background check by the FDLE as well as the Federal Bureau of Investigation. All required information must be submitted to the DACS within ten days of the hiring of a new locksmith employee. The FDLE is required to submit a monthly invoice to the DACS for fingerprint processing and criminal records checks, and the DACS is to pay the invoice from the fees collected. The FDLE is required to retain the fingerprints in the statewide automated fingerprint identification system pursuant to s. 943.051, F.S.

The bill provides that a license must be issued for each locksmith services business or locksmith referral service and that such licenses are non-transferrable and non-assignable.

The bill permits the DACS to deny a license to any locksmith services business if the applicant or any of its directors, partners, or others have:

- Failed to meet the requirements set forth in the bill;
- Failed to comply with civil or administrative penalties (including fines);
- Received any civil, criminal, or administrative adjudications in any jurisdiction;
- Pending criminal, administrative, or enforcement proceedings in any jurisdiction; or
- Had a judgment entered against them pursuant to the Florida Deceptive and Unfair Trade Practices Act.

The bill provides that if a person who was disqualified under the fingerprinting and background screening provisions can demonstrate to the DACS evidence of rehabilitation by clear and convincing evidence that he or she should not be disqualified, the DACS is authorized to grant an exemption for any felony committed more than 3 years before the date of disqualification or any misdemeanor.

The bill provides for reciprocity with other states, provided that such state's licensure programs collect the same information required by this legislation.

FEES

The bill caps licensure fees at \$800 for businesses employing one to five locksmiths and \$1600 for those employing six or more. The renewal cost for licensure is the same and requires a verification of no changes in criminal background checks. The bill requires the license to be renewed biennially. The renewal application requires submission of the proof of insurance, verification of no changes in criminal history, the annual license fees, and criminal history background checks for all new employees. The DACS is permitted to stagger initial registrations to ensure a similar amount in each year and set fees at a lower rate. The bill gives the DACS the power to reduce the fees in cases of significant financial hardship.

EMPLOYEE RECORDS AND BACKGROUND CHECKS

The bill prohibits the employment of locksmith employees convicted of a felony within the past ten years or convicted of a crime involving fraud or dishonesty (e.g. trespass, theft, larceny, dealing in stolen goods, embezzlement) within the past ten years. This bill requires the FDLE to furnish the DACS any arrest and conviction records in its possession for any individual applying for or holding a locksmith service business license. If the DACS does not receive the required criminal background information before the expiration of time permitted by Chapter 120, F.S., to issue a determination on the license application, the time period may be extended until the DACS receives the required information.

Employees are required to complete training in courses in "industry ethics," the Americans with Disabilities Act, the Florida Fire Prevention Code, and the Life Safety Code. Every two years, a locksmith must complete at least sixteen hours of training, and an automotive-only locksmith must complete at least eight hours of industry-related training including, but not limited to, training in industry ethics. The bill further requires employers to maintain a photograph, a background check, and certificate of completion of the required ethics and training courses for each locksmith employee and issue photo identification cards to each employee. The photo identification card is required to list the employee's name, the business' name, the locksmith license number, and contain the word "locksmith." Employees are required to carry the card on their person at all times when performing locksmith services. Additionally, the card shall specify whether the employee is a Locksmith, Automotive-Only Locksmith, or Apprentice Locksmith.

INSURANCE REQUIREMENT

The bill requires each locksmith services business to obtain and maintain insurance coverage and to provide proof of insurance as part of the licensing process. The bill requires liability insurance with coverage of at least \$100,000 per incident for loss or damages resulting from the negligence of the locksmith business or employees. The DACS is authorized to suspend the business' license for failure to maintain the required insurance. The insurance policy must be issued by an insurance company or carrier licensed to transact business in this state pursuant to the Florida Insurance Code.

DISPLAY OF LICENSE

The bill requires a locksmith services business to display a copy of the license issued by the DACS at the place of business in a manner easily readable by the general public. In the alternative, for mobile locksmith services, a copy of the license must be maintained in each service vehicle for presentation to any person of the general public, any law enforcement officer, or any state or local official upon request. The bill requires all advertisements, service vehicles, and forms to include the license number and the name of the business.

Further, any person applying for a local business tax receipt to engage in business as a locksmith services business must exhibit a valid license certificate from the DACS before the tax receipt may be issued or renewed.

CUSTOMER'S RIGHTS

The bill requires locksmiths to accept at least two out of three of the following categories of payment:

- Cash, cashier's check, money order, or traveler's check;
- Valid personal check with appropriate identifiable information; or
- Valid credit card, which shall include, but not be limited to Visa or MasterCard.

Additionally, the bill requires that the locksmith services business must clearly and conspicuously disclose in the work order, invoice, or sales receipt, the forms of payment that the locksmith will accept. Additionally, a copy of each work order, invoice, or sales receipt must be retained for two years and must include the name of the person performing the service.

The bill prohibits and makes unlawful any requirement that a person waive his or her rights provided in this bill as a precondition to the performance of the locksmith services.

ADVISORY COUNCIL

The bill creates an advisory council consisting of nine members and appointed by the Commissioner of Agriculture. The bill specifies that five members must be individuals employed by separate, licensed locksmith services businesses who do not provide automotive-only locksmith services; one member must be employed by separate, licensed locksmith services businesses that provide automotive-only locksmith services; one member must be an electrical contractor certified under Chapter 489, F.S.; one member must have private investigative, private security, or law enforcement experience or expertise, and one member must be a consumer who is not connected with the locksmith industry.

The bill provides for membership terms and rules for filling vacancies. It requires the DACS to provide administrative and staff support for the council and provides that members are entitled to travel expenses and per diem.

VIOLATIONS

The bill declares that any violation of the provisions of this legislation constitutes a deceptive and unfair trade practice under Part II of Chapter 501, F.S., the Florida Deceptive and Unfair Trade Practices Act and administrative rules adopted pursuant to that act.

The bill directs any moneys recovered by the DACS as a penalty for violations to be deposited in the DACS General Inspection Trust Fund.

The bill prohibits the following acts and provides that a person found guilty of such acts is guilty of a first-degree misdemeanor²:

- Performing or offering to perform locksmith services without having or acting under a valid DACS license.
- Advertising or representing himself or herself as a locksmith services business without having a valid DACS license.
- Operating a locksmith referral service without having a valid DACS license.
- Fraudulently misusing any consumer's credit card.
- Failing or refusing, after notice, to provide any law enforcement officer or the DACS with any document or record or disclose any information required to be produced or disclosed.
- Employing or contracting with any person disqualified under s. 559.946, F.S., to perform locksmith services on behalf of the licensee.
- Submitting to the DACS the fingerprints of a person other than the person for whom fingerprints must be submitted pursuant to s. 559.946 or failing to submit replacement fingerprints for a locksmith or apprentice locksmith whose original fingerprint submissions are returned to the DACS as unclassifiable by the screening agency.
- Using a mailing address, registration facility, drop box, or answering service in the promotion, advertisement, solicitation, or sale of locksmith services, unless the street address of the licensed business location is clearly disclosed during any telephone solicitation and is prominently and conspicuously disclosed in all advertisements and on the work orders, invoices, and sales receipts.
- Operating as a locksmith services business at a business location other than the location that appears on the license issued by the DACS.
- Making a false statement in response to a request or investigation by the DACS, the Department of Legal Affairs, a law enforcement officer, or a state attorney.
- Making a material false statement in an application, document, or record required to be submitted or kept under this part.
- Committing any other act of fraud or misrepresentation or failing to disclose a material fact.

² ss. 775.082, 775.083, F.S.

- Disclosing or permitting the disclosure of any consumer information without the consumer's written approval, except as authorized by this part.
- Defacing or removing a sign indicating the closure of the business by the DACS without written authorization.

ADMINISTRATIVE PENALTIES

The bill requires the DACS to process consumer complaints as defined by current law.³ The bill requires a locksmith services business to allow DACS personnel to enter its place of business to ascertain whether the license certificate is current. If the business refuses entry, the DACS is authorized to seek injunctive relief in circuit court to compel compliance.

If the DACS finds that a business is in violation of the provisions of this bill or rules adopted pursuant to this legislation, the DACS may:

- Issue a notice of noncompliance under s. 120.695, F.S.;
- Impose an administrative fine not to exceed \$10,000 for each act or omission;
- Direct that the locksmith services business cease and desist specified activities;
- Refuse to issue a license or revoke or suspend a license;
- Place the license on probation for a period of time, subject to the conditions specified by the DACS.

The bill provides that administrative proceedings, which could result in the entry of an order imposing any of the penalties expressed in the bill, are governed by Chapter 120 F.S. The DACS is permitted to assess the sanctioned party for the cost of conducting administrative proceedings when issuing a final order imposing an administrative fine or suspending, revoking, or denying initial issuance or renewal of a license.

The bill also requires the DACS to post a prominent "Closed by Order of the Department" sign on any locksmith services business that has had its license suspended or revoked. The DACS must also post the sign if the business has been judicially or administratively determined to be operating without a license.

CIVIL PENALTIES & REMEDIES

The bill permits a customer injured by a violation of this bill to bring an action in the appropriate court for relief. Additionally, the prevailing party may collect damages as well as court costs and reasonable attorney's fees. A customer may also bring an action for injunctive relief in circuit court.

Further, the DACS is authorized to institute a civil action to recover any penalties or damages authorized by this bill and for injunctive relief to compel compliance with the provisions of this legislation. The DACS is permitted to seek a civil penalty of up to \$10,000 for each violation. Additionally, the DACS may seek restitution for and on behalf of any customer injured by a violation.

The bill provides that any agreement that purports to waive, limit, restrict, or avoid any of the duties, obligations, or prescriptions of the locksmith services business, as provided by this bill, is void.

B. SECTION DIRECTORY:

Section 1. Creates Part XII, the "Florida Locksmith Services Act" within Chapter 559, F.S.

Section 2. Provides that the bill shall take effect on July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

³ Sections 570.07 and 570.544, F.S.

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: General Inspection Trust Fund (GITF)	<u>FY 10-11</u>	<u>FY 11-12</u>	<u>FY 12-13</u>
A. Recurring (2,400 Registrants estimated)	\$1,080,000	\$720,000	\$720,000
<u>1st Year</u>			
1,200 Registrants @ \$600 biennial(*)			
1,200 Registrants @ \$300 annual(*)			
<u>Subsequent Years</u>			
1,200 Registrants @ \$600 biennial			
2,400 Initial Fingerprint Background Checks @ \$45.25 (5% of 2,400 or 120 estimated in later yrs)	\$108,600	\$5,430	\$5,430
B. Non-Recurring	\$0	\$0	\$0
TOTAL REVENUE	\$1,188,600	\$725,430	\$725,430

(*) \$600 is an estimate of the amount needed to cover the costs to implement this bill (\$300 per year for two years, per business), based on the estimated number of locksmith businesses statewide.

(*) Fees will be set by rule and are based upon estimated costs to the DACS. In an effort to keep fees at the lowest level possible and reduce the workload during the first year, 50% of registrants will register for one year and 50% will register for two years. The second year the 50% that registered for one year will then register for two years. This will effectively stagger biennial revenues so that annualized expenses will be covered.

2. Expenditures:	<u>FY 10-11</u>	<u>FY 11-12</u>	<u>FY 12-13</u>
A. Recurring (GITF)			
a. Salaries (9 Positions)			
4- 0442 Regulatory Consultant – pay grade 20	218,324	222,690	227,144
4- 8318 Investigation Specialist II – pay grade 20	218,324	222,690	227,144
1- 0108 Administrative Secretary – pay grade 12	<u>41,257</u>	<u>42,082</u>	<u>42,924</u>
TOTAL SALARIES	477,905	487,462	497,212
b. Expenses			
8- Professional Expense Package (Professional)	52,064	52,064	52,064
1- Professional Expense Package (Support Staff)	5,124	5,124	5,124
Operating cost of (4) Motor Vehicles	12,000	12,000	12,000
Travel – Council Meetings	<u>10,000</u>	<u>10,000</u>	<u>10,000</u>
TOTAL EXPENSES	79,188	79,188	79,188
c. Special Categories			
FDLE Fingerprint (5% of 2,400) 120 @ \$45.25 (5% of initial registrants estimated in subsequent years)	5,430	5,430	5,430
9- Human Resources Allocation	<u>3,591</u>	<u>3,591</u>	<u>3,591</u>
TOTAL SPECIAL CATEGORIES	9,021	9,021	9,021
c. AGMIC Budget Entity (GITF-Contracted Services category) 9 PCs Maintenance	1,080	1,080	1,080

9-Additional Siemens System Maintenance	1,755	1,755	1,755
9-Additional Computer System Maintenance	<u>3,038</u>	<u>3,038</u>	<u>3,038</u>
TOTAL AGMIC COSTS	5,873	5,873	5,873
TOTAL RECURRING COSTS	571,987	581,544	591,294

B. Non-Recurring (GITF)

a. Expenses (GITF)

8-Professional Packages @ 3,877	31,016		
1-Professional Package @ 3,579	3,579		

b. Special Categories (GITF)

Acquisition of (4) Motor Vehicles @ 21,625	86,500		
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Background Checks (initial background checks) (95% of 2,400) 2,280 @ \$45.25	103,170		
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Contracted Services – 1000 hours @ \$85.00 (Programming for online use of “E-Commerce for license renewals and other features)	85,000		
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Siemens – Reprogramming & additional card in Telephone system	9,000		
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	<u>FY 10-11</u>	<u>FY 11-12</u>	<u>FY 12-13</u>
AGMIC Budget Entity– software application & DOCS Integration (GITF-Contracted Services category)	<u>10,000</u>		

TOTAL NON-RECURRING 328,265

C. Non-Operating Costs (GITF)

Administrative/Indirect costs (13%)	62,128	63,370	64,638
General Revenue Service Charge (8%)	<u>95,088</u>	<u>58,034</u>	<u>58,034</u>

TOTAL NON-OPERATING COSTS 157,216 121,404 122,672

GRAND TOTAL OF COSTS (GITF) \$1,057,468 \$702,948 \$713,966

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

According to the DACS, the fiscal impact on local governments should be slight, depending on whether there was previous local regulation of locksmiths.

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The Act creates a new regulatory structure for an existing industry. According to DACS, impacts on the private sector are unknown other than the increase in costs represented by the new licensing fee and costs of fingerprinting and criminal background checks.

D. FISCAL COMMENTS:

DACS estimates that 2,400 businesses will be subject to licensing based on answers provided by the Associated Locksmiths of America (ALOA) on the Sunrise Questionnaire.⁴

DACS indicates the need for nine new employees to implement the provisions of this bill and an intention to stagger the hiring of these employees. Some first year savings might be realized if the DACS staggered the hiring of the new employees as needed.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The bill provides rulemaking authority to the DACS. It requires the DACS to adopt rules relating to the following requirements for licensing locksmith services businesses:

- Requirements and processes for background checks and fingerprint checks for locksmith employees,
- Establishment of forms to implement the bill,
- Establishment of necessary fees based upon the costs to administer the bill,
- Development of a schedule to maintain an updated fee for the FBI background checks,
- Development of methods to obtain and renew photographs for photo identification of locksmiths,
- Adoption of rules relating to the use and display of licenses and license numbers.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Application Requirements

The bill provides that a license must be issued for each locksmith services business or locksmith referral service and that such licenses are non-transferrable and non-assignable. As read, the plain language of this section is unclear and could be misinterpreted as requiring a license to be issued to each individual location of the same business, as the definition of "locksmith services business" in the bill is defined as "any person, who, for compensation, provides [...] locksmith services [...] or who operates a locksmith services business or referral service in this state."

Violations

There are a number of potential issues with the violations that carry criminal penalties in this bill. In general, many of the bill's violation provisions are duplicative of present law, provide for a penalty less severe than currently provided by law, or may be broader than intended.

⁴ Sunrise Questionnaire For Groups Seeking New Regulation. On file with the Insurance, Business, and Financial Affairs Policy Committee.

The bill provides a list of violations, s. 559.954, F.S., and specific criminal penalties for those violations, s. 559.953, F.S.

(1)(a) Perform or offer to perform locksmith services without having or acting under a valid license issued by the department under this part.

This provision could be interpreted such that a person who offers, as a good deed, to help open a car door could be charged with a violation of this part.

(2)(a) Fraudulently misuse any customer's credit card.

Fraudulent misuse of a customer's credit card is already covered under current law.⁵ Under the provisions of this bill, fraudulent misuse of a customer's credit card is a first-degree misdemeanor. Under current law, fraudulent misuse is a first-degree misdemeanor only if the fraudulently charged amount is less than \$300 in a six month period. If the amount is more than \$300 or certain other conditions are met, fraudulent misuse of a customer's credit card is a third-degree felony.⁶ Thus, this bill may lessen the penalty currently provided by law in some instances.

(2)(c) Fail or refuse, after notice, to provide any law enforcement officer or the department with any document or record or disclose any information required to be produced or disclosed.

This provision may be overbroad. In general, "a statute is overbroad [...] when the legislature sets a net large enough to catch all possible offenders and leaves it to the courts to step inside and determine who is being lawfully detained and who should be set free."⁷

At present, this provision can be read to require a person to disclose anything that a law enforcement officer or the department chooses to require to be disclosed (whether relevant to this act or not). It would be more clear and effective if the phrase "by this part" was inserted at the end of the sentence.

Training Requirements

The bill requires locksmiths and locksmith apprentices to complete training requirements but does not detail what types of training will comply with the requirements.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 3, 2010, the Agriculture and Natural Resources Policy Committee adopted one amendment to the bill. The amendment removes the language prohibiting people from owning or possessing certain locksmith tools.

On March 22, 2010, the Public Safety and Domestic Security Policy Committee adopted an amendment to the bill. The amendment made numerous technical changes. The substantive changes include:

- Removing a provision requiring a court to assess attorney fees to the prevailing party in a civil action brought pursuant to the bill. Under the bill, the attorney fees assessment is discretionary;
- Exempting law enforcement officers, firefighters, emergency medical technicians, and government employees who perform locksmith services as part of their duties from the licensing requirements of the bill;
- Providing specific requirements before the DACS can waive the fee based on financial hardship; and
- Adding sexual battery and attempted sexual battery to the list of crimes that could cause the DACS to deny an application for a license.
- Providing that local regulations of locksmiths are not preempted if those regulations meet or exceed the requirements of the bill.

The bill was reported favorably as a committee substitute. This analysis reflects the committee substitute.

⁵ s. 817.62, F.S.

⁶ s. 817.67, F.S.

⁷ 73 Am. Jur. 2d Statutes § 243.