

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: SB 720

INTRODUCER: Senator Brandes

SUBJECT: Deregulation of Professions and Occupations

DATE: March 20, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	Imhof	RI	Pre-meeting
2.			CM	
3.			AGG	
4.			AP	
5.				
6.				

I. Summary:

SB 720 amends and repeals various provisions relating to the Deregulation of Professions and Occupations. The bill amends provisions in part VI of ch. 468, F.S. to repeal licensing requirements for apprentice auctioneers. The bill amends Chapter 477, F.S., to repeal regulation of persons who engage only in hair braiding, hair wrapping, or body wrapping. The bill repeals part VIII of ch. 559, F.S., regulating the sale or lease of certain business opportunities.

The bill provides a July 1, 2013 effective date.

The bill substantially amends sections 468.383, 468.385, 468.381, 468.384, 468.3855, 468.388, 468.391, 477.0132, 477.019, 477.026, 477.0265, 477.029, 205.1971, 501.604, and 721.11, Florida Statutes.

The bill repeals sections 559.80, 559.801, 559.802, 559.803, 559.805, 559.807, 559.809, 559.811, 559.813, and 559.815, Florida Statutes.

II. Present Situation:

Auctions and Apprentices

Part VI of ch. 468, F.S., (act) sets forth licensing requirements for auctioneers, apprentices and auction businesses by the Florida Board of Auctioneers (board) in the Department of Business and Professional Regulation (department). Auctioneer means any person licensed pursuant to part VI who holds a valid Florida auctioneer license; apprentice means any person who is being trained as an auctioneer by a licensed auctioneer; and auction business means a sole proprietorship, partnership, or corporation which in the regular course of business arranges,

manages, sponsors, advertises, promotes, or carries out auctions, employs auctioneers to conduct auctions in its facilities, or uses or allows the use of its facilities for auctions.¹

The act does not apply to the following exempted auction types:

- Auctions conducted by the owner, or the owner's attorney, of any part of the property being offered, unless the owner acquired the goods to resell;
- Auctions conducted under a judicial or an administrative order, or sales required by law to be at auction;
- Auctions conducted by a charitable, civic, or religious organization, or for such organization by a person who receives no compensation;
- Auctions of livestock if conducted by a person who specializes in the sale of livestock and the auction is conducted under the supervision of a livestock trade association, a governmental agency, or an owner of the livestock;
- Auctions of agricultural products as defined in s. 618.01(1), F.S., or the equipment or tools used to produce or market such products, if the auction is conducted at a farm or ranch where the products are produced or where the equipment and tools are used or at an auction facility that sells primarily agricultural products;
- Auctions conducted by a trustee pursuant to a power of sale contained in a deed of trust on real property;
- Auctions of collateral, sales conducted to enforce carriers' or warehousemen's liens, sales of the contents of self-contained storage units, bulk sales, sales of goods by a presenting bank following dishonor of a documentary draft, resales of rightfully rejected goods, or resales conducted pursuant to law, if the auction is conducted by the owner or agent of the lien on or interest in such goods;
- Auctions conducted as a part of the sale of real property by a real estate broker defined in s. 475.01(1)(a), F.S.;
- Auctions of motor vehicles among motor vehicle dealers if conducted by an auctioneer; and
- Auctions conducted by a person enrolled in a class at an approved school of auctioneering, for the purpose of training and receiving instruction, under the direct supervision of an auctioneer who is also an instructor in the school and who further assumes full and complete responsibility for the activities of the student.²

The board receives and acts upon applications for auctioneer, apprentice, and auction business licenses and has the power to issue, suspend, and revoke such licenses and to take such other action as is necessary to carry out the provisions of the act.³

Section 468.385, F.S., provides that only persons licensed by the department or exempt from licensure may auction or offer to auction any property in this state. Each apprentice application and license shall name a licensed auctioneer who has agreed to serve as the supervisor of the apprentice, and no apprentice may conduct, or contract to conduct, an auction without the express approval of his or her supervisor, who shall regularly review the apprentice's records

¹Section 468.382, F.S.,

²Section 468.383, F.S.

³Section 468.384(3), F.S.

that are required by the board to be maintained, to determine if such records are accurate and current.⁴ Only persons who have held an apprentice license, have served as an apprentice for one year or more, have completed a course of study of not less than 80 classroom hours of instruction, have passed the required examination, and been approved by the board, may be licensed as auctioneers.⁵

Section 468.385(7), F.S., provides that any auction that is subject to the provisions of the act must be conducted by an auctioneer who has an active license or an apprentice who has an active apprentice auctioneer license and who received prior written sponsor consent. No business shall auction or offer to auction any property in this state unless it is licensed as an auction business by the board or is exempt from licensure under the act.⁶ Each application for licensure shall include the names of the owner and the business, the business mailing address and location, and any other information which the board may require, and the owner of an auction business shall report to the board within 30 days of any change in this required information.⁷

A license issued by the department to an auctioneer, apprentice, or auction business is not transferable.⁸

Section 468.3855, F.S., describes apprenticeship training requirements, as follows:

- An auctioneer may not sponsor more than three apprentices at one time. Any auctioneer who serves as a sponsor must have held an active, valid license for three consecutive years preceding the date on which that auctioneer is named as sponsor of the apprentice;
- Any auctioneer who undertakes the sponsorship of an apprentice shall ensure that the apprentice receives training as required by board rule;
- An apprentice must actively participate in auction sales as required by board rule, and a record of each auction for which participation credit is claimed must be made as required by board rule;
- Apprentices are prohibited from conducting any auction without the prior express written consent of the sponsor. The apprentice's sponsor must be present at the auction site at any time the apprentice is actively participating in the conduct of the auction. If the apprentice's sponsor cannot attend a particular auction, the sponsor may appoint a qualified auctioneer who meets the requirements of board rule to attend the auction in his or her place. Prior written consent must be given by the apprentice's sponsor for each substitution;
- Each apprentice and sponsor shall file reports as required by board rule;
- A sponsor may not authorize an apprentice to conduct an auction or act as principal auctioneer unless the sponsor has determined that the apprentice has received adequate training to do so;
- The sponsor shall be responsible for any acts or omissions of the apprentice which constitute a violation of law in relation to the conduct of an auction;

⁴Section 468.385, F.S.

⁵*Id.*

⁶Section 468.385(7), F.S.

⁷*Id.*

⁸Section 468.385(8), F.S.

- All apprentice applications shall be valid for a period of six months after board approval. Any applicant who fails to complete the licensure process within that time shall be required to make application as a new applicant;
- Any licensed apprentice who wishes to change the sponsor under whom he or she is licensed must submit a new application and application fee. However, a new license fee shall not be required and credit shall be awarded for training received or any period of apprenticeship served under the previous sponsor;
- Credit for training received or any period of apprenticeship served shall not be allowed unless it occurred under the supervision of the sponsor under whose supervision the apprentice is licensed.

Section 468.386, F.S., provides that the board, by rule, may establish application, examination, licensure, renewal, and other reasonable and necessary fees, based upon the department's estimate of the costs to the board in administering the act. It also provides that local occupational licenses, if required, should be obtained by auctioneers in the jurisdiction in which his or her permanent business or branch office is located, but that no local government or local agency may charge any other fee for the practice of auctioneering or require any auctioneer's license in addition to the license required by the act.

Section 468.387, F.S., states that provided the requirements for licensure in the state where an applicant holds a valid license are substantially equivalent to or more stringent than those existing in this state, that the department shall issue a license by endorsement to practice auctioneering to an applicant who applies to the department and remits the required fee set by the board, demonstrates to the board that he or she is over 18 years of age, and has not committed any act or offense in this state or any other jurisdiction which would constitute an act prohibited under s. 468.389, F.S. These endorsement and reciprocity provisions shall apply to auctioneers only and not to professions or occupations regulated by other statutes.

There are numerous requirements for the conduct of an auction listed in s. 468.388, F.S., and s. 468.389, F.S., sets forth those prohibited acts constituting grounds for disciplinary activities.

Practice of Hair Braiding, Hair Wrapping or Body Wrapping

Section 477.0132, F.S., sets forth the requirements for registration of hair braiders, hair wrappers and body wrappers with the department. Hair braiding means the weaving or interweaving of natural human hair for compensation without cutting, coloring, permanent waving, relaxing, removing, or chemical treatment and does not include the use of hair extensions or wefts.⁹

Hair wrapping means the wrapping of manufactured materials around a strand or strands of human hair, for compensation, without cutting, coloring, permanent waving, relaxing, removing, weaving, chemically treating, braiding, using hair extensions, or performing any other service defined as cosmetology.¹⁰

Body wrapping means a treatment program that uses herbal wraps for the purposes of cleansing and beautifying the skin of the body, but does not include the application of oils, lotions, or other

⁹Section 477.013(9), F.S.

¹⁰Section 477.013(10), F.S.

fluids to the body, except fluids contained in presoaked materials used in the wraps, or manipulation of the body's superficial tissue, other than that arising from compression emanating from the wrap materials.¹¹

Persons whose occupation or practice is confined solely to hair braiding must register with the department, pay the applicable registration fee, and take a two-day board-approved 16-hour course, consisting of 5 hours of HIV/AIDS and other communicable diseases, 5 hours of sanitation and sterilization, 4 hours of disorders and diseases of the scalp, and 2 hours of studies regarding laws affecting hair braiding.¹²

Persons whose occupation or practice is confined solely to hair wrapping must register with the department, pay the applicable registration fee, and take a one-day board-approved 6-hour course, consisting of education in HIV/AIDS and other communicable diseases, sanitation and sterilization, disorders and diseases of the scalp, and studies regarding laws affecting hair wrapping.¹³

Section 477.0132(1)(c), F.S., provides that unless otherwise licensed or exempted from licensure under the cosmetology act, any person whose occupation or practice is body wrapping must register with the department, pay the applicable registration fee, and take a two-day board-approved 12-hour course, consisting of education in HIV/AIDS and other communicable diseases, sanitation and sterilization, disorders and diseases of the skin, and studies regarding laws affecting body wrapping.

Hair braiding, hair wrapping, and body wrapping are not required to be practiced in a cosmetology salon or specialty salon.¹⁴ When hair braiding, hair wrapping, or body wrapping is practiced outside a cosmetology salon or specialty salon, disposable implements must be used or all implements must be sanitized in a disinfectant approved for hospital use or approved by the federal Environmental Protection Agency.¹⁵

Sale or Lease of Business Opportunities

Sections 559.80 to 559.815, F.S., constitute the Sale of Business Opportunities Act (opportunities act). A business opportunity is defined in s. 559.801(1)(a), F.S., as the sale or lease of any products, equipment, supplies or services that are sold or leased to enable the purchaser (or lessee) to start a business, when the purchaser must pay an initial fee exceeding \$500, and the seller (or lessor) represents:

- That the seller or person or entity affiliated with or referred by the seller will provide locations or assist the purchaser in finding locations (which includes but is not limited to supplying the purchaser with names of locator companies, contracting with the purchaser to provide assistance or supply names, or collecting a fee on behalf of or for a locator company) for the use or operation of vending machines, racks, display cases, currency or

¹¹Section 477.013(12), F.S.

¹²Section 477.0132, F.S.

¹³*Id.*

¹⁴Section 477.0132(2), F.S.

¹⁵*Id.*

- 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;
- 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;
 - 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
 - That the seller will provide a sales program or marketing program that will enable the purchaser to derive income from the business opportunity (except as 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 laws of any state or the United States, if the seller requires use of the trademark or service mark in the sales agreement).

For purposes of the opportunities act, the term business opportunity does not include:¹⁶

- The sale of ongoing businesses when the owner of those businesses sells and intends to sell only those business opportunities so long as those business opportunities to be sold are no more than five in number;
- The not-for-profit sale of sales demonstration equipment, materials, or samples for a price that does not exceed \$500 or any sales training course offered by the seller the cost of which does not exceed \$500; or
- The sale or lease of laundry and drycleaning equipment.

Every seller of a business opportunity is required to file with the Department of Agriculture and Consumer Services (DACS) a copy of a disclosure statement containing certain required information described in s. 559.803, F.S., before placing an advertisement or making any other representation designed to offer to, sell to, or solicit an offer to buy a business opportunity from a prospective purchaser in this state, which must be updated with any material change in the required information within 30 days after the material change occurs.¹⁷

The sale of a franchise is exempt if the franchise meets the definition of that term in Federal Trade Commission regulations,¹⁸ and the franchisor files a notice and the applicable fee with DACS before selling or offering a franchise for sale in this state to a Florida resident, stating that the franchisor is in substantial compliance with the requirements of the applicable Federal Trade Commission rule.¹⁹ The initial exemption is for a period of one year after the date of filing the notice, with one-year renewal periods upon filing of the renewal notice and applicable fee.²⁰ Only the name, principal address and federal employer identification number of the applicant,

¹⁶Section 559.801(1)(b), F.S.

¹⁷Section 559.805, F.S.

¹⁸Section 559.802, F.S. and 16 C.F.R., ss. 436.1 *et seq.*

¹⁹*Id.*

²⁰*Id.*

the name of the franchise, and the name under which the applicant intends to, or does, transact business, if different may be requested by DACS.²¹

At least three working days prior to the time the purchaser signs a business opportunity contract, or at least three working days prior to the receipt of any consideration by the seller, whichever occurs first, the seller must provide the prospective purchaser a written document with disclosures controlled as to size and placement, as follows:²²

- A cover sheet titled with the phrase DISCLOSURES REQUIRED BY FLORIDA LAW and containing the following statement:
The State of Florida has not reviewed and does not approve, recommend, endorse, or sponsor any business opportunity. The information contained in this disclosure has not been verified by the state. If you have any questions about this investment, see an attorney before you sign a contract or agreement.
- An index page that briefly lists the required contents of the disclosure document, the pages where each disclosure may be located by the prospective purchaser, and the following statement at the top of the page:
The State of Florida requires sellers of business opportunities to disclose certain information to prospective purchasers. This index is provided to help you locate this information.
- The name of the seller; whether the seller is doing business as an individual, partnership, corporation, or other business entity; the names under which the seller has done business; and the name of any parent or affiliated company that will engage in business transactions with the purchasers or who takes responsibility for statements made by the seller (seller's affiliated entities);
- The names, addresses, and titles of the seller's officers, directors, trustees, general partners, general managers, and principal executives and of any other persons charged with the responsibility for the seller's business activities relating to the sale of business opportunities (seller's executives);
- The length of time the seller has sold business opportunities; or sold business opportunities involving the products, equipment, supplies, or services currently being offered to the purchaser;
- A full and detailed description of the actual services that the business opportunity seller undertakes to perform for the purchaser;
- A copy of a current (not older than 13 months) financial statement of the seller, updated to reflect material changes in the seller's financial condition;
- If training is promised by the seller, a complete description of the training, the length of the training, and the cost or incidental expenses of that training, which cost or expense the purchaser will be required to incur;
- If the seller promises services to be performed in connection with the placement of the equipment, product, or supplies at a location, the full nature of those services as well as the nature of the agreements to be made with the owners or managers of the location where the purchaser's equipment, product, or supplies will be placed;

²¹*Id.*

²²Section 559.803, F.S.

- If the business opportunity seller is required to secure a bond, guaranteed letter of credit, or certificate of deposit pursuant to s. 559.807, F.S., either of the following statements:
 - As required by Florida law, the seller has secured a bond issued by ____, a surety company authorized to do business in this state. Before signing a contract to purchase this business opportunity, you should confirm the bond's status with the surety company; or
 - As required by Florida law, the seller has established a guaranteed letter of credit or certificate of deposit (number of account) with (name and address of bank or savings institution). Before signing a contract to purchase this business opportunity, you should confirm with the bank or savings institution the current status of the guaranteed letter of credit or certificate of deposit;
- The following statement: If the seller fails to deliver the product, equipment, or supplies necessary to begin substantial operation of the business within 45 days of the delivery date stated in your contract, you may notify the seller in writing and cancel your contract;
- If the seller makes any statement concerning sales or earnings or a range of sales or earnings that may be made through this business opportunity, a statement disclosing:
 - The total number of purchasers of business opportunities involving the product, equipment, supplies, or services being offered who have actually achieved sales of or received earnings in the amount or range specified within three years prior to the date of the disclosure statement; and
 - The total number of purchasers of business opportunities involving the product, equipment, supplies, or services being offered within three years prior to the date of the disclosure statement;
- The total number of persons who purchased the business opportunity being offered by the seller within the past three years;
- The names, addresses, and telephone numbers of the 10 persons who previously purchased the business opportunity from the seller and who are geographically closest to the potential purchaser;
- A statement disclosing who, if any, of the seller's affiliated entities or seller's executives:
 - Has, at any time during the previous 10 fiscal years, regardless of adjudication, been convicted of, or found guilty of, or pled guilty or nolo contendere to, or has been incarcerated within the last 10 years as a result of having previously been convicted of, or found guilty of, or pled guilty or nolo contendere to, a felony or a crime involving fraud, theft, larceny, violation of any franchise or business opportunity law or unfair or deceptive practices law, embezzlement, fraudulent conversion, misappropriation of property, or restraint of trade.
 - Has, at any time during the previous seven fiscal years, been held liable in a civil action resulting in a final judgment or has settled out of court any civil action or is a party to any civil action involving allegations of fraud (including violation of any franchise or business opportunity law or unfair or deceptive practices law), embezzlement, fraudulent conversion, misappropriation of property, or restraint of trade or any civil action which was brought by a present or former franchisee or franchisees and which involves or involved the franchise relationship. Only material individual civil actions must be listed, including any group of civil actions which, irrespective of the materiality of any single such action, in the aggregate is material.

- Is subject to any currently effective state or federal agency or court injunctive or restrictive order, or has been subject to any administrative action in which an order by a governmental agency was rendered, or is a party to a proceeding currently pending in which such order is sought, relating to or affecting business opportunities activities or the business opportunity seller-purchaser relationship or involving fraud (including violation of any franchise or business opportunity law or unfair or deceptive practices law), embezzlement, fraudulent conversion, misappropriation of property, or restraint of trade.

Such statement must set forth the identity and location of the court or agency; the date of conviction, judgment, or decision; the penalty imposed; the damages assessed; the terms of settlement or the terms of the order; and the date, nature, and issuer of each such order or ruling. A business opportunity seller may include a summary opinion of counsel as to any pending litigation, but only if counsel's consent to the use of such opinion is included in the disclosure statement.

- A statement disclosing who, if any, of the seller's affiliated entities or seller's executives at any time during the previous seven fiscal years has filed in bankruptcy, been adjudged bankrupt, been reorganized due to insolvency, or been a principal, director, executive officer, or partner of any other person that has so filed or was so adjudged or reorganized during or within one year after the period that such person held such position in relation to such other person, and if so, the name and location of the person having so filed or having been so adjudged or reorganized, the date thereof, and any other material facts relating thereto;
- A copy of the business opportunity contract which the seller uses as a matter of course and which is to be presented to the purchaser at closing.

Should any seller of business opportunities prepare a disclosure statement pursuant to Federal Trade Commission regulations,²³ the seller may file that disclosure statement in lieu of the document required pursuant to s. 559.803, F.S. Should the seller be required by those regulations to prepare any other documents to be presented to the prospective purchaser, those documents shall also be filed with DACS.²⁴

Every seller of a business opportunity must annually file with DACS a copy of the disclosure statement required by s. 559.803, F.S., before placing an advertisement²⁵ or making any other representation designed to offer to, sell to, or solicit an offer to buy a business opportunity from a prospective purchaser in this state.²⁶ The filing must be updated by reporting any material change in the required information within 30 days after the material change occurs.²⁷ If the seller is required by s. 559.807, F.S., to provide a bond or establish a trust account or guaranteed letter of

²³16 C.F.R. ss. 436.1 *et seq.*,

²⁴*Id.*

²⁵Section 559.805, F.S., states that '[a]n advertisement is not placed in the state merely because the publisher circulates, or there is circulated on his or her behalf in the state, any bona fide newspaper or other publication of general, regular, and paid circulation which has had more than two-thirds of its circulation during the past 12 months outside the state or because a radio or television program originating outside the state is received in the state.'

²⁶Section 559.805(1), F.S.

²⁷*Id.*

credit, he or she shall contemporaneously file with DACS a copy of the bond, a copy of the formal notification by the depository that the trust account is established, or a copy of the guaranteed letter of credit.²⁸ Every seller of a business opportunity shall file with DACS a list of independent agents who will engage in the offer or sale of business opportunities on behalf of the seller in this state. This list must be kept current and shall include the following information: name, home and business address, telephone number, present employer, and birth date, and a person may not offer or sell business opportunities unless the required information has been provided to DACS.²⁹

Every seller of a business opportunity shall file with DACS a list of the seller's officers, directors, trustees, general partners, general managers, principal executives, and any other persons charged with the responsibility for the seller's business activities relating to the sale of business opportunities. This list must be kept current and shall include the following information: name, home and business address, telephone number, driver's license number, the state in which the driver's license is issued, and birth date.³⁰

Upon the filing of the disclosure statement and the posting of a bond or the establishment of a trust account or a guaranteed letter of credit, if any is required, an advertisement identification number shall be issued by DACS to the business opportunity seller.³¹ The business opportunity seller shall include and prominently display the advertisement identification number in all written advertisements, sales materials, promotional documents, and business opportunity contracts.³²

The advertisement identification number must be disclosed by the seller to each person with whom he or she places advertising, and the person receiving the advertising must record the number so that the advertising media may verify the authenticity of the registration.³³

A seller required to comply with s. 559.805, F.S., must pay an annual fee of \$300 to DACS for the administration and enforcement of the act.³⁴ If any material change in the information submitted to DACS occurs before the date for annual registration, a seller must submit a fee of \$50 for every required update filing.³⁵

If the business opportunity seller makes certain representations regarding guarantees of income, refunds or repurchase of products, equipment, supplies or chattels³⁶ supplied by the seller, if the purchaser is unsatisfied with the business opportunity,³⁷ the seller must either have obtained a surety bond issued by a surety company authorized to do business in this state or have

²⁸*Id.*

²⁹Section 559.805(2), F.S.

³⁰Section 559.805(2), F.S.

³¹Section 559.805(3), F.S.

³²*Id.*

³³Section 559.805(4), F.S.

³⁴Section 559.805(5), F.S.

³⁵*Id.*

³⁶Chattels is defined as personal property of any kind (BLACK'S LAW DICTIONARY (9th ed. 2009)).

³⁷Section 559.801(1)(a)3, F.S.

established a certificate of deposit or a guaranteed letter of credit with a licensed and insured bank or savings institution located in the state, in an amount not less than \$50,000.³⁸

Section 559.807(2), F.S., provides that the bond, certificate of deposit, or guaranteed letter of credit shall be in the favor of DACS for the use and benefit of any person who is injured by the fraud, misrepresentation, breach of contract, financial failure, or violation of the opportunities act by the seller. Such liability may be enforced by filing an action at law in a court of competent jurisdiction without preventing enforcement in an administrative action pursuant to ch. 120, the Administrative Procedure Act.

The bond, certificate of deposit, or guaranteed letter of credit shall be enforceable only by and through administrative proceedings before DACS. A money judgment resulting from an action at law, less any award for costs and attorney's fees, shall be prima facie evidence sufficient to establish the value of the claim in an administrative action.³⁹ Such bond, certificate of deposit, or guaranteed letter of credit is liable only for payment of claims duly adjudicated by order of DACS,⁴⁰ and while liable for successive claims, the aggregate amount of all claims may not exceed the amount of the bond, certificate of deposit, or guaranteed letter of credit.⁴¹

Under s. 559.809, F.S., a seller of a business opportunity may not:

- Misrepresent, by failure to disclose or otherwise, the known required total investment for such business opportunity;
- Misrepresent the quantity or the quality of the products to be sold or distributed through the business opportunity;
- Misrepresent the training and management assistance available to the business opportunity purchaser;
- Misrepresent the amount of profits, net or gross, which the franchisee can expect from the operation of the business opportunity;
- Misrepresent, by failure to disclose or otherwise, the termination, transfer, or renewal provision of a business opportunity agreement;
- Falsely claim or imply that a primary marketer or trademark of products or services sponsors or participates directly or indirectly in the business opportunity;
- Assign a so-called "exclusive territory" encompassing the same area to more than one business opportunity purchaser;
- Provide vending locations for which written authorizations have not been granted by the property owners or lessees;
- Provide machines or displays of a brand or kind substantially different from and inferior to those promised by the business opportunity seller;
- Fail to provide the purchaser a written contract as provided in s. 559.811, F.S.;
- Misrepresent their ability or the ability of a person or entity providing services as defined in s. 559.801(1)(a), F.S., to provide locations or assist the purchaser in finding locations expected to have a positive impact on the success of the business opportunity;

³⁸Section 559.807(1), F.S.

³⁹Section 559.807(2), F.S.

⁴⁰*Id.*

⁴¹*Id.*

- Misrepresent a material fact or create a false or misleading impression in the sale of a business opportunity; or
- Fail to provide or deliver the products, equipment, supplies, or services as specified in the written contract required under s. 559.811, F.S.

Section 559.811(1), F.S., provides that every business opportunity contract shall be in writing, and a copy shall be given to the purchaser at least three working days before signing the contract. Pursuant to s. 559.811(2), F.S., every contract for a business opportunity shall include the following:

- The terms and conditions of payment, including the total financial obligation of the purchaser to the seller;
- A full and detailed description of the acts or services that the business opportunity seller undertakes to perform for the purchaser;
- The seller's principal business address and the name and address of its agent in the state authorized to receive service of process; and
- The approximate delivery date of products, equipment, or supplies which the business opportunity seller is to deliver to the purchaser.

Section 559.813, F.S., provides that the purchaser of a business opportunity may, within two years of the date of execution of a contract, and upon written notice to a seller, rescind the contract and be entitled to receive from the seller all sums paid to the seller, if the contract does not comply with the requirements of the opportunities act or, if the seller:

- Uses untrue or misleading statements in the sale of a business opportunity;
- Fails to give the proper disclosures in the manner required by the opportunities act; or
- Fails to deliver the equipment, supplies, or products necessary to begin substantial operation of the business within 45 days of the delivery date stated in the contract.

Upon receipt of such sums from the seller, the purchaser shall make available to the seller at the purchaser's address, or at the places at which they are located at the time notice is given, all products, equipment, or supplies received by the purchaser. The purchaser shall not be entitled to unjust enrichment by exercising the remedies provided in s. 559.813(1), F.S.

Certain penalties may be imposed pursuant to s. 559.813(2)(a), F.S., if DACS finds that a seller or any of the seller's principal officers or agents:

- Violated or is operating in violation of any of the provisions of the opportunities act, or the orders issued or rules adopted by DACS;
- Made a material false statement in any application, document, or record required to be submitted or retained under the opportunities act;
- Refused or failed, after notice, to produce any document or record or disclose any information required to be produced or disclosed under the opportunities act or the rules of DACS;
- Made a material false statement in response to any request or investigation by DACS, the Department of Legal Affairs, or the state attorney; or
- Has intentionally defrauded the public through dishonest or deceptive means.

Pursuant to s. 559.813(2)(b), F.S., an order may be entered by DACS imposing one or more of the following penalties, upon a finding that a seller or any of the seller's principal officers or agents:

- Issuing a notice of noncompliance pursuant to s. 120.695, F.S.;
- Imposing an administrative fine not to exceed \$5,000 per violation for each act which constitutes a violation of the opportunities act or a rule or order;
- Directing that the seller or its principal officers or agents cease and desist specified activities;
- Refusing to issue or revoking or suspending an advertisement identification number; and
- Placing the registrant on probation for a period of time, subject to such conditions as DACS may specify.

The administrative proceedings which could result in the entry of an order imposing any of the penalties shall be conducted in accordance with ch. 120, F.S.⁴²

Any purchaser injured by a violation of the opportunities act, or by the business opportunity seller's breach of a contract subject to the opportunities act or any obligation arising from it, may bring an action for recovery of damages, including reasonable attorney's fees.⁴³ Upon complaint of any person that a business opportunity seller has violated the provisions of the opportunities act, the circuit court shall have jurisdiction to enjoin the defendant from further such violations.⁴⁴

The Department of Legal Affairs, DACS, or the state attorney, if a violation of the opportunities act occurs in her or his judicial circuit, are the enforcing authorities that may bring civil actions in circuit court for temporary or permanent injunctive relief and other appropriate civil relief, including, but not limited to, a civil penalty not to exceed \$5,000 for each violation, restitution and damages for injured purchasers of business opportunities, and court costs and reasonable attorney's fees.⁴⁵

Any remedy provided in s. 559.813, F.S., may be recovered in an appropriate action, or the enforcing authority may terminate any investigation or action upon agreement by the offender to pay as stipulated civil penalty, to make restitution or pay damages to purchasers, or to satisfy any other relief authorized in s. 559.813, F.S., and requested by the enforcing authority.⁴⁶ These remedies are in addition to any other remedies provided by law or in equity.⁴⁷

⁴²Section 559.813(2)(c), F.S.

⁴³Section 559.813(3), F.S.

⁴⁴Section 559.813(4), F.S.

⁴⁵Section 559.813(5), F.S.

⁴⁶Section 559.813(6), F.S.

⁴⁷Section 559.813(7), F.S.

Section 559.813(8), F.S., provides that a person who fails to file the disclosures required by s. 559.805, F.S., or who commits a prohibited act in violation of s. 559.809, F.S., is guilty of a third degree felony punishable as provided in ss. 775.082, 775.083, or 775.084.⁴⁸

III. Effect of Proposed Changes:

Section 1 exempts motor vehicle auctions⁴⁹ conducted by auctioneers licensed in other states from the licensing requirements set forth in part VI of ch. 468, F.S., but only when the auction is for the purpose of conducting sanctioned contests among auctioneers and a Florida licensed auctioneer is on site to monitor the contest.

Section 2 eliminates licensing and reporting requirements for apprentice auctioneers but requires that all apprentice auctioneers work under the supervision of licensed auctioneers. The bill requires that an auction subject to part VI of ch. 468, F.S., be conducted by a licensed auctioneer or an apprentice actively supervised by a licensed sponsor.

Sections 3 and 4 eliminate the term apprentice from ss. 468.381 and 468.384, F.S., respectively, relating to the purpose of regulating auctioneers and auction businesses, and licensure by the Board of Auctioneers (board).

Section 5 amends provisions regarding apprenticeship training requirements set forth in s. 468.3855, F.S. The bill eliminates the filing of reports as required by rule of the board by apprentice auctioneers and their sponsors. The bill eliminates the requirement for apprentice auctioneers to complete licensure requirements within six months after board approval. The bill adds a provision requiring apprentice auctioneers to submit written verification of the apprenticeship signed by the sponsors, on the form prescribed by the department, when submitting an application for an auctioneer license.

Section 6 amends s. 468.388, F.S., to delete references to licensed apprentice auctioneers and apprentices.

Section 7 amends s. 468.391, F.S., to provide that apprentice auctioneers operating without a written sponsorship consent will subject the apprentice to the existing statutory penalty for operating without an active license.⁵⁰

Section 8 amends s. 477.0132, F.S., to delete the application of the Florida Cosmetology Act (cosmetology act) to persons whose occupation or practices are confined solely to hair braiding, hair wrapping, or body wrapping as defined in the act.

⁴⁸A person convicted of a third degree felony may be sentenced to a term of imprisonment not exceeding five years and a fine not to exceed \$5,000; more severe consequences result for offenders classified as habitual felony offenders, habitual violent felony offenders, or three-time violent felony offenders pursuant to s. 775.084, F.S.

⁴⁹Section 320.27, F.S.

⁵⁰468.391, F.S., states that a violation constitutes a third degree felony, which is punishable by a term of imprisonment not to exceed five years and a fine not exceeding \$5,000.

Section 9 conforms the provisions of s. 477.019(7), F.S., by deleting a reference to an exemption from continuing education requirements for persons whose occupation or practice is confined solely to hair braiding, hair wrapping, or body wrapping.

Section 10 amends s. 477.026 to delete a reference to fees for registration of hair braiders, hair wrappers, and body wrappers.

Section 11 amends s. 477.0265(1)(f), F.S., to eliminate a reference to body wrapping.

Section 12 amends s. 477.029(1)(a), F.S., to delete a reference to hair wrapper, hair braider, or body wrapper.

Section 13 repeals part VIII of ch. 559, F.S., the Sale of Business Opportunities Act (opportunities act). Sellers or lessors of certain business opportunities are no longer required to file disclosure statements, update filings, and renewal statements, to identify advertisements with a registration number issued by DACS, or to provide security in the form of a bond, certificate of deposit, or letter of credit for claims of injury due to fraud, misrepresentation, breach of contract, financial failure of violation of the opportunities act. The remedies and enforcement provisions set forth in s. 559.813, F.S. are no longer available to purchasers of certain business opportunities.

Section 14 revises references to part XI in ss. 205.1971, 501.604, and 721.11, F.S., to part X, due to the deletion of part VIII of ch. 559, F.S.

The bill provides a July 1, 2013 effective date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

A motor vehicle auction may be conducted by auctioneers licensed in other states when the auction is for the purpose of conducting sanctioned contests properly monitored by a Florida licensed auctioneer. Licensing and reporting requirements for apprentice auctioneers are no longer required, but all apprentice auctioneers must work under the supervision of licensed auctioneers and submit written verification of the apprenticeship as prescribed by the department. Operating without a written sponsorship consent will subject the apprentice to the existing statutory penalty for operating without an active license.

Persons whose occupation or practice is solely confined to hair braiding, hair wrapping, or body wrapping will no longer be required to register or pay fees to the department, or to attend board-approved educational courses.

C. Government Sector Impact:

According to the Department of Business and Professional Regulation, there will be a fiscal impact caused by the deregulation of auction apprentices and hair braiders, hair wrappers, and body wrappers, due to the loss of current revenues generated by new registrations and renewals of those license categories.⁵¹ According to the department, there will be a net reduction in revenue of \$123,271 to the state.

According to the Department of Agriculture and Consumer Services, there will be a fiscal impact caused by the repeal of part VIII of ch. 559, F.S., due to a loss of approximately \$11,000 in revenue.⁵²

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

⁵¹See *2013 Legislative Analysis for SB 720*, Office of Legislative Affairs, Florida Department of Business and Professional Regulation, March 1, 2013.

⁵²Email from Department of Agriculture and Consumer Services, Office of Legislative Affairs, to staff (dated March 19, 2013) (on file with the Senate Committee on Regulated Industries).

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
